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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2025-002197
Civil Action No. 2024-CP-10-04878

Thomas Scott Jackson,.....Respondent,

v.

Candelabra, Inc. d/b/a Meadow Blu d/b/a Lyndon Leigh and Whitney Moore ..... Appellants,

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Appellants' Initial Brief

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Table of Contents

Table of Authorities

Page(s)

Cases

Rules

Statutes

Other Authorities

Statement of Issues on Appeal

A circuit court may enter default judgment only when a plaintiff has complied with the constitutional and procedural service requirements and the circuit court has conducted a "reasoned view of the evidence" of damages. Even then, South Carolina courts prefer to resolve cases on the merits. In this case, the circuit court entered a $612,121.86 default judgment on two of four claims against a defaulting corporation based on certified mail service that was not restricted to the addressee or signed by an authorized agent. The circuit court entered default judgment and awarded attorneys' fees without conducting the requisite damages analysis and while allowing five interrelated claims against the corporation's owner named as a co-defendant, to proceed. The circuit court also dismissed the individual defendant's counterclaims by imposing heightened pleading requirements and without granting leave to amend.

Thus, the issues presented are:

I. Whether the circuit court erred by denying the corporation's motion to vacate the default judgment when defective service by unrestricted certified mail signed by an unauthorized employee of another company rendered the judgment void under Rule 60(b)(4), SCRCP, for lack of service and personal jurisdiction?

II. Whether the circuit court erred by denying the corporation's motion to vacate the default judgment when the corporation established excusable neglect and meritorious defenses on the merits and on damages?

III. Whether the circuit court erred in entering default judgment while other claims against the corporation and its non-defaulting co-defendant remained pending, and in awarding unliquidated damages and attorneys' fees without independently calculating the amounts and making findings required by Rule 55 and South Carolina law?

IV. Whether the circuit court erred in dismissing the individual defendant's counterclaims under Rule 12(b)(6) by applying heightened pleading standards inconsistent with Rule 8 and denying leave to amend.

Introduction

This appeal arises from a default judgment's entry and enforcement in a wage payment dispute. Respondent-Plaintiff Thomas Scott Jackson sued Appellants Candelabra, Inc. ("Candelabra") and its sole shareholder, Whitney Moore, asserting claims stemming from Plaintiff's former employment as Candelabra's Chief Operating Officer. Candelabra is an online interior design and lighting company operating under the name Meadow Blu. Moore is also the sole owner and member of a separate and independent entity, Lyndon Leigh, LLC ("Lyndon Leigh"), which operates a retail store in Mount Pleasant, South Carolina.

Plaintiff sued in September 2024. He tried service on Candelabra by certified mail addressed to Lyndon Leigh's retail store location. Plaintiff's mailing was not restricted to the addressee, so a store employee who was neither Candelabra's registered agent nor authorized to accept service of process signed the return receipt. As a result, Plaintiff's service of process failed under Rule 4(d)(8), SCRCP, depriving the circuit court of personal jurisdiction over Candelabra and voiding the later-entered default judgment against it.

Before either defendant appeared, Plaintiff moved for entry of default and default judgment on his claims for breach of contract and violation of the South Carolina Payment of Wages Act ("Wages Act"). Plaintiff alleged the damages for these two claims were liquidated damages, and asserted that a judgment without a hearing was appropriate under Rule 55(b)(1), SCRCP. The circuit court refused to sign the proposed order entering the default judgment and instead conducted a damages hearing at which neither defendant was present nor notified of the hearing. The circuit court thereafter entered a default judgment on two of the six claims against Candelabra for more than $600,000. The circuit court expressly left four additional claims pending against Candelabra. (Because she was served with process later, all five claims against Moore remain

unresolved.) The circuit court awarded contract damages, treble damages, and attorneys' fees based solely on Plaintiff's affidavits, without independently assessing the amount or making findings required by Rule 55, SCRCP. It also did so without requiring Plaintiff to establish he provided the notice for an unliquidated-damages hearing as required by Rule 55(b)(2), SCRCP.

Candelabra learned about the judgment in a letter from the sheriff's office on March 17, 2025. Plaintiff served the Complaint on Moore by process server several weeks later. Candelabra immediately moved to vacate the default judgment, and Moore timely filed an answer and counterclaims. Following a consolidated hearing, the circuit court denied the motion to vacate and dismissed Moore's counterclaims under Rule 12(b)(6), SCRCP. The circuit court subsequently denied reconsideration. After Plaintiff moved for reference, the circuit court—without waiting ten days and without consent from the non-defaulting defendant—referred the entire case to the Master-in-Equity. Plaintiff is now seeking to enforce the judgment before the Master-in-Equity.

The rulings on appeal rest on conclusions that service was proper, that the default judgment was valid and final, and that Moore's counterclaims failed as a matter of law. The rulings, however, conflict with the governing service rules, the procedural requirements for default judgments, pleading requirements, and South Carolina's preference for resolving disputes on the merits. This Court should reverse so these parties can litigate their disputes on the merits.

Statement of the Case and Facts

A. Background

This appeal arises from an employment dispute filed by Plaintiff against Candelabra and its shareholder Moore concerning claims related to Plaintiff's former employment at Candelabra. (Compl.; R. __.) Candelabra is an online interior design and lighting company doing business as "Meadow Blu." (*Id.* ¶ 7; R. __.) Separately, Moore is also the CEO, President, and sole member

of Lyndon Leigh, a distinct and independent limited liability company operating a retail store at 1944 Long Grove Drive, Mt. Pleasant, South Carolina 29464. (*See* Moore Aff. ¶¶ 3, 8–9, R. __; Ex. A and B. to Moore Aff. (Sec'y of State Business Entity Record); R. __; Moore Suppl. Aff. ¶¶ 4–7; R. __; Capogrosso Suppl. Aff. ¶¶ 5–8; R. __; Penny Aff. ¶¶ 4–7; R. __.)

Although Lyndon Leigh and Candelabra shared some branding and used the same third-party payroll system for administrative and tax purposes, they operated as distinct entities with separate organizational structures, business bank accounts, tax obligations, and employees. (*Id.*) Ms. Moore was the sole registered agent for both Candelabra and Lyndon Leigh, but worked remotely from her residence at 2101 Cheswick Lane, Mt. Pleasant, South Carolina 29466. (Order Denying Mot. Vacate at 2; R. __.)[1] Plaintiff was hired in July 2023, to serve as Chief Operating Officer for Candelabra, and began work around September 5, 2023. (Compl. ¶ 34; R. __.) Plaintiff's employment ended around March 15, 2024. (*Id.*)

B. Filing and Service of the Complaint

Plaintiff filed a summons and complaint on September 28, 2024 (the "Complaint"), asserting seven claims:

Claim	Asserted Against
Violation of the Wages Act	Candelabra Only
Breach of Contract	Candelabra Only
Tortious Interference with Contract	Moore Only
Breach of Contract with Fraudulent Intent	Both Defendants
Civil Conspiracy	Both Defendants
Defamation	Both Defendants
Intentional Infliction of Emotional Distress	Both Defendants

[1] Plaintiff did not attempt service of process on Candelabra here. Instead, he addressed correspondence to a different address, "2101 Chadwick Lane," which is not Moore's personal address. (Mot. Entry Default, Ex. 2; R. __.) Moore resided at 2101 *Cheswick* Lane. (Memo Supp. Mot. Vacate, Ex. A, Moore Aff ¶ 5.) Plaintiff was familiar with this address from his employment, and was aware Moore worked exclusively from this address. (*Id.*, Ex. A, Moore Aff. ¶¶ 3, 7–9, 29–30; R. __; *id.* Ex. B, Capogrosso Aff. ¶¶ 7, 10; R.__.)

(Compl.; R. __.) Two days later, Plaintiff filed a letter attaching exhibits he had omitted from the initial filing. (Pl.'s Ltr, Sep. 30, 2024; R. __.)

The next month, Plaintiff filed a Proof of Service averring service of process on Candelabra by certified mail addressed to "1944 Long Grove Drive, Suite 1, Mt. Pleasant, South Carolina, 29464." (Proof of Service, Oct. 9, 2024; R. __.) This proof of service was not notarized, but did include a certified mail return receipt signed by "Claire Huff" on October 1, 2024. (*Id.*) Ms. Huff is a former employee of Lyndon Leigh who worked solely at the Lyndon Leigh retail store and ended her employment roughly nine months after the alleged service. (*See* Reply Memo Supporting Mot. Vacate at 2; R. __: *id.* Ex. B, Moore Suppl. Aff. ¶¶ 11–16; R. __; *id.*, Ex. C, Capogrosso Suppl. Aff. ¶¶ 10–16; R. __.) Candelabra submitted affidavits establishing Ms. Huff was not an authorized agent for service of process for Candelabra, and the record reflects that she was not the registered agent for either entity. (*Id.*; *see* Order Denying Mot. to Vacate at 2; R. __.)

The certified mail receipt filed by Plaintiff does not show delivery restricted to the addressee:

(Proof of Service, Ex. A, Oct. 9, 2024; R. __.)

Plaintiff's failure to address the package to Candelabra's registered agent and failure to restrict delivery to the addressee is potentially why the postal carrier allowed Ms. Huff to sign despite her having no key to the postal box for Candelabra. (Flinn Aff. ¶ 10; R. __.)

On October 1, 2024, Ms. Huff reached out to Candelabra's billing department manager, Mona Flinn, by text message on October 1, 2024, to let her know "an envelope" arrived. (Huff. Aff. Ex. 2, Oct. 1, 2024 text message; R. __.) Though Ms. Flinn was authorized to pick up mail for Candelabra, she was not authorized to accept service of process for Candelabra. (Moore Suppl. Aff. ¶ 17; R. __; Flinn Aff. ¶¶ 9–10; R. __.) Nor was she an officer, director, or managing agent for Candelabra. (*Id.*) Ms. Flinn did not receive the envelope containing the summons and complaint or provide it to Candelabra's registered agent and CEO, Moore. (Moore Suppl. Aff. ¶¶ 20–21; R. __; Flinn Aff. ¶¶ 11–13; R. __.)

C. The $612,121.86 Default Judgment

Plaintiff moved for entry of default and for default judgment. (Pl.'s Mot. for Default, Nov. 5, 2024; R. __.) Plaintiff originally asked that judgment be entered by the Clerk without a hearing, but the circuit court refused to sign that order. (*See* generally Case Docket; R. __.) The circuit court conducted a virtual damages hearing on December 17, 2024. (*See* Default Hr'g Tr., Dec. 17, 2024; R. __.) Candelabra was not present because it was not given proper notice of the hearing. (*Id.*; Moore Aff. ¶¶ 24–26; R. __; Moore Suppl. Aff. ¶¶ 20–25; R. __; Capogrosso Aff. ¶¶ 22–24; R. __.) Nor was Moore present—she had not yet been served with process nor notified. (*Id.*) After the hearing, the circuit court entered default judgment against Candelabra in the amount of $612,121.86 on only the breach of contract and Wages Act claims. (Default Judgment; R. __.) The order also entered default, but not default judgment, on the remaining claims against Candelabra, reserving those claims for a separate damages hearing. (*Id.*) The circuit court issued

an execution of judgment on February 13, 2025. (Execution; R. __.) To date, no damages hearing has been held on those remaining claims. (*See* generally Case Docket; R. __.)

D. Answer, Counterclaims, and Motion to Vacate

Defendants first learned about the action and default judgment upon receiving a letter from the Charleston County Sheriff's Office at Candelabra's post office box after the default judgment's entry against Candelabra in March 2025. (Moore Aff. ¶ 22; R. __.) Shortly after that letter, Plaintiff first served Moore individually with process by personal service at her home on March 30, 2025. (Aff. Service Moore; R. __.) Candelabra moved to vacate the default judgment two days later. (Mot. to Vacate, April 1, 2025; R. __.) After Candelabra filed a memorandum in support, (Mem. Supp. Mot. Vacate, July 1, 2025), Plaintiff opposed the motion, (Mem. Opp., July 7, 2025; R. __), and filed supplemental exhibits, (Suppl. Documents Supp. Pl.'s Mem. Opp., July 25, 2025; R. __). Candelabra then filed a reply in support. (Reply Mem., R. __.)

Moore also timely filed an Answer and Counterclaims. (Answer, April 28, 2025; R. __.) Plaintiff moved to dismiss the counterclaims the next month. (Pl's Mot. to Dismiss, May 22, 2025; R. __.)

After a continuance, Judge Benjamin H. Culbertson held a combined hearing on the motion to vacate and the motion to dismiss, and took the motions under advisement. (Hr'g Tr. 43:12–17, Aug. 4, 2025; R. __; Form 4 Order, Aug. 5, 2025; R. __.) Later that month, the circuit court denied Candelabra's motion to vacate and granted Jackson's motion to dismiss Moore's counterclaims. (Order, Aug. 19, 2025; R. __.) The circuit court concluded that Plaintiff's service complied with Rule 4, Candelabra offered no basis for relief under Rule 60(b), and Moore's counterclaims lacked sufficient detail or could not be brought in her individual capacity. (*Id.)*

Defendants timely moved to reconsider. (Defs.' Mot. Reconsider, Aug. 29, 2025; R. __.) The circuit court denied Defendants' motion to reconsider in a Form 4 Order. (Form 4 Order Denying Mot. to Vacate, Sep. 30, 2025; R. __.)

E. Reference to Master-in-Equity

After the entry of judgment against Candelabra and a *nulla bona* return on execution by the Sheriff's Office, Plaintiff filed a Petition for Supplemental Proceedings. (Pet. Suppl. Proceedings, Oct. 1, 2025; R. __.) The Petition sought to enforce Plaintiff's judgment against property owned by "Defendant" and for an examination under oath. (*Id.*) Only seven days later and without holding a hearing or otherwise waiting on a response brief from Candelabra or Moore, the circuit court referred the entire case to the Master-in-Equity: "IT IS FURTHER ORDERED that, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the Master-in-Equity will entertain and rule upon all motions necessary to dispose of this matter including, but not limited to, motions to dismiss, motions to appoint a receiver, and motions to continue this matter, and has authority to enter a Final Order in this matter, any appeal therefrom being directly to the South Carolina Supreme Court." (Order of Reference, Oct. 8, 2025; R. __.)

Both Candelabra and Moore timely appealed from (1) the Order entering a default judgment against Candelabra; (2) the Form 4 entering a judgment against Candelabra; (3) the Order denying Candelabra's Motion to Vacate Default and granting Plaintiff's Motion to Dismiss Moore's Counterclaims; (4) the Order denying reconsideration; and (5) the Order of Reference. (Not. Appeal, Oct. 29, 2025.)

To date, neither post-judgment proceedings nor a hearing on Plaintiff's remaining open claims have been set.

Standard of Review

The first three issues presented on appeal relate to default and arise under Rules 55 and 60, which are reviewed for an abuse of discretion. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009) ("A motion under Rule 55(c) is addressed to the sound discretion of the trial court."); *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006) ("Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge."). "[N]o hard and fact rule can be laid down for the exercise of judicial discretion in granting or refusing relief from a default, and, therefore, each case must be considered in the light of its own attendant circumstances." *Brown v. Weathers*, 251 S.C. 67, 72, 160 S.E.2d 133, 135 (1968). That said, the circuit court's discretion should be exercised with a "liberal spirit . . . in furtherance of justice in order that cases may be tried and disposed of upon their merits." *Brown v. Weathers*, 251 S.C. 67, 72, 160 S.E.2d 133, 135 (1968*)*; *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997). "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

The amount of damages and attorneys' fees awarded by the circuit court are typically reviewed for abuse of discretion. *Id.* at 229, 734 S.E.2d at 152. But a circuit court's failure to conduct an independent damages analysis required by Rule 55, SCRCP, and a misapplication of the legal standards governing damages and attorneys' fees, constitutes an error of law reviewed *de novo*. Rule 55(b), SCRCP; *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). Additionally, when "reviewing the award of treble damages, this court can take its own view of the facts." *Ross v. Ligand Pharms., Inc.*, 371 S.C. 464, 471, 639 S.E.2d 460, 464 (Ct. App. 2006).

The circuit court's dismissal of Moore's counterclaims under Rule 12(b)(6), SCRCP, is reviewed *de novo*. *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). "The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." *Id.*

Argument

I. The default judgment against Candelabra must be vacated because it is void under Rule 60(b)(4) due to defective service.

The circuit court's order denying Candelabra's motion to vacate (the "Order") failed to consider its arguments that the judgment was void under Rule 60(b)(4). (Mot. to Vacate, R. __). Rule 60(b)(4) is not discretionary; it *requires* the court to vacate a judgment when it is void. *Richardson Const. Co. v. Meek Eng'g & Const.*, Inc., 274 S.C. 307, 309, 262 S.E.2d 913, 915 (1980). Relatedly, Rule 4(d)(8) expressly provides that a "default or judgment by default *shall* be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person." Rule 4(d)(8), SCRCP (emphasis added). Plaintiff's failure to properly serve Candelabra required the circuit court to vacate the entry of default and default judgment as "a matter of right." *Id.*; *Momani v. Van Surdam*, 296 S.C. 409, 373 S.E.2d 691 (Ct. App. 1988) ("When a defendant is not properly served, 'the Court has no jurisdiction of the defendant, and all proceedings based on the pretended service are void.'") (citing *Wyman v. Hoover*, 10 S.C. 135, 136 (1878)). This Court should reverse this legal error.

A. The unrestricted certified mailing did not comply with Rule 4(d)(8).

South Carolina law permits serving a summons and complaint by certified mail when a return receipt is requested and delivery is restricted to the addressee. Rule 4(d)(8), SCRCP. The Order concludes that "the certified letter was served by way of restricted delivery." (Order at 15; R. __.) The record, however, shows no "Certified Mail Restricted Delivery" selection and reflects

delivery without restriction to the addressee. (Proof of Service, Ex. A, Oct. 9, 2024; R. __.) Section 1 of the Certified Mail Receipt shows it was sent to "Candelabra, Inc.," without attention to the registered agent or any specific individual. (*Id.*) And in section 3, none of the "Restricted Delivery" boxes are checked. (*Id.*) The certified mailing, therefore, was facially defective because it was not restricted to Candelabra's registered agent. This failure improperly allowed anyone at the business to sign, defeating the entire purpose of Rule 4(d)(8)'s requirement of restricted delivery to the addressee only. *See Moore v. Simpson*, 322 S.C. 518, 524, 473 S.E.2d 64, 67 (Ct. App. 1996).

In *Langley v. Graham*, this Court concluded that a default judgment should have been vacated by the trial court where the certified mail at issue "was defective in that delivery was not restricted to the addressee" only as required by Rule 4(d)(8). *Langley v. Graham*, 322 S.C. 428, 431, 472 S.E.2d 259, 261 (Ct. App. 1996) (citing *Roche v. Young Bros*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995). As in *Langley*, Plaintiff sent certified mail *not* restricted to the addressee, and thus did not meet his burden to show the certified mail was sent through the proper method of restricted delivery. (*Id.*; Order of Default at 2; R. __.) The circuit court, therefore, should have vacated the entry of default and the default judgment on this basis.

B. Plaintiff failed to serve an authorized agent of Candelabra.

The circuit court's Order erroneously concluded service of the Summons and Complaint on Candelabra by mail was proper and complied with Rule 4, SCRCP. (Order at 12–17; R. __.) "Service by mail cannot be the basis for a default judgment unless the return receipt shows 'acceptance by the *defendant*.'" *Roche*, 318 S.C. at 211, 456 S.E.2d at 900 (citing Rule 4(d)(8), SCRCP). "However, any default judgment may be set aside if the defendant 'demonstrates to the court that the return receipt was signed by an unauthorized person.'" *Id.*

The circuit court approved the service because the summons and complaint were delivered to the registered agent's address and accepted by "store manager Claire Huff." (Order at 2; R. __.) Yet Plaintiff's attempt to effect service on Candelabra failed because Ms. Huff is neither the registered agent nor an authorized agent of Candelabra, as required by Rule 4(d)(3); *see Richardson v. P.V., Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009) ("Not every employee of a corporation is an agent of the corporation for the purposes of service of process."). Failure to comply with the Rule requires the court to vacate the circuit court's entry of default and default judgment. Rule 4(d)(8), SCRCP ("Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.").

It is undisputed that the Secretary of State identifies Moore as Candelabra's registered agent at 1944 Long Grove Dr., Ste 1, Mt. Pleasant, SC 29464. (Order at 2; R. __.) Yet Plaintiff never served Moore with process for Candelabra (although Plaintiff served Moore individually with process much later). Moore also did not accept service for Candelabra by mail. (*Id.* at 2–3; R. __.) Instead, an individual named Claire Huff signed for the mailed Summons and Complaint, which the circuit court deemed sufficient based on an erroneous interpretation of Rule 4 and South Carolina law that Ms. Huff was an authorized agent of Candelabra. (Order at 13; R. __.)

Rule 4(d)(3) clarifies that a corporation can only be served "by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other *agent authorized by appointment or by law to receive service of process* and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." Rule 4(d)(3), SCRCP. "Whether an employee may accept service on behalf of a corporation depends on the authority the corporation conferred upon the employee." *Richardson*, 383 S.C. at

615, 682 S.E.2d at 265. The record includes no evidence that Huff was an agent of Candelabra or authorized to accept service of process on its behalf. (*See* Huff Aff. ¶¶ 9–11, July 7, 2025; R. __.)

The circuit court improperly concluded that Ms. Huff was the store manager for Candelabra, or at minimum, an its employee with authority to sign for process. (Order at 2; R. __.) In so ruling, the circuit court conflated two separate entities: Lyndon Leigh and Candelabra. They are distinct entities. (*See* Moore Aff. ¶¶ 3, 8–9; R. __; Ex. A & B. to Moore Aff. (Sec'y of State Business Entity Record); R. __; Moore Suppl. Aff. ¶¶ 4–7; R. __; Capogrosso Suppl. Aff. ¶¶ 5–8; R. __; Penny Aff. ¶¶ 4–7 ; R. __.) In the Complaint's caption, Plaintiff incorrectly named "Lyndon Leigh" as if it were doing business as Candelabra, but the record confirms that Candelabra and Lyndon Leigh are separate entities. (*Id.*) Indeed, Ms. Huff's own affidavit states that "at no time" was she ever "an employee of Candelabra, Inc. and/or Meadow Blu." (Huff Aff. ¶¶ 7–8, July 7, 2025; R. __.) Plaintiff's service on the Lyndon Leigh employee was therefore invalid and cannot be cured by any affiliation between Lyndon Leigh and Candelabra. *See Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 280–81 (2018) (affirming that affiliates are not treated as a single enterprise and noting the court has "never held corporations liable for each other's obligations merely because of centralized control, mutual purposes, and shared finances"); *La Varre v. Int'l Paper Co.*, 37 F.2d 141, 144–45 (E.D.S.C. 1929) (holding that service of process on officer of defendant's subsidiary was not sufficient to effect service on parent corporation); *see also* 62B Am. Jur. 2d *Process* § 239 ("Generally, service on a parent, subsidiary, cosubsidiary, or affiliate of a corporate defendant is not service on the defendant even though one corporation holds an equity interest in the other." (footnote omitted)).

Still, it would not matter if Ms. Huff was an employee of Candelabra, because her ordinary employment, including authority to "sign for packages," is <u>not</u> the same as authority to accept

service of process. *See Moore*, 322 S.C. at 524, 473 S.E.2d at 67 (holding that attempted personal service on receptionist, who routinely received mail for defendant's employees, was not sufficient to constitute service when she did not have express authority to accept service of process); *Bowman v. Weeks Marine, Inc.*, 936 F.Supp. 329, 343 (D.S.C. 1996) (granting motion to dismiss for lack of personal jurisdiction where service was made on a receptionist at defendant's corporate headquarters who "was not an authorized agent of Defendant, nor an officer of the corporation, nor a person authorized to accept service.").

In determining whether an employee is allowed to accept service, South Carolina law instructs courts to consider the *employer's* actions, not the employee's conduct. *Moore*, 322 S.C. at 524, 473 S.E.2d at 67; *see also Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 11–12, 615 S.E.2d 112, 115 (2005) ("However, it is Southern Finance's past behavior which would be relevant and not Bair's. Here, there is no evidence in the record that Southern Finance held out Bair as its agent or was even aware that Bair had ever signed for Brooks. Bair's behavior in the prior cases are not actions which a third party could rely upon to conclude that Southern Finance authorized her to accept service."). The relevant question, therefore, is whether *Candelabra* had ever held Ms. Huff as its agent or authorized her to accept service of process.

The circuit court misapplied *Moore* and *Roberson* by relying on *Ms. Huff's* workplace conduct in her employment by a different entity of collecting mail and hiring/firing employees, rather than *Candelabra*'s conduct to determine whether she had agency to accept service of process. (Order at 2 n.1; R. __.) As in *Roberson*, Ms. Huff's prior behavior in accepting mail for Candelabra was irrelevant unless Candelabra authorized or held her out as having authority to accept *service of process.* Here, there is no evidence that Candelabra or Lyndon Leigh ever held out Ms. Huff as a registered agent or authorized her to accept service of process. (*See* Huff July

7, 2025 Aff. ¶¶ 9–11; R. __.) In fact, they did the opposite. Ms. Huff testified that she was *not* authorized to accept service of process for Candelabra: "At no time have I ever been authorized to accept service of process for Lyndon Leigh, LLC, Candelabra, Inc., Meadow Blu or Whitney Moore." (*Id.* ¶ 10; R. __.) She even testified to this point twice: "At no time have I held myself out as an individual authorized to accept service of process for Lyndon Leigh, LLC, Candelabra, Inc., Meadow Blu or Whitney Moore." (*Id.* ¶ 11; R. __.) Ms. Huff further admits that she has never been an officer, director, or agent for Lyndon Leigh or Candelabra or been their registered agent. (*Id.* ¶¶ 8–9; R. __.)

Plaintiff presented no evidence that Candelabra authorized Ms. Huff to accept service of process. Accordingly, the service on Candelabra does not comply with Rules 4(c)(3) or 4(d)(8), and the order of default should be vacated.

C. The circuit court improperly waived compliance with the service requirements under Rule 4.

Though "exacting compliance" with service rules are not required, the plaintiff still must have "sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Roche*, 318 S.C. at 210, 456 S.E.2d at 899. The circuit court emphasized the principle that Rule 4(d)(8) "**does not require the specific addressee to sign the return receipt**." (Order at p.13 (citing *Roche*, 318 S.C. at 207).) While true, signature by an *authorized* person is still required under Rule 4(d)(4). Indeed, in *Roche*, the South Carolina Supreme Court found service proper because the plaintiff complied with Rule 4's requirement that return service be restricted to the addressee *and* the defendant "failed to show [the signee] was an unauthorized person to accept service on behalf of the corporation." 318 S.C. at 211–212, 456 S.E.2d at 900. Neither condition was met here, so the circuit court erred in waiving Plaintiff's compliance with Rule 4.

The circuit court also erred when it ruled that Candelabra had notice of the litigation by October 1, 2024, the date that Ms. Huff signed the certified mailing. (Order at 16–17; R. __.) The circuit court found Candelabra's position "that no person ever received any mailing from counsel for Plaintiff" lacked credibility based on evidence of "multiple emails sent to Moore's corporate Candelabra email address or the mailings sent to her home address." (*Id.* at 16; R. __.) Yet those communications cannot be evidence of good-faith attempts to provide notice *at the time of filing*, as they were sent only after the response deadline had passed and after Candelabra moved to vacate the default on November 5, 2024. (Pl's Opp. to Mot. for Default, Ex. 2; R. __; *id.* Pl's Ex. 3; R. __.) Plaintiff also provided no read-receipt confirmation of the emails to Moore's business address after purported service of process. Nor did Plaintiff secure approval from the circuit court to provide notice by email in lieu of mailed notice to the corporation as required by Rule 55, SCRCP. The circuit court, thus, improperly assumed receipt without evidence and failed to account for spam filters or other benign reasons the emails might not have been seen.

The circuit court also inferred that Candelabra had notice of the action by October 1, 2024, based on unsuccessful attempts to serve Moore at her home regarding the damages hearing. (Order at 3; R. __.) Yet the circuit court's emphasis of unsuccessful attempts do not prove evasion or actual notice. *BB&T v. Taylor*, 369 S.C. 548, 554–55, 633 S.E.2d 501, 504–05 (2006) (requiring ""something more than a mere suspicion of a defendant's refusal to accept the summons and complaint before we are willing to find a defendant was sufficiently served with process by a means other than strict compliance with Rule 4(d)(1)." (footnote omitted)). Additionally, the circuit court improperly referenced two instances of pre-filing conduct as evidence that Moore had notice of this litigation: (1) Moore's post-termination request of Plaintiff to notify Moore of any intention to bring suit, sent roughly six months before the litigation, and (2) a litigation

preservation notice sent by Plaintiff to Moore in August 2024. (Order at 16; R. __.) These communications occurred before Plaintiff filed his complaint in September 2024, and thus cannot demonstrate notice of the later-filed lawsuit. (*See* Memo Opp to Mot. for Default, Ex. 6; R. __; *id.* Ex. 7, Preservation Ltr; R. __.)

For these reasons, the defective service on Candelabra requires vacating the entry of default and default judgment as "a matter of right." *Richardson Const. Co.*, 274 S.C. at 309, 262 S.E.2d at 915.

II. Alternatively, the default judgment against Candelabra must be vacated because the circuit court abused its discretion in denying relief from default under Rule 60(b)(1).

A. Candelabra acted promptly once it learned of the judgment and provided a reasonable explanation for the default.

Courts applying Rule 60(b)(1) regularly vacate judgments where a party has demonstrated excusable neglect, mistake, confusion, fraud or misrepresentation. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 889 (2009); (Mot. to Reconsider at 6; R. __.) Candelabra presented sufficient reasons for relief under Rule 60(b)(1), as argued in its motion to vacate and further explained in its motion for reconsideration. (*Id*. at 20–25; R. __; Mot. to Vacate at 14–20; R. __; Candelabra's Reply in Support at 9–11; R. __.) The circuit court's subsequent Form 4 order summarily dismissed the support provided by Candelabra for setting aside the default judgment.

In order to gain relief under Rule 60(b)(1), SCRCP, a party must first show "a good faith mistake of fact has been made[.]" *Williams v. Watkins*, 384 S.C. 319, 324, 681 S.E.2d 914, 917 (Ct. App. 2009). Candelabra made that showing. The individual who signed the certified mailing, Claire Huff, was not authorized by Candelabra to accept service of process and did not realize that she was signing for the service of a lawsuit. (*See* Huff Aff. ¶¶ 9–11, 19, July 7, 2025; R. __.) Ms.

Huff then reached out to Candelabra's billing department manager, Mona Flinn, by text message on October 1, 2024, to let her know an envelope arrived. (Huff. Aff. Ex. 2, Text Message, Oct. 1, 2024, R. __.) Though Ms. Flinn was authorized to pick up Candelabra's mail at its post office box, Ms. Flinn was not authorized to accept service of process for Candelabra. (Moore Suppl. Aff. ¶ 17; R. __; Flinn Aff. ¶¶ 11–13; R. __.)

There is no evidence that Ms. Flinn ever provided this envelope to Candelabra's registered agent and CEO, Whitney Moore. (*Id*. ¶¶ 20–21; R. __.) Instead, the record reflects that Ms. Flinn "did not receive any mail or written correspondence related to this lawsuit until on or about March 17, 2025, when I received a letter from the Charleston County Sheriff's Office, dated March 10, 2025, in Candelabra's post office box." (Flinn Aff. ¶¶ 12–13; R. __.) Likewise, Moore did not become aware of the lawsuit until the letter from the sheriff's office and was first served with legal process on March 30, 2025. (*Id.* ¶ 23; R. __.) The undisputed fact that the individual who signed for process on October 1, 2024, was not authorized by Candelabra to do so, coupled with Moore's averments that she was not aware of this lawsuit until March 2025 establish excusable neglect, mistake, or confusion warranting relief from default under Rule 60(b)(1), SCRCP.

B. Candelabra demonstrated meritorious defenses, including as to damages.

"To obtain relief from a default judgment under Rule 60(b)(1), the moving party must also show he has a meritorious defense." *Green v. Johnson*, 446 S.C. 326, 339, 919 S.E.2d 894, 900 (2025). "[A] party in default can satisfy the meritorious defense requirement under Rule 55(c) and Rule 60(b)(1) by showing he has a meritorious defense as to the amount of damages or proximate cause."). *Id.* at 340, 919 S.E.2d at 901. This requirement "serve[s] the desired goal of reminding trial courts in default settings to avoid the inflation of damage awards when a defendant is in default and not present for a damages hearing." *Id.*

Here, Candelabra has numerous meritorious defenses to the claims, including counterclaims it intends to assert against Plaintiff for breach of contract, conversion, breach of fiduciary duty, breach of loyalty, and negligence. (Memo. Supp. Mot. Vacate, Ex. K (Proposed Answer & Countercl.); R. __.) Candelabra also has meritorious defenses regarding the amount of damages and Plaintiff's entitlement to treble damages, given that the circuit court automatically imposed treble damages in a sum certain calculation without the proper evaluation of whether a bona fide dispute existed. *See Temple*, 381 S.C. at 675 S.E.2d at 416 (holding that trial court's automatic award of treble damages was an error of law and explaining it is "for the trial court to determine, in the first instance, whether there existed a bona fide dispute such that treble damages were not warranted"). Candelabra has other defenses to the breach-of-contract damages award, as the award improperly includes compensation for the 77 weeks remaining on Plaintiff's employment contract when he was terminated, without any consideration of, or offset for, Plaintiff's earnings through subsequent employment. *See Chastain v. Owens Carolina, Inc.*, 310 S.C. 417 (1993) (holding that "circuit court erred when it failed to reduce the award of lost wages by the amount Chastain obtained from his other employment during the period of wrongful discharge."); (Order of Default at 2, R. __.)

For these reasons, the circuit court's denial of the motion to vacate under Rule 60(b)(1) on all causes of action was an error of law and also unsupported by the evidence, amounting to an abuse of discretion. It also goes against South Carolina's preference for disposition of claims on their merits. *See Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986) ("Therefore, we hold that where there is a good faith mistake of fact, and, no attempt to thwart the judicial system, there is basis for relief. We favor trial of issues on merit over securing

judgment by slight technicalities."). Accordingly, the default judgment against Candelabra should be vacated.

III. Even if Candelabra was properly served, the circuit court erred by entering a default judgment against Candelabra prematurely and without the required independent damages and fee analysis.

A. The circuit court improperly entered default judgment while other claims and parties remained pending, risking inconsistent verdicts.

The circuit court's decision to grant default judgment against Candelabra, while allowing all of Plaintiff's claims against Moore to proceed, creates an inconsistent procedural posture, prejudice to the non-defaulted Moore, and risks inconsistent findings. Although Candelabra and Moore are distinct under the law, the claims asserted against them overlap, arise from the same alleged conduct, and involve the same facts and evidence. There is a substantial risk that factual or legal determinations the circuit court has made against the defaulted Candelabra will be contradicted by findings in favor of the non-defaulting Moore.

In its Default Judgment Order, the circuit court entered default and default judgment against Candelabra on Plaintiff's breach of contract and South Carolina Payment of Wages Act causes of action in the amount of $612,121.86. (Order of Default, Feb. 13, 2025; R. __.) That same order declined to enter judgment on Plaintiff's remaining four causes of action against Candelabra and instead set those claims for a later damages hearing. (*Id.*) Plaintiff has scheduled no damages hearing on the remaining four causes of action, and judgment has not been entered on those claims.

Courts have long sought to avoid the risk of inconsistent judgments. *See Frow v. De La Vega*, 82 U.S. 552 (1872) (finding default judgment against one defendant should not be entered while the case proceeds against others, because doing so could result in "absurd" and irreconcilable outcomes, such as a judgment imposing liability on the defaulting defendant alongside a judgment

exonerating the remaining defendants based on the same facts). Courts in South Carolina have followed this principle and generally disfavor partial judgment where, as here, claims against multiple defendants arise from the same underlying facts. *See MAG Mut. Ins. Co. v. Brown*, No. 6:14-cv-353, 2015 WL 13648556, at *8 (D.S.C. July 24, 2015) ("The United States Supreme Court has long held that when a default of a defendant in a multi-defendant case can lead to inconsistent rulings by the court, the court should not enter judgment against the defaulting defendant.") (citing *Frow v. De La Vega*, 82 U.S. 552, 554 (1872)). Other courts agree. *See*, *e.g.*, *Escalante v. Lidge*, 34 F.4th 486, 495 (5th Cir. 2022) ("When a case involves multiple defendants, courts may not grant default judgment against one defendant if doing so would conflict with the position taken by another defendant."); *Moore v. Booth*, 122 F.4th 61, 67 (2d Cir. 2024) ("We, along with the majority of the federal appellate courts, have held that the *Frow* principle is not limited to cases of joint liability but more generally "prohibits a default judgment that is inconsistent with a judgment on the merits."); S*tate of Fla. ex rel. Dept. of Ins. of State of Fla. v. Countrywide Truck Ins. Agency, Inc.*, 258 Neb. 113, 122–123 (1999) ("As we interpret [*Frow*], a trial court should defer entering a default judgment against one of multiple defendants where doing so could result in inconsistent and illogical judgments following determination on the merits as to the defendants not in default.").

Allowing default judgment to stand against Candelabra while Moore continues to litigate would also result in prejudice to Moore, as she faces the practical consequences of being the only party actively defending against claims and factual allegation that the circuit court has already, in effect, accepted as true against Candelabra—despite those claims having been untested. *See Frow*, 82 U.S. at 554 (recognizing that granting a default judgment against one defendant creates the possibility that the remaining defendants show the allegations underlying that judgment are false, a result the Court rejected as "unseemly and absurd, as well as unauthorized by law"). Principles

of judicial economy and fairness also weigh strongly against piecemeal adjudication of claims. If Moore ultimately prevails on the merits, the circuit court will be left with a default judgment resting on factual findings that the court has rejected in the same case. Courts routinely avoid such inconsistent outcomes by deferring default judgment until the resolution of the claims against the non-defaulting defendants, particularly where, as here, the claims are factually and legally interdependent. The circuit court, therefore, erred by prematurely entering default judgment against Candelabra before adjudication of the claims against Moore.

B. The circuit court erred in failing to vacate the default under Rule 55.

In its Order of Default, the circuit court only entered default—but not default judgment—on the majority of the claims against Candelabra, leaving four causes of action pending until a later damages hearing. (Order of Default; R. __.) Because the circuit court entered only a partial default judgment, it erred by evaluating the entirety of Candelabra's motion to vacate under a Rule 60 standard rather than under Rule 55(c), SCRCP. (*See* Order at 11–12; R. __.)

If Rule 55(c), SCRCP, should not have applied to all claims, then the circuit court should have at least applied it to the remaining causes of action and set aside the entry of default. "The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause,'" which is a less rigorous standard than Rule 60(b). *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Rule 55 requires a party to provide an explanation for the default and why vacating the entry of default would serve the interests of justice. *Id.* "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607–08, 681 S.E.2d at 888.

Plaintiff's failure to properly serve Candelabra explains the default and constitutes "mere good cause" to set it aside. Looking past the service issue, good cause also exists because Candelabra promptly retained counsel and sought relief from default on April 1, 2025—two weeks after it received notice of the lawsuit on March 17, 2025 and two days after Moore was personally served with process on March 30, 2025. (*See* Moore Suppl. Aff. ¶¶ 21–22., July 25, 2025; R. __.). Candelabra has numerous meritorious defenses in this action, including counterclaims against Plaintiff for breach of contract, conversion, breach of the fiduciary duty, breach of loyalty, negligence. (Proposed Ans. & Countercl.; R. __.) So too does it have meritorious defenses as to damages given the improper calculation, trebling of damages, and award of attorneys' fees discussed in more detail below. *See Green*, 446 S.C. at 339, 919 S.E.2d at 900. There is no prejudice in requiring Plaintiff to litigate his claims on the merits given South Carolina's preference for litigating cases on the merits *and* the fact that Plaintiff will be litigating the same claims against a co-defendant involving the same facts, evidence, and witnesses. *Williams v. Watkins*, 384 S.C. 319, 327, 681 S.E.2d 914, 918 (Ct. App. 2009) (finding where a plaintiff was on "notice to preserve and maintain" evidence, there was "little prejudice in requiring [him] to proceed with a trial on the merits"). Accordingly, the circuit court erred in failing to vacate the entry of default under Rule 55(c) given the way it entered judgment on two of Plaintiff's claims. This is all the more true for the causes of action against Candelabra for breach of contract with fraudulent intent, civil conspiracy, defamation, and intentional infliction of emotional distress.

C. Alternatively, the circuit court should have vacated the default judgment because Candelabra was not properly notified of the damages hearing.

Even if Plaintiff properly served the Complaint on Candelabra, the circuit court should have vacated the default judgment because Plaintiff failed to properly notify Candelabra of the damages hearing. Rule 55(b)(2) required the Plaintiff to provide notice "by first class mail to the

last known address" of the defaulting party." Rule 55(b)(2), SCRCP. The circuit court erred in: (1) determining that notice was proper; and (2) concluding that notice of the damages hearing was not necessary because the hearing only involved unliquidated damages. (Order at 17; R. __.)

The circuit court concluded notice was proper because Plaintiff sent notice of the hearing by U.S. mail and by email to Moore's email address. (Order at 15–16; R. __.) Yet Plaintiff did not file a certificate of service with the circuit court showing such service,[2] and no evidence shows that Candelabra ever received any notice. (*See generally* Docket; R. __.) To the contrary, the record reflects that Candelabra did not receive notice of the damages hearing as required by Rule 55. (Moore Aff. ¶¶ 24–26; R. __; Moore Suppl. Aff. ¶¶ 20–25; R. __; Capogrosso Aff. ¶¶ 22–24; R. __.)

Notice was necessary under Rule 55(b)(2) because the damages Plaintiff seeks in this action are not limited to liquidated damages. (Compl. ¶¶ 61, 71, 75, 82, 87; R. __ (seeking expenses associated with relying on Defendant's promises and finding other work, emotional distress and other psychological harm, professional reputation, loss of enjoyment of life, embarrassment, and more).) Indeed, the circuit court originally refused to sign the default judgment without a hearing, and its Order of Default acknowledged that most claims involved unliquidated rather than liquidated damages. (*See* Order of Default at 2; R. __.) Further, the attorneys' fees and treble damages awarded by the circuit court were, in fact, a form of unliquidated damages that required a judicial determination of "reasonableness" and proper notice to the defaulting party of the damages hearing. *See Beckmann Concrete Contractors, Inc. v. United Fire*

[2] Plaintiff first filed the emails and letter as exhibits to his memorandum opposing Defendants' motion to vacate. (*See* Pl.'s Memo Opp. Mot. Vacate, Ex. 2 (Nov. 21 and 22, 2024, Email and Letter of Notice of Default Hearing); R. __.) While the "Proof of Service" is dated November 1, 2024, the filing date on the document is July 8, 2025, and no such filing appears on the docket in November. (*Id.* at 5–6; R. __; *see also* Case Docket; R. __.)

& Cas. Co., 360 S.C. 127, 133, 600 S.E.2d 76, 79 (Ct. App. 2004); S.C. Code Ann. § 41-10-80(C). The circuit court, then, erred in concluding notice of the damages hearing was proper and disregarding such notice as unnecessary under Rule 55(b)(2), and the Order of Default should have been vacated.

D. The amount of the default judgment should be reversed because the circuit court failed to conduct the required analysis and make specific findings.

In entering the default judgment, the circuit court failed to conduct the proper damages analysis in awarding both damages and attorneys' fees as required by Rule 55. It erred in entering the original default judgment and in failing to vacate that default judgment upon Candelabra's motion. This Court should reverse and vacate the default judgment on this basis as well.

Rule 55(b) establishes a procedural framework distinguishing between liquidated and unliquidated damages in default proceedings. "A 'liquidated claim' is '[a] claim for an amount previously agreed on by the parties or that can be precisely determined by operation of law or by the terms of the parties' agreement." *Beckmann Concrete Contractors*, 360 S.C. at 132, 600 S.E.2d at 79 (citing *Black's Law Dictionary* 240). When the damages are liquidated, Rule 55(b)(1) permits entry of judgment "upon affidavit of the amount due" if the party is in default for failure to appear and is not a minor or incompetent person. Rule 55(b)(1), SCRCP.

A claim for unliquidated damages, on the other hand, is a "claim in which the liability of the party or the amount of the claim is in dispute." *Beckmann Concrete Contractors*, 360 S.C. at 132, 600 S.E.2d at 79. "If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence," the court "may conduct such hearing or order such references as it deems necessary and proper." Rule 55(b)(2), SCRCP.

The Order of Default classifies Plaintiff's damages for breach of contract and unpaid wages as liquidated, and thus, awards a sum certain. That Order, however, does not properly calculate damages based on a sum certain and instead takes Plaintiff's affidavit at face value. The Order of Default first awards $75,000 to purportedly represent "three times the unpaid wages alleged in the Complaint." (Order of Default at 2; R. __.) The Complaint, alleges, that Plaintiff was compensated based on an annual salary of $240,000. (Compl. ¶ 15; R. __.) That equates to weekly pay of approximately $4,615.385, exclusive of tax deductions. Plaintiff alleges he is owed *five* weeks of missed pay periods, and has provided the LLR's calculation for three missed weeks, amounting to $13,846.15. (Compl. ¶ 30; R. __.) Accordingly, five missed weeks amounts to a sum certain amount of $23,076.925. Yet Plaintiff's affidavit in support of his damages amount makes a conclusory claim that his five weeks of unpaid wages total "$25,000.00." (Mot. Entry of Default, Ex. 3 ¶ 7, Nov. 5, 2024; R. __.) But neither Plaintiff nor the circuit court provided a justification for rounding up the $23,076.925 in actual wages to $25,000.

The Default Judgment then trebles much of the damages award under the Wages Act without any analysis whatsoever, even though trebled damages under that statute are not automatically imposed. *See* S.C. Code Ann. § 41-10-80(C); *Morin v. Innegrity, LLC*, 424 S.C. 559, 574, 819 S.E.2d 131, 139 (Ct. App. 2018) (discussing applicable discretionary standard for treble damages under Wages Act); *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 600, 675 S.E.2d 414, 415 (2009) ("A finding that an employee is entitled to recover unpaid wages is not equivalent to a finding that there existed no bona fide dispute as to the employee's entitlement to those wages."). This alone inflated the damages by $50,000, all without conducting the required analysis for these types of unliquidated damages. *See Temple*, 381 S.C. at 675 S.E.2d at 416 (holding that trial court's automatic trebling of the damages award was an error of law and explaining it is "for the

trial court to determine, in the first instance, whether there existed a bona fide dispute such that treble damages were not warranted"). Therefore, the circuit court erred both in its calculation of the unpaid wages by rounding up and its trebling of those damages. At a minimum, these calculation errors confirm that the damages sought in the Complaint were not liquidated under Rule 55(b)(1), SCRCP, as not even Plaintiff could reasonable and accurately calculate them.

Next, for the breach of contract claim, the Order of Default awards judgment for $385,000 in lost wages. (Order of Default at 2; R. __.) Plaintiff's complaint alleges he was terminated on March 25, 2024, on a two-year contract to September 2025. (Compl. ¶¶ 14, 23 43–44; R. __.) Indeed, the exhibit submitted by Plaintiff in support of his damages claim includes a start date of September 5, 2023. (Mot. Entry Default, Ex. 3, Attachment A, Nov. 5, 2024; R. __.) Using a two-year term of September 5, 2023, through September 5, 2025, leaves 75 weeks and 4 days. Plaintiff's affidavit incorrectly alleges 77 weeks. (*Id.*, Ex. 3 ¶ 12; R. __.) Even using 77 weeks, however, based on a $240,000 annual salary, that amounts to $355,384.62, not the $385,000 alleged in Plaintiff's complaint. This distinction matters, as an accurate valuation results in a $30,000 difference. (*Id.* ¶ 13; R. __.) The circuit court, therefore, erred by accepting Plaintiff's affidavit alleging $385,000 without doing the proper damages calculation or independent verification. Accordingly, the circuit court's order should be reversed and remanded for the circuit court to independently analyze damages and make specific findings supported by evidence.

The Order of Default also improperly awarded $151,800 in attorneys' fees without conducting the reasonableness analysis mandated by South Carolina law. (Order of Default at 2; R. __.) The award was based solely on a private contingency fee agreement and entered without evidence of hours counsel expended on the case, prevailing market rates, or specific factual

findings, in direct contravention of controlling precedent. *See Jackson v. Speed,* 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

In *Jackson*, the South Carolina Supreme Court made clear that a trial court may *not* award attorneys' fees—even where there is a contingency arrangement—without engaging in a reasoned analysis supported by the record. *Id*. at 308, 486 S.E.2d at 759. "When determining the reasonableness of attorney's fees under a statute mandating the award of attorney fees, the contract between the client and his counsel does not control the determination of a reasonable hourly rate." *Id.* Instead, courts must consider six factors when determining the reasonableness of the fee: (1) the case's nature, extent, and difficulty; (2) time necessarily devoted to the case; (3) counsel's professional standing; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Id.* at 308, 486 S.E.2d at 760. Contingency of compensation is *a* factor, but not the *only* factor.

Here, Plaintiff claimed—and the circuit court awarded him—$151,800 in purported attorneys' fees. But that award is not supported by the record. The affidavit submitted by Plaintiff's counsel establishes only that Plaintiff was represented on a contingency basis where his counsel would retain a third of any recovery. (Mot. Entry Default, Ex. 4, Nov. 5, 2024; R. __.) The $151,800 figure represents a third of a contemplated $460,000 recovery. Thus, the amount awarded by the circuit court reflects Plaintiff's contractual obligation under a private contingency agreement, *not* his attorneys' fees proven by evidence. Neither the record nor affidavit submitted by Plaintiff's counsel contain evidence detailing the hours that counsel spent on the case, market rates, counsel's professional standing, or any other *Jackson* factor. Plaintiff never even mentions the *Jackson* factors at the hearing on the default judgment. (Hr'g Tr., Dec. 17, 2024; R. __.)

By accepting Plaintiff's fee request at face value, the circuit court failed to engage in a reasoned damages analysis or make specific findings of fact supporting each *Jackson* factor. Accordingly, the default judgment should be reversed and vacated. *See Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993).

IV. The circuit court erred in dismissing Moore's counterclaims under Rule 12(b)(6).

Moore, who was later served with process and is not in default, separately submits that the circuit court's Order improperly dismissed her counterclaims. South Carolina's liberal pleading standard reinforces that a complaint should not be dismissed if any facts alleged and reasonable inferences could entitle the pleader to relief. *Ashley River Props. I, LLC v. Ashley River Props. II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007). In deciding a 12(b)(6) motion to dismiss a counterclaim, the "question is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief." *Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001). "The counterclaim should not be dismissed merely because the trial court doubts the complainant will prevail in the action." *Id.* Further, when "a trial court finds a complaint fails 'to state facts sufficient to constitute a cause of action' under Rule 12(b)(6), the Court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal." *Skydive Myrtle Beach, Inc.*, 426 S.C. at 179, 826 S.E.2d at 587 (2019).

Because Moore pled facts sufficient to state entitlement to relief on her counterclaims against Plaintiff, and any deficiencies could have been resolved by granting Moore leave to amend, the Court should reverse the circuit court's Order dismissing the counterclaims.

A. The circuit court improperly applied a heightened pleading standard to Moore's conversion claim.

The circuit court's dismissal of Moore's conversion counterclaim rested on a heightened specificity requirement that Rule 8 does not impose for non-fraud claims. (Order at 20–21; R. __.) Under South Carolina law, conversion is "the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003). Accordingly, to establish conversion, a plaintiff must show: (1) he has an interest in or a right to the property converted, (2) defendant converted the property to its own use, and (3) defendant converted the property without permission or authorization. *See id.* These elements focus on defendant's wrongful possession and control of property, not fraud. *See Austin v. Indep. Life & Acc. Ins. Co.*, 296 S.C. 156, 162, 370 S.E.2d 918, 922 (Ct. App. 1988) ("Fraud is not a necessary element of conversion and it is not the case that every alleged fraudulent action also constitutes a conversion."); *compare* Rule 8, SCRCP (requiring only a "short and plain statement of the facts showing that the pleader is entitled to relief"), *with* Rule 9, SCRCP (requiring in matters alleging fraud or mistake that "a party must state with particularity the circumstances constituting fraud or mistake").

Moore's counterclaim sufficiently pleads that Plaintiff converted "products, inventory, goods, and/or assets" for his personal benefit and gain, without authorization. (Ans. & Countercl. ¶¶ 92–93; R. __.) Yet the circuit court required Moore to identify the specific property converted at the pleading stage, faulting her for not itemizing "any goods, assets, or inventory of any kind," and concluding that her allegation did "not place Plaintiff on notice of what [she] claims to have been the subject of conversion." (Order at 20–21; R. __.) This replicates a Rule 9(b) particularity

requirement, notwithstanding the circuit court's own assertion that Rule 8 requires "ultimate facts," not evidentiary detail. (*Id.* at 9; R. __.)

Moore did plead ultimate facts sufficient to give notice that Plaintiff, without authorization, converted "products, inventory, goods, and/or assets" belonging to Moore and used them for his personal benefit, causing damages. (Ans. & Countercl. ¶¶ 92–93; R. __.) That is enough under Rule 8 at the Rule 12(b)(6) stage, where courts must credit well-pleaded facts and reasonable inferences and should not demand evidentiary particulars better suited to discovery. *See* Rule 12(b)(6), SCRCP. Moore's counterclaim cleared the low pleading bar, notwithstanding that any deficiencies could have been resolved by amendment. This Court should therefore reverse the circuit court's dismissal of Moore's counterclaims.

B. Moore stated a claim for breach of contract against Plaintiff.

Moore adequately stated a claim for breach of contract against Plaintiff, alleging the existence of a contract with Plaintiff, numerous breaches, and resulting damages. (*See* Ans. & Countercl. ¶¶ 95–98; R. __.) The circuit court determined that Plaintiff could not have breached an agreement with Moore because there was no privity of contract between them—despite this contract allegedly forming the basis for Plaintiff's contract-based claims against Moore. (Order at 22, R. __; *see* Ans. & Countercl. ¶¶ 95–98 (breach of contract); R. __; Compl. ¶¶ 63–71 (breach of contract with fraudulent intent); R. __.) This contract establishes mutual obligations and expectations about Plaintiff's employment. *See Int'l Shoe Co. v. Herndon*, 135 S.C. 138, 133 S.E. 202, 203 (1926) (emphasizing that bilateral contracts require "absolutely mutuality of the engagement, so that each party has the right to hold the other to a positive agreement" (quoting 1 Elliott on Contracts § 231)).

Indeed, Plaintiff first alleged the existence of a contract and claimed Moore breached with fraudulent intent. (Compl. ¶¶ 62–71; R. __.) Moore then countersued for breach of the *same* contract. (Ans. ¶¶ 95–98; R. __.) The circuit court's erroneous dismissal of Moore's counterclaim yields the illogical result that Plaintiff can proceed with a breach of contract claim against Moore, but she is barred from countersuing for breach of the same contract. This result denies Moore the ability to adequately defend against and seek justice for the breach of contract claims.

The circuit court added that Moore "incorporates the written employment agreement in her allegations, [but] she fails to identify the specific terms of the contract she claims Plaintiff breached." (Order at 23; R. __.) If the circuit court wanted additional identification of contract terms beyond those already incorporated by Moore, the appropriate remedy was to grant Moore leave to amend—not to dismiss the claim entirely. *See Skydive Myrtle Beach, Inc.*, 426 S.C. at 180, 826 S.E.2d at 587. Accordingly, the circuit court erred by dismissing Moore's breach of counterclaim and denying her leave to amend.

C. Moore stated valid claims for breach of fiduciary duty and separately for breach of the duty of loyalty

The circuit court erroneously dismissed Moore's breach of fiduciary duty and duty of loyalty claims as not cognizable in the employment context. (Order at 24–25; R. __.) South Carolina courts, however, have declined to impose such a limitation. *See Pitts v. Jackson Nat'l. Life Ins. Co.*, 352 S.C. 319, 330, 574 S.E.2d 502, 507 (Ct. App. 2002) ("Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring."). Employment relationships *can* create fiduciary relationships and duty of loyalty in South Carolina. Disloyal conduct by an employee can support a breach of loyalty claim when "(1) when an employee competes directly

with her employer; (2) when the employee misappropriates her employer's profits, property, or business opportunities; and (3) when the employee breaches her employer's confidences." *Legree v. Hammett Clinic, LLC*, No. 3:19-cv-00871-SAL-TER, 2020 WL 1283715, at *3 (D.S.C. March 18, 2020) (quoting *Food Lion, Inc. v. Cap. Cities/ABC, Inc.*, 194 F.3d 505, 515 (4th Cir. 1999)).

Moore sufficiently alleged a breach of fiduciary duty and a breach of loyalty claim. (Ans. ¶¶ 99–108; R. __.) Moore adequately alleged a fiduciary relationship based on the parties' employment relationship and alleged numerous breaches, including, but not limited to, failing to use due care, good business judgment, or act in Moore's best business interests, taking actions to compete with Moore, disclosing sensitive and/or confidential information, attempted solicitation, all of which resulted in damages. (*Id.* ¶¶ 100–01, 105–06; R. __.)

Regardless of the circuit court's error on the fiduciary duty claim, Moore also adequately pleaded a breach of the duty of loyalty—a distinct and well-recognized aspect of an employee's obligations under South Carolina law. *See Food Lion, Inc. v. Cap. Cities/ABC, Inc.*, 194 F.3d 505, 515 (4th Cir. 1999) ("In South Carolina it is 'implicit in any contract for employment that the employee shall remain faithful to the employer's interest throughout the term of employment.'" (quoting *Berry v. Goodyear Tire & Rubber Co.*, 270 S.C. 489, 491, 242 S.E.2d 551, 552 (1978)). This duty encompasses obligations to refrain from misappropriating trade secrets, misusing confidential information, or soliciting the employer's clients or employees before employment ends. *See Futch v. McAllister Towing of Georgetown*, Inc., 335 S.C. 598, 606, 518 S.E.2d 591, 595 (1999).

Moore's allegations that Plaintiff engaged in competitive conduct, disclosed confidential information, and attempted to solicit business while still employed are more than sufficient, at the pleading stage, to state a viable duty-of-loyalty claim. *Id.* (citing *Schuermann v. American KA-*

RO Corp., 295 S.C. 64, 367 S.E.2d 159 (1988); *Berry*, 270 S.C. at 491, 242 S.E.2d at 552). These allegations are particularly significant because a proven breach may affect not only liability, but also the calculation—and potential reduction—of damages. *Id.* at 605, 518 S.E.2d at 594 ("This Court's precedent establishes that an employee who breaches the common law duty of loyalty to an employer, often described as a "faithless servant," forfeits the right to compensation."). The circuit court, therefore, erred in summarily and prematurely dismissing Moore's breach of fiduciary and breach of loyalty claims at the pleading stage.

D. Moore plead sufficient facts to establish a negligence claim

The circuit court erred in holding Moore could not sustain her negligence claim because the employment contract was between Plaintiff and Candelabra. (Order at 25–26; R. __.) Moore's counterclaim, however, alleges duties arising independently from contractual obligations based on Plaintiff's negligent conduct that foreseeably caused her *individual* harm. (Ans. & Countercl., ¶¶ 88, 109–112; R. __.) This included misappropriating company property, improperly disclosing confidential information, and negligently performing his operational duties, which exposed her to personal damages and risk of liability. (*Id*.)

These allegations are sufficient at this early juncture to establish the existence of a duty owed to Moore individually, breach of that duty, and resulting damages, irrespective of contractual privity between Plaintiff and Candelabra. *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54–55, 463 S.E.2d 85, 88 (1995) ("A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie. A breach of a duty arising independently of any contract duties between the parties, however, may support a tort action."); *Johnson v. Sam Eng. Grading, Inc.*, 412 S.C. 433, 449, 772 S.E.2d 544, 552 (Ct. App. 2015) ("A tortfeasor may be liable for

injury to a third party arising out of the tortfeasor's contractual relationship with another, despite the absence of privity between the tortfeasor and the third party. The tortfeasor's liability exists independently of the contract and rests upon the tortfeasor's duty to exercise due care." (citation omitted)).

Moore met her burden to plead a negligence claim. The circuit court thus erred in dismissing Moore's negligence claim, particularly without granting leave to amend to cure any deficiencies.

E. Alternatively, the circuit court's failure to consider amendment under Rule 15(a) constitutes reversible error.

Rule 15(a) provides that where a party asks to amend her pleading, "leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRCP. Moore asked the circuit court *twice* for leave to amend her pleading in lieu of dismissal. (Mem. Opp. Mot. Dismiss at 6–7 (requesting, in the alternative, "in the event the Court finds all or some of Defendant Moore's claims insufficient at this early stage of the proceedings, Defendant would respectfully request leave to amend any such claims."); R. __; Mot. Reconsider at 30 (reaffirming request to amend); R. __.)

Rule 15(a) "strongly favors amendments and the court is encouraged to freely grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005) (citing *Jarrell v. Seaboard Sys. R.R., Inc*., 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987)). "Rule 15(a) is substantially the same as the Federal Rule," and the Supreme Court of the United States has referred to the "freely given" provision as a "mandate" that "is to be heeded." *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

The Order denies Moore's counterclaims based on the perception of the merits of her claims, but it does not consider or address Moore's request for amendment under Rule 15(a). *See* (Order at 20–26; R. __.) The Order's failure to make any specific findings about amendment under Rule 15(a) is reversible error. *See Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) ("In this case, the circuit court never considered Rule 15(a). While we have consistently held that a circuit court's ruling on a Rule 15 motion to amend is within its discretion, a court's failure to exercise its discretion is itself an abuse of discretion." (footnote omitted)). Accordingly, the circuit court's order dismissing Moore's counterclaims must be reversed.

Conclusion

For the reasons set forth above, the Court should reverse and remand the matter to the circuit court.

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