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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2026-000058
Case No. 2024-CP-10-02646

Peter Skoler and Patricia Skoler, Appellants,
v.

Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner, and Jeffrey
Pumilia Respondents,

Appellate Case No. 2026-000043
Case No. 2024-CP-10-04606

Frank Perrelli, Jr., Appellant,
v.

Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner, and Jeffrey
Pumilia Respondents,

**APPELLANTS' RETURN TO RESPONDENTS' MOTION TO STRIKE MATERIALS
IN APPELLANTS' DESIGNATION OF MATTER AND IN INITIAL BRIEF AND
MEMORANDUM IN SUPPORT**

Appellants respectfully submit this Return in opposition to Respondents' Motion to Strike. The Motion should be denied because it rests on an unduly narrow reading of Rule 210(c), does not identify where the challenged materials were—and were not—presented in the consolidated trial-court proceedings, and cites no decision applying Rules 209 or 210 to comparable circumstances. The Motion also overlooks that several challenged materials were expressly

referenced in pleadings and motion practice below; others are properly included for the limited purpose of establishing this Court's appellate jurisdiction; and all are public records or other materials susceptible to judicial notice for appropriate purposes.

Respondents' request for wholesale striking would elevate form over substance. The Court can readily distinguish between using a document as proof of disputed historical facts and considering the document for its existence, public-record status, notice, recurrence, or jurisdictional significance. If Respondents believe any item should receive little or no weight, that is a merits argument. It is not a basis to excise materials the circuit court was asked to consider, materials incorporated into the pleadings and briefs, or materials bearing directly on whether the challenged arbitration scheme is capable of repetition.

I. BACKGROUND

A. The Underlying Dispute and the Challenged Materials

This appeal arises from Appellants' challenge to a vacation-club agreement that they allege was procured through a high-pressure sales process and contains a fundamentally unfair one-sided dispute-resolution scheme. The Verified Complaint alleges that Respondents discouraged outside research, rushed Appellants through execution of a noncancellable agreement, and imposed an arbitration provision granting Vacation Inspirations unilateral authority to select the arbitrator while exposing consumers to severe procedural disadvantages. The circuit court nevertheless compelled arbitration and stayed the action.

The materials Respondents now seek to strike are not collateral to that dispute. They concern Respondents' sales practices, governmental enforcement history, consumer complaints filed with the South Carolina Department of Consumer Affairs, use of the same form agreement and arbitration provision in other transactions, and efforts to enforce that provision in parallel litigation. They thus bear directly on issues raised below and on this Court's threshold

determination whether the challenged arbitration scheme is recurring and capable of repetition. Moreover, the materials were, in various respects, pleaded, cited, incorporated by reference, presented through motion practice, or derived from public records susceptible to judicial notice for proper purposes.

B. Appellants Attempted to Narrow the Dispute; Respondents Refused

This Motion was avoidable. On June 3, 2026, Respondents first contacted Appellants to discuss the Designation of Matter. Appellants responded that same day, stating that they were “happy to discuss these points in an effort to reach a compromise.” Respondents then explained that, given the limited time before their brief was due, they might “tell the Court that consultation for purposes of attempting to resolve it could not be timely held.” Appellants again emphasized that they “would prefer to avoid inundating the Court with motion practice, if we can.” Accordingly, Appellants advised that they were “prepared to try and discuss efforts to compromise our respective positions with regard to the designation,” while explaining that they “believe there is a strong basis for the materials reflected in the designation, but are willing to discuss it further to see if there is any arrangement that can resolve the items to be included by consent.”

During the parties’ conference on June 5, 2026, Appellants proposed discussing each of the six disputed items individually in an effort to narrow or eliminate the disagreement. Respondents declined to engage in an item-by-item discussion and offered no alternative proposal for resolving or narrowing the dispute. Having rejected Appellants’ effort to identify possible areas of agreement, Respondents filed a Motion seeking wholesale exclusion of every challenged item. The resulting motion practice is therefore not the product of an irreconcilable legal dispute, but of Respondents’ refusal to engage with the specific materials they now ask this Court to strike.

C. Respondents' Barebones Motion

Respondents' Motion confirms why the extraordinary remedy of striking materials from the appellate record is unwarranted. The Motion is barely more than a page and, despite Rule 240(c)(2), SCACR's requirement that every motion contain a "memorandum with citation of authorities in support of the motion," it cites no case law at all. Instead, Respondents invoke Rules 209, 210, and 240, SCACR, in conclusory fashion and assert that six materials "were not presented to or ruled on by the lower court and so they are not appropriate for appellate review." (Mot. 2.)

That unsupported assertion does not carry their moving party burden. The Motion does not analyze the pleadings, the motion-to-compel briefing, the reconsideration briefing, the consolidated proceedings, or the limited purposes for which the challenged materials are offered. Nor does it distinguish between materials offered as proof of disputed facts and materials offered to show existence, notice, public-record status, recurrence, judicially noticeable facts, or appellate jurisdiction. Respondents' unsupported, all-or-nothing request should be denied for that reason alone.

II. ARGUMENT

A. Respondents Have Not Carried Their Burden

Respondents cite no decisional authority interpreting Rules 209 or 210, SCACR and no authority supporting the extraordinary remedy of striking portions of an initial brief. To be sure, "[a] motion to strike places a sizable burden on the movant, and would typically require a showing that denial of the motion would prejudice the movant." *Levolor, Inc. v. Rowley Co., LLC*, No. CV 6:22-3599-DCC, 2023 WL 11963040, at *5 (D.S.C. May 16, 2023). "Striking . . . is a 'drastic remedy' rarely to be granted." *Bell v. Forrest Paschal Mach. Co. & Eng'g Assocs.*, 277 S.C. 19, 20, 282 S.E.2d 232, 233 (1981) (citation omitted).

The Motion likewise supplies no affidavit or other supporting material identifying the filings they reviewed or establishing the factual premise that the challenged materials were never presented. *See* Rule 240(c)(3), SCACR (requiring affidavits and supporting documents for motion practice before the Record on Appeal or Appendix has been filed).

B. Materials were Presented to the Lower Court

Rule 210(c), SCACR, excludes materials that were “not presented to the lower court.” This does not require that materials be admitted into evidence, received as an exhibit, or relied upon in an order. The word “presented” encompasses material placed before the lower court through pleadings, briefs, attachments, incorporated documents, and requests for judicial notice. *See* Rule 210, SCACR (indicating matters contained in the record on appeal can include “index, orders, judgments, decrees, decisions, pleadings, transcript, charges, and exhibits and other materials or documents”). Reading “presented” to mean only “admitted” would erase the Rule’s chosen language and exclude ordinary components of appellate records, including arguments, authorities, proffers, and materials a trial court declined to credit.

1. The Prior State Enforcements Actions Against Respondents Were Presented to the Circuit Court on Multiple Occasions

Respondents seek to strike the “Assurance of Voluntary Compliance in *Sours v. The Vacation Station, LLC*, No. 2012-CV211716, filed Feb 20, 2012” and the press release titled “AG Paxton Reaches \$74K Agreement with San Antonio-Based Business, Texas v. Vacation Inspirations, LLC”, No. 2017CI11368, dated June 22, 2017.” But the Georgia and Texas enforcement matters were placed before the circuit court repeatedly.

First, the Verified Complaints specifically pleaded both enforcement actions.¹ Paragraphs allege that Respondents Shirley and Gardner were individually named in a Georgia enforcement action, No. 2012-CV211716, and a Texas enforcement action, No. 2017CI11368. (*See* Exhibit A Skoler Compl. ¶¶ 62–64 & Exhibit B Perrelli Compl. ¶¶ 74–76.) The Complaints further allege that some of the Respondents, including Shirley and Gardner, were named in the Georgia Assurance of Voluntary Compliance. (*Id.* ¶ 63 & ¶ 75.)

Second, Respondents’ Answer confirms both that the matters were presented below and that Respondents had an opportunity to address them. In response to the referenced paragraphs of the Verified Complaints, Respondents stated that “the document mentioned speaks for itself,” in each, but denied the allegations, “[t]o the extent any further response is necessary” in the Perrelli Answer. (*See* Exhibit C Answer to Skoler Compl. ¶¶ 62–64 & Exhibit D Answer to Perrelli Compl. ¶ 74–76.) Respondents only denied the allegations concerning the existence and contents of those documents in one of the two actions. To be sure, even the express denial in Perrelli would not alter the dispositive point: the allegations and documents were presented to the trial court. Respondents’ failure to deny them in Skoler is nevertheless telling because allegations not denied are “deemed admitted.” *Motors Insurance Corp. v. State ex rel. Department of Highways & Public Transportation*, 313 S.C. 279, 281, 437 S.E.2d 555, 557 (Ct. App. 1993) (citing Rule 8(d), SCRCP).

¹ The allegations in paragraphs 62 through 65 of the Skoler Verified Complaint and paragraphs 74 through 76 of the Perrelli Verified Complaint establish that the materials Respondents seek to strike were presented to the circuit court. *See Carolina First Corp. v. Whittle*, 343 S.C. 176, 190, 539 S.E.2d 402, 410 (Ct. App. 2000) (“Generally, a court may consider documents outside of the complaint if the complaint incorporates the documents by reference.”). Moreover, although not necessary for the “presented” issue, Appellants have consistently maintained—both below and on appeal—that the allegations in the Verified Complaints must be treated as evidence. *See Dawkins v. Fields*, 354 S.C. 58, 67, 580 S.E.2d 433, 438 (2003) (recognizing that “a verified complaint is the equivalent of an affidavit” under South Carolina law). The evidentiary status of those allegations further bolsters that the challenged materials were properly presented to the lower court.

Third, Appellants again presented the Georgia and Texas enforcement matters in their motion for reconsideration and reply in support of that motion. (*See* Exhibit E Recon. Mot. n.10; *see also* Exhibit F Recon. Reply 10.)²

Accordingly, the challenged materials concern enforcement proceedings to which Respondents themselves were parties, were specifically pleaded in the Verified Complaint, were addressed in Respondents' Answer, and were again presented in the briefing. Because these matters were repeatedly placed before the circuit court and Respondents had ample opportunity to address them, they are properly included in the appellate record.

2. The South Carolina Department of Consumer Affairs, Complaints for Vacation Inspirations were Twice Presented to the Lower Court

Respondents seek to strike the record of the existence of more than 100 complaints filed against Vacation Inspirations with the South Carolina Department of Consumer Affairs. Paragraph 25 of the Verified Complaint alleges that Respondents have “a significant number of negative reviews on a number of websites, including, but not limited to, *the South Carolina Department of Consumer Affairs*. . .” (Skoler Compl. ¶ 25 (emphasis added); *see also* Perrelli Compl. ¶ 14.)

Appellants then identified the specific Department record in their respective March 26, 2025 surreplies. The surreplies cited the Department's publicly available profile page for Vacation Inspirations, provided the page's internet address, and informed the circuit court that it could take judicial notice that “[o]ne hundred and eleven (111) complaints have been lodged with the South Carolina Department of Consumer Affairs against Vacation Inspirations as of March 26, 2025.”

² Because the Motions to Reconsider and Replies to Respondents' Opposition to the Motion to Reconsider are materially the same between those filed in the Skoler and Perrelli matters, only one of the Motion and Reply Memorandum are being attached as an exhibit hereto.

(See Exhibit G Surreply 6)³ Thus, both the existence of the Department’s complaint records and the specific public webpage containing them were expressly presented to the circuit court.

C. The Records All Relate to Appellate Jurisdiction—Capable of Repetition—That was not Before the Lower Court

An independent basis for denying the Motion is that the challenged materials bear directly on one of Appellants’ asserted grounds for appellate jurisdiction: whether the challenged arbitration scheme is recurring and therefore capable of repetition. Appellate jurisdiction is necessarily a question for this Court, not the circuit court. Materials relevant to that threshold inquiry therefore need not have been presented below in the same manner as materials offered to establish the merits. *United States v. Fowler*, 58 F.4th 142, 152 (4th Cir. 2023) (“[W]e may take judicial notice of facts outside the record where the fact may not be reasonably disputed and is relevant and *critical to the matter on appeal*.” (internal quotation and citation omitted)) (emphasis added).

South Carolina appellate courts have reviewed otherwise nonappealable arbitration orders where the issues were “capable of repetition and need[ed] to be addressed.” *Toler’s Cove Homeowners Ass’n, Inc. v. Trident Construction Co.*, 355 S.C. 605, 611, 586 S.E.2d 581, 585 (2003); see also *Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 365, 887 S.E.2d 534, 539 (Ct. App. 2023), *rev’d on other grounds*, 444 S.C. 592, 910 S.E.2d 474 (2024). Cases in which Respondents used the same arbitration provision in other consumer contracts and invoked that provision in other litigation bears directly on whether the challenged conduct and legal issues are likely to recur.

Indeed, some of the relevant materials could not have been presented to the circuit court because they postdate the orders under review or concern subsequent appellate developments. This

³ Because the Surreplies to Respondents’ Memorandum in Support of the Motion to Compel Arbitration are materially the same between those filed in the Skoler and Perrelli matters, only one of the surreplies is being attached as an exhibit hereto.

Court nevertheless must assess its own jurisdiction in light of current, objectively verifiable circumstances. Consistent with that obligation, South Carolina appellate courts may “take judicial notice of [their] own docket and note that this very issue is currently on appeal in” another action. *Sloan v. Greenville County*, 380 S.C. 528, 537, 670 S.E.2d 663, 668 (Ct. App. 2009) (taking judicial notice of the appellate docket and a separate pending appeal in evaluating appellate jurisdiction).

Rule 210(c), SCACR, should not be transformed from a rule governing the record on the merits into a barrier preventing this Court from considering the objectively verifiable information necessary to determine its own jurisdiction. At minimum, the challenged materials are properly before the Court for the purpose of evaluating whether the issues presented are capable of repetition and warrant appellate review.

The circuit court had no occasion to decide appellate jurisdiction. This Court does. Materials relevant to appellate jurisdiction—especially public filings and public records subject to judicial notice—may properly be considered for that threshold purpose. *See Just. 360 v. Stirling*, 42 F.4th 450, 455 (4th Cir. 2022) (courts “may properly take judicial notice of matters of public record”). Critically, Respondents cannot contest recurrence while simultaneously seeking to strike the materials showing recurrence.

D. In the Alternative, the Materials Easily Come in Through Judicial Notice

Even assuming *arguendo*, if the Court were to conclude that certain contested records were not “presented” to the lower court—which Appellants dispute—many of the challenged materials are independently proper subjects of judicial notice. *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (“[A]n appellate court can take judicial notice of something that was not before the trial court if it is indisputable.”). Appellants do not ask the Court to notice disputed adjudicative facts or to accept every factual assertion in the challenged materials as true.

At a minimum, the Court may consider the materials for limited and proper purposes: that related lawsuits were filed; that public court filings and agreements exist; that government enforcement materials and press releases were issued; that the South Carolina Department of Consumer Affairs maintained a number of complaint materials concerning Vacation Inspirations; that the WCSC article was published on a particular date; and that these public materials bear on notice, recurrence, unconscionability, and appellate jurisdiction.

Rule 201, SCRE, authorizes judicial notice of facts “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned” and permits notice “at any stage of the proceeding,” including appeals. Rule 201(b), (f), SCRE. The challenged court filings, filed government settlement, agency publication, South Carolina agency complaint database, and court dockets are public records whose existence and contents can be verified from official sources. *See also* Rule 803(8), SCRE (public records and reports).

The Supreme Court of South Carolina has explained that it routinely looks to the federal interpretation of the Rules of Evidence to guide us in our interpretation of our own Rules of Evidence.” *State v. Broadnax*, 414 S.C. 468, 477 n.7, 779 S.E.2d 789, 793 n.7 (2015). Therefore, the Court can look to federal cases involving the Federal Rule of Evidence, including Rule 201 governing judicial notice.

Judicial notice does not require the Court to accept disputed allegations within those records as true. The Court may notice that an action was filed, that a contract containing specified language was attached, that state agencies issued identified public documents, that complaints were received or categorized, and that a news report was published and included Respondents’ participation. This limited approach preserves both the integrity of the record and Respondents’ ability to dispute the merits.

1. The Assurance of Voluntary Compliance and the Attorney General Press Release Are Official Government Records Subject to Judicial Notice.

The Assurance of Voluntary Compliance entered in *Sours v. The Vacation Station, LLC*, No. 2012-CV211716, is an official law-enforcement document executed by a state attorney general’s office, and in which a number of Respondents are party to. Just the same, the Texas Attorney General press release regarding the 2017 settlement with Vacation Inspirations, LLC is an official publication of a state government agency. Official government documents and public regulatory materials are the type of sources whose existence, issuance, and legal effect are capable of accurate and ready determination. *Scurmont LLC v. Firehouse Rest. Grp., Inc.*, No. 4:09-CV-00618-RBH, 2011 WL 2670575, at *15 n.11 (D.S.C. July 8, 2011) (taking judicial notice of “[r]ecords from government websites” because they “are generally considered admissible and self-authenticating”).

2. The Department of Consumer Affairs Records Are Official State Agency Records Subject to Judicial Notice

The South Carolina Department of Consumer Affairs complaint data regarding Vacation Inspirations constitutes an official record maintained by a state agency. Courts “‘may properly take notice of matters of public record,’ including ‘publicly available statistics on a government website.’” *Tina T. v. Kijakazi*, No. CV 1:22-3192-DCC-SVH, 2023 WL 9955804, at *2 (D.S.C. Apr. 6, 2023), *report and recommendation adopted sub nom. Torongeau v. Kijakazi*, No. 1:22-CV-03192-DCC, 2024 WL 618730 (D.S.C. Feb. 14, 2024) (quoting *Philips v. Pitt Cnty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)).

Further, this is also a record the circuit court was directly and expressly asked to notice. These records are offered to establish the existence and volume of consumer complaints on file with the State’s designated consumer protection agency—not to establish the truth of every consumer allegation. Respondents had every opportunity to respond to Appellants’ judicial-notice

request below and cannot now claim the record should be cleared of materials the court was expressly asked to notice.

3. *Sawyer* Action Materials

“A court may take judicial notice of closely related proceedings, particularly where the same parties are involved and the allegations from those proceedings have been proved, or where the cases are essentially the same.” 29 Am. Jur. 2d Evidence § 148. In fact, the “most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.” *Fowler*, 58 F.4th at 152 (internal citation and quotation omitted).

The Verified Complaint and Purchase Agreement in *Sawyer v. Vacation Inspirations*, No. 2024-CP-10-02642, *on appeal*, appellate case no. 2026-000910, concern the same form membership agreement and identical dispute-resolution provision at issue here. Both documents are public records filed in the Charleston County Court of Common Pleas—the same court from which this appeal arises. *Sawyer* also involves the same Respondents, represented by the same counsel.

The *Sawyer* complaint, like the complaint here, is verified. Appellants do not offer it, however, to establish the truth of every allegation made in that action. Rather, it demonstrates the existence and substance of a parallel challenge involving the same Respondents, the same alleged high-pressure sales practices, and the same arbitration language. The accompanying Purchase Agreement—which the same Respondents by the same counsel attached to its Motion to Compel Arbitration⁴—further confirms that recurrence is not inferred merely from similar allegations:

⁴ See *Exhibit H Sawyer v. Vacation Inspirations*, No. 2024-CP-10-02642, Exhibit to Motion to Compel Arbitration, filed November 12, 2024.

Respondents employed the same operative dispute-resolution provision in a separate transaction with different consumers.

4. The News Article Is Subject to Judicial Notice for the Fact of Its Publication.

The WCSC-TV article dated November 4, 2022, concerning Respondents' prior settlements and consumer complaints is offered for limited purposes: its existence, title, publication date, subject matter, and the fact of public reporting concerning the same regulatory and consumer-complaint history. Appellants do not ask the Court to notice the truth of every statement in the article. That limited use is sufficient to defeat Respondents' request to strike the article wholesale. Courts regularly distinguish between noticing the truth of a news report, which is generally improper, and noticing the fact that a particular article was published or that information was publicly reported. *See Bradacs v. Haley*, 58 F. Supp. 3d 499, 511 (D.S.C. 2014) (“[A] news article . . . can be judicially noticed for facts such that a fact was printed.”); *Bryant v. Woodall*, 1 F.4th 280, 288–89 & n.2 (4th Cir. 2021) (taking judicial notice of the publication of an opinion piece in the Washington Post).

A published article's existence and publication date are capable of accurate and ready determination from publicly available sources whose accuracy cannot reasonably be questioned. Rule 201(b), SCRE. Respondents were the subject of the article and participated in the coverage at the time it was published, further negating any claim of surprise. Accordingly, Respondents' objections, if any, go to the weight and permissible use of the article—not to its inclusion in the record.

E. The Sawyer Materials Should Also Be Used For One Limited Purpose Beyond Appellate Jurisdiction

Of the Sawyer materials, Appellants rely only on the Sawyer Purchase Agreement for a purpose beyond establishing appellate jurisdiction. (*See* Appellants' Initial Brief 56.) That

agreement is nearly identical to the Purchase Agreements at issue in these consolidated appeals and was submitted by Respondents—through the same counsel—in support of their motion to compel arbitration in Sawyer.

In their Initial Brief, Appellants cite the indisputable text of the Sawyer Purchase Agreement for a narrow purpose: to compare it with the corresponding language in the Skoler and Perrelli agreements. That comparison demonstrates that provisions Respondents characterize as individually “negotiated” are, in fact, substantially similar form language across three separate consumer transactions:

Skoler	Perrelli	Sawyer
Annual dues frozen \$199 forever	Annual dues frozen \$199 for lifetime	Annual dues frozen \$199 forever
4 Friend/family plans w/no dues & 5% back on cruises	4 family + friends included; no dues	6 family + friends w/no dues & 5% back on cruises
Primary members 10% back on cruises	5% rewards on friends + family cruising	Primary members 10% back on cruises
Members may choose to upgrade condo weeks @\$1000 for each week	10% rewards on members cruising	

Appellants do not ask this Court to accept any disputed allegation from the Sawyer complaint as true. They ask the Court only to consider the language appearing on the face of a written agreement that Respondents themselves submitted in judicial proceedings. That language is objectively verifiable and not reasonably subject to dispute. *See Masters v. Rodgers Development Group*, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984) (taking judicial notice on appeal of material whose “accuracy is capable of verification by reference to readily available sources of indisputable reliability”).

Respondents’ suggestion that the text of the Sawyer Purchase Agreement is somehow disputable is incompatible with both their conduct in Sawyer and common sense. Respondents

themselves placed that agreement before the Sawyer court to obtain affirmative relief. They cannot reasonably rely on the agreement as authentic and enforceable when seeking to compel arbitration, yet contend here that its facial language is too uncertain for this Court even to compare with the agreements in these consolidated appeals.

F. Respondents Did Not and Cannot Show Prejudice

Striking is particularly unwarranted because Respondents cannot plausibly claim surprise. *Provident Life & Acc. Ins. Co. v. Cohen*, 137 F. Supp. 2d 631, 632 (D. Md. 2001) (motions to strike “should not be granted absent a showing of undue prejudice.”) The purpose of procedural rules governing the record on appeal is to ensure fairness: to prevent a party from being surprised by materials it never had an opportunity to address. That concern is entirely absent here.

The contested records are not new, unfamiliar, or unfairly surprising. They concern Respondents’ own membership purchase agreements—the contracts Respondents drafted and relied upon in moving to compel arbitration. The related litigation in *Sawyer v. Vacation Inspirations* involves Respondents as the named defendants. The settlements with the Texas and Georgia Attorney Generals involve enforcement actions against Vacation Inspirations or its predecessor and affiliated entities—proceedings to which Respondents or their predecessors and principals were parties. The South Carolina Department of Consumer Affairs complaints were filed against Vacation Inspirations, are maintained by a state agency in the ordinary course of its functions, and reflect matters to which Vacation Inspirations engages with through the Department’s complaint process. And the WCSC-TV article reported on Vacation Inspirations specifically and in which Vacation Inspirations’ agents participated; Respondents were its subject and had a full opportunity to participate in or respond to the coverage at the time it was published.

Respondents were therefore aware of, involved in, or directly connected to each category of material they now seek to strike. The only prejudice they can plausibly claim is that the materials

are adverse to their position. That is not cognizable prejudice. It is not a basis to sanitize the appellate record of materials relevant to recurrence, notice, and appellate jurisdiction. Respondents' motion seeks not to prevent unfair surprise, but to remove materials that undermine their substantive position. That purpose is not a legitimate basis for striking the record.

The materials also do not expand the causes of action or inject a new merits theory. They relate to issues already litigated: the recurring use of the same arbitration clause, the context surrounding formation, the need for discovery, Respondents' notice, and appellate jurisdiction. Respondents can respond to those points in their brief. Ordinary appellate review supplies all tools necessary to decide what is relevant, what use is permissible, and what weight—if any—each item deserves.

G. Any Doubt Should be Resolved by Limiting Use, Not Striking Wholesale

Even if the Court was skeptical that a particular item was “presented” to the lower court, the appropriate remedy is not wholesale excision. Even if Respondents disagree with Appellants' characterization or use of particular materials, that disagreement belongs in merits briefing. Striking would create collateral litigation over record composition and risk preventing review of the very questions presented by the appeal. Respondents can—and should—argue that an item deserves no weight. But they have not shown that the Court is incapable of drawing the familiar distinction between admissibility for the truth, judicial notice of existence, and consideration for jurisdictional purposes.

III. CONCLUSION

For these reasons, Appellants respectfully request that the Court deny Respondents' Motion to Strike. In the alternative, Appellants request that the Court permit the challenged materials to remain in the Designation and Initial Brief subject to such limitations on purpose or

weight as the Court deems appropriate, and grant any other relief necessary to preserve a merits determination of the consolidated appeals.

Respectfully submitted,

s/David W. Wolf

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Jun 22 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

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Case No. 2024-CP-10-2646

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PROOF OF SERVICE

I certify that I have served Appellants' Return to Respondents' Motion to Strike Materials In Appellants Designation of Matter and In Initial Brief and Memorandum In Support, along with the exhibits referenced therein, on the above-named Respondents by email on June 22, 2026 addressed to counsel of record as follows:

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