

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Lakeview Loan Servicing, LLC,
Respondent,

v.

Wendell Don Cooper,

Appellant,

Appellate Case No. 2026-001649

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SC Court of Appeals

APPELLANT'S MEMORANDUM ADDRESSING APPEALABILITY

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INTRODUCTION

Appellant Wendell Don Cooper respectfully submits this Memorandum in response to the Court's directive to address whether the July 7, 2026, Order and the July 10, 2026, Form 4 are immediately appealable under Rule 201(a), SCACR, and South Carolina Code section 14-3-330.

Appellant does not contend that an interlocutory order becomes immediately appealable merely because it is erroneous, prejudicial, or procedurally unfair. The question is what the challenged Orders actually determined and the legal effect they produced. Read together and applied to the full procedural record, the Orders purported to conclusively eliminate substantial defenses, threshold jurisdictional objections, mandatory federal foreclosure protections, and requests for potentially case-dispositive relief while permitting this federally regulated foreclosure action to continue toward summary judgment, foreclosure judgment, and compulsory sale of Appellant's residence.

The July 7, 2026, Order represented that Appellant's unheard motions would remain protected during a stated sixty-day period. Appellant thereafter affirmatively requested that the Master-in-Equity decide those motions upon the written record without requiring another hearing. That request was an express demand for adjudication. It was not silence, withdrawal, delay, refusal to prosecute, or abandonment.

Nevertheless, the July 10, 2026, Form 4 promptly characterized the same pending matters collectively as "abandoned and/or denied." The Form 4 did not identify which motion was supposedly abandoned, which motion was denied, what conduct constituted abandonment, or the factual and legal grounds supporting the disposition of each motion.

The Form 4 therefore converted Appellant's affirmative written demand for adjudication into the factual opposite—abandonment. It also directly conflicted with the July 7 Order's protection of the unheard motions. Its practical effect was to terminate the matters most capable of requiring judicial examination of whether the foreclosure was properly before the Master-in-Equity, whether Plaintiff properly served the summons and complaint, whether Plaintiff satisfied mandatory USDA servicing requirements, whether the action should be stayed or dismissed, whether material discovery remained outstanding, and whether legal counterclaims and jury-triable issues belonged in circuit court.

This appeal does not arise merely from denial of leave to file a proposed counterclaim or disagreement with ordinary pretrial rulings. It presents the antecedent question whether the written Order of Reference ever conferred authority upon the Master-in-Equity to adjudicate Appellant's independently pending circuit-court motions at all.

At least one of those matters—Appellant's Motion to Require Plaintiff to Prosecute the Action and to Set Status Conference; Alternatively, Motion to Dismiss for Failure to Prosecute—had already been placed upon the May 19, 2026, circuit-court roster after Appellant submitted a written hearing request and corrected SCCA/233 form. Appellant did not request cancellation of that hearing. No circuit judge entered a written order cancelling, continuing, transferring, denying, or otherwise disposing of the motion. The motion disappeared from the circuit-court calendar, was never rescheduled, and was later swept into the Master-in-Equity's omnibus disposition despite the absence of a judicial transfer.

A master's authority is confined to that granted by the written order of reference. See *Bunkum v. Manor Properties*, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1996); *First Citizens Bank & Trust Co. v. Taylor*, 431 S.C. 239, 252–53, 847 S.E.2d 682, 689 (Ct. App. 2020). Plaintiff's later

hearing notice could not transfer independently pending circuit-court motions to the Master-in-Equity or enlarge the authority granted by the written reference.

The federally regulated nature of this foreclosure further establishes why the matters disposed of were substantial. This is not a conventional mortgage dispute involving only discretionary modification discussions. The loan is guaranteed through the United States Department of Agriculture Single Family Housing Guaranteed Loan Program. The governing federal regulations impose the following mandatory duties before the loan may proceed from loss mitigation into liquidation and foreclosure:

- Lenders and their agents “must comply” with all USDA regulations and handbooks, including amendments and revisions of program requirements and policies. 7 C.F.R. § 3555.51(b)(1).
- Lenders “shall take prompt action” to collect overdue amounts, bring the loan current as quickly as possible, avoid foreclosure to the extent possible, and minimize losses. 7 C.F.R. § 3555.301(a).
- Lenders “must evaluate” delinquent loans and take appropriate loss-mitigation actions to resolve repayment problems and provide borrowers the maximum opportunity to remain successful homeowners. 7 C.F.R. § 3555.301(b).
- After default, the lender “shall promptly contact” the borrower within the timeframe required by USDA. 7 C.F.R. § 3555.301(c).
- The lender “must make a reasonable effort” to obtain information concerning the reason for default, the borrower’s current financial condition, the ability to cure the default, the

availability of a feasible collection plan, and alternatives to foreclosure. 7 C.F.R. § 3555.301(d).

- Before the account becomes sixty days past due, when no payment arrangement exists, the lender “must send” the borrower a certified letter requesting an interview to resolve the delinquency. 7 C.F.R. § 3555.301(e).
- Before initiating liquidation, the lender “must assess” the property’s condition, determine whether the property is occupied, and take necessary measures to protect the property. 7 C.F.R. § 3555.301(f).
- The lender “must maintain documentation” demonstrating that the servicing requirements were met and identifying the steps taken to save the mortgage before deciding to foreclose. 7 C.F.R. § 3555.301(g).
- When recommending a resolution other than foreclosure for a loan ninety days or more delinquent, the lender “must report” a formal servicing plan to USDA through the required system. 7 C.F.R. § 3555.301(h).
- The lender “must consider” the traditional servicing options in the precise regulatory order: repayment agreement, special forbearance, loan modification, and, where needed, Mortgage Recovery Advance. 7 C.F.R. § 3555.303(b).
- A loan modification “must be” in writing. 7 C.F.R. § 3555.303(b)(3).
- Loan modifications “must be” at a fixed interest rate and cannot exceed the applicable market rate. 7 C.F.R. § 3555.303(b)(3)(ii).

- The traditional servicing options “shall be used in the order established” to reduce the borrower’s mortgage-payment-to-income ratio as close as possible to thirty-one percent of gross monthly income. 7 C.F.R. § 3555.303(b)(3)(vi).
- If the thirty-one-percent target cannot be achieved through modification alone, the lender may then consider a Mortgage Recovery Advance in addition to the modification. 7 C.F.R. § 3555.303(b)(3)(vii).
- The principal deferment through a Mortgage Recovery Advance “shall be limited” to the amount needed to bring the borrower’s total monthly mortgage payment to thirty-one percent of gross monthly income. 7 C.F.R. § 3555.303(b)(4)(iii).
- Before making a Mortgage Recovery Advance, the lender “must perform” an escrow analysis to ensure that the payment accurately reflects required taxes and insurance. 7 C.F.R. § 3555.303(b)(4)(v).

These mandatory federal commands eliminate Plaintiff’s assertion that USDA servicing requirements are merely optional guidelines. The regulations themselves require compliance, evaluation, collection and consideration of financial information, application of the prescribed servicing sequence, use of the thirty-one-percent affordability standard, documentation of compliance, and completion of the required process before liquidation.

Because federal regulation expressly requires participating lenders and their agents to comply with USDA regulations and handbooks, the detailed USDA servicing requirements do not become optional merely because every individual handbook sentence does not repeat the words “must” or “shall.” Their mandatory force derives from the federal regulatory command requiring compliance with USDA program requirements as a whole.

The record reflects that Appellant had already completed a loss-mitigation submission. Once Appellant supplied the completed package and required financial information, the governing federal duties shifted to Plaintiff. Plaintiff was required to evaluate the completed submission, apply the prescribed servicing sequence, determine whether the loan could be made affordable under the thirty-one-percent requirement, document its evaluation and compliance, and issue a determination before proceeding into liquidation and foreclosure.

The federally required sequence was therefore:

- Completed loss-mitigation package;
- Mandatory lender evaluation;
- Application of the prescribed servicing options in their required order;
- Reduction of the mortgage-payment-to-income ratio as close as possible to thirty-one percent;
- Consideration of a Mortgage Recovery Advance where modification alone did not achieve the required result;
- Documentation of the evaluation, calculations, options considered, and steps taken to save the mortgage;
- A determination based upon the completed evaluation; and
- Liquidation and foreclosure only after completion of the mandatory pre-liquidation process.

The July 7 Order did not determine whether Plaintiff performed that mandatory sequence after receiving Appellant's completed submission. It did not determine whether Plaintiff correctly

calculated Appellant's income, applied the prescribed servicing order, attempted to reach the thirty-one-percent target, properly considered a Mortgage Recovery Advance, documented its calculations, or issued a lawful final determination.

Instead, the July 7 Order directed Appellant to submit another loss-mitigation package. That direction effectively disregarded the completed submission and shifted Plaintiff's already-triggered federal obligations back onto Appellant without identifying any federal regulation requiring Appellant to restart the entire process.

The regulations permit a servicer to identify genuinely missing or outdated information where necessary. They do not authorize a lender or state foreclosure court to erase a completed application, avoid adjudication of the evaluation already required, and substitute an open-ended obligation requiring the borrower to begin the entire process again.

The July 10 Form 4 then purported to terminate the motions through which Appellant sought discovery and adjudication concerning Plaintiff's federal compliance. The combined Orders thereby replaced the federally prescribed sequence—

completed package → mandatory lender evaluation → prescribed servicing sequence → thirty-one-percent analysis → documented determination → liquidation only afterward

—with a materially different course—

completed package disregarded → Appellant ordered to restart → Plaintiff's prior compliance left undecided → Appellant's challenges characterized as abandoned or denied → foreclosure permitted to advance.

Applicable state procedure may govern the administration of a foreclosure action, but it cannot be applied to nullify or obstruct controlling federal duties governing a USDA-guaranteed loan.

The Orders' practical effect must therefore be evaluated not as routine foreclosure case management, but as the purported removal of a substantial defense concerning whether Plaintiff acquired the legal right to proceed from federally required loss mitigation into liquidation and foreclosure.

South Carolina Code section 14-3-330(1) authorizes review of an intermediate order when it finally determines a substantial matter forming the whole or part of a cause of action or defense. The USDA federal-law issue does not bypass that statute. It establishes why the statute applies differently to these Orders: the Orders purported to conclusively affect a mandatory, potentially foreclosure-preclusive federal defense rather than merely postpone consideration of a discretionary mortgage-modification request.

The matters purportedly terminated included Appellant's sworn challenge to service and personal jurisdiction; his motion alternatively seeking dismissal for failure to prosecute; his request for stay relief; his motion to compel material discovery; his objections to the Master's authority and the scope of the reference; his request for leave to assert legal counterclaims and demand a jury; and his defenses concerning Plaintiff's mandatory USDA pre-liquidation obligations.

The foreclosure context gives those dispositions immediate practical consequence. Once those pending barriers were characterized as "abandoned and/or denied," Plaintiff was positioned to pursue summary judgment, foreclosure judgment, an order of sale, and compulsory disposition of Appellant's residence before the threshold federal, jurisdictional, forum, and authority questions received individualized adjudication. Review after judgment and sale would not provide the same protection as review while the federally required opportunity to avoid liquidation remains capable of enforcement.

The record further reflects selective action and nonaction affecting the appearance of impartial administration. Requests requiring examination of Plaintiff's service, USDA compliance, foreclosure prerequisites, or the Master's authority remained unresolved. Appellant's emergency request for a stay was not addressed until the Court of Appeals intervened and remanded the matter for lower-court action. In contrast, after Appellant requested written rulings upon the protected motions without another hearing, the Master acted promptly to characterize those motions collectively as "abandoned and/or denied."

The documented sequence creates the appearance that matters capable of exposing defects in Plaintiff's foreclosure or limiting the Master's authority remained unresolved, while an omnibus disposition removing those barriers received prompt action. Appellant previously requested reassignment because this pattern extends beyond a single adverse ruling and reasonably calls into question whether the threshold federal, jurisdictional, service, forum, and authority issues can receive neutral and individualized adjudication before foreclosure proceeds.

Accordingly, this appeal does not seek interlocutory review merely because Appellant disagrees with adverse rulings. It seeks review because the challenged Orders purported to conclusively eliminate substantial defenses, mandatory federal protections, threshold jurisdictional objections, jury and forum rights, and potentially case-dispositive relief; because the Master's authority to decide those independently pending matters was never established by the written Order of Reference; because Appellant's affirmative demand for adjudication could not lawfully be converted into abandonment; and because the combined effect of the Orders permitted a federally regulated foreclosure to proceed toward compulsory sale before those substantial matters received individualized adjudication.

II. THE CHALLENGED ORDERS SATISFY SOUTH CAROLINA CODE SECTION 14-3-330 AND ARE MATERIALLY DIFFERENT FROM THE NO APPEALABLE ORDER IN BALDWIN CONSTRUCTION CO. v. GRAHAM

South Carolina Code section 14-3-330(1) authorizes immediate review of an intermediate order involving the merits. An order involves the merits when it finally determines a substantial matter forming the whole or part of a cause of action or defense. Appellant addresses that statutory limitation directly. He does not contend that every denial of a motion, every discovery ruling, or every refusal to permit an amended pleading is immediately appealable. He contends that the combined July 7, 2026, Order and July 10, 2026, Form 4 conclusively disposed of multiple existing threshold defenses and potentially case-dispositive matters while allowing Plaintiff's foreclosure action to continue toward judgment and compulsory sale. See S.C. Code Ann. § 14-3-330(1); *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 333, 426 S.E.2d 777, 779–80 (1993).

Appellant also directly acknowledges *Baldwin Construction Co. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004). In *Baldwin*, the circuit court denied permission to file a proposed amended answer containing counterclaims, setoffs, and a jury demand. The Supreme Court held that the order was not immediately appealable because the proposed pleading had never become operative. The circuit court refused to permit its filing; it did not strike an existing pleading. *Baldwin* therefore establishes that denial of leave to file a proposed pleading, standing alone, does not satisfy section 14-3-330.

The circumstances presented here are materially different from *Baldwin*.

The July 10 Form 4 did not merely refuse Appellant permission to file a proposed counterclaim. It purported to dispose collectively of existing motions and defenses that had already been filed,

actively pursued, and presented for adjudication. Those matters included Appellant's sworn challenge to service of the summons and complaint and personal jurisdiction; his Motion to Require Plaintiff to Prosecute the Action and to Set Status Conference or, alternatively, to dismiss the foreclosure action for failure to prosecute; his Motion for Summary Judgment; his Motion to Compel Discovery concerning Plaintiff's compliance with mandatory USDA servicing requirements and other foreclosure prerequisites; his Motion to Stay; his objections to the scope of the written Order of Reference and the Master's authority; his Motion for Leave to File Counterclaims and accompanying jury demand; and his defenses concerning Plaintiff's compliance with mandatory federal pre-liquidation requirements.

Most of those matters existed independently of the proposed counterclaims. Their legal existence did not depend upon permission to file an amended pleading, and they cannot be treated as though they were merely proposed claims of the type addressed in Baldwin. The service challenge raised whether the court acquired personal jurisdiction over Appellant. The status motion alternatively sought dismissal of the foreclosure action. The summary-judgment motion raised whether Plaintiff could lawfully proceed while mandatory discovery and USDA-compliance issues remained unresolved. The stay motion sought to prevent foreclosure from overtaking those threshold issues. The discovery motion sought evidence bearing directly upon whether Plaintiff satisfied mandatory federal servicing and foreclosure prerequisites. The reference objections challenged whether the Master possessed authority to adjudicate those matters at all.

Baldwin also involved a judicial officer whose authority to rule upon the amendment motion was not disputed. Here, the Master-in-Equity's authority is itself a threshold issue. Under *Bunkum v. Manor Properties*, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1996), a master has no

authority beyond that granted by the written order of reference. *First Citizens Bank & Trust Co. v. Taylor*, 431 S.C. 239, 252–53, 847 S.E.2d 682, 689 (Ct. App. 2020), likewise requires examination of the actual language of the reference to determine the matters the Master was authorized to decide.

Wells Fargo Bank, N.A. v. Smith, 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012), further demonstrates that the written language of the reference controls the scope of the Master’s authority. Authority over an additional matter must be supported by the terms of the judicial reference; it cannot be created merely by a party’s later hearing notice, administrative calendaring, or the Master’s assumption that every matter connected to the foreclosure was transferred.

At least one of Appellant’s motions had already been placed upon the circuit-court roster. Appellant filed his Motion to Require Plaintiff to Prosecute the Action and to Set Status Conference; Alternatively, Motion to Dismiss for Failure to Prosecute, submitted a written hearing request and corrected SCCA/233 form, and obtained placement of that motion upon the May 19, 2026,

III. THE JULY 7, 2026, ORDER AND THE JULY 10, 2026, FORM 4 DID NOT MERELY POSTPONE APPELLANT’S DEFENSES; THEY CONCLUSIVELY ELIMINATED THE PROCEDURAL MEANS NECESSARY TO PRESENT THOSE DEFENSES BEFORE FORECLOSURE COULD PROCEED

Plaintiff may argue that Appellant can raise his defenses later and that no substantial matter was finally determined. That argument does not reflect the language or practical effect of the challenged Orders. The July 7, 2026, Order and July 10, 2026, Form 4 did not continue Appellant’s motions, reserve them for later adjudication, authorize their renewal, or identify any future proceeding in which the requested relief would be heard. The Form 4 instead characterized

the motions collectively as “abandoned and/or denied,” thereby purporting to terminate the procedural means through which Appellant sought adjudication of threshold defenses before foreclosure proceeded.

South Carolina Code section 14-3-330(1) applies when an intermediate order finally determines a substantial matter forming the whole or part of a cause of action or defense. See *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 333–34, 426 S.E.2d 777, 779–80 (1993). Rule 72, SCRCP, generally prevents piecemeal appeals from ordinary motion rulings. Appellant does not contend that the denial of summary judgment, discovery, a stay, or a service challenge would necessarily be immediately appealable if considered separately. This appeal concerns the combined operation of the July 7 Order and Form 4, which collectively affected the Master’s authority, personal jurisdiction, potentially case-dispositive dismissal relief, mandatory federal foreclosure prerequisites, preservation of the property, and Appellant’s asserted jury and mode-of-trial rights.

Plaintiff cannot divide the Form 4 into isolated motion rulings while ignoring its cumulative effect. The Form 4 swept the matters into one omnibus disposition, removed them from active consideration, and permitted Plaintiff’s foreclosure claim to continue. None of the motions remained pending, and the Form 4 contained no reservation permitting later renewal or individualized consideration.

The July 7 Order represented that Appellant’s unheard motions would remain protected during a stated sixty-day period. Appellant thereafter requested that the Master decide those motions upon the written record without another hearing. That request relinquished only oral presentation, not the motions or the relief requested. Nevertheless, the Form 4 treated the motions as “abandoned

and/or denied” without identifying which motions were abandoned, which were denied, or what conduct constituted abandonment.

Under *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992), waiver or abandonment requires voluntary and intentional relinquishment of a known right. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), supplies the same general definition, and *Fuentes v. Shevin*, 407 U.S. 67 (1972), cautions against lightly inferring waiver of important procedural protections. Appellant demonstrated the opposite of abandonment: he filed the motions, sought calendaring, obtained a hearing date for at least one motion, continued requesting rulings, and expressly asked that the motions be decided.

Appellant’s status-and-dismissal motion illustrates the practical problem. It had been placed upon the circuit-court roster after Appellant submitted a hearing request and corrected SCCA/233 form. Appellant did not cancel the hearing, and no circuit judge entered an order transferring or disposing of the motion. It disappeared from the calendar and was later swept into the Form 4. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), supports the principle that a litigant who timely invokes an established adjudicatory process may not lose the asserted matter because governmental machinery fails to perform its procedural responsibility. This case is therefore materially different from *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962), which involved an actual failure to prosecute. Appellant repeatedly sought adjudication.

Appellant does not rely upon the service challenge, summary-judgment motion, discovery motion, or stay request as separate grounds for immediate appeal. Their importance lies in the combined effect of the Form 4. The service motion challenged personal jurisdiction; the status motion alternatively sought dismissal; the discovery motion sought evidence necessary to test Plaintiff’s USDA compliance; the summary-judgment motion challenged Plaintiff’s right to

proceed on the existing record; and the stay motion sought to preserve the status quo while those threshold issues remained unresolved.

The Form 4 also affected Appellant's Motion for Leave to File Counterclaims, jury demand, and objections to the Master's authority. *Flagstar Corp. v. Royal Surplus Lines Insurance Co.*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000), recognizes that an order depriving a party of a mode of trial to which the party is entitled must be challenged immediately. *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985), *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997), and *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004), likewise recognize that objections affecting reference to a master and jury mode of trial may be lost if not timely appealed.

Appellant recognizes that the foreclosure cause of action itself sounds in equity and that a jury right does not automatically attach merely because a jury demand accompanies a proposed pleading. *South Carolina Community Bank v. Salon Proz, LLC*, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017), requires examination of whether asserted counterclaims are legal and compulsory and whether they require return to circuit court. Appellant's point is that the Form 4 purported to extinguish the leave motion, jury request, and forum objection without that required individualized analysis and without first determining whether the Master had authority under the written reference to decide those matters.

Nor does *Baldwin Construction Co. v. Graham* resolve the entire appeal. Appellant does not rely solely upon proposed counterclaims. The authority, abandonment, service, dismissal, stay, calendaring, and USDA-compliance issues existed independently. Unlike *Baldwin*, this case also presents the antecedent question whether a Master acting under a limited reference possessed authority to decide the Motion for Leave and determine the forum in the first instance.

The USDA-compliance issues likewise concern more than a discretionary modification request. Appellant does not assert the USDA regulations as a freestanding damages claim. He relies upon them as mandatory servicing requirements and substantial foreclosure defenses concerning whether Plaintiff acquired the right to move from loss mitigation into liquidation. As established in the Introduction, the regulations require compliance with USDA program requirements, evaluation of the delinquent loan, consideration of the prescribed servicing sequence, application of the thirty-one-percent affordability standard, and documentation before foreclosure.

The record reflects that Appellant completed a loss-mitigation submission. The threshold question was whether Plaintiff performed and documented the evaluation required after receiving that completed package. The July 7 Order did not decide that question. It required Appellant to submit another package without first determining whether Plaintiff evaluated the completed submission, applied the prescribed sequence, performed the affordability analysis, considered a Mortgage Recovery Advance where applicable, documented its decision, or issued a lawful determination.

Appellant does not contend that updated information may never be requested. The defect is that the Order did not identify any particular document as missing or stale, identify any material change, or cite a regulation requiring an entirely new application. Nor did it determine whether Plaintiff had completed the evaluation already triggered by the acknowledged package.

Characterizing another package as a renewed opportunity does not answer whether the Order displaced adjudication of Plaintiff's existing federal duties and made continued protection dependent upon Appellant restarting an already completed process.

The combined Orders therefore substituted a different course for the federal sequence: the completed package was disregarded; Appellant was ordered to restart; Plaintiff's prior

compliance remained undecided; Appellant's challenges were characterized as abandoned or denied; and the foreclosure was permitted to advance.

Appellant does not contend that the challenged Orders themselves directed a foreclosure sale. Their practical effect was to eliminate the pending barriers to a foreclosure decree while permitting Plaintiff to continue toward judgment and compulsory sale. *Forgay v. Conrad*, 47 U.S. 201 (1848), is offered only as persuasive reasoning concerning the danger of delaying review where property may be transferred before the asserted protections can operate. The property consequence reinforces why the matters terminated were substantial; it does not replace South Carolina's statutory appealability standard.

Nor does the availability of a stay or supersedeas resolve whether the Orders are appealable. A stay preserves the status quo during an appeal; it does not determine appellate jurisdiction. Appellant sought stay relief below, and the lower court did not address the emergency request until the Court of Appeals returned the matter for action.

Later review would not fully restore the protections affected. A mode-of-trial objection may be waived if not promptly challenged. The USDA process is designed to operate before liquidation. Discovery intended to prevent foreclosure before compliance is established cannot perform that function after judgment. A stay cannot preserve a status quo already materially altered. Review after final judgment would also occur only after the Master exercised the very authority Appellant contends was never conferred.

Accordingly, the challenged Orders did not merely require Appellant to await later consideration. Their combined operation purported to terminate the procedural means through which he sought adjudication of substantial threshold defenses before foreclosure proceeded. The Orders fall within section 14-3-330(1) because they finally determined substantial matters forming parts of

Appellant's defenses. To the extent they affected a legally protected jury mode of trial and the forum in which asserted legal matters would be adjudicated, they also implicate the substantial-right principles applied under section 14-3-330(2).

circuit-court roster. Appellant did not cancel the hearing. No circuit judge entered an order cancelling, continuing, transferring, denying, or otherwise disposing of that motion. It disappeared from the circuit-court calendar and was later swept into the Form 4 despite the absence of a written judicial transfer.

Plaintiff's later hearing notice requesting that Appellant's generally described "outstanding Motions" be heard before the Master could not enlarge the written Order of Reference. A party may request that a matter already within a tribunal's authority be scheduled, but a party cannot confer adjudicatory authority that the circuit court never granted.

The abandonment language creates another material distinction from Baldwin. The July 7 Order protected Appellant's unheard motions during a stated sixty-day period. Appellant then expressly requested that the Master decide those motions upon the written record without scheduling another hearing. The July 10 Form 4 nevertheless characterized those motions collectively as "abandoned and/or denied."

That was not a mere refusal to permit a proposed pleading. It was a purported conclusive disposition of existing matters. The Form 4 did not reserve the motions for later review, continue them, or identify additional action Appellant was required to take. It purported to end them.

Nor can the abandonment characterization remove the Orders from section 14-3-330. Under *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992), waiver or abandonment requires a voluntary and intentional relinquishment of a known

right. The party asserting waiver must establish that the opposing party knew of the right and intentionally relinquished it. Appellant's conduct demonstrated the opposite. He filed the motions, requested calendaring, secured a circuit-court date for at least one motion, continued seeking rulings, and expressly requested written adjudication.

The United States Supreme Court's reasoning in *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), likewise defines waiver as the intentional relinquishment or abandonment of a known right. *Fuentes v. Shevin*, 407 U.S. 67 (1972), supports the requirement that waiver of important procedural protections must be clear. Appellant's affirmative demand for adjudication cannot reasonably be treated as a clear or intentional relinquishment of the very matters he asked the court to decide.

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), supplies an additional due-process principle. A litigant who timely invokes an established adjudicatory process cannot be deprived of the asserted matter because governmental machinery fails to perform the required procedural act. Here, Appellant's scheduled circuit-court motion disappeared without a written judicial disposition, other motions remained unresolved, and the court-controlled absence of adjudication was later converted into supposed abandonment.

This case is therefore the opposite of *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962), where dismissal followed a documented history of delay and failure to appear. Appellant did not fail to prosecute his motions. He repeatedly sought rulings upon them. His request that the court decide the motions without another hearing was affirmative prosecution, not abandonment.

The substantial nature of the matters disposed of is also materially different from *Baldwin*. This foreclosure concerns a USDA-guaranteed loan governed by mandatory federal pre-liquidation duties. As set forth in the Introduction, 7 C.F.R. § 3555.51(b)(1) requires participating lenders

and their agents to comply with USDA regulations and handbooks; 7 C.F.R. § 3555.301 imposes mandatory servicing, evaluation, information-gathering, documentation, and foreclosure-avoidance duties; and 7 C.F.R. § 3555.303 requires consideration and use of the prescribed servicing sequence, including the thirty-one-percent affordability standard.

Appellant's motions sought adjudication and discovery concerning whether Plaintiff completed the federal process governing whether it had acquired the legal right to move from loss mitigation into liquidation and foreclosure. These were not optional modification requests or collateral servicing complaints. They were asserted as mandatory federal defenses to Plaintiff's claimed right to foreclose.

The July 7 Order did not determine whether Plaintiff complied with those already-triggered federal duties after Appellant completed a loss-mitigation package. Instead, it required Appellant to submit another package without first deciding whether Plaintiff had properly evaluated and documented the completed submission, applied the prescribed servicing sequence, performed the thirty-one-percent affordability analysis, considered a Mortgage Recovery Advance where required, or issued a lawful determination.

The July 10 Form 4 then purported to terminate the motions through which Appellant challenged that substitution and sought adjudication of Plaintiff's compliance. The combined Orders therefore did more than deny permission to create a proposed claim. They purported to eliminate existing jurisdictional defenses, an existing request for dismissal, a pending summary-judgment position, stay protection, discovery necessary to test mandatory federal foreclosure prerequisites, objections to the Master's authority, and jury- and forum-related matters.

The jury and mode-of-trial consequences provide an additional basis for immediate review under section 14-3-330(2). South Carolina courts have recognized that an order affecting a legally

protected mode of trial affects a substantial right and may require immediate appellate preservation. See *Flagstar Corp. v. Royal Surplus Lines Insurance Co.*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985); *South Carolina Community Bank v. Salon Proz, LLC*, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017).

Appellant's Motion for Leave sought to assert legal counterclaims and preserve a jury demand. His objections also challenged whether legal and jury-triable matters could properly remain before the Master or were required to proceed in circuit court. The Form 4's omnibus disposition therefore affected not only proposed claims but also the forum and mode in which Appellant's asserted legal rights would be adjudicated. Unlike *Baldwin*, this appeal includes the antecedent question whether the Master possessed authority to extinguish those matters and thereby determine the forum and mode of trial without an individualized ruling.

Those matters were not left open for later determination. They were collectively characterized as "abandoned and/or denied" while Plaintiff's foreclosure claim remained active and continued toward enforcement. Their conclusive disposition therefore finally determined substantial matters forming parts of Appellant's defenses under section 14-3-330(1) and affected substantial jury and mode-of-trial rights under section 14-3-330(2).

Baldwin establishes that denial of leave to file a proposed pleading, standing alone, is ordinarily not immediately appealable. It does not authorize a Master acting under a disputed and limited reference to extinguish multiple existing circuit-court motions and substantial defenses through an unsupported abandonment ruling and then characterize the resulting Orders as ordinary interlocutory rulings.

The combined July 7 and July 10 Orders therefore satisfy section 14-3-330 not because Appellant seeks an exception from the statute, but because the nature and practical effect of the

matters conclusively determined place the Orders within the statute's existing appealable categories.

IV. THE JULY 10, 2026, FORM 4 COULD NOT LAWFULLY CONVERT APPELLANT'S EXPRESS REQUEST FOR ADJUDICATION INTO ABANDONMENT, PARTICULARLY AFTER THE JULY 7 ORDER HAD PRESERVED THE UNHEARD MOTIONS

The July 7, 2026, Order and the July 10, 2026, Form 4 reflect materially different treatment of Appellant's unheard motions. The July 7 Order stated that those matters would remain protected during a sixty-day period. Appellant then submitted a written request asking the Master-in-Equity to decide the motions upon the existing written record without scheduling another hearing. Three days after the July 7 Order, the Form 4 nevertheless characterized the same pending motions collectively as "abandoned and/or denied."

Appellant's request for a ruling was the opposite of abandonment. He requested waiver only of oral presentation and asked the court to adjudicate the motions upon the written record. He did not waive, withdraw, or abandon the motions or any relief requested in them.

Under *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992), waiver requires the voluntary and intentional relinquishment of a known right. The party asserting waiver must establish both knowledge of the right and conduct demonstrating an intentional surrender of it. The record here shows the opposite. Appellant filed the motions, sought calendaring, obtained placement of at least one motion upon the circuit-court roster, continued requesting rulings, and expressly asked that the motions be decided.

Johnson v. Zerbst, 304 U.S. 458, 464 (1938), likewise defines waiver as the intentional relinquishment or abandonment of a known right. *Fuentes v. Shevin*, 407 U.S. 67 (1972), cautions against lightly inferring waiver of important procedural protections from an unclear

record. Neither the Form 4 nor the procedural history identifies any statement or act by Appellant demonstrating a clear intention to surrender the pending matters.

The phrase “abandoned and/or denied” also fails to disclose what the court actually decided.

Abandonment depends upon the litigant’s conduct and intent. Denial ordinarily reflects a judicial determination that the requested relief should not be granted. The disjunctive and conjunctive phrase “abandoned and/or denied” cannot establish both intentional relinquishment by Appellant and adjudication by the court without identifying which legal conclusion applied to each motion.

The Form 4 did not identify which motions were supposedly abandoned, which were denied, whether any motion was considered on its merits, or the factual and legal basis for each disposition. It supplied neither findings establishing intentional abandonment nor individualized reasons supporting denial.

On its face, the immediate Form 4 disposition also appears inconsistent with the July 7 Order’s stated sixty-day treatment of the unheard motions. The Form 4 was entered only three days later. It did not identify any intervening noncompliance by Appellant, explain why the sixty-day period no longer applied, or reconcile its immediate disposition with the prior Order. Appellant’s only intervening conduct was his written request that the court decide the motions.

Plaintiff may contend that Appellant abandoned the motions by asking for rulings without a hearing or by failing to appear. That position is unsupported. Appellant affirmatively requested decisions upon the written submissions. The court did not order him to appear at another hearing, warn that failure to appear would constitute abandonment, or direct him to take any additional action to preserve the motions.

Plaintiff may also contend that the word “denied” independently cures any defect in the abandonment characterization. It does not. An unexplained alternative denial does not identify whether the Master reached the merits, what standard was applied, whether the requested evidence and arguments were considered, or whether the Master possessed authority under the written Order of Reference to decide each motion.

The contradiction created a preservation dilemma. If Appellant relied exclusively upon the July 7 Order, he risked treating the motions as protected when the later Form 4 had already purported to terminate them. If he failed to challenge the Form 4 promptly, Plaintiff could later argue that jury, reference, forum, or other issues had been waived. Appellant therefore could not safely disregard the operative language of the later written disposition.

The history of the Motion to Require Plaintiff to Prosecute the Action and to Set Status Conference; Alternatively, Motion to Dismiss for Failure to Prosecute, further defeats abandonment. Appellant filed that motion, submitted a hearing request and corrected SCCA/233 form, and obtained placement upon the May 19, 2026 circuit-court roster. He did not cancel the hearing. No circuit judge entered an order cancelling, continuing, transferring, denying, or otherwise disposing of the motion. It disappeared from the calendar, was never rescheduled, and was later swept into the Form 4.

The reasoning of *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), supports the principle that a litigant’s timely invocation of an adjudicatory process should not be defeated by the government’s failure to perform the procedural step assigned to it. Appellant invoked the process, requested calendaring, obtained a hearing date, and continued seeking adjudication. The court-controlled absence of a hearing or ruling could not then be attributed to Appellant as abandonment.

This record is materially different from *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962).

There, dismissal followed conduct demonstrating a failure to prosecute, including counsel's failure to appear at a scheduled proceeding. Here, Appellant repeatedly sought calendaring and rulings and expressly requested adjudication upon the written record. The actual record demonstrates active prosecution, not neglect.

The abandonment characterization cannot be separated from the appealability question. The Form 4 used that characterization to remove motions asserting service and jurisdictional objections, dismissal relief, mandatory USDA defenses, discovery necessary to present those defenses, stay protection, objections to the Master's authority, and jury- and forum-related matters.

Those motions were not continued, reserved, or left pending for later adjudication. The Form 4 contained no procedure for renewal or clarification, while Plaintiff's foreclosure cause of action remained active and continued toward enforcement. Appellant could not assume that clarification would occur before foreclosure advanced.

The unsupported abandonment characterization therefore demonstrates the conclusive operation of the Form 4. Because that disposition removed substantial defenses and affected matters independently supporting immediate review, it strengthens the application of South Carolina Code section 14-3-330. The abandonment error is not asserted as an independent substitute for the statutory standard; it establishes that the challenged disposition was final as to the motions and was based upon a premise directly contradicted by the record.

Accordingly, the Court should reject any contention that Appellant voluntarily surrendered the pending matters or that the Form 4 merely regulated future proceedings. The record demonstrates active prosecution, no warning or order requiring further action, no identified basis for

abandonment, conflicting written treatment of the motions, and an omnibus disposition that allowed foreclosure to continue without individualized adjudication of substantial threshold defenses.

V. THE JULY 7, 2026, ORDER EXCEEDED THE PERMISSIBLE SCOPE OF STATE-COURT AUTHORITY BY REPLACING PLAINTIFF’S MANDATORY FEDERAL DUTIES WITH A NEW SIXTY-DAY OBLIGATION IMPOSED UPON APPELLANT

This foreclosure concerns a loan guaranteed through the USDA Single Family Housing Guaranteed Loan Program. It therefore differs materially from a conventional mortgage dispute involving only a lender’s voluntary modification practices. The governing federal regulations impose mandatory servicing duties upon participating lenders and their agents before a delinquent USDA-guaranteed loan may proceed from loss mitigation into liquidation and foreclosure.

Under 7 C.F.R. § 3555.51(b), lenders and their agents “must comply” with USDA program requirements. Section 3555.51(b)(1) expressly requires them to “[k]eep up to date, and comply with, all Agency regulations and handbooks, including all amendments and revisions of program requirements and policies.” The mandatory force of the USDA servicing requirements therefore arises directly from federal regulation. Plaintiff cannot avoid those requirements by characterizing the USDA handbook as merely advisory or optional.

The regulations further provide that lenders “shall take prompt action” to bring delinquent loans current, avoid foreclosure to the extent possible, and minimize losses. 7 C.F.R. § 3555.301(a). Lenders “must evaluate loans and take appropriate loss mitigation actions” to resolve repayment problems and provide borrowers the maximum opportunity to remain successful homeowners. *Id.* § 3555.301(b). They “must make a reasonable effort” to obtain and evaluate the financial information necessary to consider alternatives to foreclosure, *id.* § 3555.301(d), and “must

maintain documentation” demonstrating compliance and identifying the servicing steps taken to save the mortgage before deciding to foreclose. Id. § 3555.301(g).

Section 3555.303(b) separately requires the lender to consider the prescribed traditional servicing options in the regulatory order. Those options “shall be used in the order established” to reduce the borrower’s mortgage-payment-to-income ratio as close as possible to thirty-one percent of gross monthly income. 7 C.F.R. § 3555.303(b)(3)(vi). If modification alone cannot achieve that target, the lender “may consider” a Mortgage Recovery Advance. Id. § 3555.303(b)(3)(vii). If an MRA is evaluated or used, principal deferment “shall be limited” to the amount necessary to reach the thirty-one-percent target, and the lender “must perform” an escrow analysis. Id. § 3555.303(b)(4)(iii), (v).

Those federal commands establish the governing allocation of responsibility. Once Appellant completed the loss-mitigation package and supplied the required information, the next mandatory duties belonged to Plaintiff. Plaintiff was required to evaluate the completed submission, apply the prescribed servicing sequence, perform the thirty-one-percent affordability analysis, address the Mortgage Recovery Advance issue where applicable, document its calculations and the options considered, and communicate a determination before proceeding toward liquidation.

The July 7 Order did not determine whether Plaintiff performed those duties. It did not decide whether Plaintiff properly evaluated Appellant’s completed package, accurately calculated his income, followed the prescribed servicing order, attempted to reach the thirty-one-percent affordability target, properly addressed the Mortgage Recovery Advance issue, documented its analysis, or communicated a lawful determination.

Instead, the July 7 Order imposed a new sixty-day obligation requiring Appellant to submit another loss-mitigation package. The Order did not identify any federal regulation requiring

Appellant to restart the entire process. It did not identify a particular document as missing or stale, identify a material change in Appellant's financial circumstances, or determine that the prior package had ceased to be complete. Most importantly, it did not adjudicate whether Plaintiff had performed the federal duties already triggered by the completed submission.

Appellant does not contend that Plaintiff may never request specifically identified updated information. Financial documents may become stale, and materially changed circumstances may require additional documentation. But requesting a particular update is materially different from disregarding a completed package, leaving Plaintiff's prior compliance unresolved, and requiring Appellant to begin the entire process again without identifying the regulatory basis for doing so.

Plaintiff may characterize the sixty-day process as an additional opportunity offered for Appellant's benefit. That characterization does not answer the controlling issue. A second opportunity cannot substitute for adjudication of whether Plaintiff complied with the mandatory duties already triggered by the completed package. Nor may continued protection from foreclosure be conditioned upon Appellant restarting the process while Plaintiff's prior compliance remains undecided.

The July 7 Order therefore did more than allegedly misinterpret a loss-mitigation requirement. It altered the federally prescribed allocation of responsibility. Federal law placed the next duties upon Plaintiff. The Order instead imposed a present affirmative obligation upon Appellant and exposed him to adverse consequences if he failed to perform a substitute procedure not identified by federal law.

Two distinct limitations are implicated. First, the Master possessed only the adjudicatory authority conferred by the written Order of Reference. Second, even assuming the loss-mitigation issue fell within the reference, the Master's authority was authority to apply governing

federal law and determine compliance—not authority to rewrite, supersede, or replace the federal servicing process.

The Master could determine whether Plaintiff complied with USDA requirements. He could determine, upon evidence and governing law, whether a particular document required updating. He could not relieve Plaintiff of duties already triggered by Appellant's completed package, replace those duties with a new state-created borrower obligation, or hold Appellant accountable for failing to perform a substitute procedure unsupported by the governing federal framework.

The July 10 Form 4 compounded that action by purporting to terminate as “abandoned and/or denied” the motions through which Appellant sought discovery and adjudication concerning Plaintiff's federal compliance. The combined Orders thus left Plaintiff's existing obligations unresolved, imposed a new obligation upon Appellant, removed the procedural means through which he challenged that substitution, and permitted foreclosure to continue.

The combined Orders replaced the federally prescribed sequence—completed package, mandatory lender evaluation, prescribed servicing analysis, documented determination, and liquidation only afterward—with a contradictory sequence in which the completed package was disregarded, Appellant was ordered to restart within sixty days, Plaintiff's prior compliance remained undecided, Appellant's challenges were characterized as abandoned or denied, and foreclosure was permitted to advance.

That substitution implicates the Supremacy Clause and conflict-preemption principles. Valid federal regulations may preempt conflicting state rules with the same force as federal statutes. *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153–54 (1982). *De la Cuesta* is particularly relevant because it involved federal mortgage regulation and held that a

contrary state judicial rule could not interfere with the operation of a valid federal regulatory scheme.

Conflict preemption applies where compliance with both federal and state requirements is impossible or where state action stands as an obstacle to accomplishing the purposes and prescribed operation of federal law. See *GenBioPro, Inc. v. Raynes*, 121 F.4th 218, 236–37 (4th Cir. 2024). Obstacle preemption is most directly implicated here because the challenged procedure left the federally required evaluation unresolved, shifted responsibility back to Appellant, conditioned continued protection upon restarting the process, and allowed foreclosure to advance without adjudicating Plaintiff’s existing duties.

Appellant does not contend that federal law displaces South Carolina foreclosure procedure in its entirety. State procedure continues to govern the administration of the foreclosure action to the extent it does not conflict with controlling federal requirements. The narrower point is that state procedure cannot be used to displace, excuse, or obstruct the federally required evaluation of Appellant’s completed package.

To the extent the July 7 Order operated to relieve Plaintiff of those duties or substitute a contradictory process, federal law controlled. State courts adjudicating matters governed by federal law must apply the controlling federal rule and may not use state procedural characterizations to defeat its operation. See *Howlett v. Rose*, 496 U.S. 356, 367–75 (1990).

Appellant does not invoke the USDA regulations as a freestanding federal damages cause of action. He relies upon them as mandatory servicing requirements and as a substantial foreclosure defense concerning whether Plaintiff acquired the legal right to proceed from loss mitigation into liquidation. The issue is whether Plaintiff completed the federally prescribed process preceding

foreclosure—not whether Appellant may recover damages solely because a regulation was violated.

Federal law does not bypass South Carolina Code section 14-3-330. It identifies why the matter conclusively affected by the challenged Orders was substantial and potentially foreclosure preclusive. The July 7 Order presently altered the allocation of duties, imposed a fixed sixty-day obligation upon Appellant, conditioned his protection upon performing it, and exposed him to foreclosure consequences if he did not comply. The July 10 Form 4 then terminated the motions challenging that alteration.

Because the USDA requirements are designed to operate before liquidation, review only after foreclosure judgment would not provide equivalent protection. A later ruling might identify legal error, but it could not cause the mandatory evaluation to occur at the point when it was intended to determine whether foreclosure could be avoided.

Accordingly, even assuming the loss-mitigation issue was within the scope of the written reference, the Master's authority extended only to applying the governing federal requirements and determining Plaintiff's compliance. It did not extend to superseding those requirements, relieving Plaintiff of duties already triggered by the completed package, creating a new sixty-day borrower obligation unsupported by the governing framework, or holding Appellant responsible for failing to perform that substitute procedure.

The July 7 Order and July 10 Form 4 therefore did more than contain an alleged error capable of correction after final judgment. They presently altered the parties' governing obligations, imposed an affirmative duty upon Appellant contrary to his asserted federal protections, and conclusively eliminated the motions challenging that action while foreclosure advanced. The combined Orders consequently affected a substantial and potentially foreclosure-preclusive **defense within South Carolina Code section 14-3-330.**

VI. DELAYED REVIEW AFTER FORECLOSURE JUDGMENT WOULD NOT PRESERVE THE SUBSTANTIAL RIGHTS AND PRE-LIQUIDATION PROTECTIONS AFFECTED BY THE CHALLENGED ORDERS

The rights affected by the July 7, 2026, Order and the July 10, 2026, Form 4 were designed to operate before foreclosure moved from loss mitigation into liquidation. Once that stage passed, those protections could not be fully restored through review after final judgment.

The July 7 Order imposed a present affirmative obligation requiring Appellant to submit another loss-mitigation package within sixty days. Failure to comply exposed Appellant to immediate litigation consequences while Plaintiff's already-triggered federal duties remained unresolved. The July 10 Form 4 then purported to terminate the motions through which Appellant sought to challenge that new obligation and obtain adjudication of Plaintiff's prior compliance.

That present alteration of the parties' legal obligations is precisely why the challenged Orders affected a substantial matter rather than merely regulating the future course of litigation.

Appellant does not contend that the possibility of foreclosure, standing alone, makes every interlocutory order immediately appealable. Nor does he rely merely upon hardship, expense, or disagreement with an adverse ruling. The issue is whether the challenged Orders conclusively affected defenses and protections that were intended to operate before foreclosure judgment and could not be adequately restored afterward.

The USDA servicing requirements discussed in Section V are pre-liquidation protections. Their purpose is to require evaluation of foreclosure alternatives before the lender proceeds from loss mitigation into liquidation. A later ruling that Plaintiff should have evaluated Appellant's completed package differently would not provide the same protection as requiring that evaluation while it could still determine whether foreclosure should occur.

The same timing problem applies to Appellant's Motion to Compel Discovery. That motion sought the income calculations, servicing analysis, Mortgage Recovery Advance consideration, payment history, arrears calculations, USDA communications, and compliance documentation necessary to determine whether Plaintiff possessed the legal right to proceed into foreclosure in the first instance. Production after foreclosure judgment could not serve the preventive purpose of allowing Appellant to use that evidence before judgment was entered.

Appellant's Motion to Stay likewise sought to preserve the status quo while the unresolved service, authority, discovery, USDA-compliance, jury, and forum issues were adjudicated. A stay preserves existing rights. It cannot recreate rights already lost because the federally required evaluation never occurred before the foreclosure advanced.

The jury and mode-of-trial issues present an additional preservation concern. South Carolina decisions recognize that an order affecting a mode of trial to which a party claims entitlement may require immediate appellate challenge or risk waiver. See *Flagstar Corp. v. Royal Surplus Lines Insurance Co.*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985); *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997); *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). Appellant therefore could not safely await completion of proceedings before the Master and later assume that his objections to the reference, forum, and asserted jury rights remained preserved.

The disputed scope of the Master's authority presents the same problem. Review after judgment would necessarily occur only after the tribunal had already exercised the very authority Appellant contends it never possessed. A later reversal might correct the resulting judgment, but it would not change the fact that independently pending matters had already been adjudicated by a tribunal whose authority over them was disputed from the outset.

Plaintiff may argue that Rule 241, SCACR, provides an adequate remedy through a stay or supersedeas. Rule 241 addresses preservation of the status quo during a pending appeal. It does not determine whether the underlying Orders are appealable under South Carolina Code section 14-3-330. A stay presupposes an appeal; it is not a substitute for deciding whether an intermediate order conclusively affected a substantial matter.

Appellant sought emergency stay relief below. The lower court did not promptly address that request, and action by the Court of Appeals was required before the matter was returned for a ruling. That procedural history demonstrates why the theoretical availability of stay relief did not eliminate the need for immediate review.

Appellant does not contend that the July 7 Order or July 10 Form 4 directly entered a foreclosure decree or ordered an immediate sale. Their significance lies in what they removed. The Orders purported to eliminate the pending motions and defenses most capable of preventing Plaintiff from obtaining summary judgment, foreclosure judgment, and an order of sale before the threshold issues were adjudicated.

The reasoning of *Forgay v. Conrad*, 47 U.S. 201 (1848), is relevant only by analogy. Forgay recognized the special concern created when delayed review exposes property to transfer before appellate relief can operate effectively. Appellant does not rely upon Forgay as controlling South Carolina appellate law. The foreclosure consequence simply demonstrates why conclusively removing the pending barriers to judgment and sale had immediate practical significance.

Plaintiff may further contend that Appellant could reassert the same arguments in opposition to Plaintiff's summary-judgment motion. But later mention of a related issue is not equivalent to restoration of the terminated motions. It would not restore the original relief requested, the

circuit-court calendaring, the discovery record, the stay protection, the jury and forum objections, or the opportunity to obtain adjudication before Plaintiff advanced the foreclosure.

The Form 4 did not state that the motions could be renewed. It did not reserve their issues for a later hearing or identify any procedure through which they remained pending. It characterized them as “abandoned and/or denied.” Appellant therefore could not assume that the same relief would remain available after Plaintiff proceeded further toward foreclosure.

Section 14-3-330(1) does not require the entire foreclosure action to be finally resolved. It applies when an intermediate order finally determines a substantial matter forming the whole or part of a cause of action or defense. *See Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 333–34, 426 S.E.2d 777, 779–80 (1993). The Form 4 purported to terminate substantial components of Appellant’s defenses while leaving Plaintiff’s foreclosure claim moving forward.

The combined Orders also created a one-sided procedural posture. Plaintiff retained the ability to seek summary judgment and foreclosure, while Appellant’s motions challenging service, dismissal, discovery, federal compliance, stay protection, the scope of the reference, and the asserted mode of trial were removed from active consideration. That imbalance was not merely a scheduling inconvenience. It materially altered which claims and defenses remained capable of adjudication before judgment.

Accordingly, delayed review after foreclosure judgment would not provide an equivalent remedy. It would occur after the pre-liquidation stage had passed, after the Master had exercised the disputed authority, after discovery intended to test foreclosure prerequisites had been denied or extinguished, and after Appellant risked waiver of the asserted jury and forum objections.

For those reasons, delayed review would not preserve the substantial federal, jurisdictional, procedural, and property interests affected by the challenged Orders. The Orders had a present and conclusive effect upon substantial matters forming parts of Appellant's defenses, and immediate review is therefore necessary under South Carolina Code section 14-3-330.

VII. THE MASTER-IN-EQUITY'S PURPORTED DISPOSITION OF MATTERS NEVER TRANSFERRED BY THE WRITTEN ORDER OF REFERENCE PRESENTS AN INDEPENDENT THRESHOLD AUTHORITY ISSUE

The challenged Orders also present a threshold question separate from whether the Master correctly decided the individual motions: whether the written Order of Reference authorized him to decide those matters at all.

A Master-in-Equity possesses only the authority conferred by the written order of reference. In *Bunkum v. Manor Properties*, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1996), the Court of Appeals explained that a master has no power or authority except that granted by the reference. *First Citizens Bank & Trust Co. v. Taylor*, 431 S.C. 149, 847 S.E.2d 249 (Ct. App. 2020), likewise requires examination of the actual language of the written reference when determining the scope of the Master's adjudicatory authority.

The referral of Plaintiff's foreclosure cause of action did not automatically transfer every independently filed circuit-court motion, jurisdictional objection, discovery dispute, request for dismissal, counterclaim issue, jury demand, or challenge to the reference itself. Authority over those matters had to arise from the written Order of Reference or from a later written judicial order transferring them.

No such later transfer appears in the procedural record upon which Appellant relies.

Appellant's Motion to Require Plaintiff to Prosecute the Action and to Set Status Conference; Alternatively, Motion to Dismiss for Failure to Prosecute, had been placed upon the May 19, 2026 circuit-court roster after Appellant submitted a hearing request and corrected SCCA/233 form. Appellant did not request cancellation of the hearing. No circuit judge entered a written order cancelling, continuing, transferring, denying, or otherwise disposing of that motion.

The motion nevertheless disappeared from the circuit-court calendar, was never rescheduled, and was later included within the July 10 Form 4's omnibus disposition. Administrative removal from a roster did not constitute a judicial transfer to the Master. Nor could the absence of a circuit-court hearing enlarge the written reference.

Plaintiff's subsequent notice seeking to place Appellant's generally described "outstanding Motions" before the Master likewise could not confer authority. A party may request the scheduling of a matter already within a tribunal's jurisdiction. A party cannot enlarge a judicial reference or transfer independently pending circuit-court matters through its own hearing notice.

The motions affected by the Form 4 extended far beyond routine administration of the referred foreclosure claim. They included Appellant's sworn challenge to service and personal jurisdiction; his request for dismissal of the foreclosure action; his Motion for Summary Judgment; his Motion to Compel Discovery; his Motion to Stay; his Motion for Leave to File Counterclaims and accompanying jury demand; his USDA-compliance defenses; and his objections to the Master's authority and the scope of the reference.

The authority issue necessarily preceded any ruling on the merits of those matters. Before deciding whether a motion should be granted, denied, or deemed abandoned, the Master was required to possess lawful authority to adjudicate it. The Form 4 did not identify the provision of

the written reference authorizing disposition of each independently pending matter or explain how those matters had been transferred from circuit court.

The problem is particularly direct as to Appellant's challenge to the Master's authority. The Master purported to dispose of the very objection questioning whether he possessed authority to dispose of the other motions. The threshold authority question therefore could not be avoided by including it within the same unexplained omnibus ruling.

The counterclaim and jury issues presented an additional limitation. A foreclosure claim ordinarily sounds in equity, but asserted legal counterclaims and related jury-triable issues may require individualized examination to determine the proper forum and mode of trial. The mere referral of the foreclosure claim did not itself answer whether the proposed legal matters could be adjudicated by the Master or were required to remain in circuit court.

South Carolina Community Bank v. Salon Proz, LLC, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017), requires careful consideration of the nature of counterclaims asserted in a foreclosure action and whether legal, compulsory claims accompanied by a valid jury demand require circuit-court adjudication. The Form 4 did not conduct that analysis. It instead treated the Motion for Leave and jury demand as part of the same collective "abandoned and/or denied" disposition.

Appellant does not argue that every ruling made outside the proper scope of a reference automatically becomes appealable. The point is narrower. The Form 4 purported to conclusively terminate substantial and potentially case-dispositive matters through the exercise of authority that Appellant contends was never conferred. That distinguishes the Orders from ordinary interlocutory rulings entered by a tribunal whose authority over the subject matter is undisputed.

Delayed review would not eliminate the problem. Review after final foreclosure judgment would occur only after the Master had already exercised the disputed authority over the motions, allowed Plaintiff's foreclosure claim to advance, and affected Appellant's asserted forum and mode-of-trial rights. The authority question therefore had to be preserved when the Form 4 purported to dispose of the matters.

The July 7 Order and July 10 Form 4 must also be considered together. The July 7 Order addressed Appellant's pending motions and imposed a new loss-mitigation obligation. The July 10 Form 4 then purported to terminate the motions collectively. Neither Order first identified the written source of the Master's authority over each matter or established that the circuit court had transferred the independently pending motions.

Accordingly, the challenged Orders did not merely contain alleged errors in resolving matters properly before the Master. They purported to conclusively dispose of existing circuit-court motions and substantial defenses without establishing that the written Order of Reference authorized those dispositions. That threshold authority issue further demonstrates why the Orders affected substantial matters forming parts of Appellant's defenses within South Carolina Code section 14-3-330.

CONCLUSION AND PRAYER FOR RELIEF

The July 7, 2026, Order and July 10, 2026, Form 4 cannot be reduced to ordinary interlocutory rulings upon unrelated motions. Read together and according to their practical operation, the Orders conclusively altered the parties' governing obligations, imposed a present sixty-day loss-mitigation duty upon Appellant, purported to terminate actively prosecuted motions as "abandoned and/or denied," affected the forum and asserted mode of trial, and permitted this

federally regulated foreclosure to continue while substantial threshold defenses remained unadjudicated.

Appellant has not asked this Court to disregard South Carolina Code section 14-3-330 or create a new exception to the statute. The governing federal law instead establishes the nature and substantiality of the defense conclusively affected. Once Appellant completed the loss-mitigation package, federal USDA requirements placed the next mandatory duties upon Plaintiff. Plaintiff was required to evaluate the completed submission, follow the prescribed servicing sequence, perform the applicable thirty-one-percent affordability analysis, address the Mortgage Recovery Advance issue where appropriate, document its evaluation, and communicate a determination before proceeding toward liquidation.

The July 7 Order did not determine whether Plaintiff performed those duties. It instead imposed a new sixty-day obligation upon Appellant without identifying any federal regulation requiring an entirely new application, any particular document that was missing or stale, or any material change that rendered the completed package inadequate. Even assuming the loss-mitigation issue was within the written Order of Reference, the Master's authority was authority to apply controlling federal law and determine Plaintiff's compliance—not authority to supersede that law, relieve Plaintiff of duties already triggered, or replace them with a contradictory state-created obligation imposed upon Appellant.

The July 10 Form 4 compounded that action by characterizing the motions through which Appellant challenged Plaintiff's compliance and the Master's authority as "abandoned and/or denied." Appellant's written request that the motions be decided upon the existing record was the opposite of abandonment. The Form 4 did not identify which motions were abandoned, which

were denied, what conduct constituted abandonment, what legal standard supported denial, or whether the Master possessed authority under the written reference to decide each matter.

Those Orders finally affected substantial matters forming parts of Appellant's defenses within South Carolina Code section 14-3-330(1). To the extent they affected the asserted jury mode of trial, the scope of the reference, and the forum in which legal matters would be determined, they also affected substantial rights recognized under section 14-3-330(2).

Delayed review would not provide equivalent protection. The USDA requirements are designed to operate before liquidation. Discovery concerning compliance was sought before foreclosure judgment. Stay relief was requested to preserve the existing status quo. The challenge to the Master's authority necessarily had to be resolved before that disputed authority was exercised. The asserted jury and forum objections risked waiver if not promptly preserved. Review only after foreclosure judgment would occur after the very protections at issue had lost their intended preventive operation.

WHEREFORE, Appellant Wendell Don Cooper respectfully requests that this Court:

1. Determine that the July 7, 2026, Order and July 10, 2026, Form 4 are immediately appealable under South Carolina Code section 14-3-330 and Rule 201(a), SCACR;
2. Permit this appeal to proceed and establish an appropriate schedule for preparation of the appellate record and briefing upon the merits;
3. Determine that Appellant's pending motions were not abandoned because Appellant expressly requested that they be adjudicated upon the existing written record;
4. Determine that the mandatory USDA servicing requirements governing this federally guaranteed loan could not be treated as merely optional handbook guidance where 7

C.F.R. § 3555.51(b)(1) expressly requires lenders and their agents to comply with USDA regulations and handbooks and 7 C.F.R. §§ 3555.301 and 3555.303 impose mandatory servicing and loss-mitigation duties;

5. Determine that the July 7 Order could not lawfully substitute a new sixty-day borrower obligation for Plaintiff's already-triggered federal duties without first adjudicating whether Plaintiff evaluated and documented Appellant's completed loss-mitigation submission in accordance with the governing USDA requirements;
6. Vacate or reverse the portions of the July 7 Order and July 10 Form 4 that imposed the new-package requirement and purported to dispose of Appellant's pending motions as "abandoned and/or denied";
7. Determine that any motion not expressly transferred to the Master-in-Equity through the written Order of Reference or a subsequent written judicial order remained a circuit-court matter and could not be adjudicated merely because Plaintiff placed it upon a hearing notice before the Master;
8. Restore each affected motion to pending status and remand with instructions that each motion be identified and adjudicated separately upon the existing written submissions, without requiring another hearing unless the lower court identifies a specific disputed factual issue that cannot fairly be resolved from the written record;
9. Require any order entered upon remand to identify each motion adjudicated and state the factual findings and legal grounds supporting its disposition;
10. Direct that no summary-judgment order, foreclosure judgment, order of sale, or other liquidation relief be entered unless and until Plaintiff establishes compliance with the

mandatory USDA requirements governing its asserted right to proceed from loss mitigation into foreclosure;

11. If this Court determines from the undisputed record that Plaintiff failed to establish compliance with mandatory federal pre-liquidation requirements, reverse any ruling permitting the foreclosure to proceed and direct appropriate disposition of the foreclosure action;
12. Alternatively, remand with instructions that the foreclosure remain stayed or otherwise held in abeyance until the restored motions, the scope of the Master's authority, and Plaintiff's compliance with the governing USDA requirements have been adjudicated; and
13. Grant such other and further relief as this Court considers just, lawful, and necessary to preserve Appellant's substantial rights and prevent foreclosure from advancing before the threshold matters are resolved.

Respectfully submitted,



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August 6, 2026

Simpsonville, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August 2026, I served a true and correct copy of the foregoing APPELLANT'S MEMORANDUM ADDRESSING THE APPEALABILITY OF THE JULY 7, 2026, ORDER AND JULY 10, 2026, FORM 4 by depositing the same in the United States Mail, first-class postage prepaid, addressed as follows:

Alan M. Stewart, Esquire
Foundation Legal Group
240 Stoneridge Drive, Suite 400
Columbia, South Carolina 29210

RECEIVED
Aug 06 2026
SC Court of Appeals

I further certify that a copy was transmitted electronically to Mr. Stewart at the email address reflected in the filings in this matter.

Respectfully submitted,



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Dated: August 6, 2026