FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

RECEIVED
Sep 03 2026
SC Court of Appeals

September 3, 2026

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Frank Henderson and Antioch Group v. Abundance Home Care and Tyrhonda Priest*
Appellate Case No. 2026-000265

Dear Ms. Kitchings,

I write in response to this Court's letter of September 2, 2026, which states that "this case is no longer held in abeyance." I am respectfully requesting clarification, as I believe the letter may be mistaken as to the somewhat unusual posture of this appeal.

On May 27, 2026, this Court issued its Order, granting Appellants' Motion for Leave to file a Rule 60(b) motion with the circuit court. The Order states: "This appeal shall be held in abeyance pending the circuit court's ruling on the motion."

The circuit court has not yet ruled on the Rule 60 motion. It has scheduled a hearing on the motion for September 10, 2026. It is my understanding that this appeal is held in abeyance until after the circuit court makes a ruling on the Rule 60(b) motion.

The source of the confusion may be that on June 26, 2026, the parties filed a Joint Motion to Stay Pending Mediation, asking this Court to stay their deadline to file the Rule 60(b) motion. ("Pursuant to this Court's Order of June 4, 2026, the current deadline for Appellants to serve and file their Motion pursuant to Rule 60, SCRCP, is June 26, 2026. The parties request that this filing deadline would be held in abeyance until August 7, 2026. The parties shall notify this Court on or before August 7, 2026, as to whether the matter is resolved or not."). This Court then granted that relief, in an Order filed June 26, 2026.

After the parties participated in an unsuccessful mediation on August 4, 2026, Appellants filed their Rule 60(b) Motion with the circuit court on August 7, 2026. A copy of the motion is attached for this Court's records.

Appellants will notify this Court after the circuit court rules on the Rule 60(b) Motion—again, the hearing is scheduled for September 10.

In the meantime, Appellants respectfully request clarification as to whether the appeal remains in abeyance until the circuit court issues an order on the motion, as indicated by this Court's Order of May 27, 2026.

I appreciate your help and your consideration of this letter. Please do not hesitate to let me know if there is anything further that you require from me.

With kind regards, I am,

Yours very truly,

FORD WALLACE THOMSON LLC

Ainsley F. Tillman

cc: all counsel of record

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	IN THE COURT OF COMMON PLEAS Case No: 2022-CP-22-00650
Frank Henderson and Antioch Group, Plaintiffs/Counterclaim Defendants, v. Abundance Home Care and Tyrhonda Priest, Defendants/Counterclaim Plaintiffs.	**PLAINTIFFS FRANK HENDERSON AND ANTIOCH GROUP'S MOTION PURSUANT TO RULE 60(b), SCRCP**

Pursuant to Rule 60(b), SCRCP, by and through their undersigned counsel, Plaintiffs/Counterclaim Defendants Frank Henderson and Antioch Group ("Plaintiffs") hereby respectfully move for an order vacating the judgment entered in favor of Defendants Abundance Home Care and Tyrhonda Priest ("Defendants") on January 5, 2026, and the orders that produced same, on the grounds that the judgments and orders are void for failure of due process, and error as to the rules of court and the law.[1] Plaintiffs reserve the right to set forth the bases for this Motion in more detail in a Memorandum (or Memoranda) in Support, as well as supporting exhibits and affidavits, to be filed in advance of the hearing of this Motion.

The principal basis for this Motion is not complicated: neither Frank Henderson nor Antioch Group was properly served with notice of the December 15, 2025, damages hearing as required by Rules 5 and 55(b)(2), SCRCP. Plaintiffs further seek relief from the June 16,

[1] Plaintiffs also incorporate by reference the arguments made within their *Motion Pursuant to Rules 52, 54, 55, 59, and 60, SCRCP*, which was filed with the court on January 14, 2026, and which has not yet been heard. Plaintiffs respectfully request that it would be scheduled for a hearing contemporaneously with the hearing on this motion. Plaintiffs further incorporate herein all previously-filed Affidavits and Exhibits, as well as the transcripts of record for the hearings underlying the orders for which relief is sought.

2025, order striking their pleadings for the reason that Defendants never served Plaintiff Antioch with discovery requests despite representing to the court that they had, and because the order is based in the failure of a non-party to respond to a subpoena, making the relief granted error of law under Rules 37 and 45, SCRCP. Moreover, Plaintiffs seek relief from the October 24, 2025, order entering default on Defendants' counterclaims, and the January 15, 2026 order appointing a receiver, for the reasons set forth below and within their Motion to Vacate Appointment of Receiver.

PROCEDURAL BACKGROUND

Although this case has a lengthy procedural history, with numerous orders that are the subject of Plaintiffs' Notice of Appeal, Plaintiffs will discuss in this Motion only those procedural events that are pertinent to this motion:

1. On August 3, 2022, Plaintiffs filed this action for breach of partnership agreement.
2. On March 16, 2023, Defendants filed an Answer and Counterclaims, asserting nine counterclaims. Importantly, the Counterclaims on their face allege claims only against Antioch Group, LLC; they expressly state, "Plaintiff Henderson is the managing member of Plaintiff Antioch who acted on behalf of Plaintiff Antioch in all allegations set forth below" and "Plaintiff Henderson at all times acted on behalf of and as an agent of Plaintiff Antioch." (Counterclaims, ¶ 4, 30). Further, the Counterclaims make "General Allegations," in which 16 out of the 27 numbered paragraphs are alleged "upon information and belief." Many more of the allegations contain legal conclusions and vague unsupported statements referring to non-parties and extrinsic documents. No exhibits are attached to the counterclaim pleadings. Within the counterclaims asserted, the key elements of the claims are conclusively alleged, without factual basis, and "upon

information and belief."[2]

3. On March 16, 2023, contemporaneously with the service of the Counterclaims, Defendants served discovery requests to Plaintiff Frank Henderson. Plaintiff Antioch is not aware of any discovery requests directed to Antioch, and the record shows none.[3]

4. On March 20, 2024, Defendants filed a Motion to Compel discovery responses from Antioch, notwithstanding that the exhibit to the motion does not include any discovery requests served on Antioch – because there were none ever served.

5. On March 20, 2024, Defendants filed a Motion to Compel Subpoenas from non-parties, seeking relief pursuant to Rule 45, SCRCP.

6. On May 3, 2024, the parties mediated this case, as indicated by Proof of ADR filed May 13, 2024. Despite the noted 5.7 hours spent at mediation, the Defendants never mentioned that Plaintiffs had not filed a reply to the Counterclaims, nor that they perceived them to be in default. *See* Henderson Affidavit.

7. On April 25, 2025, Defendants filed a "Rule to Show Cause and Request for Contempt Sanctions" pursuant to Rule 37, SCRCP. A key basis for sanctions asserted in the motion was the alleged failure by Antioch to respond to discovery requests (which in reality did not exist), and the failure by a non-party, Heart of the Carolinas, LLC, to respond to a subpoena pertaining to its bank statements.

8. On June 16, 2025, the court entered an order striking Plaintiffs' pleadings. Although the order identifies Rule 37, SCRCP, as the grounds for this "drastic result," the order's

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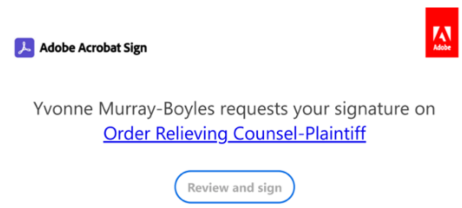
2 See, e.g., Counterclaim Para. 34, reciting: "Upon information and belief, Plaintiffs have breached, violated, or failed to abide by or uphold multiple provisions of the Operating Agreement, including but not limited to Provisions Nos. 13, 14, 16, 18, 21, 36, 39, 40, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, and 62."

3 **Defendants' own filings reveal that they never served discovery on Antioch Group, LLC**. *See* Ex. 1 to Defendants' Motion to Compel, filed March 20, 2025.

factual recitations center around unproduced bank records by non-party Heart of the Carolinas, LLC, which Defendants had sought by subpoena.[4]

9. On September 3, 2025, Defendants moved for entry of default on their counterclaims.

10. On October 9, 2025, Plaintiffs' prior attorney sent plaintiff Frank Henderson a Proposed "Consent Order Relieving Counsel," with only this message:



11. On October 23, 2025, the parties' attorneys argued Defendants' motions for default. At the hearing, Plaintiffs' prior attorney made clear to the court and opposing counsel that she was going to request to be relieved as counsel, *via* a yet-to-be-filed motion, in which she "would definitely ask the Court to allow Mr. Henderson to find alternate counsel" prior to any damages hearing:

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> so I would definitely ask the Court to allow Mr. Henderson to find alternate counsel. So I don't know if that could be done before December, because now, I've requested to be relieved. So I'm going to have to file a motion with the Court to be heard to be relieved from this case, and I'd ask the Court to allow time for that to happen, Your Honor.

(Hearing Transcript, p. 7: 1-6).

12. On October 24, 2025, the court granted Defendants' Motion for Entry of Default and Motion for Default.[5]

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[4] Plaintiffs' prior counsel did not tell Plaintiffs that their pleadings had been stricken. *See* Henderson Aff., ¶ 23, filed Jan. 14, 2026.

[5] Plaintiffs' prior counsel did not tell Plaintiffs that they had been put in default. *See* Henderson Aff., ¶ 21, filed Jan. 14, 2026.

13. On October 28, 2025, rather than inform her clients that they had been put in default, Plaintiffs' attorney submitted, without making an underlying motion, the "Proposed Consent Order Relieving Counsel," for which she had previously procured the signature of one Plaintiff, Frank Henderson.

14. On October 29, 2025, the court entered the proposed Order Relieving Counsel, notwithstanding that no Motion to Withdraw was ever filed by Plaintiffs' attorney, nor was a hearing ever held, at which a court surely would have discerned that the attorney's final-hour withdrawal would have a material adverse effect on Plaintiffs' interests, among other problems. *See* Rule 11(b), SCRCP ("An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, <u>upon application</u>, by order of the Court, <u>and not otherwise</u>." (emphasis added); *see also* Rule 407, SCACR at Rule 1.16.[6] For example, the order makes no finding that Plaintiff Antioch Group, LLC (which did not consent) was informed that it could not proceed *pro se*.

15. On November 24, 2025, according to the public index, the court issued notice that the damages hearing was on the roster for December 15, 2025.

16. On November 25, 2025, alarmingly, Plaintiffs' prior counsel, in collaboration with Defendants' attorneys who apparently objected to her withdrawal without their consent, even though their consent was not necessary, filed an "Amended Consent Order Relieving Counsel," drafted in part by counsel for Defendants, to the deep prejudice of

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[6] *See also*, Elizabeth Scott Moise, Gone but Not Forgotten: Motions to Withdraw as Counsel, SC Lawyer (Jan. 8, 2015), explaining: "When a lawyer has made a formal appearance in a federal or state court proceeding, the withdrawing lawyer must obtain court approval by filing a motion to withdraw." *citing* Local Civ. Rule 83.I.07 (D.S.C.); SCRCP 11(b), (c); SCACR 407 (Rule 1.16(b)); *see also Culbertson v. Clemens*, 322 S.C. 20, 24, 471 S.E.2d 163, 165 (1996).
Available at:
https://www.nelsonmullins.com/storage/5a49bcc4633a6b15c9c2b9f46c26fcfb.pdf

Plaintiffs, in which language was added stating:

> That opposing counsel does not object to Yvonne Murray-Boyles being relieved as counsel, so long as the Plaintiffs are aware that this shall not constitute grounds for any delays or continuances to be granted in this matter, and the damages hearing set for December 15, 2025, shall proceed as scheduled.. . . **Further, there shall be no delays or continuances granted for the damages hearing set for December 15, 2025, and it shall proceed as scheduled regardless of if or when Plaintiffs retain new counsel prior to the damages hearing**.

(emphasis added). The court entered this proposed Amended Order, notwithstanding that Plaintiffs' attorney had already been relieved by the prior order and was patently not acting in her former clients' best interests, nor was a hearing ever held, at which a court surely would have discerned that the attorney's final-hour withdrawal would have a material adverse effect on Plaintiffs' interests, including because not permitting a corporation to obtain counsel prior to a damages hearing rendered it unable even to appear to defend itself. *See* Rule 11(b), SCRCP; *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999) (clarifying corporation's inability to appear *pro se* in circuit court).

17. On December 8, 2025, Defendants filed what they captioned "Notice/Notice of Hearing." It's just a letter. There is no affidavit or sworn certificate of service. There is no postmarked envelope. No green card from the post office indicating certified mail. The letter was apparently addressed to one Plaintiff, Frank Henderson, at an address at which he does not now – and has never—resided. There is no attempt indicated to separately serve corporate Plaintiff Antioch Group, LLC, including through the address for its registered agent which is readily available on the South Carolina Secretary of State's website. The letter says nothing about default or default judgment or an unliquidated damages hearing:

Frank Henderson, Individually and on behalf of
Antioch Group
14 Antioch Drive
Greenville, SC 29605

RE: Frank Henderson and Antioch Group v. Abundance Home Care and Tyrhonda Priest
Civil Action No. 2022-CP-22-00650

Dear Mr. Henderson & Antioch Group:

Please be advised that a non-jury trial is set in Georgetown County on Monday, December 15, 2025 beginning at 9:30 a.m.

Thank you for your consideration of this letter.

18. The hearing on Defendants' unliquidated damages was conducted on December 15, 2025, without Plaintiffs, or counsel for either Plaintiff, present. At the hearing, the Defendants introduced new alleged facts, exhibits, and grounds for relief that were not asserted within their Counterclaims. The Court subsequently entered judgment against Plaintiffs, jointly and severally, for $195,574.62 in actual damages, $1,892,187.81 in lost profits, and $782,298.48 in punitive damages, for a total judgment of Two Million, Eight Hundred Seventy Thousand, Sixty Dollars and Ninety-One Cents ($2,870,060.91).

19. On January 5, 2026, this Court issued its Order of Judgment, entering default judgment against the Plaintiffs. The order goes well beyond merely accepting the counterclaim allegations as true: it makes factual findings and awards categories and amounts of damages that are not grounded in the pleadings alone, and it also grants relief against non-parties. Rather than reciting the allegations of the Counterclaims as the basis for the damages award, the Order makes five (5) pages of new "Findings of Fact," incorporating 21 factual exhibits that were not exhibits to the Counterclaims, as well as three (3) more pages of new findings purportedly supporting punitive damages. The Order then states that "the testimony and evidence presented by Defendants [at the hearing] establishes all the necessary elements supporting Defendants' [Nine] Counterclaims." (Order, p.

15).

20. On January 15, 2026, Defendants thereafter obtained an order appointing a receiver, including over ten (10) non-parties, which order is the subject of Plaintiffs' Motion to Vacate Receivership, filed May 29, 2026.

21. On February 5, 2026, Plaintiffs filed a Notice of Appeal in the Court of Appeals, in which they respectfully appealed the final judgment and the numerous interlocutory orders leading up to it, including the orders striking Plaintiffs' pleadings, placing plaintiffs in default, relieving counsel, and appointing a receiver.

22. On March 4, 2026, Plaintiffs filed a Motion with the Court of Appeals for its leave to file a Rule 60 Motion with the circuit court. Defendants vehemently opposed this request.

23. On March 17, 2026, the clerk of court for Georgetown County e-filed a returned envelope containing the Notice of Hearing for the default judgment – addressed to Frank Henderson— which was stamped by the Postal Service:

24. On April 10, 2026, after the Receiver had taken possession of and secured the assets of non-party Heart of the Carolinas, LLC (*inter alia*), and required that $2,870,060.91 of that non-party's assets to be deposited with the Court pursuant to Rule 67, SCRCP, to secure the default judgment, for which the non-party was not a judgment debtor, the Defendants consented to a Consent Order Confirming Termination of Receivership.

25. On May 27, 2026, the Court of Appeals issued its Order, granting Plaintiffs' request for leave to file a motion pursuant to Rule 60(b), SCRCP with the circuit court. The Order further states that, "Nothing in this order prevents the circuit court from hearing [Plaintiffs'] pending motion to stay execution."

26. On August 4, 2026, the parties participated in a mediation of this matter, which concluded in an impasse.

27. This motion is now ripe to be filed and heard.

INTRODUCTION

This case is troubling, on multiple levels. That the Order of Judgment is void for failure of due process is the most simple and straightforward grounds for relief. But the other reasons that this court should grant relief to Plaintiffs are equally legitimate, if more complex and disturbing. Essentially, the underlying orders in this case are corrupted by error of law, violation of the rules, and attorney abandonment – all of which (improperly) culminated to leave Plaintiffs effectively *pro se*, defenseless, without notice, and flying blind in the midst of a complex commercial dispute.

For one thing, Defendants moved for "the harshest of punishments" against Plaintiff Antioch Group, LLC, on the premise that it ostensibly failed to respond to discovery requests, notwithstanding that ***Defendants were fully aware they had never served discovery requests on Antioch Group***. Defendants nonetheless characterized Antioch's non-existent "discovery violations" as being in "bad faith and willful and deliberate," urging the court to strike Antioch's pleadings for its "willful and continued disobedience." Defendants then disregarded the legal distinction between Rules 37 and 45, and unlawfully blurred the line between parties and non-parties, further urging the court to strike both Plaintiffs' pleadings due to the failure by a non-party to fully respond to a subpoena. The proper remedy against a non-party is contempt under Rule 45, not the most severe of sanctions under Rule 37, SCRCP.

Defendants then went on to use these purported but legally inaccurate discovery "violations" as a basis for punitive damages in the default judgment award. *See* Order of Judgment, filed Jan. 5, 2026. The Judgment awards $782,298.48 in punitive damages because "[t]he totality of Plaintiffs' actions when viewed in the context of this litigation and Plaintiffs' egregious discovery abuses which led to their pleadings being struck reveals a clear pattern of willful conduct demonstrating a complete disregard for Defendants' and their rights. This level of culpability meets the clear and convincing standard for punitive damages, and Plaintiffs' willful, fraudulent, and bad-faith conduct compels the imposition of punitive damages to achieve justice and prevent recurrence." Judgment, at p. 20.

Moreover, Plaintiff Henderson's Affidavit, filed Jan. 14, 2026 and incorporated herein, attests to the failures of communication by his original attorney in this case, which surpass simple negligence and rise to the level of abandonment. Tellingly, after she withdrew as counsel on the eve of a default judgment hearing about which she did not inform her clients, Plaintiffs requested that their prior attorney send to them a copy of their file. Not only did their prior attorney ignore this request, but she also failed to respond to a subpoena from her own clients requesting the file.[7] Disturbingly, counsel for Defendants has moved to quash that subpoena, as well as a subpoena to himself that requests all his communications with

[7] A client should never have to send a subpoena to his own attorney to obtain a copy of his file and opposing counsel should never move to quash such access, nor assert grounds for "protection" as to non-privileged communications between himself and another party's attorney.

Plaintiffs' former attorney.[8] At the time that she withdrew as counsel, Plaintiffs were unaware that they were in default and unaware that their pleadings had been stricken as a sanction for failure by a non-party to respond to a subpoena. Worse, after she withdrew and was apparently no longer representing Plaintiffs, Defendants collaboratively drafted the Amended Consent Order Relieving Counsel—and they designed it to deprive Plaintiffs of any meaningful opportunity to retain new counsel prior to the damages hearing (of which Plaintiffs were unaware).

Defendants then proceeded to obtain a multi-million dollar default judgment award on theories, evidence, and allegations outside of those made in their counterclaims, at a hearing for which they failed to provide legally sufficient notice.

In the interest of justice, and pursuant to Rule 60(b), SCRCP, the Plaintiffs respectfully ask this Court to unwind the errors of law, mistakes, neglect, and fraud that together resulted in an invalid and void Judgment.

ARGUMENT

Initially, the Order of Judgment is void for lack of due process. Not only did Defendants fail to serve Plaintiff Henderson properly, and at the correct address, but they failed to serve Plaintiff Antioch altogether, under the rules. Moreover, the Order of Judgment improperly awards relief not supported by the pleadings, it is tainted by fraud, and it should be vacated as corrupted by injustice and error of law. The Order Granting Defendants' Motion for Sanctions Pursuant to SCRCP 37 takes the exceptionally drastic measure of

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[8] *See* Defendants' Motion to Quash and for Protection, filed March 18, 2026, moving for relief from, *inter alia*, a subpoena sent to Plaintiffs' former counsel and to Defendants' attorney. Respectfully, this motion should be heard, denied, and the requested discovery permitted prior to any hearing or decision on this motion. Defendants have no basis whatsoever to block Plaintiffs from their own file, nor to communications with their prior attorney.

striking Plaintiffs' pleadings based on error of law: Defendants represented to the court that they had served discovery requests on Plaintiff Antioch Group, and that Antioch acted in bad faith in failing to respond. This representation was false: Defendants never served Antioch with discovery requests. Moreover, the order striking pleadings commits error of law by imposing sanctions per Rule 37 on a party, for failure of a non-party to respond to a subpoena; Defendants' remedy against a non-party is found exclusively in Rule 45, SCRCP. Beyond that, as set forth below and in Plaintiffs' other filings with this Court, the orders and judgment at issue were irreparably tainted by error, mistake, fraud, and attorney abandonment.

I. The January 5, 2026, Judgment Is Void Because Plaintiffs Were Not Properly Served with Notice of the Damages Hearing.

As stated above, Rule 60(b)(4), SCRCP, authorizes relief where "the judgment is void." A judgment is void when the proceedings failed to provide proper due process or when the court lacked jurisdiction. *McDaniel v. U.S. Fidelity & Guaranty Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996); *Tobias v. Rice*, 386 S.C. 306, 311, 688 S.E.2d 552, 554 (2010). Procedural due process requires, at a minimum, adequate notice and a meaningful opportunity to be heard. *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008).

Rule 55(b)(2) expressly requires that notice of a hearing on unliquidated damages be provided to a party in default by first-class mail to that party's last known address. When service is made by mail, Rule 5(b) requires mailing to the party's last known address. Further, the Rule incorporates Rule 5(a), which requires that every written notice and similar paper be served "upon <u>each</u> of the parties." (emphasis added). These requirements were not satisfied as to either Plaintiff.

First, the notice directed to Henderson was mailed to 14 Antioch Drive, Greenville, South Carolina. *See* Purported Notice, attached hereto as <u>Exhibit 1</u>. As Henderson attests, he has never resided at that address; rather, he grew up at 16 Antioch Drive, where his mother continues to reside. Henderson Aff. ¶ 28. Henderson therefore did not receive notice of the hearing and did not learn of the default proceedings until a neighbor of his mother delivered papers received from Defendants' counsel. *Id.* ¶ 38. Because the notice was mailed to an address that was never Henderson's address, it did not comply with Rule 5(b) or Rule 55(b)(2), SCRCP.

Second, Antioch Group was not separately served. Rule 5(a) requires service upon "each" party, and Antioch Group and Henderson are distinct litigants. A mailing to Henderson—even one purporting to name both Plaintiffs—could not substitute for separate service upon Antioch Group. That is the holding of *McCall v. Ikon*, 363 S.C. 646, 655, 611 S.E.2d 315, 319 (2005). There, the Supreme Court held that mailing a single letter addressed to two separate parties did not comply with Rules 5(a) and 55(b)(2), explaining that the Rules require each party to be served separately. The same defect exists here. No separate notice was mailed to Antioch Group even though the address of its registered agent was readily available.[9] Further, the Amended Consent Order Relieving Counsel—which Defendants drafted—deprives Antioch as a corporation of any meaningful opportunity to be heard, considering that it lacks legal ability to appear *pro se*.

<u>Because the default judgment was entered against Plaintiffs without the notice required by Rule 55(b)(2), and without due process of law, it is void.</u> *Dymon, Inc. v. Hyman*, 305 S.C. 170, 172, 406 S.E.2d 388, 389 (Ct. App. 1991) (holding a default judgment void where the requisite written notice was not provided); *Stark Truss Co. v. Superior Construction Corp.*,

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[9] *See, e.g.*, https://businessfilings.sc.gov/BusinessFiling/Entity/Search (S.C. Secretary of State's website providing the registered agent for Antioch Group).

360 S.C. 503, 511, 602 S.E.2d 99, 103 (Ct. App. 2004) ("Because no notice was given and no hearing was held, the default judgment was void. The circuit court erred in refusing to relieve Appellants from the void judgment."); *see also Cruz v. Arete Wyndham Property Owner*, Op. No. 2026-UP-224, at 3 (S.C. Ct. App. filed May 13, 2026) ("Because the record lacks evidence supporting the finding that Casa Bahari received notice of the damages hearing, we must hold the circuit court abused its discretion in declining to set the default judgment aside.").

Because neither Henderson nor Antioch Group was served in the manner required by Rules 5 and 55(b)(2), neither Plaintiff received the notice or opportunity to be heard required by due process. Accordingly, the January 5, 2026 judgment is void and must be vacated under Rule 60(b)(4), SCRCP.

II. As an additional basis to void the judgment, Plaintiffs were entitled to due process, including Rule 4 service, as to the manifold new allegations against them—far exceeding the rote, unsupported allegations in the Counterclaims—which improperly served as the basis for the default judgment.

Rule 5(a), SCRCP, requires "that pleadings asserting new or additional claims for relief against [parties in default] shall be served upon them in the manner provided for serving of summons in Rule 4." That did not happen here. The relief sought by Defendants at the default damages hearing went far beyond the allegations in the counterclaims, and Plaintiffs Henderson and Antioch Group LLC were "each" entitled to service pursuant to Rule 4, SCRCP.

For example, the Counterclaims plainly allege that Henderson "acted on behalf of Plaintiff Antioch in all allegations set forth below," and that "Plaintiff Henderson at all times acted on behalf of and as an agent of Plaintiff Antioch." (Counterclaims, ¶¶ 4, 30). However, at the damages hearing, Defendants claimed they were entitled to relief against Henderson, including for the purported actions of Antioch Group, LLC. For this additional reason, Henderson was deprived of due process—he was entitled under Rule 5(b) to Rule 4 service of previously unalleged claims for relief against him. Likewise, as discussed below, the claims and allegations made at the default damages hearing were new and previously unasserted, as against both Plaintiffs – entitling Antioch to Rule 4 service, as well.

Moreover, default does not convert "information and belief" allegations into proven liability, and the allegations of the Counterclaims were insufficient to support the massive default judgments awarded—which is why the Order of Judgment cites to Defendants' testimony at the hearing in order to establish the elements of Defendants' claims, rather than the deficient allegations of the Counterclaims. This was error of law, and it deprived Plaintiffs of due process.

South Carolina law strictly limits the admissions created by default to "well-pleaded" factual allegations. As the South Carolina Supreme Court held over a century ago, in a principle that remains binding today, "default does not admit that the facts pleaded are sufficient to constitute a cause of action, as the effect of the confession is limited to the material issuable facts well pleaded in the complaint." *Gadsden v. Home Fertilizer & Chem. Co.*, 89 S.C. 483, 488, 72 S.E. 15, 17 (1911) (*quoting Gillian v. Gillian*, 65 S.C. 129, 43 S.E.386 (1903)). Rule 8, SCRCP, requires pleadings to contain "ultimate facts", not bare legal conclusions, to state a cause of action. *Rotec Servs. v. Encompass Servs.*, 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004); *Watts v. Metro Sec. Agency*, 346 S.C. 235, 550 S.E.2d 869 (Ct. App. 2001). The purpose of this requirement is straightforward; <u>it is to provide fair notice to the opponent and the court.</u> *Watts* at 238. **Defendants' Counterclaim pleadings deprived both Plaintiffs of fair notice of the facts underlying the elements of Defendants' claims**.

Defendants' counterclaims are replete with allegations framed "upon information and belief" rather than based on personal knowledge. For example, Defendants repeatedly preface core assertions of fraud, misappropriation, and loan activity with "upon information and belief," including: the creation and use of Abundance Home Care 2, LLC, Henderson's control over accounts, the destination of loan proceeds, and the alleged misappropriation of funds. Those allegations are not based on Priest's personal knowledge; they expressly acknowledge uncertainty and lack of evidentiary support. Allegations pled "upon information and belief" are not "properly pleaded" facts because Plaintiff expressly disclaims the direct knowledge required under South Carolina's fact pleading standard. By definition, such allegations rest on secondhand information rather than personal knowledge. Where Plaintiff herself acknowledges insufficient knowledge to state a fact directly, that "fact" cannot qualify as a well-pleaded allegation entitled to admission. *See United States of America et al v. Health Screening Services LLC et al,* No. 0:18-cv-02341-JDA (D.S.C. Mar. 24, 2026)(Finding information-and-belief allegations were not well pleaded under Rule 9(b) and could not support the sought relief); *see also J&J Sports Prods., Inc. v. Ramsey,* 57 F. App'x 93, 97–98 (3d Cir. 2018) (affirming denial of default judgment against an individual defendant where the plaintiff relied predominantly on allegations made "on information and belief"); *Carlisle v. Nat'l Commercial Servs., Inc.*, 722 F. App'x 864, 868 (11th Cir. 2018); *Balt. Line Handling Co. v. Brophy*, 771 F.Supp.2d 531, 545 (D.Md. 2011) ("An allegation made 'on information and belief' does not serve as a reliable foundation upon which to predicate a final judgment,"); *see, e.g.*, *Oceanic Trading Corp. v. Vessel Diana*, 423 F.2d 1, 4-5 (2d Cir. 1970) (vacating default judgment that was based on factual assertions made "on information and belief").

The Order's damages awards rest on extra-pleading, "information and belief"-laden assertions and not on admitted, proven facts. For example, the lost-profits award of

$1,892,187.81 is based entirely on a "Projected" 2021 Annual Budget and Exhibit 21's internal calculations. The counterclaims, however, do not plead any specific profit figure or budget as a contractual benchmark, any allegation that Abundance was reasonably certain to earn $33,444/month ($401,328/year), or any factual connection between that projected figure and the years 2020–2025. Instead, the pleading states, "upon information and belief," that Plaintiffs would increase revenue and assist with finances, and that misconduct caused unspecified "lost profits." The exact dollar amount and time span are supplied only by internal spreadsheets.

Further, by building a six-year, seven-figure lost-profits award on a budget and a financial model that appear nowhere in the pleadings, the Order grants relief on factual grounds that go beyond the admitted allegations of the counterclaims. The $195,574.62 "actual damages" figure derives from Exhibit 20 and Priest's testimony, not from any specific, non-speculative factual allegations in the counterclaims. That exhibit aggregates rent obligations, checks to Henderson and Harrison, transfers to Heart of the Carolinas and other non-party entities, and loan repayments allegedly attributable to Henderson. But in the counterclaims, much of this is pled vaguely, and "upon information and belief" (e.g., that funds from loans "were disbursed to accounts that Henderson has exclusive control over" and that Henderson "converted those funds for his own benefit and for the benefit of Antioch."

The punitive-damages award of $782,298.48 relies not only on the barely pleaded allegations of fraud and fiduciary breach, but also on assumptions about "significant monetary assets" in "other business entities including but not limited to Heart of the Carolinas, LLC," and Plaintiffs' discovery conduct, which is not part of the counterclaims and is, at best, collateral litigation behavior for which sanction have already been imposed. These considerations—especially asset-based assumptions and discovery conduct—are not pleaded as part of any cause of action and are neither quantified nor proven in the manner default law requires.

The "information and belief" problem is compounded by the Order's treatment of non-party entities and individuals. The Order of Judgment repeatedly finds that Henderson "funneled" funds to Heart of the Carolinas, Sherman Residential Care, Palmetto Breakfast Club, Faith Hope and Charity Residential Care, and Edward Andre Harrison, and then uses those findings to support both compensatory and punitive damages. Yet: Heart of the Carolinas and the other entities are not parties; many of the allegations concerning them are explicitly pled "upon information and belief" and without identifying them; and the forensic accountant's review of those entities' accounts is admittedly incomplete due to lack of access.

Ultimately, this Court should vacate the Final Judgment because of failure of due process and error of law and fact. *Brophy*, 771 F.Supp.2d at 543 ("An allegation made "on information and belief" does "not serve as a reliable foundation upon which to predicate a final judgment."), *citing Oceanic Trading Corp. v. Vessel Diana*, 423 F.2d 1, 4–5 (2d Cir. 1970) (vacating default judgment that was based on factual assertions made "on information and belief").

III. As additional grounds, the January 5, 2026 Order of Judgment Should Be Vacated Because It Was Procured Through Fraud Upon the Court.

Pursuant to SCRCP Rule 60(b)(3), the Court may relieve a party from a judgment for "fraud, misrepresentation, or other misconduct of an adverse party." "[I]n order to obtain equitable relief from a judgment based on fraud, the fraud must be extrinsic." *Raby Const.*, *LLP v. Orr*, 358 S.C. 10, 19, 594 S.E.2d 478 (2004). "Extrinsic fraud is 'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" *Chewning v. Ford Motor Co.*, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003).

The court in *Chewning* recognized that "the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney" constitutes extrinsic fraud. *Id*. at 82, 579 S.E.2d at 610. And in *Ray v. Ray*, the Supreme Court made clear that attorney participation is not necessary. 374 S.C. 79, 85–86, 647 S.E.2d 237, 240–41 (2007). Rather, "an act of perjury or concealment of a document coupled with an intentional scheme to defraud the court" justifies setting aside a judgment under Rule 60(b) for extrinsic fraud. *Id*. at 86, 647 S.E.2d at 241.

Here, Plaintiffs do not seek Rule 60 relief merely because they dispute Priest's testimony. They seek relief because the alleged falsehoods were presented in an unopposed damages hearing after procedural acts that deprived Plaintiffs of the notice and opportunity necessary to test that evidence. The evidence supports a finding that Defendants-Counterclaimants engaged in an "intentional scheme to defraud the court" warranting vacatur of the January 5, 2026 judgment. *Id.* Specifically, Defendants-Counterclaimants' narrative at the damages hearing constituted the "intentional scheme to defraud the court." The evidence shows that the following material assertions were untrue: that Priest was unaware Henderson had created Abundance Home Care 2, LLC; that she lacked knowledge of and access to the accounts associated with that entity; that Henderson secretly obtained fraudulent loans in her name and diverted the proceeds; and that Priest first learned of Henderson's alleged fraud when CCNB alerted her in November 2021.

To start, at the December 15, 2025 damages hearing, Priest testified that she had "no knowledge" of Abundance Home Care 2, LLC until Justin Lee supposedly presented her with documentation in November 2021. Dec. 15, 2025 Tr. 21:1–10. That testimony cannot be reconciled with Priest's own conduct years earlier. On September 27, 2018, Priest wrote a check for $3,000.00 to herself from an Abundance Home Care 2, LLC account ending in 5532. More significantly, on May 20, 2020, Priest personally signed a check for $130,000.00 from the Abundance Home Care 2, LLC TD Bank account ending in 5459. *See* Looper Aff. ¶ 14(c), filed Feb. 5, 2026. Despite the fact that she signed the check, she testified at the damages hearing that the $130,000.00 transfer was used by Henderson to skim money. *See* Damages Hearing Transcript, at 36-38; Looper Aff. ¶¶ 13–22.

Priest further testified at the December 15, 2025 hearing that she only knew of two of the Abundance accounts. Tr. 23:15–17; 31:2–4. However, Marshall Looper attested that Priest had access to all six Abundance bank accounts, that she wrote checks from those accounts, and in November 2021, she revoked Looper's access to all Abundance accounts. *See* Looper Aff. ¶¶ 13–22.

Moreover, Priest represented that she did not learn of Abundance Home Care 2, LLC until after CCNB allegedly alerted her to fraudulent activity in November 2021. Counterclaims ¶¶ 17, 19. The January 5, 2026 judgment expressly relied upon this testimony, finding that Plaintiffs were effectively removed from the partnership when Priest purportedly received notice of fraud from CCNB. *See* January 5, 2026 Order, at 21. However, Justin Lee, CCNB's Executive Vice President, attests that those communications concerned routine SBA requests made before any PPP loans were forgiven and that the subject PPP loan was, in fact, forgiven. *See* Justin Lee Aff. ¶¶ 5–15.

This series of falsehoods constituted an intentional scheme to defraud the court at a hearing where Plaintiffs were not present, by design of Defendants.[10] It is not a scenario like in *Raby Construction, L.L.P. v. Orr*, where the alleged fraud consisted of false testimony and concealed evidence concerning matters the movant had an opportunity to discover and counter. 358 S.C. 10, 21–22, 594 S.E.2d 478, 484 (2004). Here, Plaintiffs had no opportunity at the damages hearing to confront Priest with the contradictory bank records, challenge her account of the $130,000 transfer, or rebut her representation that she first learned of the alleged fraud through CCNB in November 2021. Priest knew that Plaintiffs could not counter her falsehoods so she lied repeatedly to the Court and these unchallenged falsehoods operated together to create the factual narrative upon which the Court imposed millions of dollars in unjustified damages. Under *Ray*, such perjury and concealment, when coupled with an intentional scheme to defraud the court, constitutes extrinsic fraud warranting relief under Rule 60(b)(3). 374 S.C. at 85–86, 647 S.E.2d at 240–41.

Accordingly, the Court should vacate the January 5, 2026 Order of Judgment under Rule 60(b)(3), SCRCP.

IV. The Court Should Also Vacate the Orders Striking Plaintiffs' Pleadings and Entering Default on Defendants' Counterclaims.

Although the service defect and lack of due process each independently require that the judgment be vacated, the antecedent orders striking Plaintiffs' pleadings and entering default should also be set aside under SCRCP Rule 60(b), SCRCP.

A. Because Defendants never served discovery on Plaintiff Antioch Group, LLC, there was no basis to strike its pleadings, as a matter of law.

10 *See, e.g.* Section IV.A, discussing Defendants' actions to impose sanctions on Plaintiff Antioch Group, LLC, for discovery requests that did not exist, as well as the procedural background discussing Defendants' collaborative drafting of the Order Relieving Plaintiffs' Counsel in a manner that was deeply prejudicial and deprived them of a fair and necessary opportunity to obtain new counsel.

As discussed above, despite complaining to the court within their Motion to Compel that "Defendants have received no discovery responses from Plaintiff Antioch Group, LLC," the Defendants' own exhibits show that they failed to serve any discovery requests on Antioch at all. Indeed, the items served by Defendants on Plaintiffs are itemized by Defendants in Exhibit 1 of their Motion to Compel as:

- Defendants' Answer and Counterclaims
- Defendant Abundance Home Care, LLC's First Set of Interrogatories and Requests for Production to Plaintiff Frank Henderson
- Letter and Subpoena to Coastal Carolina National Bank
- Letter and Subpoena to Still Water Accounting, LLC, et. al.
- Letter and Subpoena to Heart of the Carolinas, LLC
- Certificate of Service

As a matter of law, a party simply cannot be sanctioned for failure to respond to discovery requests that were never served upon it, and which do not even exist. The submission of discovery requests to a party is a legal prerequisite for moving to compel responses. *See* Rule 37(a)(2) (permitting a motion to compel only where "a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested."). Moreover, it is patently unfair and improper to accuse a party of "bad faith" and "willful disobedience" in failing to respond to non-existent discovery.

At a minimum, the Defendants' Motion to Compel against Plaintiff Antioch Group, LLC—and the subsequent imposition of sanctions stemming from the motion—were the product of mistake or negligent misrepresentation to the court. The extraordinarily severe, death-sentence remedy of stricken pleadings may only be administered in furtherance of justice. *See* Rule 37(b)(2) (permitting the court to "make such orders in regard to the failure as are just."). Likewise, this court has the power to unwind such an order "upon such terms as are just." Rule 60(b), SCRCP. Because there was never a basis for sanctions against Antioch

Group, LLC, this Court should vacate its June 16, 2025 Order Granting Defendants' Motion for Sanctions Pursuant to SCRCP 37, relieve Antioch of the sanctions, and restore Antioch's pleadings in the interest of justice and as a matter of law.

B. The sanction striking Plaintiffs' pleadings was improperly imposed because the alleged discovery noncompliance involved a separate nonparty, not Plaintiffs.

The Court's June 16, 2025, Order struck Plaintiffs' pleadings based upon Heart of the Carolinas, LLC's failure to comply with Defendants' subpoena and the Court's July 30, 2024 Order compelling compliance with same. However, Heart of the Carolinas, LLC, is a legally distinct nonparty in this case. Thus, Plaintiffs' pleadings were improperly stricken based upon a nonparty entity's noncompliance of a subpoena.

The June 16, 2025 Order granted Defendants' Motion for Sanctions pursuant to SCRCP Rule 37. Subsection (b)(2)(C) of that rule allows the Court to issue "[a]n order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the **disobedient party**" *if* "a **party** or an officer, director, or managing agent **of a party** or a person designated under Rule 30(b)(6) or 31(a) to testify on **behalf of a party** fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or **if a party** fails to obey an order entered under Rule 26(f)." (emphasis added).

Accordingly, SCRCP Rule 37 only permitted the Court to strike Plaintiffs' pleadings if the noncompliance at issue was committed *by* the Plaintiffs (whom are parties to the action). The proper mechanism for addressing noncompliance of a subpoena by a nonparty such as Heart of the Carolinas is instead SCRCP Rule 45(e). Thus, the appropriate remedy for Heart of the Carolinas' alleged noncompliance was relief directed to that entity under SCRCP Rule

45—not the striking of Plaintiffs' pleadings under SCRCP Rule 37. *See Moore v. BPS Direct, LLC*, No. 2:17-cv-03228-RMG, ECF No. 148, at 6 (D.S.C. July 8, 2019) (explaining that the proper mechanism for obtaining the documents from a nonparty "would have been a third-party subpoena under Rule 45").

This is well-supported by the case law. In *McNair v. Fairfield County*, the South Carolina Court of Appeals stated "[u]nder Rule 37(b)(2)(C), SCRCP, when a **party** fails to comply with a discovery order, the trial court has the discretion to impose a sanction it deems just, including an order dismissing the action." 379 S.C. 462, 466, 665 S.E.2d 830, 832 (Ct. App. 2008) (emphasis added). The court further noted that "severe sanctions" should "only be imposed in cases involving bad faith, willful disobedience, or gross indifference to the **opposing** party's rights." *Id.* at 466, 832 (emphasis added). *See also Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 595, 586 S.E.2d 572, 576 (2003) (holding it improper to strike three plaintiffs' complaints where the sanction was largely premised upon a fourth plaintiff's refusal to sign a medical authorization form ordered to be signed by the court); *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 543–44, 489 S.E.2d 679, 682–83 (Ct. App. 1997) (holding that it was improper, *inter alia*, for the trial court to strike a defendant's crossclaim—against another defendant—for the defendant's violation of an order granting the plaintiff's motion to compel requiring the defendant to make a witness available for deposition by the plaintiff).

Accordingly, the Court's June 16, 2025 Order striking Plaintiffs' pleadings based on Heart of the Carolinas, LLC's failure to comply with Defendants' subpoena was improper and should be vacated pursuant to Rule 60, SCRCP, because it is void or was entered as a result of mistake.

V. Plaintiffs' default on Defendants' counterclaims resulted from their former counsel's abandonment.

The October 24, 2025 default was not the product of a single inadvertent filing error. It arose from Plaintiffs' former counsel's sustained abandonment of Plaintiffs. Former counsel failed to file the reply to Defendants' counterclaims, failed to advise Plaintiffs of the counterclaims or their significance, and failed to inform Plaintiffs that they faced default as a result of counsel's omission. Henderson Aff. ¶¶ 21-24, filed Jan. 14, 2026. Even after Defendants moved for entry of default, former counsel neither informed Henderson nor Antioch Group of the motion nor took meaningful action to protect them from the consequences of counsel's own error. *Id.*

In fact, after May 27, 2025, Plaintiffs did not receive another email from their prior attorney until October 9, 2025, when they were asked to sign a document relieving her as counsel, which was sent to Frank Henderson without explanation from adobesign@adobesign.com. *Id.* ¶ 25.

The timing and manner of former counsel's withdrawal demonstrates the abandonment at issue. Default was entered on October 24, 2025—the same date former counsel submitted her Proposed Order ostensibly permitting herself to be relieved. *Id.* ¶¶ 26–27; *see Procedural Background, supra*. The court entered the Proposed Order on October 29th. Counsel then submitted an Amended Consent Order, collaboratively drafted with Defendants, on November 25, 2025, shortly before the December 15, 2025 damages hearing, without having meaningfully informed Henderson or Antioch of the default or the hearing or the need to obtain new counsel. *Id.* ¶¶ 27–29. Henderson attests that, had he known of the damages hearing, he would have retained new counsel, as he did immediately after learning of the default. *Id.* ¶ 29. Former counsel therefore did not merely mishandle a deadline; she effectively withdrew from the representation while continuing to leave Plaintiffs exposed to dispositive proceedings.

Although an attorney's ordinary negligence is generally imputed to the client, that rule does not apply when counsel willfully and unilaterally abandons the representation. *See Tobias*, 386 S.C. at 311 n.5, 688 S.E.2d at 554 n.5 ("[T]he rule that an attorney's negligence may be imputed to his client and prevent the latter from relying on that ground for opening or vacating a judgment does not prevail where, as here, the attorney abandons or withdraws from the case.").

The court in *Graham v. Town of Loris* recognized that withdrawal at a crucial stage without reasonable notice constituted willful abandonment and that the consequences of such abandonment should not be imposed upon an innocent client. 272 S.C. 442, 452–53, 248 S.E.2d 594, 599 (1978). Former counsel's prolonged cessation of communication, failure to disclose dispositive orders and proceedings, failure to protect Plaintiffs from a default caused by counsel's own omission, and withdrawal immediately before the damages hearing constitute abandonment under *Graham*. *See generally id.*

Because the October 24, 2025 default was the direct product of Plaintiffs' former counsel's willful abandonment rather than any knowing or willful failure by Plaintiffs to defend the counterclaims, the Order entering default should be vacated under SCRCP Rule 60 as void. *See Stearns Bank Nat. Ass'n v. Glenwood Falls*, 373 S.C. 331, 342, 644 S.E.2d 793, 799 (Ct. App. 2007) ("Our law thus instructs that an exception to the general rule applies when the attorney's inaction was the consequence of willful abandonment or withdrawal from the case. Where an attorney is merely neglectful, the general rule applies and relief from judgment is unavailable; where an attorney's conduct transcends mere neglect and the party seeking relief establishes willful abandonment or withdrawal from the case, relief from judgment is available."), *rev'd on other grounds*, 375 S.C. 423, 653 S.E.2d 274.

VI. The Receivership Order Must Be Vacated with the Underlying Judgment.

In addition to the reasons set forth in Plaintiffs' Motion to Vacate Receivership, the order appointing a receiver was entered to enforce or preserve assets in satisfaction of the January 5, 2026 Order of Judgment. Once that judgment is declared void, the receivership has no valid judgment upon which to operate and must likewise be dissolved.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court:

1. Vacate the January 5, 2026 Order of Judgment;
2. Vacate the December 16, 2025 judgment;
3. Vacate the October 24, 2025 order entering default on Defendants' counterclaims;
4. Vacate the June 16, 2025 order striking Plaintiffs' pleadings;
5. Vacate the January 15, 2026 Receivership Order;
6. Restore Plaintiffs' claims and defenses to the active trial roster; and
7. Grant such other and further relief as the Court deems just and proper.

Plaintiffs reserve the right to file additional memorandum of law and exhibits in further support of this Motion.

[signature block appears on the next page]

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/ Ainsley F. Tillman
Ainsley F. Tillman, S.C. Bar No. 70551
Ainsley.Tillman@FordWallace.com
Justin M. Moffitt, S.C. Bar no. 106389
Justin.Moffitt@FordWallace.com
715 King Street
Charleston, South Carolina 29403
(843) 277-2011

Wesley D. Few, S.C. Bar. No. 15565
WESLEY D. FEW, LLC
Post Office Box 9398
Greenville, South Carolina 29605
Phone: (864) 527-5906
Email: wes@wesleyfew.com

Ryan L. Beasley, S.C. Bar No. 68307
RYAN L. BEASLEY, ATTORNEY AT LAW, P.A.
416 East North Street
Greenville, South Carolina 29601
Phone: (864) 679-7777
Email: rlb@ryanbeasleylaw.com
Attorneys for Plaintiffs
Frank Henderson and Antioch Group

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