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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable Jane H. Merrill, Circuit Court Judge

Court of Common Pleas Case No. 2021-CP-37-00149
Appellate Court Case No. 2026-000480

Firewalker Hot Sauce Company, LLC,.....Respondent,

v.

American Pharma Machinery, LLC, Dorothy Wells a/k/a Dorothy Aleweny a/k/a Queen Dorothy Amolo a/k/a Dorothy Pierce, and the Estate of Doyle Elton Pierce, Defendants,

of which

Dorothy Pierce is the.....Appellant.

MOTION TO STRIKE PORTIONS OF APPELLANT'S DESIGNATION OF MATTER

Pursuant to Rule 209, Rule 210 and Rule 240, SCACR, Respondent Firewalker Hot Sauce Company, LLC ("Respondent" or "Firewalker") moves to strike the majority of the entries in Appellant Dorothy Pierce's Designation of Matter to Be Included in the Record on Appeal, filed August 8, 2026 ("the Designation"), on the grounds that: (1) the sole order Pierce appealed is the February 3, 2026 Final Order for Damages Default Judgment[1]; (2) several entries designate matter from a separate probate proceeding and appeal never before the circuit court, contrary to Rule 210(c); (3) most remaining entries concern non-appealing parties American Pharma

[1] A direct appeal from a default judgment does not lie under S.C. Code Ann. § 14-3-330 and *Winesett v. Winesett*, 287 S.C. 332, 338 S.E.2d 340 (1985). Respondent is subsequently filing a Motion to Dismiss Appeal contemporaneously with this Motion.

Machinery, LLC and the Estate of Doyle Elton Pierce, non-party Jared Adam Pierce's intervention, or liability-phase history irrelevant to the order on appeal, contrary to Rule 209; (4) Pierce's own opposition brief and exhibits were never presented at, or admitted into, the damages hearing she did not attend, contrary to Rule 210(c), SCACR; and (5) numerous entries are vague, open-ended categories, contrary to Rule 209, SCACR.

BACKGROUND

Pierce's Notice of Appeal, filed February 27, 2026, designates only the February 3, 2026 Final Order for Damages Default Judgment—no order concerning entry of default, American Pharma Machinery, LLC's own default history, Jared Adam Pierce's intervention, or the Estate's dismissal on privity grounds. Yet the Designation spans eighty-eight entries reaching back to the original 2021 Complaint. By Respondent's count, sixty-six of those eighty-eight entries do not concern the damages hearing or default judgment order at all. In substance, the Designation attempts to relitigate this five-year case history in an appeal from a single default judgment order.

ARGUMENT

Rule 209 provides "[t]he Designation must clearly identify what the party desires to have included in the Record on Appeal....A party shall not include any matter in his Designation which is not relevant to the appeal." Rule 209(b), SCACR. Rule 210 adds that the Record "shall not...include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. Together these rules bar matter never before the lower court, matter not relevant to the order on appeal, and open-ended, non-specific categories.

Relevance is measured against the order actually appealed. Pierce filed no Rule 60(b) motion, so the November 24, 2025 and December 8, 2025 orders are final and the law of the

case, and her failure forecloses review of the order entirely. *Winesett v. Winesett*, 287 S.C. 332, 338 S.E.2d 340 (1985). In *State v. Harris*, 278 S.C. 46, 292 S.E.2d 40 (1982), our Supreme Court condemned a record in which less than thirty percent of the material was relevant, "denounce[d]...the shocking waste such disobedience begets," and warned it may require offending counsel personally to pay reproduction costs. *Id*. at 47. At least sixty-six of eighty-eight items here present the same problem.

I. Materials from the separate probate proceeding and appeal were never before the circuit court and are absolutely barred by Rule 210(c).

Rule 210(c)'s bar is categorical: "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." The following items designate matter from the separate Probate Court proceeding concerning the Estate, and from a separate prior appeal of that matter (Appellate Case No. 2021-001552), neither properly part of this record:

- Item 7 (Probate Court Order denying Firewalker's claim against the Estate for lack of privity);
- Item 20 (Court of Appeals Order Dismissing Probate Appeal by Agreement, App. Case No. 2021-001552);
- Item 21 (Remittitur in that same appeal); and
- Item 72 (record material concerning the Probate Court's privity ruling).

II. The remaining entries concerning the Estate's resolved claim are not relevant under Rule 209.

These entries, filed in the circuit court itself and thus not barred by Rule 210(c), concern only the resolved claim against the Estate. Like American Pharma Machinery, LLC, the Estate is a non-appealing party. Pierce lacks standing to appeal a ruling against it, and no Estate-related order was designated on appeal. These entries should be stricken:

- Item 5 (Estate's Answer and Affirmative Defense of Lack of Privity);

- Item 28 (Estate's Memorandum in Opposition to Default Judgment and Motion to Dismiss);
- Item 71 (any order resolving Firewalker's claims against the Estate); and
- Item 87 (record material concerning that claim's status).

III. American Pharma Machinery, LLC is a non-appealing party, and its own default history is not relevant to Pierce's appeal.

American Pharma Machinery, LLC did not appeal. Its own default history (i.e., the answer struck, the motion for reconsideration, and the notice, transcript, and order surrounding that track) is that company's procedural record, not Pierce's, and does not bear on the damages awarded. A non-appealing co-defendant's judgment stands on its own. "[F]rom the judgment entered on that verdict there was no appeal. Therefore, it is not affected by our finding and conclusion on this appeal." *Plowden v. Wilson*, 186 S.C. 285, 195 S.E. 847, 852 (1938); *see also* S.C. Code Ann. § 18-1-140 (judgment on appeal). The following entries should be stricken:

- Item 22 (Motion to Strike American Pharma Machinery, LLC's Answer and Enter Default);
- Item 25 (Notice of the hearing on that motion);
- Item 29 (transcript of that hearing);
- Item 31 (Order Striking American Pharma Machinery, LLC's Answer and Entering Default);
- Item 32 (American Pharma Machinery, LLC's Motion to Reconsider);
- Item 33 (Order Denying that Motion); and
- Item 37 (Motion for Default Judgment Against American Pharma Machinery, LLC).

IV. Jared Adam Pierce's intervention concerns a non-party and is not relevant to the order appealed.

The order granting Jared Adam Pierce's intervention, and any order on his status, were never designated on appeal. Pierce also lacks standing to seek review of a non-appealing party's status. The following entries should be stricken:

- Item 12 (Motion to Intervene);
- Item 16 (Order Granting Intervention);
- Item 17 (transcript of the hearing on default and intervention);
- Item 70 (his post-intervention pleadings and any disposition of his status); and
- Item 88 (record material concerning his intervention).

V. The case's remaining liability-phase history has no bearing on the amount of damages awarded and is not relevant to the order on appeal.

The February 3, 2026 order awarded damages. It did not determine liability, which was established by the unappealed November 24, 2025 and December 8, 2025 orders. Everything leading up to those orders including the original pleadings, 2021 default practice, and 2025 continuance, trial-docket, and re-default motion practice, does not bear on the damages figure on appeal. The following entries should be stricken:

- Items 4, 6, 8–11, 13–15, and 19 (Pierce's own April 2021 delivery-and-condition affidavit; her original Answer; early default-practice and administrative filings; the 2021 fee affidavit superseded by Item 57; the October 2022 Evidence Packet of machine photographs, communications, and product literature—filed more than three years before, and never admitted at, the damages hearing; and the order staying this action for the probate appeal);
- Items 23–24, 26–27, 30, and 34–45 (Pierce's 2025 travel-protective-order motion; trial-docket, continuance, and jury-roster filings; her amended answer and counterclaims naming Francis "Franco" Donohue; the motions and hearing directed at that pleading—none bearing on the damages later awarded);
- Items 66–68 (service documentation for the 2021 default and the October 2025 default motion, distinct from service of the damages-hearing materials at Items 48 and 60); and

Respondent reserves the right to challenge all other designated items later and to separately designate under Rule 209(b), SCACR any matter it independently needs for its own brief. Respondent also reserves its right to seek costs under Rule 222(c), SCACR for any irrelevant matter unjustifiably designated and printed into the Record.

VI. Pierce did not appear at the January 8, 2026 damages hearing, so her purported opposition brief and exhibits were never presented at, or admitted as exhibits, that hearing.

Item 51 (Pierce's Brief in Opposition to Damages, with exhibits and photographs) and Item 69 (records of its receipt) were never presented at or admitted into the January 8, 2026 hearing, which Pierce did not attend; her continuance and remote-participation requests were denied, and the Form 4 Order was entered without her present. The official Summary of Exhibits for that hearing lists only five exhibits, all offered by Firewalker; none of Pierce's submitted material was marked or received into the record by the Court. While the January 9, 2026 order states that the court "reviewed and considered" filings Pierce made the day of the hearing, reviewing an unadmitted, out-of-court submission from an absent, defaulting party is not the same as receiving it into evidence as a defaulting party's hearing rights are limited to live cross-examination and objection, not mail-in evidence. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203-04, 723 S.E.2d 597, 603 (Ct. App. 2012). These items should be stricken, or, at minimum, Pierce should be put to her proof that this material was admitted into the record below.

VII. Numerous entries designate open-ended categories rather than specific documents, contrary to Rule 209's "clearly identify" requirement.

Items 66 through 88 each designate "[a]ny" filing, order, transcript, or service document concerning a broad subject, several of which are qualified as "not otherwise separately identified above" rather than identifying a specific document by name and filing date. In other words, this

is a search instruction to the clerk, not a designation of specific matter. Moreover, several of these broad categories are impertinent to the Order on appeal. These entries should be stricken, or Pierce directed to amend her Designation to identify specific documents by name and filing date.

CONCLUSION

A designation this far out of proportion to the order on appeal is precisely what *State v. Harris* condemned, and Respondent respectfully requests that this Court order the Designation revised before the Record on Appeal is compiled. For the foregoing reasons, Respondent respectfully requests that this Court strike Items 4 through 45, 51, and 66 through 88; require amendment of the Designation; and grant such other relief as this Court deems appropriate.

Respectfully submitted,

/s/Bryan P. Kelley
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Counsel for Respondent

September 3, 2026
Greenville, South Carolina

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of which

Dorothy Pierce is the.....Appellant.

PROOF OF SERVICE
OF MOTION TO DISMISS APPEAL AND MOTION TO STRIKE PORTIONS OF APPELLANT'S DESIGNATION OF MATTER ON RESPONDENT

I certify that I have filed and served these Motions, Motion to Dismiss Appeal and Motion to Strike Portions of Appellant's Designation of Matter, on Appellant, Dorothy Pierce, by depositing a copy of same in the United States Mail, postage prepaid, on September 3, 2026, to the last known address to me and electronic mail:

Dorothy Pierce a/k/a Dorothy Wells a/k/a Dorothy Alweny
a/k/a Queen Dorothy Amolok, individually
750 Mourning Dove Lane
Seneca, South Carolina 29678

Dorothypierce84@gmail.com

Respectfully submitted,

/s/Bryan P. Kelley

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September 3, 2026
Greenville, South Carolina

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Via US Post and Electronic Mail

Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Firewalker Hot Sauce Company, LLC, v. Dorothy Pierce*
Appellate Case No: 2026-000480

Dear Ms. Kitchings:

In connection with the above-referenced case, please find enclosed our firm check for $100.00 for the filing fee for Respondent's Motion to Dismiss Appeal and Motion to Strike Portions of Appellant's Designation of Matter filed with the Court on September 3, 2026.

Thank you for your attention.

Very truly yours,

ELMORE GOLDSMITH KELLEY & DEHOLL, P.A.

Katharine O. Spooner

Katharine O. Spooner, CP
Certified Paralegal to Bryan P. Kelley and
H. Drennan Quattlebaum

/kos
Enclosures

cc *Dorothy Pierce (via email dorothypierce84@gmail.com and US Post)*