

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GREENVILLE COUNTY
COURT OF COMMON PLEAS

The Honorable Vernon F. Dunbar, Circuit Court Judge

Appellate Case No. 2026-000999

Thomas J. Stultz, Lecia S. Franklin, and Frederick Hanold, III,

Respondents,

v.

Rallis Holdings, LLC,

Appellant.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in striking Appellant's answer and imposing a default as a discovery sanction where the court had not previously ordered any sanction against Appellant, nor warned it that it might be subject to the sanction of default.

2. Whether the trial court erroneously based its decision to impose the sanction of default on Appellant upon factual findings that were incorrect or unsupported by the record in the case.

3. Whether the trial court erred in finding that Appellant's actions in discovery caused a delay in this case sufficient to prejudice Respondents and warrant the sanction of default.

STATEMENT OF THE CASE

This appeal arises from a dispute over a parcel of land that Appellant Rallis Holdings, LLC ("Rallis") purchased along Pelham Road in Greenville, South Carolina (the "Property"). Respondents (Plaintiffs below) are property owners in a neighborhood on the opposite side of Pelham Road called Watson Orchard. Respondents filed their complaint in this action on October 11, 2021 alleging that Rallis had violated certain restrictive covenants alleged to encumber the Property when it removed trees from the Property in the summer of 2021. **R. pp. __** (Oct. 11, 2021 Complaint). The complaint states causes of action for breach of covenants and for a permanent injunction, and alleges that Respondents are entitled to actual damages in the amount of \$15,000,000 as well as punitive damages for Rallis' removal of trees from the Property. *Id.*

Rallis answered the complaint on December 27, 2021 and admitted that it had removed trees from the Property, but denied that its actions violated any covenants inuring to the benefit of Respondents or otherwise caused Respondents any damages. **R. pp. __** (Dec. 27, 2021 Answer). The answer also asserted affirmative defenses for failure to state a claim and lack of standing. *Id.*

On October 18, 2022, Rallis filed an amended answer asserting additional affirmative defenses of estoppel and abandonment. **R. pp. __** (Oct. 18, 2022 Amended Answer).

Respondents did not initiate discovery in this action until July 13, 2022, when they served their first set of interrogatories and requests for production to Rallis. **R. pp. __** (Ex. A to Mot. to Reconsider, July 13, 2022 Discovery Requests). The interrogatories contained some of the standard interrogatories under Rule 33, SCRCP, as well as an interrogatory requesting a “list of all meetings or conversations between Plaintiff or its principals and Pelham Industries, LLC or its principals, Mike Stephens, Jay Stephens, or Zach Hines regarding the Property,” and another interrogatory requesting names and contact information of “any individual or entity that has contacted Plaintiff to inquire about purchasing the Property.” **R. pp. __** (*id.* at 5–6). The requests for production included, among other things, general requests for documents that may be introduced at trial, statements from witnesses, and expert discovery, as well as a request for correspondence between “Plaintiff or its principals, Pelham Industries, LLC or its principals, Mike Stephens, Jay Stephens, or Zach Hines, and/or any prospective buyers that relate or refer to offers to purchase the Property from Plaintiff.” **R. pp. __** (*id.* at 9–11).

After receiving the requests, Rallis requested, and Respondents agreed to, a 30-day extension of time for Rallis to answer the discovery. On September 26, 2022, before Rallis answered the requests, Respondents served a revised version of their interrogatories to correct references in places to “Plaintiff” where Respondents intended to say “Defendant.” **R. pp. __** (Ex. B to Mot. to Reconsider, Sept. 26, 2022 Revised First Set of Interrogatories).

On October 13, 2022—less than 30 days after Respondents served their revised interrogatories—Rallis answered the discovery. **R. pp. __** (Ex. C to Mot. to Reconsider, Oct. 13, 2022 discovery responses). Rallis responded to the standard interrogatories with a list of potential

witnesses in this case (including the parties themselves and other residents of the Watson Orchard Subdivision) as well as an identification of documents that Rallis believed to be relevant to this matter, including its deed to the Property, the restrictive covenants at issue in this case, a preliminary layout design prepared for Rallis for the Property, and Rallis' application to the City of Greenville for annexation. *Id.* With respect to interrogatory 6, which sought a listing of "all meetings and conversations" between Rallis and a number of individuals,¹ Rallis objected that the interrogatory was not likely to lead to the discovery of admissible evidence. **R. p. __** (*id.* at 6). Rallis lodged the same objection to interrogatory number 7, which sought a listing of any individuals who had contacted Rallis about purchasing the Property. *Id.* With respect to the requests for production, Rallis identified the same documents identified in its response to the interrogatories and noted that the documents were already in Respondents' possession or were otherwise publicly available. **R. p. __** (*id.* at 7–8). Rallis objected to several of the requests based on relevance, including request number 10, which sought correspondence concerning offers to purchase the Property. **R. pp. __** (*id.* at 7–11). For other of the requests, Rallis responded that it did not possess any documents responsive to those requests. *Id.*

On November 9, 2022, Rallis filed a motion for substitution of counsel, which motion was granted on November 17, 2022, substituting Ashaley Boatwright and Erika Baldwin as counsel of record for Brook Fowler. **R. pp. __** (Nov. 9, 2022 Mot. to be Relieved and Substitute Counsel & Nov. 17, 2022 Order Relieving and Substituting Counsel).

Respondents did not raise any objections to Rallis' discovery responses for nearly five months, until March 13, 2023. On that day, Respondents sent a deficiency letter to Rallis' new

¹ This response incorrectly numbers this interrogatory as interrogatory number 5, when in fact it was interrogatory number 6.

counsel objecting to Rallis' responses to requests for production 1, 9, 10, 12, 13, and 14, and its responses to interrogatories number 6 and 7. **R. pp. ____** (Ex. D to Mot. to Reconsider, March 13, 2023 Deficiency Letter). On May 30, 2023, Rallis responded to the letter by email, expanding on its objections and observing that this case concerns restrictive covenants and Rallis' removal of trees from its Property, rendering irrelevant any communications or documents about offers by third parties to purchase the property. **R. pp. ____** (Ex. E to Mot. to Reconsider, May 30, 2023 email between counsel).

Respondents did not dispute the positions raised in Rallis' email for nearly another five months. On October 23, 2023, Respondents transmitted another letter disputing Rallis' discovery objections, this time limiting the discussion to requests for production 9, 10, 12, 13, and 14, and interrogatories 6 and 7, but asserting largely the same arguments Respondents made back in March 2023. **R. pp. ____** (Ex. F to Mot. to Reconsider, Oct. 23, 2023 Deficiency Letter). When the parties were not able to resolve the dispute, Respondents filed a motion to compel on November 9, 2023. **R. pp. ____** (Nov. 9, 2023 Mot. to Compel). As part of their motion, Respondents requested that they be awarded their attorneys' fees necessitated by the motion. *Id.*

On November 30, 2023, the Honorable Alex Kinlaw held a hearing on the motion to compel and ordered the parties to engage the services of a mediator to resolve the discovery issues. **R. pp. ____** (Nov. 30, 2023 Form 4 Order on Mot. to Compel). The order held the issue of sanctions in abeyance. *Id.*

The parties did eventually mediate their discovery dispute on March 11, 2024. The resolution of the mediation was that Rallis would, by April 10, 2024, update its responses to interrogatories 1 and 4, would provide documentation concerning its subdivision application to the planning commission, would respond to interrogatory number 6 with a list of meetings and

conversations with Pelham Industries, Mike Stephens, Jay Stephens, and Zach Hines concerning the Property, would respond to request for production number 9 seeking certain correspondence with those same parties, and would respond to request for production number 14 seeking correspondence with Watson Orchard property owners concerning the sale of the property to Rallis or the subject matter of the lawsuit. **R. pp. ____** (May 22, 2024 Consent Order). With respect to interrogatory 7 and request for production 10, the parties were not able to resolve their dispute and agreed to submit this issue to the court for resolution. *Id.*

The parties memorialized their agreement in the form of a consent order, but the order was not issued by the court until May 22, 2024. *Id.* On April 11, 2024, Respondents transmitted a letter to Rallis inquiring about the status of the discovery responses that Rallis had agreed to supplement. **R. pp. ____** (Ex. G to Mot. to Reconsider, April 11, 2024 Deficiency Letter). Counsel for Rallis responded to the inquiry that same day by email and noted that he had attempted to transmit the responses two weeks prior, but the email had inadvertently not been sent. **R. pp. ____** (Ex. H to Mot. to Reconsider, April 11, 2024 email correspondence between counsel). Counsel for Rallis provided supplemental information in that correspondence, noting in response to interrogatories 1 and 4 that Rallis would further identify Zach Hines as a potential witness and described his relevant knowledge of this case. *Id.* With respect to interrogatory number 6, counsel responded that there were no meetings with the individuals identified in the interrogatory. *Id.* With respect to requests for production 9 and 10, counsel responded that all of the emails and communications sought by those requests had already been provided. *Id.* With respect to the documents submitted to the planning commission, counsel noted that Rallis was attempting to retrieve that information and intended to provide it within the next week. *Id.*

The next day, Respondents wrote to Rallis' counsel to inquire when the emails and other communications referenced had been previously provided. **R. pp. ____** (Ex. I to Mot. to Reconsider, April 12, 2024 email correspondence between counsel). Rallis' counsel responded that day that, based on conversations with his client, it was his understanding that Rallis' previous counsel had provided this information before present counsel had entered an appearance in this case. *Id.*

Over a month later, on May 21, 2024, Respondents sent correspondence to Rallis requesting that Rallis formally update its discovery responses and provide responsive documents. **R. pp. ____** (Ex. J to Mot. to Reconsider, May 21, 2024 Deficiency Letter). Two days later, on May 23, 2024, Rallis provided formal responses mirroring the information it had already provided to Respondents via email. **R. pp. ____** (Ex. K to Mot. to Reconsider, May 23, 2024 Supp. Discovery Responses). The responses further noted that, with respect to Rallis' subdivision application to the planning commission, that information was no longer in Rallis' possession, but counsel was attempting to obtain the documents by subpoena. *Id.*

Another month later, on June 25, 2024, Respondents emailed Rallis' counsel to say that they had never received any document production from Rallis in this case, and that Rallis' counsel was mistaken that documents had previously been provided. **R. pp. ____** (Ex. L to Mot. to Reconsider, June 2024 email correspondence between counsel). On June 27, Rallis' counsel responded to acknowledge that he did not appear in the case until November 2022, but that it was his understanding from speaking with his client and from Rallis' prior counsel that documents had been provided, and noted that Respondents' deficiency letters had raised issues with only some of the requests for production, which would indicate that some documents were indeed provided. *Id.* Rallis' counsel further acknowledged that he did not have in his possession any prior productions and asked Respondents' counsel to send them for his records. *Id.* Respondents' counsel reiterated

that he did not have any prior productions and suggested that Rallis' counsel obtain prior counsel's file and "produce what you claim was produced before your involvement." *Id.* Respondents further indicated that they would file a motion that week if the issue were not resolved. *Id.*

On July 22, 2024, Rallis supplemented its response to request for production 9, which sought correspondence between Rallis and Pelham Industries, Mike Stephens, Jay Stephens, or Zach Hines concerning the sale of the Property to Rallis or the subject matter of this lawsuit. **R. pp. ____** (Ex. M to Mot. to Reconsider, July 22, 2024 Supp. Discovery Responses). The supplement stated that, while Rallis did not have in its possession any emails responsive to the request, Rallis was providing "emails currently in his possession" and that those emails were attached thereto. *Id.*

Respondents did not file a motion to compel during the week of June 27 as they had indicated, nor did they file a motion after Rallis' supplemental production and responses on July 22. With respect to the parties' dispute concerning interrogatory 7 and request for production 10, which had been ripe since the mediation on March 11, 2024, Respondents moved to compel those responses five months later on August 23, 2024. The Honorable Alex Kinlaw heard that motion on November 19, 2024 and granted it first by a Form 4 order on November 20, 2024, **R. pp. ____** (Nov. 20, 2024 Form 4 Order), and then by a written order dated December 4, 2024, overruling Rallis' objections to the relevance of those requests and ordering Rallis to provide complete responses to those requests within 21 days of the December 4 order. **R. pp. ____** (Dec. 4, 2024 Order Granting Motion to Compel). Notably, the December 4 order was clear that "[g]eneral compliance by the parties pursuant to the other requirements of the [May 22, 2024 consent order] was not addressed at this hearing and may be addressed at a further hearing if necessary." **R. p. ____** (*id.* at 2).

On December 4, 2024, Rallis responded to interrogatory number 7 to identify individuals who had inquired about purchasing the Property, which included Zach Hines, Flournoy Development Group, LLC, and QuikTrip. **R. pp. ____** (Ex. N to Mot. to Reconsider, Dec. 4, 2024 Supp. Discovery Responses). Rallis provided contact information for Mr. Hines as the interrogatory requested and noted that it did not possess contact information for Flournoy and QuikTrip. *Id.* Then on December 13, 2024, Rallis responded to request for production 10, which sought correspondence between Rallis and Pelham Industries, Mike Stephens, Jay Stephens, Zach Hines, and any prospective buyers related to offers to purchase the Property, to say that it did not possess any responsive documents to produce. **R. pp. ____** (Ex. O to Mot. to Reconsider, Dec. 13, 2024 Supp. Discovery Responses). Finally, on December 19, 2024, Rallis supplemented its response to interrogatory number 1 to identify as a potential witness in this case Jay Stephens and provided his contact information. **R. pp. ____** (Ex. P to Mot. to Reconsider, Dec. 19, 2024 Supp. Discovery Responses).

Over five months later, on May 27, 2025, Respondents filed a Motion for Default Judgment / Third Motion to Compel. **R. pp. ____** (May 27, 2025 Motion for Default Judgment / Third Motion to Compel). The motion was just over two pages long, and while it accused Rallis of repeated failings to comply with discovery, it did not explain specifically how Rallis had done so, other than noting that previous interrogatory responses had not been verified pursuant to Rule 33, SCRCF. *See id.* The motion succinctly accused Rallis of failing to comply with the two discovery orders that had been entered in the case, but provided no specifics as to the non-compliance. *See id.* The motion requested that the trial court strike Rallis' answer and enter a default judgment against Rallis or, in the alternative, compel Rallis to provide complete responses to Respondents' first interrogatories and requests for production, though again, it did not say how those discovery

responses ought to be supplemented. *See id.* The motion noted that a memorandum of law and exhibits may be filed prior to the hearing. *Id.*

Counsel for Rallis on June 25, 2025 provided a supplemental production of documents. **R. pp. ____** (Ex. Q to Mot. to Reconsider, email transmitting production).² As the file name of the production in counsel’s email suggests, the production totaled 1,837 pages of documents, and it included site plans for the Property, the restrictive covenants at issue in this case, other relevant property records related to the Property, printouts of cases from Westlaw, emails, engagement agreements, counsel’s own outlines for oral argument, and records of an earlier case involving this Property. Indeed, the email transmitting the production described it as “what is in [counsel’s] file for the Stultz v Rallis case.” *Id.*

The next day, and one day prior to the hearing on the motion, Respondents filed a 28-page memorandum in support of the motion. **R. pp. ____** (June 26, 2025 Memorandum in Support of Motion for Default Judgment / Third Motion to Compel). The memorandum asserted that Rallis had committed broad and repeated discovery violations in this case and further asserted that Rallis was responsible for delaying this case. Chief among Respondents’ complaints about Rallis’ discovery productions was that Rallis had not provided “materials submitted to the Greenville Planning Commission” or “all correspondence with prospective purchasers of the property.” **R. p. ____** (*id.* at 9). The memorandum also asserted that Rallis had failed to provide a complete response to interrogatory 7 because the response “only identified one additional witness, Jay Stephens,” **R. p. ____** (*id.* at 8), apparently confusing Rallis’ December 19, 2024 supplemental response to interrogatory number 1 and overlooking Rallis’ December 4, 2024 response to interrogatory 7

² The production itself was voluminous and was not provided to the trial court, but its contents were described to the trial court in Rallis’ July 31, 2025 Motion to Reconsider, wherein Rallis also offered to make the production available to the court. **R. p. ____** (Mot. to Reconsider at 8).

which in fact identified three individuals who had expressed interest in purchasing the property. *See* **R. pp. ____** (Dec. 4, 2024 Supp. Discovery Responses).

The Honorable Vernon F. Dunbar held a hearing on Respondents’ motion on June 27, 2025 in which the court heard arguments from counsel but did not take any evidence. **R. pp. ____** (Transcript of June 27, 2025 Hearing). On July 1, 2025, the trial court issued a Form 4 Order dismissing without prejudice Rallis’ “Answer and Counterclaim,”³ entering a default against Rallis, and directing that counsel for Respondents should draft a proposed order memorializing the trial court’s decision. **R. pp. ____** (July 1, 2025 Form 4 Order).

Counsel for the Respondents did thereafter submit their proposed order, and on July 21, 2025, the trial court entered its formal order, ruling that Rallis had exhibited a “repeated failure to respond to discovery and [] repeated non-compliance with prior court orders.” **R. pp. ____** (July 21, 2025 Order Granting Plaintiffs’ Third Motion to Compel and Striking Defendant’s Amended Answer). The order therefore struck Rallis’ answer and entered default against Rallis “effective June 1, 2025, the date the Form 4 Order was filed.”⁴ **R. pp. ____** (*id.* at 17–18). The order further directed that this case should be set for a damages hearing, and that “Plaintiffs’ counsel shall coordinate with the Clerk of Court to schedule the hearing.” **R. p. ____** (*id.* at 18).

On July 31, 2025, the undersigned counsel entered an appearance in this case on behalf of Rallis and filed a motion to reconsider the trial court’s July 21, 2025 order pursuant to Rule 59(e), SCRCP. **R. pp. ____** (July 31, 2025 Mot. to Reconsider). The crux of the motion was that the July 21 order had (1) based its decision on facts that were either not established or unsupported by the record; (2) incorrectly laid blame on Rallis for the delays in this case, which goes toward prejudice;

³ Rallis’ October 18, 2022 Amended Answer, which was Rallis’ operative pleading at the time of the trial court’s order, did not assert a counterclaim.

⁴ In fact, the trial court’s Form 4 order was filed on July 1, 2025, not June 1, 2025.

and (3) failed to provide any prior sanction to Rallis or any other meaningful warning that the sanction of default was a possibility, such that imposing the harshest sanction at its disposal was inappropriate in these circumstances. *Id.* The motion specifically requested that, if the trial court were still disposed to impose sanctions on Rallis, it conduct an evidentiary hearing to make findings of fact and conclusions of law that would support such sanctions. **R. pp. ____** (Mot. to Reconsider at 1, 20). Respondents filed a memorandum in opposition to the motion on August 27, 2025. **R. pp. ____** (Aug. 27, 2025 Memo. in Opp’n to Mot. to Reconsider).

On August 28, 2025, and prior to the hearing on the motion to reconsider,⁵ Rallis filed correspondence with the trial court informing it that, on August 26, 2025, it had served amended and supplemental responses to Respondents’ first set of interrogatories and requests for production, and that these responses were accompanied by a production of over 300 emails that Rallis had been able to retrieve with the assistance of a digital forensic contractor. **R. pp. ____** (Aug. 28, 2025 Correspondence and Supp. Discovery Responses). The letter attached the supplemental discovery responses, as well as a verification of the interrogatory responses, and offered to provide the produced emails to the trial court if it wished to review them. *Id.*

The trial court held a hearing on Rallis’ motion to reconsider on August 28, 2025. At the hearing, the trial court heard arguments from counsel but did not take any testimony or other evidence. *See* **R. pp. ____** (Transcript of August 28, 2025 Hearing). Of note, Rallis’ new counsel explained at the hearing the recent production of emails and the efforts that they had undertaken in order to obtain and produce these emails to Respondents. **R. pp. ____** (*id.* at 7–11). In particular, counsel explained that Mr. Rallis, who is the sole operator of Rallis Holdings, LLC, does not maintain any reliable infrastructure to archive, categorize, or effectively locate or identify his

⁵ The letter was dated August 27, 2025, but it appears not to have been docketed until the next day.

historical email traffic—he rather uses his personal Gmail account, which he typically accesses from his phone, to conduct Rallis’ business. **R. pp. ____** (*id.* at 8:9–9:16). Counsel explained the difficulties that Mr. Rallis has had in the past with maintaining and locating his emails, and that he simply does not have the practical ability to conduct a comprehensive search of his emails such that he can produce them in a reliable manner upon demand in litigation. *Id.* To highlight the issue, counsel explained that in order for Rallis to produce the emails that it had produced just prior to the hearing, Rallis had to hire a digital forensic consultant to review, search, and collect responsive emails in Mr. Rallis’ Gmail account and organize them for production, which took a considerable effort to accomplish. **R. pp. ____** (*id.* at 9:17–10:10, 11:13–17). Thus, counsel argued, Rallis’ failure up to that point to produce responsive emails contained in Mr. Rallis’ Gmail account was not the result of bad faith, willfulness, or gross indifference; rather, it was a result of poor recordkeeping and the lack of a practical ability to retrieve those records. **R. pp. ____** (*id.* at 11:18–12:1). Rallis’ counsel informed the trial court that Rallis would continue its efforts to produce any information it could locate that was responsive to Respondents’ discovery requests, *id.*, and asked that the trial court reconsider its order striking Rallis’ answer. After hearing argument from counsel, the trial court took the motion under advisement. **R. p. ____** (*id.* at 32:12–15).

In the months that followed, Rallis did in fact continue to supplement its discovery responses and production, including a September 17, 2025 production of native versions of emails it had previously produced, as well as an over 300-page production of documents it obtained from the City of Greenville in response to a Freedom of Information Act request that Rallis had sent seeking documents that were responsive to Respondents’ discovery requests. **R. pp. ____** (April 3, 2026 Correspondence to the court attaching Supplemental Discovery Responses).

On April 10, 2026, the trial court entered a Form 4 order succinctly denying Rallis’ Motion to Reconsider. **R. pp. ____** (April 10, 2026 Form 4 Order). Rallis filed its Notice of Appeal to this Court on April 22, 2026, and specifically appealed from the trial court’s (1) July 1, 2025 Form 4 Order Dismissing Defendant’s Answer and Counterclaim; (2) July 21, 2025 Order Granting Plaintiffs’ Third Motion to Compel and Striking Defendant’s Amended Answer; and (3) April 10, 2026 Form 4 Order Denying Defendant’s Motion for Reconsideration. **R. pp. ____** (April 22, 2026 Notice of Appeal).

STANDARD OF REVIEW

“The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court.” *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). A trial court’s imposition of sanctions in discovery matters is reviewed for abuse of discretion, and the burden of demonstrating an abuse of discretion rests with the party appealing from the order. *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997) (citing *Clark v. Ross*, 284 S.C. 543, 570, 328 S.E.2d 91, 107 (Ct. App. 1985)). “An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law.” *Id.* (citing *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)).

ARGUMENT

As the Court may have derived from the lengthy recitation of facts above, discovery in this case has had a long and arduous history, plagued by delays, multiple discovery motions, turnover among counsel representing both of the parties, and misunderstandings between those counsel about what information had been produced and what was available to be produced. And, Rallis must accept some of the blame for these difficulties—the withdrawal of its original attorney in this

case and miscommunications between its old and new counsel caused confusion about the status of discovery, and Rallis' own inability to ascertain the scope of responsive documents within its control, not to mention its practical inability to collect and produce those documents, caused a considerable delay in the production of responsive emails that Respondents had sought. But the question before this Court is not whether Rallis erred in the manner in which it undertook discovery in this case; rather, the question is whether those errors rose to the level of "bad faith, willfulness, or gross indifference to the rights of other litigants" necessary to justify the harshest sanction in the book—the striking of a defendant's answer and the entry of a default against him. *See Karppi*, 327 S.C. at 543, 489 S.E.2d at 682. Rallis respectfully submits that it was not.

As a starting point, Rule 37, SCRCP grants the trial court the power to impose a range of sanctions on parties for violating orders related to discovery including, among others, "[a]n order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action"; "[a]n order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence"; "[a]n order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, . . . or rendering a judgment by default against the disobedient party"; and ordering that the disobedient party pay the reasonable expenses and attorneys' fees occasioned by the failure. Rule 37(b), SCRCP.

Thus, while trial courts have the power to order an array of sanctions against parties for discovery abuse, "when the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless harsh medicine that should not be administered lightly." *Karppi*, 327 S.C. at 542–43, 489 S.E.2d at 682. "Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the

rights of other litigants.” *Id.* Factors to be considered in determining the appropriateness of a sanction generally include “the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999). Ultimately, whatever sanction the court determines to impose “should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” *Karppi*, 327 S.C. at 543, 489 S.E.2d at 682; *Griffin*, 334 S.C. at 198, 511 S.E.2d at 719 (same).

Federal courts treat the imposition of default as a sanction with similar trepidation. *See Hathcock v. Navistar Int’l Transp. Corp.*, 53 F.3d 36, 40 (4th Cir. 1995) (“In the case of default, the ‘range of discretion is more narrow’ than when a court imposes less severe sanctions.” (quoting *Wilson v. Volkswagen of Am.*, 561 F.2d 494, 503 (4th Cir. 1977))). The Fourth Circuit has, in particular, “emphasized the significance of warning a defendant about the possibility of default before entering such a harsh sanction.” *Id.* (observing that “a party ‘is entitled to be made aware of the drastic consequences of failing to meet the court’s conditions at the time the conditions are imposed, when he still has the opportunity to satisfy the conditions and avoid’ the sanction” (quoting *Choice Hotels Int’l, Inc. v. Goodwin & Boone*, 11 F.3d 469, 473 (4th Cir. 1993)) (internal alterations omitted)); *see also Karppi*, 327 S.C. at 549–50, 489 S.E.2d at 685–86 (Anderson, J., concurring) (citing *Hathcock* with favor and finding that “striking Ogden’s answer and holding it in default [was] too severe a sanction in itself, especially without warning of the impending default”).

Here, not only was Rallis not warned that a default might be entered against it in this case—the trial court’s July 21, 2025 order striking Rallis’ answer and entering a default against it was the first instance in which *any* sanction was imposed on Rallis in these proceedings. To make

matters worse, the trial court's order rested upon factual conclusions that were either unsupported by the record or were simply incorrect, and the trial court failed to factor in Respondents' own delay of these proceedings when weighing whether to order this severe sanction against Rallis. These errors, taken together, merit the reversal of the trial court's order.

I. The Trial Court's July 21, 2025 Order Misconstrued Important Facts and Reached Factual Conclusions Unsupported by the Record.

In ordering that Rallis' answer in this case should be struck and a default entered against it, the trial court's July 21, 2025 order rested upon a misconstruction of several important facts that were critical to its decision to impose this harsh sanction on Rallis. Chief among these was the trial court's conclusion that Rallis had violated the December 4, 2024 order—which had compelled Rallis to provide complete responses to interrogatory number 7 and request for production number 10 within 21 days of that order—because “[o]n December 19, 2024, Defendant supplemented Interrogatory 7 by adding only one name, Jay Stephens, notwithstanding earlier testimony that negotiations had occurred with QuikTrip and other prospective buyers of the Property.” **R. p. __** (July 21, 2025 Order at 8). That factual conclusion was incorrect—it is true that on December 19, 2024, Rallis sent supplemental interrogatory responses, but that supplement was to Respondents' interrogatory number 1, which was the standard interrogatory seeking the identification of witnesses with knowledge. *See R. p. __* (Dec. 19, 2024 Supp. Disc. Resp.). In that supplement, Rallis identified Jay Stephens as a potential witness in this case. *Id.* Rallis in fact supplemented its response to interrogatory 7 on December 4, 2024—the same day the order compelling this response was issued—wherein Rallis identified individuals who had contacted it about purchasing the Property as Zach Hines, Flournoy Development Group, LLC, and QuikTrip. *See R. p. __* (Dec. 4, 2024 Supp. Disc. Resp.). The trial court appears to have been unaware altogether that Rallis

provided this response, which was a complete response to Respondents' interrogatory 7 that satisfied the directives of the December 4, 2024 order.

This factual error in the trial court's order is significant because, had it been true, Rallis would have wholesale failed to comply with the December 4, 2024 order by providing effectively no response at all to this interrogatory despite having been explicitly ordered to do so. Had this happened, Rallis agrees that some sanction would have been appropriate for failing to even attempt to comply with the December 4 order. But it did not happen. This factual conclusion appears in multiple places in the July 21, 2025 order and it was no doubt a critical piece of the trial court's decision to impose a default on Rallis. *See R. pp. __* (July 21, 2025 Order at 6, 8). Because this conclusion was incorrect, one of the central bases for the trial court's imposition of a default against Rallis is removed.

The July 2025 order throughout finds fault in the volume of Rallis' productions in this case, but the trial court never undertook any inquiry or received any evidence about what documents Rallis actually possessed or could practically produce. For example, the order at page 9 found that, "[a]s sole owner of Rallis Holdings, the Defendant had both legal authority and practical capacity to retrieve corporate records concerning Planning-Commission filings, neighborhood outreach, and negotiations with purchasers." *R. p. __* (July 21, 2025 Order at 9). But the trial court never received any evidence about what constituted Rallis' "corporate records," what documents are contained within those records, or how such records are stored or accessed. Without this information, it was impossible for the trial court to reach this conclusion.

As it would happen, Rallis in fact did not have the legal authority or the practical capacity to retrieve many of the records referenced in the order. With respect to the City of Greenville Planning Commission documents pertaining to this Property, Rallis represented that it no longer

had them, which is unsurprising when one considers the manner in which Rallis maintains, or rather does not maintain, its documents. The undersigned counsel had to go so far as sending a FOIA request to the City of Greenville to obtain what documents it had concerning this Property, which records Rallis promptly produced to Respondents upon their receipt. *See R. pp. ____* (April 3, 2026 Correspondence to the court attaching Supplemental Discovery Responses). Rule 34, SCRPC requires only that a party produce those documents that are within his “possession, custody, or control”; it ought to go without saying that if a party must issue a subpoena or FOIA request to a third party in order to obtain a document, he does not have “the legal right to obtain the documents on demand.” *See In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir. 1995). The trial court’s assumption, without a record to support it, that Rallis had the right or ability to obtain and produce these documents was error.

With respect to Rallis’ communications with members of the Watson Orchard neighborhood and with potential purchasers of this Property, some of these documents were in fact discovered and produced when Rallis hired a forensic digital consultant to review and analyze Mr. Rallis’ thousands of unorganized emails contained within his personal Gmail account. Rallis will not dispute that it had the legal right to obtain these emails given that they were contained within its owner’s personal email account, but it will dispute that it had the practical capacity to do so—the mere fact that an outside vendor had to be retained to undertake this review counsels as much. And in any event, the ease or difficulty with which these records could be obtained was not known to the trial court at the time it entered its July 21 order because the trial court had no evidence before it on this subject either way. Rallis’ subsequent efforts to obtain these documents after the July 21 order was entered demonstrate that it, in fact, did not have the practical ability to obtain

these records absent a significant and uncommon effort that Rallis subsequently undertook to comply with the trial court's directives.

The fact of the matter is that, had the trial court undertaken an inquiry or taken evidence about the records that Rallis maintains or the manner in which it maintains them, it would have discovered that Rallis has no reliable system for maintaining or retrieving its records. That is not to say that it is impossible for Rallis to do so, or that it is relieved of its discovery obligations by its utter lack of organization and good recordkeeping. But it would have gone to show that Rallis' failure to produce responsive documents in this case, and its lack of awareness whether it even had these documents to begin with, was not the result of "bad faith, willfulness, or gross indifference to the rights of other litigants" necessary to justify the entry of a default against it. *See Karppi*, 327 S.C. at 543, 489 S.E.2d at 682. It was rather the result of the absence of reliable recordkeeping practices on the part of a small business that is not set up to respond to wide-ranging discovery requests in civil litigation. The trial court's conclusions to the contrary are unsupported by the record.

The July 21 order also found that "[o]n September 28, 2023, Plaintiffs deposed the owner of Defendant, and it became clear there were additional deficiencies in Defendant's discovery responses." **R. p. ___** (July 21, 2025 Order at 4). This conclusion in the July 21 order is problematic because there is no record of the trial court ever reviewing or even receiving Mr. Rallis' deposition, and the order does not say what deficiencies were identified in that deposition. This factual conclusion contained in the trial court's order thus highlights the fundamental problem underlying the trial court's factual conclusions—they are, in many places, unsupported by any testimony or other evidence of record that would support the drastic sanction the trial court imposed in this case.

Finally, the July 21 order found that the May 22, 2024 consent order following the parties' mediation required Rallis to "provide full, verified answers to Interrogatories 1, 4, and 6" and that Rallis failed to do so. **R. pp. __** (July 21, 2025 Order at 7–8). In fact, Rallis did provide responses to these interrogatories, *see* **R. pp. __** (May 23, 2024 Supp. Disc. Resp.), and while they were not verified, the May 22, 2024 consent order said nothing of providing verified responses to these interrogatories. *See* **R. pp. __** (May 22, 2024 Consent Order). Rallis does not dispute that Rule 33, SCRCP requires that responses to interrogatories be provided under oath; however, if the contention was that Rallis' failure to provide verified interrogatory responses violated a prior court order, that is simply not correct. In fact, prior to the filing of Respondents' motion for sanctions on May 27, 2025, it does not appear from the record that Respondents ever requested that Rallis provide verified responses. Rallis does not dispute that it has an obligation to provide verified responses, and in fact Rallis did so after this issue was identified in the July 21 order, *see* **R. pp. __** (Aug. 28, 2025 Correspondence and Supp. Discovery Responses), but Rallis submits that its failure up to that point to provide a verification of its interrogatory responses violated no court order and should not have been a basis for the imposition of sanctions against Rallis.

In sum, the trial court's July 21, 2025 order contained enough factual errors and factual conclusions that were unsupported by any evidence of record so as to call into doubt the bases of the trial court's imposition of a default on Rallis, and these errors merit the reversal of the trial court's order.

II. The Trial Court Disregarded Respondents' Profound Delay in Pressing These Discovery Issues, Which Counsels Against Sanctions.

In weighing the posture of the case and the prejudice that Respondents purportedly experienced from Rallis' actions in discovery, the trial court placed great emphasis on the delay of these proceedings and placed the blame for those delays at Rallis' feet. *See* **R. p. __** (July 21, 2025

Order at 12) (observing that “1,080 days have passed since Plaintiffs first served discovery in July 2022,” and that “[t]his prolonged delay is highly prejudicial to Plaintiffs, and the present discovery posture strongly supports the imposition of significant sanctions”). In reaching this conclusion, the trial court failed to observe that much of the delay about which Respondents complained was of their own making.

Indeed, the record shows that Respondents waited nearly seven months to initiate discovery in this case, waited five months to object to Rallis’ responses to Respondents’ discovery requests, and then waited another five months to object again after Rallis provided further explanation and justification for its responses. *See R. pp. ____* (March 13, 2023 Deficiency Letter & October 23, 2023 Deficiency Letter). Respondents also waited five months after the parties’ March 11, 2024 mediation to file a motion to compel regarding interrogatory 7 and request for production 10, even though the parties agreed at the mediation that they had a substantive dispute about those requests that required court intervention. *See R. pp. ____* (May 22, 2024 Consent Order). And, the trial court effectively acknowledged in its November 30, 2023 order that the parties’ dispute about the scope of Respondents’ discovery requests was a valid one given that it did not grant their motion to compel but rather ordered the parties to mediation to resolve the dispute. *See R. pp. ____* (Nov. 30, 2023 Order).

In fact, the record shows that throughout this case, Rallis substantively responded to Respondents’ claimed deficiencies in Rallis’ discovery responses, and then Respondents would wait for weeks or months to raise any issues with Rallis’ position. When parties are conferring over the sufficiency of their discovery responses and the opposing party does not offer any further objection, or does not file a motion to compel, the opposing party naturally assumes the dispute has been resolved. This is why, for example, parties in federal district court in South Carolina are

required to file motions to compel “within twenty-one (21) days after receipt of the discovery response to which the motion to compel is directed.” *See* Local Civil Rule 37.01(A) (D.S.C.). Had that rule been applied to Respondents in this case, they would have long ago waived any objections to Rallis’ discovery responses. The point being, if a party takes issue with another party’s discovery responses, the onus is on the requesting party to press the issue by initiating further conferral efforts or filing an appropriate motion in a timely manner. Respondents in this case failed to do that, and Rallis cannot be blamed for Respondents’ lack of diligence in this regard.

This issue is particularly highlighted by the timing of Respondents’ third motion to compel and motion for sanctions, which brought about the trial court’s July 21, 2025 order. The order incorrectly states that Respondents’ motion was filed on January 6, 2025, *see* **R. p. ____** (July 21, 2025 Order at 6), but in fact it was filed nearly five months after that, on May 27, 2025. *See* **R. pp. ____** (May 27, 2025 Motion for Default Judgment / Third Motion to Compel). This was despite Respondents threatening nearly *a year prior* to file a motion to compel that week, indicating that the issues Respondents sought to resolve by their motion were ripe at that time. *See* **R. pp. ____** (June 2024 email correspondence between counsel). When the motion was finally filed nearly a year later, the motion was scarcely over two pages and did not alert Rallis to what additional information Respondents sought from Rallis. Respondents’ memorandum was not filed until the day before the hearing, thus denying Rallis any substantive opportunity to resolve Respondents’ qualms before the motion was heard by the trial court.

This pattern of lengthy delay by Respondents in waiting weeks, months, or a year to raise discovery disputes with Rallis’ counsel or with the court is informative for each of the factors that courts consider when determining whether to award sanctions. *See Griffin*, 334 S.C. at 199, 511 S.E.2d at 719 (listing the factors that courts consider when weighing sanctions as “the precise

nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice”). Had the discovery sought to be obtained in Respondents’ motion for sanctions been truly important for their claims, one might presume that they would not have waited almost a year to bring their motion; thus, the “nature of discovery” factor militates in Rallis’ favor. Had they raised these issues with the court in a timely manner, both the posture of this case and the degree of prejudice Respondents complain of would have been alleviated considerably. And by their profound delay in pressing these issues, Rallis might well have been entitled to assume that these discovery items were not very important to Respondents, militating against the willfulness factor. As it stands, the harm that Respondents claim to have suffered by Rallis’ actions in discovery is largely of their own making, and the trial court should have taken that into account in its ruling.

Rallis does not mean to say that it bears no responsibility for the posture of this case—as Rallis acknowledged at the outset of its argument, some delay and a fair amount of confusion was caused by the substitution of Rallis’ counsel earlier in this case and miscommunications between them about what had been produced. And Rallis admittedly had difficulty determining what responsive documents it had within its control and how to produce them. But as the plaintiffs in this case, it was Respondents’ responsibility to diligently prosecute their case—including by timely raising discovery disputes to the trial court as they arose. Respondents here abjectly failed to do that, and they should not have been permitted to turn around and use their lack of diligence as a basis to hold Rallis in default.

III. The Trial Court Erred in Holding Rallis in Default Before Providing a Warning or Imposing a Lesser Sanction.

Perhaps most importantly, the trial court erred in striking Rallis’ answer and imposing a default on Rallis without first providing Rallis a warning that it might be held in default, or ordering a lesser sanction to bring about compliance. The cases passing upon the sanction of default

consistently demonstrate the importance of issuing an explicit warning to the offending party before the court imposes this “harsh” sanction. *See Karppi*, 327 S.C. at 542–43, 489 S.E.2d at 682 (characterizing the imposition of default as “harsh medicine that should not be administered lightly”). Federal courts all but require this warning. *See Hathcock*, 53 F.3d at 40 (“In particular, this court has emphasized the significance of warning a defendant about the possibility of default before entering such a harsh sanction.”); *see also Lolatchy v. Arthur Murray, Inc.*, 816 F.2d 951, 954 n.2 (4th Cir. 1987) (observing that whether a warning was issued to the offending party that it may be held in default is a “salient fact” and finding that “[n]o such warning was given in this case; had there been, another case would be presented”). While South Carolina courts have not explicitly required such a warning, whether one was given to the offending party is consistently an important fact in reviewing the propriety of an order striking a party’s pleading. *See Karppi*, 327 S.C. at 549–50, 489 S.E.2d at 685–86 (Anderson, J., concurring) (“I find striking Ogden’s answer and holding it in default too severe a sanction in itself, especially without warning of the impending default.”); *see also Bauknight v. Pope*, 445 S.C. 408, 420, 914 S.E.2d 848, 855 (2025) (affirming the trial court’s striking of defendant’s answer under Rule 11 and observing that the defendant had been warned repeatedly about her vexatious filings); *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 649, 916 S.E.2d 320, 325 (2025) (affirming striking a defendant’s answer where “[t]he trial court warned Atlas Turner that if it did not cooperate with the Rule 30(b)(6) notices and answer other pending discovery, it would be sanctioned and possibly held in contempt”).

The trial court’s July 21, 2025 order relied heavily upon *Griffin Grading & Clearing*, but that case confirms as well the importance of a warning that a default may be entered against an offending party before this sanction is imposed. In that case, the defendant violated no less than four (4) prior court orders regarding discovery before the court determined to impose this sanction,

and it did so only after finding that a different sanction was unlikely to yield any meaningful compliance given the defendant's repeated violations of the court's orders. *Griffin*, 334 S.C. at 199, 511 S.E.2d at 719. Well before imposing this sanction, however, the court explicitly warned the defendant that it "is hereby cautioned that if it fails to comply with this order, this court will consider, among other sanctions, the striking of its answer." *Id.* at 196–97, 718 (internal alterations omitted).

The trial court gave no such warning to Rallis in this case, nor did it even have an occasion to do so prior to its July 21 Order. It is important to note that there were only two prior discovery orders that are relevant to this inquiry—the May 22, 2024 consent order following the parties' mediation, and the December 4, 2024 order on Respondents' second motion to compel, which ordered Rallis to respond to interrogatory 7 and request for production 10. These two orders did not overlap with each other at all—the first one concerned certain of Respondents' discovery requests that the parties were able to resolve at the mediation, *see* **R. pp. ____** (May 22, 2024 Consent Order), and the second one concerned two requests that they could not resolve at the mediation, *see* **R. pp. ____** (December 4, 2024 Order). The December 4 order made plain that it applied only to interrogatory 7 and request for production 10, and that "[g]eneral compliance by the parties pursuant to the other requirements of the [May 22, 2024 consent order] was not addressed at this hearing and may be addressed at a further hearing if necessary." **R. p. ____** (Dec. 4, 2024 Order at 2). The order cautioned generally that "[f]ailure to comply with this Order may result in sanctions as provided under the South Carolina Rules of Civil Procedure," **R. p. ____** (*id.* at 3), but it did not call to Rallis' attention any purported failure up to that point to comply with its discovery obligations, and Rallis perceived none—indeed, the December 4 order was a succinct, three-page order resolving only Rallis' relevance objections to two discovery requests.

The first time that Respondents sought any relief from the trial court with respect to Rallis' compliance with either of these two orders was in their motion filed on May 27, 2025, and then the motion did not describe in any detail how Rallis failed to comply with those orders—Rallis would not discover the specific nature of Respondents' qualms until the day before the hearing on the motion when Respondents filed their brief. Rallis submits that, throughout this case, Rallis provided meaningful discovery responses to Respondents' requests, produced what documents it could reasonably access, and made its best efforts to comply with its discovery obligations and the orders of the court. But, to be sure, there was no conceivable reason or basis prior to the June 27, 2025 hearing on Respondents' motion for the trial court to warn Rallis that it was at risk of default for discovery abuse, and without question, the court provided Rallis no such warning before determining to strike its answer and hold it in default in this case. Rallis respectfully submits that the trial court's decision to impose this extreme sanction, under these circumstances and without any meaningful prior warning to Rallis, violates the directives of this Court that discovery sanctions "should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case." *Karppi*, 327 S.C. at 543, 489 S.E.2d at 682; *Griffin*, 334 S.C. at 198, 511 S.E.2d at 719.

The heavy-handedness of the trial court's sanction is highlighted by the fact that the trial court had at its disposal a range of lesser sanctions and directives that it could have imposed that would have almost certainly brought about the compliance it sought from Rallis. *See Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) ("The sanction should be aimed at the specific misconduct of the party sanctioned."). The trial court could have simply granted Respondents' third motion to compel and ordered the sought-after information produced forthwith. It could have also imposed a fine on Rallis, or an award of

attorneys' fees and expenses to Respondents—a significant one if it wished—that represented the time and expense Respondents had gone to in filing the motion that was the subject of the hearing, or perhaps even their expenses for prior motions as well if the trial court thought it warranted. Rallis submits that, while a mere warning or an order granting Respondents' third motion to compel would have brought about Rallis' swift and full compliance in this case, any of these lesser sanctions would certainly have done so. This is demonstrated by the fact that, within 30 days of the July 21, 2025 order, Rallis had hired new attorneys, served amended and supplemental discovery responses, retained a specialized vendor to search and extract Mr. Rallis' emails, and produced those emails to Respondents. Plainly, Rallis was not so far down the path of non-compliance that it could not be redirected.

Instead, the trial court elected to impose the harshest sanction that it could—depriving Rallis of the means to defend itself in this litigation, which should be done only as a last resort. *See Karppi*, 327 S.C. at 543, 489 S.E.2d at 682. Put another way, “the sanction should be a rifle-shot, not a shotgun blast. In the instant case, the sanction was a hydrogen bomb. The defendants were denied the opportunity to present a defense.” *Balloon Plantation*, 303 S.C. at 154, 399 S.E.2d at 440. The trial court's sanction is especially acute in this case, where Respondents' complaint claims \$15,000,000 in damages, in addition to punitive damages, for the removal of trees from a property that does not belong to Respondents, nor is it even adjacent to their properties. *See R. p. ___* (Oct. 11, 2021 Complaint at 6). Rallis has now been left with no operative pleading to rebut these extraordinary allegations.

For these reasons, Rallis submits that there is no evidence here of the kind of “bad faith, willfulness, or gross indifference” required to hold a party in default, *Karppi*, 327 S.C. at 543, 489 S.E.2d at 682, and no factual or legal basis upon which to impose this harsh penalty upon Rallis in

this case, especially where no warning was given to Rallis that this sanction might be imposed, no prior sanction was ever imposed, and no lesser, more proportionate sanction was imposed.

CONCLUSION

For the reasons stated herein, Appellant Rallis Holdings, LLC respectfully requests that this Court reverse the trial court's orders in this case striking Rallis' answer and imposing a default and remand this case for further proceedings on the merits of the parties' claims and defenses.

Respectfully submitted,

s/ Andrew R. Hand

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