THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

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SC Court of Appeals

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Case No. 2017-CP-40-07131

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Shriners Hospitals for Children; Dorraine Lester;
Fred Townsend; and Howard Townsend

Respondents,

v.

Wells Fargo Clearing Services, LLC d/b/a Wells Fargo Advisors, LLC;
Wells Fargo Advisors, LLC; and Jessie Rowe Faircloth

Appellants.

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# RESPONDENTS MEMORANDUM REGARDING APPLICABILITY OF APPEAL

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Shriners Hospitals for Children; Dorraine Lester, Fred Townsend, and Howard Townsend, Respondents, respectfully submit this Memorandum pursuant to the Court's directive of February 1, 2019.

Appellants filed the Notice of Appeal on December 28, 2018 from the Circuit Court's Entry of Default and denial of Motion to Reconsider Entry of Default. Such Orders are not immediately appealable: "We agree that the grant or denial of a Rule 55(c) motion is not directly appealable under S.C. Code Ann. §

14–3–330 (1976)." Jefferson by Johnson v. Gene's Used Cars, Inc., 295 S.C. 317, 317, 368 S.E.2d 456, 456 (1988). Respectfully, the appeal is not within the Court's jurisdiction because the Trial Court's order is not a final order, and is consequently not appealable as of right.

The determination of whether a party may immediately appeal an order issued before trial is governed primarily by statute. S.C. Code Ann. 14-3-330 (1976 & Supp.2007); Hagood v. Sommerville, 362 S.C. 191, 195, 607 S.E.2d 707,708 (2005). "An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable." Hagood., 362 S.C. at 195, 607 S.E.2d at 708. An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed. *Id.* In Hagood, the Supreme Court held:

> The provisions of Section 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial. *See e.g.* Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) (order denying motion for change of venue is not immediately appealable because any error in the order can be corrected by new trial); Senter v. Piggly Wiggly Carolina Co., 341 S.C. 74, 77-78, 533 S.E.2d 575, 577 (2000) order denying bifurcation of trial on issues of liability and damages in personal injury case is not immediately appealable as affecting a substantial right); Townsend v. Townsend, 323 S.C. 309, 312, 474 S.E.2d 424, 427 (1996) (denial of motions for disqualification of a judge and for a continuance are interlocutory orders not affecting the merits, and thus are reviewable only on appeal from a final order); Collins v. Sigmon, 299 S.C. 464, 466, 385 S.E.2d 835, 836 (1989) (order allowing amendment of a pleading generally is not immediately appealable); Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986) (ordering directing a party or a non-party to submit to discovery is not immediately appealable; instead, the party or non-party must be held in contempt before an appeal may be taken challenging the validity of the discovery order); Tatnall, 350 S.C. at 138, 465 S.E.2d at 379 (order denying motion to amend pleadings to assert third party claims was not

immediately appealable because the order did not affect a substantial right). Id. At 197, 711.

In the present case, Appellants/Defendants are attempting to appeal the granting of the Entry of Default. The order is an interlocutory order that is not immediately appealable because it does not involve the merits of the action commenced, it does not discontinue the action, nor does it prevent a judgment from which an appeal might be taken. S.C. Code Ann. § 14-3-330. "[A]n order setting aside an entry of default is not appealable until after final judgment." Ateyeh v. United of Omaha Life Ins. Co., 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987)

WHEREFORE, the Respondents respectfully request that the Notice of Appeal be dismissed and for such other and further relief as the Court deems just and appropriate.

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This 11 Day of February, 2019

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PROOF OF SERVICE

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The undersigned hereby certifies that on February 11, 2019, a copy of the foregoing RESPONDENTS MEMORANDUM REGARDING APPLICABILITY OF APPEAL was served upon the below counsel for Appellants by placing it in the United States mail, with sufficient postage affixed thereon, addressed as follows:

Stephen M. Cox SC Bar 12263
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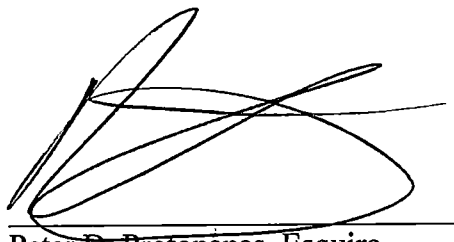

Peter D. Protopapas, Esquire