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Oct 03 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Court of Common Pleas

Honorable Daniel D. Hall

Appellate Case No. 2023-001049

Jane and John Smith, individually and as
Guardians of H.A., and H.A. Individually,

Appellants,

v.

South Carolina Department of Social Services,
South Carolina Department of Children's Advocacy,
Tammy Gaye Causey Dalsing and
Edward Anthony Dalsing,

Respondents.

RESPONDENTS TAMMY GAYE CAUSEY DALSSING
AND EDWARD ANTHONY DALSSING'S
MOTION TO DISMISS

Respondents Tammy Gaye Causey Dalsing and Edward Anthony Dalsing (Dalsings) move to dismiss this appeal against them. The Dalsings move the Court for an order dismissing the appeal filed by the Appellants based upon the appeal not being within the Court's jurisdiction due

to the Appellants' failure to seek permission from the bankruptcy court to pursue an action against the Dalsings.

BASES FOR MOTION TO DISMISS

Respondent-Dalsings' bankruptcy discharge precludes Appellants' claims against

Dalsings: All claims that Appellants are making against the Dalsings are based upon allegations of conduct which arose prior to the date of the Bankruptcy Court's Order of Discharge entered February 20, 2020. Applying the case law discussed below, these claims are barred and this Court does not currently have jurisdiction to hear this appeal.

The Dalsings filed a Voluntary Petition for bankruptcy on October 31, 2019. See Exhibit 1. The Dalsings' Chapter 7 "No Asset" Bankruptcy Order of Discharge was entered on February 20, 2020. See Exhibit 2. Appellants filed their original Complaint in the Circuit Court on March 11, 2020, only 20 days after the February 20, 2020 Bankruptcy Court Order of Discharge. See Exhibit 3. Appellants filed their Amended Complaint on March 25, 2020. See Exhibit 4. On May 20, 2020, the Dalsings filed their Answer to the Amended Complaint, specifically setting forth in Paragraph 75 that "The Dalsings assert that the plaintiffs' claims are, or may be, barred and/or discharged by the Dalsings' filing for bankruptcy, as reflected in case no. 7:2019-bk-05767 (scb)." See Exhibit 5.

The Bankruptcy Code, at 11 U.S.C. Section 727(b), clearly provides that all debts which arose prior to the date of the Order of Discharge are discharged.

"Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from **all debts** that arose **before** the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, **whether or not a proof of claim based on any such debt or liability is filed** under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title." 11 U.S.C. Section 727(b), (Emphasis added).

Appellants have failed to Petition Bankruptcy Court for relief from discharge despite notice of the Dalsings' bankruptcy and discharge: Appellants have clearly received notice of the Dalsings' bankruptcy and discharge, yet have failed to petition the Bankruptcy Court for relief from the discharge.

In the deposition of Mrs. Smith, testified that she knew about the Dalsings' bankruptcy while it was pending but took no action to file a claim in the bankruptcy proceeding. (See Exhibit 6, Mrs. Smith deposition at p.318, L.17 – p.319, L.10). As set forth above, on May 20, 2020, the Dalsings filed their Answer to the Amended Complaint, specifically setting forth in Paragraph 75 that “The Dalsings assert that the plaintiffs' claims are, or may be, barred and/or discharged by the Dalsings' filing for bankruptcy, as reflected in case no. 7:2019-bk-05767 (scb).” See Exhibit 5. Further, paragraph 139 of the Dalsings' Answer provides that their “bankruptcy action has been concluded and ended by a final hearing.”

The July 3, 2023 Order of the Circuit Court granting Summary Judgment in favor of the Dalsings also provided Appellants with notice that “[a]pplicable law makes it clear that once the Plaintiffs were placed on notice of the bankruptcy, they were precluded from pursuing or continuing any action against the Dalsings without first seeking relief from the Bankruptcy Court on whether their claim is viable following the Bankruptcy Court's Order of Discharge.” To date, Appellants have not taken any action to seek redress of this matter in the bankruptcy court or to petition the Bankruptcy Court to lift the discharge which gave the Dalsings a fresh start for all claims and debts occurring prior to the date of the Bankruptcy Order of Discharge.

Bankruptcy discharge prevents Appellants' from pursuing the present appeal against Dalsings: Appellants' pursuit of this appeal continues to subject the Dalsing Respondents to ongoing litigation and litigation expenses for causes of action which are subject to the Bankruptcy

Court Order of Discharge entered February 20, 2020. The Dalsing Respondents respectfully request that the South Carolina Court of Appeals determine that it has no subject matter jurisdiction to continue to entertain the present Appeal against the Dalsing Respondents.

“The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental.” Tatnall v. Gardner, 350 S.C. 135, 137–38, 564 S.E.2d 377, 378–79 (Ct. App. 2002); quoting Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). Subject matter jurisdiction may not be waived even with consent of the parties. Id.; citing Hunter v. Boyd, 203 S.C. 518, 525, 28 S.E.2d 412, 416 (1943). The issue of subject matter jurisdiction may be raised at any time including when raised for the first time on appeal to this Court. Id.; citing Brown v. State, 343 S.C. 342, 346, 540 S.E.2d 846, 848–49 (2001). Furthermore, this Court must, on its own motion, raise the issue of subject matter jurisdiction to ensure the “orderly administration of justice.” Id.; quoting State v. Castleman, 219 S.C. 136, 139, 64 S.E.2d 250, 252 (1951).

Applicable law makes clear that once Appellants were placed on notice of the Dalsings’ bankruptcy, they were precluded from pursuing or continuing any action against the Dalsings without first seeking relief from the Bankruptcy Court on whether their claim is viable following the Bankruptcy Court’s Order of Discharge. Once a bankruptcy petition is filed, the Bankruptcy Court takes custody of all property in the debtor’s possession. Bragg v. Bragg, 347 S.C. 16, 24–25, 553 S.E.2d 251, 255–56 (Ct. App. 2001); citing 28 U.S.C. § 133 (1993); Tolk v. Weinsten, 265 S.C. 546, 550, 220 S.E.2d 239, 241 (1975). Property owned by the debtor is in the Bankruptcy Court’s jurisdiction, and “no other Court, and no person acting under any process from any other Court, can, without the permission of the Bankrupt[cy] Court, interfere with it.” Id.; quoting Bratton v. Anderson, 5 S.C. 504, 504 (1875) (quoting In re Vogel, 4 N.B.R. 427 (1869)). Because the

Bankruptcy Court has exclusive jurisdiction over the debtor's assets, no action can be maintained in a state court to enjoin assets within the Bankruptcy Court's jurisdiction. Id.; citing Southern v. Fisher, 6 S.C. 345 (1875).

Similarly, other jurisdictions have held that because a Bankruptcy Court is competent to apportion a debtor's property, a Bankruptcy Court's judgments are not thereafter subject to collateral attack. Id.; citing Kalb v. Feuerstein, 308 U.S. 433, 439, 60 S.Ct. 343, 84 L.Ed. 370 (1940); see, e.g., LaBarge v. Veirkant, 240 B.R. 317, 321 (B.A.P. 8th Cir.1999); In re Fernandez–Lopez, 37 B.R. 664, 669 (B.A.P. 9th Cir.1984). Further, state courts cannot issue orders interfering with the Bankruptcy Court's exclusive jurisdiction over the property of a bankrupt estate. Id.; citing In re Brown, 734 F.2d 119, 124 (2d Cir.1984); Missouri v. U.S. Bankruptcy Court, 647 F.2d 768, 774 (8th Cir.1981).

Addressing a Chapter XI bankruptcy, this Court discussed the failure to file a claim against the debtor in the Chapter XI proceeding and the failure to seek permission of the Bankruptcy Court to assert a claim against the debtor. This Court held: “**Having refused to avail itself of these remedies before the bankruptcy court, it cannot now pursue them in a state court action.**” H.G. Hall Const. Co. v. J.E.P. Enterprises, 283 S.C. 196, 201–02, 321 S.E.2d 267, 270–71 (Ct. App. 1984) (Emphasis added); see also Michaels-Stern & Co., Inc. v. Rice Men's Shop, Inc., 274 S.C. 44, 260 S.E.2d 717 (1979).

Bankruptcy Court has provided clear instructions on the proper path for pursuit of discharged claims:

In the case of In re Bearden, the Creditor learned of the Debtor’s bankruptcy **after** it was closed and **after** filing a lawsuit against the Debtor. See In re Bearden, 382 B.R. 911, 923 (Bankr.

D.S.C. 2008).¹ The Bankruptcy Court held that the Creditor violated the discharge injunction by failing to dismiss the Debtor from the state court litigation after the Creditor were served with the answer which indicated that Debtor had received a discharge. Id. The Bankruptcy Court stated that the correct procedure would have been to dismiss Debtor from the state court litigation without prejudice and then file an adversary proceeding seeking a determination of nondischargeability pursuant to §523(a)(3)(B) and §523(a)(2), (4), or (6). Id.

The Court in In Re Bearden provides the following analysis which is instructive in this Motion to Dismiss in the present appeal:

The Bankruptcy Court for the Eastern Division of Virginia summarizes the above concept rather well, stating,

[A] discharge under [§ 727(a)] ... discharges the debtor from all debts that arose before the date of the order for relief under this chapter..." 11 U.S.C. § 727(b). "All" is the key word. The statute is unambiguous in that it "discharges every prepetition debt, without regard to whether a proof of claim has been filed ...," Zirnhelt v. Madaj (In re Madaj), 149 F.3d 467, 469 (6th Cir.1998), and does not distinguish "between scheduled and nonscheduled debts." Karras v. Hansen (In re Karras), 165 B.R. 636, 638 (N.D.Ill.1994); see also Beezley v. California Land Title Co. (In re Beezley), 994 F.2d 1433, 1434 (9th Cir.1993) (per curiam) (O'Scannlain, J., concurring) (stating that section 727 says nothing about "whether the debt is or is not scheduled").

The § 524(a) post-discharge injunction embodies the "fresh start" concept inherent in the Bankruptcy Code by allowing the debtor to begin anew with a debt-free start and without pressure from creditors to repay discharged debts. The injunction is broad in scope and was intended to preclude virtually all actions to collect. See H.R.Rep. No. 595, 95th Cong., 1st Sess. 363–64(1978)], U.S. Code Cong. & Admin.News 1978, p. 5963]. Post-discharge lawsuits are clearly prohibited.

¹ In our case, the Appellants knew about the bankruptcy before filing their state court lawsuit, making it more egregious.

The **correct procedure** would have been to dismiss Debtor from the state court litigation without prejudice and then file an adversary proceeding seeking a determination of nondischargeability pursuant to §523(a)(3)(B) and §523(a)(2), (4), or (6).

Id. at pp. 917, 922–23. (Emphasis added).

Based on the foregoing, the Appellants were barred from pursuing their state court civil lawsuit without first filing an adversary proceeding to seek a determination of nondischargeability in the Bankruptcy Court as set forth above. Likewise, the case law above was part of the Circuit Court's Order granting the Dalsing Respondents summary judgment with said Order being the subject of this appeal. Despite knowing about the bankruptcy before filing the civil lawsuit, despite the affirmative defense of the case being barred by bankruptcy being asserted in the Dalsing Respondents' Answers, and despite the Circuit Court ruling that the case was barred, in part, due to the bankruptcy, the Appellants still continue to improperly pursue an appeal of the Circuit Court's Order and never filed an adversary proceeding in the Bankruptcy Court. As such, this Court does not have jurisdiction over this appeal and it should be dismissed.

CONCLUSION

The bankruptcy discharge bars Appellants' from their continuing pursuit of claims against the Dalsings. Based on the law cited above, this Court does not have subject matter jurisdiction. In addition, to allow this appeal to continue against the Dalsing Respondents will subject them to ongoing fear and worry over this litigation, as well as cause them to continue to incur further litigation expenses for causes of action which were discharged by the Bankruptcy Court Order of Discharge entered February 20, 2020.

WHEREFORE, Respondents Tammy Gaye Causey Dalsing and Edward Anthony Dalsing respectfully request that this appeal be dismissed against them and for such other and further relief as the court deems just and appropriate.

Respectively Submitted,

CLARKSON, WALSH, & COULTER, P.A.

s/James P. Walsh

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October 3, 2023



Fill in this information to identify your case:

United States Bankruptcy Court for the:
 DISTRICT OF SOUTH CAROLINA

Case number (if known) _____ Chapter you are filing under:
 Chapter 7
 Chapter 11
 Chapter 12
 Chapter 13

Check if this is an amended filing

Official Form 101 Voluntary Petition for Individuals Filing for Bankruptcy

12/17

The bankruptcy forms use you and Debtor 1 to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use you to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be yes if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

About Debtor 1:

About Debtor 2 (Spouse Only in a Joint Case):

1. Your full name

Write the name that is on your government-issued picture identification (for example, your driver's license or passport).

Bring your picture identification to your meeting with the trustee.

Edward
First name

A
Middle name

Dalsing
Last name and Suffix (Sr., Jr., II, III)

Tammy
First name

G
Middle name

Dalsing
Last name and Suffix (Sr., Jr., II, III)

2. All other names you have used in the last 8 years

Include your married or maiden names.

3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)

xxx-xx-

xxx-xx-

Debtor 1 **Edward A Dalsing**
Debtor 2 **Tammy G Dalsing**

Case number (if known) _____

About Debtor 1:

About Debtor 2 (Spouse Only in a Joint Case):

4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years

I have not used any business name or EINs.

I have not used any business name or EINs.

Include trade names and *doing business as* names

Business name(s) _____

Business name(s) _____

EINs _____

EINs _____

5. Where you live



Number, Street, City, State & ZIP Code

If Debtor 2 lives at a different address:

Number, Street, City, State & ZIP Code

York

County

County

If your mailing address is different from the one above, fill it in here. Note that the court will send any notices to you at this mailing address.

If Debtor 2's mailing address is different from yours, fill it in here. Note that the court will send any notices to this mailing address.

Number, P.O. Box, Street, City, State & ZIP Code

Number, P.O. Box, Street, City, State & ZIP Code

6. Why you are choosing this district to file for bankruptcy

Check one:

Check one:

Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.

Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.

I have another reason. Explain. (See 28 U.S.C. § 1408.)

I have another reason. Explain. (See 28 U.S.C. § 1408.)

Debtor 1 Edward A Dalsing
Debtor 2 Tammy G Dalsing

Case number (if known) _____

Part 2: Tell the Court About Your Bankruptcy Case

7. **The chapter of the Bankruptcy Code you are choosing to file under** *Check one.* (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)*). Also, go to the top of page 1 and check the appropriate box.
 Chapter 7
 Chapter 11
 Chapter 12
 Chapter 13

8. **How you will pay the fee** **I will pay the entire fee when I file my petition.** Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
 I need to pay the fee in installments. If you choose this option, sign and attach the *Application for Individuals to Pay The Filing Fee in Installments* (Official Form 103A).
 I request that my fee be waived (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.

9. **Have you filed for bankruptcy within the last 8 years?** No.
 Yes.
District _____ When _____ Case number _____
District _____ When _____ Case number _____
District _____ When _____ Case number _____

10. **Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?** No.
 Yes.
Debtor _____ Relationship to you _____
District _____ When _____ Case number, if known _____
Debtor _____ Relationship to you _____
District _____ When _____ Case number, if known _____

11. **Do you rent your residence?** No. Go to line 12.
 Yes. Has your landlord obtained an eviction judgment against you?
 No. Go to line 12.
 Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it as part of this bankruptcy petition.

Debtor 1 Edward A Dalsing
Debtor 2 Tammy G Dalsing

Case number (if known)

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

- No. Go to Part 4.
- Yes. Name and location of business

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

Name of business, if any

Number, Street, City, State & ZIP Code

Check the appropriate box to describe your business:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a small business debtor?

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. 1116(1)(B).

For a definition of small business debtor, see 11 U.S.C. § 101(51D).

- No. I am not filing under Chapter 11.
- No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.
- Yes. I am filing under Chapter 11 and I am a small business debtor according to the definition in the Bankruptcy Code.

Part 4: Report If You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

- No.
- Yes. What is the hazard?
- If immediate attention is needed, why is it needed?

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

Where is the property?

Number, Street, City, State & Zip Code

Debtor 1 **Edward A Dalsing**
Debtor 2 **Tammy G Dalsing**

Case number (if known)

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling

15. Tell the court whether you have received a briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy. If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

I am not required to receive a briefing about credit counseling because of:

Incapacity.
I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability.
My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty.
I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver credit counseling with the court.

About Debtor 2 (Spouse Only In a Joint Case):

You must check one:

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

I am not required to receive a briefing about credit counseling because of:

Incapacity.
I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability.
My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty.
I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Debtor 1 **Edward A Dalsing**
 Debtor 2 **Tammy G Dalsing**

Case number (if known) _____

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?
- 16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- No. Go to line 16b.
- Yes. Go to line 17.
- 16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.
- No. Go to line 16c.
- Yes. Go to line 17.
- 16c. State the type of debts you owe that are not consumer debts or business debts

17. Are you filing under Chapter 7?
- No. I am not filing under Chapter 7. Go to line 18.
- Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?
- No
- Yes
- Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

18. How many Creditors do you estimate that you owe?
- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000 | <input type="checkbox"/> 25,001-50,000 |
| <input type="checkbox"/> 50-99 | <input type="checkbox"/> 5001-10,000 | <input type="checkbox"/> 50,001-100,000 |
| <input type="checkbox"/> 100-199 | <input type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999 | | |

19. How much do you estimate your assets to be worth?
- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> \$0 - \$50,000 | <input type="checkbox"/> \$1,000,001 - \$10 million | <input type="checkbox"/> \$500,000,001 - \$1 billion |
| <input type="checkbox"/> \$50,001 - \$100,000 | <input type="checkbox"/> \$10,000,001 - \$50 million | <input type="checkbox"/> \$1,000,000,001 - \$10 billion |
| <input checked="" type="checkbox"/> \$100,001 - \$500,000 | <input type="checkbox"/> \$50,000,001 - \$100 million | <input type="checkbox"/> \$10,000,000,001 - \$50 billion |
| <input type="checkbox"/> \$500,001 - \$1 million | <input type="checkbox"/> \$100,000,001 - \$500 million | <input type="checkbox"/> More than \$50 billion |

20. How much do you estimate your liabilities to be?
- | | | |
|---|--|--|
| <input type="checkbox"/> \$0 - \$50,000 | <input type="checkbox"/> \$1,000,001 - \$10 million | <input type="checkbox"/> \$500,000,001 - \$1 billion |
| <input type="checkbox"/> \$50,001 - \$100,000 | <input type="checkbox"/> \$10,000,001 - \$50 million | <input type="checkbox"/> \$1,000,000,001 - \$10 billion |
| <input type="checkbox"/> \$100,001 - \$500,000 | <input type="checkbox"/> \$50,000,001 - \$100 million | <input type="checkbox"/> \$10,000,000,001 - \$50 billion |
| <input checked="" type="checkbox"/> \$500,001 - \$1 million | <input type="checkbox"/> \$100,000,001 - \$500 million | <input type="checkbox"/> More than \$50 billion |

Part 7: Sign Below

For you

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11, 12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

/s/ Edward A Dalsing

Edward A Dalsing

Signature of Debtor 1

/s/ Tammy G Dalsing

Tammy G Dalsing

Signature of Debtor 2

Executed on October 23, 2019
MM / DD / YYYY

Executed on October 23, 2019
MM / DD / YYYY

Debtor 1 **Edward A Dalsing**
Debtor 2 **Tammy G Dalsing**

Case number (if known) _____

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

/s/ Mitchell C Payne

Date

October 23, 2019

Signature of Attorney for Debtor

MM / DD / YYYY

Mitchell C Payne 4381

Printed name

Payne, Black & Pickelsimer, LLC

Firm name

P.O. Box 10352

Rock Hill, SC 29731

Number, Street, City, State & ZIP Code

Contact phone **803-329-8656**

Email address

mcp@pbplawsc.com

4381 SC

Bar number & State

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LINCOLN NE 68501

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SALT LAKE CITY UT 84130-0285

CAPITAL ONE
PO BOX 71083
CHARLOTTE NC 28272-1083

CHASE
PO BOX 15298
WILMINGTON DE 19850

DALE DOVE
125 HAMPTON STREET
SUITE 200
ROCK HILL SC 29730

FAMILY TRUST
1690 OLD YORK ROAD
YORK SC 29745

FAMILY TRUST FCU
P.O. DRAWER 10233
ROCK HILL SC 29731

FOUNDERS FEDERAL CREDIT UNION
1404 EBENEZER ROAD
ROCK HILL SC 29732

INTERNAL REVENUE SERVICE
PO BOX 7346
PHILADELPHIA PA 19101-7346

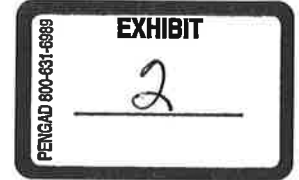
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S.C. DEPARTMENT OF REVENUE
PO BOX 125
COLUMBIA SC 29214

SAINT-AMAND THOMPSON & MATHIS LLC
210 S LIMSTONE STREET #1
GAFFNEY SC 29340

WELLS FARGO
7000 VISTA DRIVE
WEST DES MOINES IA 50266

United States Bankruptcy Court
District of South Carolina



Case Number: 19-05767-hb

Chapter: 7

In re:

Edward A Dalsing

Tammy G Dalsing

Entered By The Court
2/20/20

ORDER DISCHARGING DEBTOR(S) AND TRUSTEE AND CLOSING
THE CASE

Filed By The Court
2/20/20
Laura A. Austin
Clerk of Court
US Bankruptcy Court

The trustee, having certified that the estate of the above-named debtor(s) has been fully administered, and it appearing that the debtor(s) having met the requirements for discharge under 11 USC § 727,

1. The debtors(s), **Edward A Dalsing, Tammy G Dalsing** are granted a discharge;
2. The trustee is discharged as the trustee of this case; and
3. The chapter 7 case of the above-named debtor(s) is closed.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John L. ...".

United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION

Explanation of Bankruptcy Discharge in a Chapter 7 Case

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

Creditors cannot collect discharged debts

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

Some debts are not discharged

Examples of debts that are not discharged are:

- ◆ debts that are domestic support obligations;
- ◆ debts for most student loans;
- ◆ debts for most taxes;
- ◆ debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- ◆ debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- ◆ some debts which the debtors did not properly list;
- ◆ debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- ◆ debts for death or personal injury caused by operating a vehicle while intoxicated.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

Most debts are discharged

Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

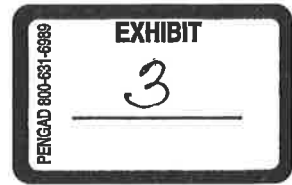
Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

Also, debts covered by a valid reaffirmation agreement are not discharged.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
Case No. 2020-CP-44-__

COUNTY OF UNION

H.A., by and through her guardians, Jane and John Smith, and Jane Smith and John Smith, individually,

Plaintiffs

vs.

COMPLAINT
JURY TRIAL DEMANDED

South Carolina Department of Social Services, South Carolina Department of Children's Advocacy, Tammy Gay Causey Dalsing and Edward Anthony Dalsing,

Defendants

(Subject to Amendment, as to any and all other necessary Defendants)

The Plaintiffs, complaining of the Defendants herein, would respectfully show and allege unto this Honorable Court as follows:

Jurisdiction, Venue and Parties

1. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina, and the South Carolina Tort Claims Act codified at S.C. Code Ann. § 15-78-10 et seq. (Supp. 2014).
2. The Plaintiff, H.A. is a minor child who is a citizen and resident of the State of South Carolina, County of Union.
3. The Plaintiffs, Jane Smith and John Smith, are residents and citizens of the State of South Carolina, County of Union.
4. This action is being brought using the minor child's initials and fictitious names for the Plaintiffs to protect the privacy of the minor child.

5. The Plaintiffs are informed and believe that the South Carolina Department of Social Services (“SCDSS”) is a state agency created by the General Assembly of the State of South Carolina and is an agency of the State of South Carolina. The Defendant SCDSS is joined and made a party to this action pursuant to Section 15-78-10 et seq. of the South Carolina Code of Laws, more commonly known as the “South Carolina Tort Claims Act”.
6. That the employees of SCDSS, including within its county divisions and employees, were acting within the course and scope of their employment when they committed tortious acts that were the direct and proximate cause of the Plaintiffs’ injuries. SCDSS, through its county divisions and employees, such as the Union and York County Department of Social Services, is charged with conducting its child protective services activities in accordance with sound professional standards for intervention into family lives and placement of children in foster care. SCDSS county divisions and employees must be guided by law and be competent in law enforcement procedures, fact finding, evidence gathering, and effective social intervention, assessment and placement of foster children into foster homes. | _____
7. The Plaintiffs are informed and believe that the South Carolina Department of Children’s Advocacy (“SCDCA”), formerly known as the Foster Care Review Board, is an independent state agency charged with ensuring that children across South Carolina receive adequate protection and care from services or programs related to the welfare of children offered by departments such as SCDSS.
8. Tammy Gaye Causey Dalsing and Edward Anthony Dalsing (“Foster Parents”): The Dalsings were the Plaintiff H.A.’s foster parents and, upon information and belief are currently citizens and residents of the County of York, State of South Carolina.

Commented [LS1]: Moved down to first allegation

9. That jurisdiction and venue are proper properly before this Court pursuant to S.C. Code Ann. § 15-7-30 and S.C. Code Ann. § 15-78-100 of the South Carolina Code of Laws, because there are multiple defendants, and the acts and omissions in failing to protect Plaintiff H.A. from the abuse she endured occurred in both Union County, South Carolina and York County, South Carolina.

Summary of Factual Allegations

10. Plaintiff H.A. was born at the end of 2012. On August 27, 2013, Law enforcement took the child who was then 8 months old, into emergency protective custody after discovering an active methamphetamine lab at H.A.'s biological parents' home. H.A. tested positive for methamphetamine, cocaine, benzoylecgonine and marijuana. SCDSS placed the child in the home with foster parents Defendants Tammy and Edward Dalsing. On October 9, 2013 a merits hearing was held in the SCDSS removal action and a finding was entered against the biological parents for substantial risk of physical neglect.¹
11. On May 31, 2014, a SCDSS caseworker informed the foster parents that they wanted to remove the child from the home of the foster parents and would be doing so at the upcoming Family Court hearing to be held on June 4, 2014. Prior to the June 4, 2014 hearing, the foster parents filed a private action² for TPR and adoption of the minor child, as well as a Motion to Intervene into the DSS removal action.
12. At a hearing on June 4, 2014, the Union County DSS sought court approval to place the Plaintiff H.A. with her relatives, however the foster parents thwarted those efforts in contravention to the recommendations and wishes of SCDSS, the child's Guardian *ad litem*, the child's caseworker as well as the wishes and preference of the child's biological

¹ The parents' names were entered into the Central Registry of Child Abuse and Neglect.

² See Tammy and Edward Dalsing v SCDSS 2014-DR-44-155

parents. At this time, SCDSS knew or should have known of the foster parents' history with SCDSS and their refusal to give children back to parents/relatives.³

13. During the time that Plaintiff H.A. was in the home of the Defendant foster parents, the child was physically and emotionally abused.
14. On August 2, 2018, after four (4) years of repeated incidents of abuse of Plaintiff H.A. at the hands of the foster parents, SCDSS referred the child to the Children's Advocacy Center for a forensic interview to determine if actual abuse was occurring in the Defendant's foster home. Based upon the disclosures made by the child, the child was removed from the foster parent's home and has never gone back. The Plaintiff H.A. disclosed the she was abused at the hands of the foster parents.
15. DSS left the child in the home of these foster parents from 2014 through 2018 and failed to properly supervise and protect the Plaintiff H.A. SCDSS knew or should have known that the Plaintiff H.A. was in danger because of the repeated complaints of abuse by the Plaintiff's guardians and relatives, the disclosures by the minor child, and the foster parents' extensive and negative history with SCDSS. Upon information and belief, multiple reports were made to SCDSS during this time that the minor child was being abused, but SCDSS failed to protect the child. SCDSS employees were willful, wanton, careless indifferent, reckless and grossly negligent in their regards to Plaintiff H.A.'s safety, best interests and welfare.
16. SCDCA, including its county agents, volunteers and employees, had dealings with the Defendant foster parents and knew or should have known of the foster parents' negative history and abuse. The SCDCA owed the Plaintiff H.A. a duty of protection and of due

³ One family court judge made the comment on the record that what the foster parents (Dalsings) did in their other case was "tantamount to kidnapping". See Honorable Michelle Hurley's order from March 3, 2015

diligence in foster placement and breached its duty by failing to ensure that the child received proper protection while in foster care. SCDC agents and employees were willful, wanton, careless indifferent, reckless and grossly negligent in failing to protect Plaintiff H.A.'s safety, best interests and welfare.

17. The foster parents failed to exercise adequate protection and care as to the child's welfare and safety; rather they were willful, wanton, careless indifferent, reckless and grossly negligent in failing to protect Plaintiff H.A.'s safety, best interests and welfare.

18. The following documented incidences of abuse occurred to the child while in the Defendant's foster home:

- a. The grown child (27-year old son) of the foster parents twisted the minor child's wrist causing bruising and swelling.
- b. The minor child's arm was broken three (3) separate times from 2014-2018 and is properly documented by medical evidence.
- c. On one occasion, the minor child "tripped over the family dog", causing such a fracture and injury to her arm that she had to have surgery.
- d. The foster parents tortured the child by forcing her to wear diapers to bed and urinate in the diaper when the child was fully potty trained and wearing normal underwear while in the care of her relatives. Rather than being allowed to go the restroom the child was forced to urinate on herself.
- e. The foster-family dog bit the child causing injuries.
- f. The minor child had scratch marks to her private areas; swelling on her face; bruises on her knee cap and temple; and on one occasion upon information and belief was hit with a hammer, all of which were documented and reported by the minor child's relatives.
- g. The foster parents allowed the other children in the home to be mean to the child.
- h. On several different occasions, the Defendant foster parents refused to allow SCDCS and/or the child's Guardian *ad litem* access to their home.

- i. Throughout the minor child's placement with Defendant foster parents, each Guardian *ad litem* advocated for this child to be placed with relatives.⁴ And often raised concerns about the child being abused by the foster parents.⁵ Despite these facts, the Department of Social Services continued to leave the child with the foster parents. Had the Plaintiffs not stood their ground and advocated for their niece, the foster parents would have adopted a fifth child.
- j. During the entire time the child remained in foster care placement, the child visited with her relatives every single week from Friday through Monday. The Plaintiffs, the foster parents, the Guardian ad litem and SCDSS observed the child cry and beg to not return to the foster parents at each exchange.
- k. The foster parents contacted local and national media after a negative Court of Appeals decision was issued in a separate case involving one of their foster children, while the child that is the subject of this action was still placed in their care. The Dalsings allowed the media to use photos of the foster children they were charged with protecting and the Dalsings also promulgated the children's photos and the issues regarding their foster children all over social media.

FOR A FIRST CAUSE OF ACTION

Negligence

- 19. The Plaintiffs reallege and incorporate herein all of the relevant and consistent allegations in the foregoing paragraphs as fully as if repeated herein.
- 20. The Defendants, each of them, owed a duty of care to the said minor child.
- 21. The acts and/or omissions of the Defendants, as described above, were negligent, grossly negligent, willful, wanton and reckless and were done knowingly and with total disregard for the child's protection.

⁴ There were numerous Guardians ad litem for this child due to the foster parents calling the Central Office in Columbia and having the guardians removed from the case. (See the recommendations from the Guardian ad litem in the year two-thousand and fourteen: "That legal and physical custody be with Darryl and Ann Armstrong on August 27, 2014. . . . If legal and physical custody is not placed with Darryl and Ann Armstrong, that the child be removed from the current foster care placement." All the way through, the Guardians ad litem for this minor child advocated for her to be placed with her relatives.

⁵ See the countless Guardian ad litem reports filed throughout this matter. On one occasion in particular, the Guardian ad litem raised concerns as to whether the young children in the foster home were being watched "as close as they need to be." GAL report, December 4, 2017. p. 4)

22. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, the child and the Plaintiffs have suffered damages as more fully set forth in this Complaint.

FOR A SECOND CAUSE OF ACTION
Gross Negligence Under the South Carolina Tort Claims Act

23. The Plaintiffs reallege and incorporate herein all of the relevant and consistent allegations in the foregoing paragraphs as fully as if repeated herein.

24. The Defendants SCDSS and SCDCA both as an agencies in general and through its employees, agents and servants, owed Plaintiffs a duty, both under the common law as well as a separate, special duty, by statute and regulation. The under the South Carolina Tort Claims Act, Section 15-78-10 et seq. of the Code of Laws of South Carolina 1976, as amended, and the Common Law of South Carolina, SCDSS and SCDCA is liable for its tortious acts and the tortious acts of its employees and agents performed in the scope of their employment.

25. The Defendants, including and an all agents and employees, had a duty to perform its child protective services and foster care placement of children in a professional and competent manner. During all times material to the claims herein, these Defendants' acts and omissions amounted to gross negligence, recklessness and a willful and wanton disregard for the safety and well-being of the Plaintiff H.A. who is a minor child. The reckless, willful and wanton acts of these Defendants include, but are not limited to: Failing to properly investigate the foster home; Leaving the minor child in an abusive foster home for four (4) years; Failing to adequately monitor the foster home placement of the minor child, and

providing the proper supervision necessary to protect the minor child from harm; Failing to timely remove the minor child from and abusive foster home.

26. All of the above failures to adequately protect were the direct and proximate cause of the injuries suffered by the Plaintiffs herein, said acts being in violation of the South Carolina Code of Laws and SCDSS/SCDCA policies and procedures.
27. The Plaintiffs allege that each and every failure of the Defendants to protect the minor child constitutes a separate occurrence and delict.
28. That as a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, H.A. suffered mental harm and injury, physical pain, emotional and mental distress, anxiety, depression, and loss of enjoyment of life, all resulting having to suffer through four years of abuse and injuries in a foster home that she should have never been placed in to begin with. This abuse and trauma has and will in the future cause her to spend money for physical and mental health treatment services.

FOR A THIRD CAUSE OF ACTION
Negligence per se

29. The Plaintiffs reallege and incorporate herein all of the relevant and consistent allegations in the foregoing paragraphs as fully as if repeated herein.
30. In addition to the aforementioned negligent and grossly negligent acts, these Defendants violated the South Carolina Code Ann. Section 59-101 through 200.
31. These legislative and administrative regulations are designed to prevent injury to a class of persons to which the child belongs.
32. These violations by Defendants and each of them were the proximate cause of the abuse the child endured, along with the child's injuries and resulting damages.

Commented [LS2]: WHAT CODE SECTION

33. These Defendants named herein, all of whom are acting agents of the State of South Carolina Department of Social Services, are bound by the negligence *per se* of the Defendants, individually and severally.

34. Plaintiffs specifically reserve the right to amend their pleadings, and to join additional parties should they find through the process of discovery.

35. Damages:

- a. The Plaintiffs reallege and incorporate herein all of the relevant and consistent allegations in the foregoing paragraphs as fully as if repeated herein.
- b. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness, and wantonness of the Defendants herein, the child suffered numerous painful, severe and grievous injuries to her physical, mental and emotional well-being.
- c. In accordance with South Carolina Code Ann. Section 15-5-90, and as a direct result of the Defendants, and each of them, negligence and gross negligence, the Plaintiffs are informed and believe that they are entitled to judgment against all Defendants for damages incurred such as the following:
 - i. Mental harm and injury,
 - ii. Physical pain;
 - iii. emotional and mental distress,
 - iv. Anxiety, depression, and loss of enjoyment of life
 - v. Grief and sorrow;
 - vi. Loss of companionship;
 - vii. Mental shock and suffering;

viii. Punitive damages;

ix. And other damages yet to be determined.

36. Jury Trial Demanded: Plaintiffs demand a trial by jury as to all issues to the extent permitted by law.

WHEREFORE, Plaintiffs demand a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure (SCRPC), and Plaintiffs pray for judgment against Defendants, for actual and punitive damages, in an amount to be determined by the jury, and for such other and further relief as the Court deems just and proper.

Butler Law Firm, LLC

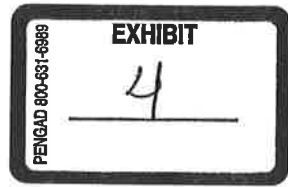
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ATTORNEYS FOR PLAINTIFFS

March 11, 2020
Union, South Carolina



ELECTRONICALLY FILED - 2020 Mar 25 2:00 PM - UNION - COMMON PLEAS - CASE#2020CP4400104

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
Case No. 2020-CP-44-00104

COUNTY OF UNION)

H.A., by and through her guardians, Jane and John Smith, and Jane Smith and John Smith, individually,)

Plaintiffs)

vs.)

AMENDED COMPLAINT
JURY TRIAL DEMANDED

South Carolina Department of Social Services, South Carolina Department of Children's Advocacy, Tammy Gaye Causey Dalsing and Edward Anthony Dalsing,)

Defendants)

The Plaintiffs, complaining of the Defendants herein, would respectfully amend the complaint to show and allege unto this Honorable Court as follows:

Jurisdiction, Venue and Parties

1. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina, and the South Carolina Tort Claims Act codified at S.C. Code Ann. § 15-78-10 et seq. (Supp. 2014).
2. The Plaintiff, H.A. is a minor child who is a citizen and resident of the State of South Carolina, County of Union.
3. The Plaintiffs, Jane Smith and John Smith, are residents and citizens of the State of South Carolina, County of Union.
4. This action is being brought using the minor child's initials and fictitious names for the Plaintiffs to protect the privacy of the minor child.

5. The Plaintiffs are informed and believe that the South Carolina Department of Social Services (“SCDSS”) is a state agency created by the General Assembly of the State of South Carolina and is an agency of the State of South Carolina. The Defendant SCDSS is joined and made a party to this action pursuant to Section 15-78-10 et seq. of the South Carolina Code of Laws, more commonly known as the “South Carolina Tort Claims Act”.
6. That the employees of SCDSS, including within its county divisions and employees, were acting within the course and scope of their employment when they committed tortious acts that were the direct and proximate cause of the Plaintiffs’ injuries. SCDSS, through its county divisions and employees, such as the Union and York County Department of Social Services, is charged with conducting child protective services activities in accordance with sound professional standards for intervention into family lives and placement of children in foster care. SCDSS county divisions and employees must be guided by law and be competent in law enforcement procedures, fact finding, evidence gathering, and effective social intervention, assessment and placement of foster children into foster homes.
7. The Plaintiffs are informed and believe that the South Carolina Department of Children’s Advocacy (“SCDCA”), formerly known as the Foster Care Review Board, is an independent state agency charged with ensuring that children across South Carolina receive adequate protection and care from services or programs related to the welfare of children offered by departments such as SCDSS.
8. Tammy Gaye Causey Dalsing and Edward Anthony Dalsing (“Foster Parents”): The Dalsings were the Plaintiff H.A.’s foster parents and, upon information and belief are currently citizens and residents of the County of York, State of South Carolina.

9. That jurisdiction and venue are proper properly before this Court pursuant to S.C. Code Ann. § 15-7-30 and S.C. Code Ann. § 15-78-100 of the South Carolina Code of Laws, because there are multiple defendants, and the acts and omissions in failing to protect Plaintiff H.A. from the abuse she endured occurred in both Union County, South Carolina and York County, South Carolina.

Summary of Factual Allegations

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² See Tammy and Edward Dalsing v SCDSS 2014-DR-44-155

parents. At this time, SCDSS knew or should have known of the foster parents' history with SCDSS and their refusal to give children back to parents/relatives.³

13. During the time that Plaintiff H.A. was in the home of the Defendant foster parents, the child was physically and emotionally abused.
14. On August 2, 2018, after four (4) years of repeated incidents of abuse of Plaintiff H.A. at the hands of the foster parents, SCDSS referred the child to the Children's Advocacy Center for a forensic interview to determine if actual abuse was occurring in the Defendant's foster home. Based upon the disclosures made by the child, the child was removed from the foster parent's home and has never gone back. The Plaintiff H.A. disclosed the she was abused at the hands of the foster parents.
15. DSS left the child in the home of these foster parents from 2014 through 2018 and failed to properly supervise and protect the Plaintiff H.A. SCDSS knew or should have known that the Plaintiff H.A. was in danger because of the repeated complaints of abuse by the Plaintiff's guardians and relatives, the disclosures by the minor child, and the foster parents' extensive and negative history with SCDSS. Upon information and belief, multiple reports were made to SCDSS during this time that the minor child was being abused, but SCDSS failed to protect the child. SCDSS employees were willful, wanton, careless indifferent, reckless and grossly negligent in their regards to Plaintiff H.A.'s safety, best interests and welfare.
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- a. The grown child (27-year old son) of the foster parents twisted the minor child's wrist causing bruising and swelling.
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- c. On one occasion, the minor child "tripped over the family dog", causing such a fracture and injury to her arm that she had to have surgery.
- d. The foster parents tortured the child by forcing her to wear diapers to bed and urinate in the diaper when the child was fully potty trained and wearing normal underwear while in the care of her relatives. Rather than being allowed to go the restroom the child was forced to urinate on herself.
- e. The foster-family dog bit the child causing injuries to the child.
- f. The minor child had scratch marks to her private areas; swelling on her face; bruises on her knee cap and temple; and on one occasion, upon information and belief, the child was hit with a hammer. All of these injuries were documented and reported by the minor child's relatives.
- g. The foster parents allowed the other children in the home to be mean to the child.
- h. On several different occasions, the Defendant foster parents refused to allow SCDCSS and/or the child's Guardian *ad litem* access to their home.

- i. Throughout the minor child's placement with Defendant foster parents, each Guardian *ad litem* advocated for this child to be placed with relatives⁴ and often raised concerns about the child being abused by the foster parents.⁵ Despite these facts, SCDSS continued placement of the child with the foster parents. Had the Plaintiffs not stood their ground and advocated for their niece, the foster parents would have adopted a fifth child.
- j. During the entire time the child remained in foster care placement, the child visited with her relatives every single week from Friday through Monday. The Plaintiffs, the foster parents, the Guardian ad litem and SCDSS observed the child cry and beg to not return to the foster parents at each exchange.
- k. The foster parents contacted local and national media after a negative Court of Appeals decision was issued in a separate case involving one of their foster children, while the child that is the subject of this action was still placed in their care. The Dalsings allowed the media to use photos of the foster children they were charged with protecting and the Dalsings also promulgated the children's photos and the issues regarding their foster children all over social media.

FOR A FIRST CAUSE OF ACTION
Negligence

19. The Plaintiffs reallege and incorporate herein all of the relevant and consistent allegations in the foregoing paragraphs as fully as if repeated herein.
20. The Defendants, each of them, owed a duty of care to the said minor child.
21. The acts and/or omissions of the Defendants, as described above, were negligent, grossly negligent, willful, wanton and reckless and were done knowingly and with total disregard for the child's protection.

⁴ There were numerous Guardians ad litem for this child due to the foster parents calling the Central Office in Columbia and having the guardians removed from the case. (See the recommendations from the Guardian ad litem in the year two-thousand and fourteen: "That legal and physical custody be with Darryl and Ann Armstrong on August 27, 2014....If legal and physical custody is not placed with Darryl and Ann Armstrong, that the child be removed from the current foster care placement." All the way through, the Guardians ad litem for this minor child advocated for her to be placed with her relatives.

⁵ See the countless Guardian ad litem reports filed throughout this matter. On one occasion in particular, the Guardian ad litem raised concerns as to whether the young children in the foster home were being watched "as close as they need to be." GAL report, December 4, 2017. p. 4)

22. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, the child and the Plaintiffs have suffered damages as more fully set forth in this Complaint.

FOR A SECOND CAUSE OF ACTION
Gross Negligence Under the South Carolina Tort Claims Act

23. The Plaintiffs reallege and incorporate herein all of the relevant and consistent allegations in the foregoing paragraphs as fully as if repeated herein.

24. The Defendants SCDSS and SCDC A both as an agencies in general and through its employees, agents and servants, owed Plaintiffs a duty, both under the common law as well as a separate, special duty, by statute and regulation. The under the South Carolina Tort Claims Act, Section 15-78-10 et seq. of the Code of Laws of South Carolina 1976, as amended, and the Common Law of South Carolina, SCDSS and SCDC A is liable for its tortious acts and the tortious acts of its employees and agents performed in the scope of their employment.

25. The Defendants, including and an all agents and employees, had a duty to perform its child protective services and foster care placement of children in a professional and competent manner. During all times material to the claims herein, these Defendants' acts and omissions amounted to gross negligence, recklessness and a willful and wanton disregard for the safety and well-being of the Plaintiff H.A. who is a minor child. The reckless, willful and wanton acts of these Defendants include, but are not limited to: Failing to properly investigate the foster home; Leaving the minor child in an abusive foster home for four (4) years; Failing to adequately monitor the foster home placement of the minor child, and providing the proper supervision necessary to protect the minor child from harm; Failing to timely remove the minor child from and abusive foster home.

26. All of the above failures to adequately protect were the direct and proximate cause of the injuries suffered by the Plaintiffs herein, said acts being in violation of the South Carolina Code of Laws and SCDSS/SCDCA policies and procedures.
27. The Plaintiffs allege that each and every failure of the Defendants to protect the minor child constitutes a separate occurrence and delict.
28. That as a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, H.A. suffered mental harm and injury, physical pain, emotional and mental distress, anxiety, depression, and loss of enjoyment of life, all resulting having to suffer through four years of abuse and injuries in a foster home that she should have never been placed in to begin with. This abuse and trauma has and will in the future cause her to spend money for physical and mental health treatment services.

FOR A THIRD CAUSE OF ACTION
Negligence per se

29. The Plaintiffs reallege and incorporate herein all of the relevant and consistent allegations in the foregoing paragraphs as fully as if repeated herein.
30. In addition to the aforementioned negligent and grossly negligent acts, these Defendants violated the provisions of the South Carolina Children's Code, South Carolina Code Ann. Section 63-1-10 *et seq.*
31. These legislative and administrative regulations are designed to protect and prevent injury to the class of persons to which the child belongs.
32. These violations by Defendants and each of them were the proximate cause of the abuse the child endured, along with the child's injuries and resulting damages.

33. These Defendants named herein, all of whom are acting agents of the State of South Carolina Department of Social Services, are bound by the negligence *per se* of the Defendants, individually and severally.

34. Plaintiffs specifically reserve the right to amend their pleadings, and to join additional parties should they find through the process of discovery.

35. Damages:

- a. The Plaintiffs reallege and incorporate herein all of the relevant and consistent allegations in the foregoing paragraphs as fully as if repeated herein.
- b. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness, and wantonness of the Defendants herein, the child suffered numerous painful, severe and grievous injuries to her physical, mental and emotional well-being.
- c. In accordance with South Carolina Code Ann. Section 15-5-90, and as a direct result of the Defendants, and each of them, negligence and gross negligence, the Plaintiffs are informed and believe that they are entitled to judgment against all Defendants for damages incurred such as the following:
 - i. Mental harm and injury,
 - ii. Physical pain;
 - iii. emotional and mental distress,
 - iv. Anxiety, depression, and loss of enjoyment of life
 - v. Grief and sorrow;
 - vi. Loss of companionship;
 - vii. Mental shock and suffering;

viii. Punitive damages;

ix. And other damages yet to be determined.

36. Jury Trial Demanded: Plaintiffs demand a trial by jury as to all issues to the extent permitted by law.

WHEREFORE, Plaintiffs demand a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure (SCRCP), and Plaintiffs pray for judgment against Defendants, for actual and punitive damages, in an amount to be determined by the jury, and for such other and further relief as the Court deems just and proper.

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ATTORNEYS FOR PLAINTIFFS

March 25, 2020
Union, South Carolina



ELECTRONICALLY FILED - 2020 May 20 2:28 PM - UNION - COMMON PLEAS - CASE#2020CP4400104

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2020-CP-44-00104

H.A., by and through her guardians, Jane)
and John Smith, and Jane Smith and John)
Smith, individually,)

Plaintiffs,)

ANSWER, COUNTERCLAIM(S),

AND

THIRD-PARTY COMPLAINT

(By the Dalsings)

-vs-

South Carolina Department of Social)
Services, South Carolina Department of)
Children's Advocacy, Tammy Gaye Causey)
Dalsing and Edward Anthony Dalsing,)

JURY TRIAL DEMANDED

Defendants,)

And)

Tammy Dalsing and Edward Dalsing,)

Third-Party Plaintiffs,)

vs.)

Melinda I. Butler and Stephanie Kitchens,)

Third-Party Defendant.)

Defendants, Edward and Tammy Dalsing, by way of this Answer, Counterclaims and Third-party Complaint, respectfully allege as follows:

1ST DEFENSE: ANSWER

1. All allegations in the Amended Complaint(s) (hereinafter "Complaint"), including the prayer for relief, are denied, unless admitted herein.

2. In response to the allegations of Paragraph 1 of the Complaint, the Dalsings are not obligated to respond to these allegations because they call for legal conclusions. To the extent the Dalsings are obligated to respond to these allegations, they deny these allegations.

3. The Dalsings lack sufficient information to form a belief regarding the allegations of Paragraph 2, and therefore, deny them.

4. The Dalsings lack sufficient information to form a belief regarding the allegations of Paragraph 3, and therefore, deny them.

5. The Dalsings deny the allegations of Paragraph 4 and demand strict proof thereof. Further responding to the allegations of Paragraph 4, the Dalsings would show that if plaintiffs Jane Smith and John Smith were truly concerned with protecting the privacy of the minor child, they would not have filed suit naming the foster parents, who many associate with minor child H.A., who were heavily involved in H.A.'s life for many years, caring for her, parenting her and attempting to adopt her until these false allegations were made to improperly interrupt the adoption process for the personal self-gain of Jane Smith and John Smith.

6. The allegations of Paragraph 5 do not appear to be directed towards the Dalsings, and therefore, no response by the Dalsings appears to be necessary. However, to the extent that any of the allegations of these paragraphs are directed towards the Dalsings, they admit that SCDCSS is an agency of the State of South Carolina, but deny the other allegations contained in this paragraph.

7. The allegations of Paragraph 6 do not appear to be directed towards the Dalsings, and therefore, no response by the Dalsings appears to be necessary. However, to the extent that any of the allegations of these paragraphs are directed towards the Dalsings, they deny the allegations contained in this paragraph.

8. The allegations of Paragraph 7 do not appear to be directed towards the Dalsings, and therefore, no response by the Dalsings appears to be necessary. However, to the extent that any of the allegations of these paragraphs are directed towards the Dalsings, they deny the allegations contained in this paragraph.

9. The Dalsings admit the allegations of Paragraph 8.

10. In response to the allegations of Paragraph 9, the Dalsings are not obligated to respond to these allegations regarding jurisdiction because they call for legal conclusions. To the extent the Dalsings are obligated to respond to these allegations, the Dalsings deny these allegations. Further responding to the allegations of Paragraph 9 regarding venue, pursuant to SC Code Section 15-7-30(C), venue in this case is not proper in Union County, SC, and should be

transferred from Union County to York County. The most substantial part of the facts and events surrounding the allegations made by the Smiths in their Complaint occurred in York County. The Dalsings currently reside in York County and lived there at the time of the facts and events alleged by the Smiths which give rise to the subject Complaint.

11. The Dalsings admit the allegations of Paragraph 10, on information and belief.

12. The Dalsings admit the allegations of Paragraph 11.

13. The Dalsings deny the allegations of Paragraph 12 as stated and demand strict proof thereof. Further responding to the allegations of Paragraph 12, the Dalsings would show the following: That at a hearing on February 19, 2014, the Family Court ordered a permanent plan for the child of termination of parental rights ("TPR") and adoption, concurrent with reunification of the child with the parents; that at the time of the June 4, 2014 hearing neither parent had provided support for the child or complied with their treatment plans; and that the South Carolina Supreme Court subsequently ruled that defendants had standing to seek TPR and Adoption of the subject child in SCDSS custody, and further ruled that the clear mandate of the legislature set out in SC Code Section 63-1-20(D) is that when a child in SCDSS custody is not being returned to the biological parents, that adoption is the preferred permanent setting for the child, and not nonadoptive relative placement.

14. The Dalsings deny the allegations of Paragraph 13. Further responding to the allegations of Paragraph 13, the Dalsings would show that if H.A. suffered any physical and/or emotional abuse, it was at the hands of Jane Smith and John Smith, who are trying to hide their true identities from the Court and the world, and by Melinda Butler, Stephanie Kitchens and others, and not by the Dalsings. The allegations against the Dalsings for abuse or neglect contained in this Complaint were fabricated by the Smiths, Melinda Butler and Stephanie Kitchens, in their wrongful and bad faith efforts to improperly manipulate the system to gain placement of H.A. Further, through this lawsuit, the Smiths attempt to obtain fraudulent financial gain and to bring further harm to the Dalsings and other defendants.

15. The Dalsings deny the allegations of Paragraph 14. Further responding to the allegations of Paragraph 14, the Dalsings would show that if H.A. suffered any physical and/or emotional abuse, it was at the hands of Jane Smith and John Smith, who are trying to hide their true identities from the Court and the world, and by Melinda Butler, Stephanie Kitchens and

others, and not by the Dalsings. The allegations against the Dalsings for abuse or neglect contained in this Complaint were fabricated by the Smiths, Melinda Butler and Stephanie Kitchens,, in their wrongful and bad faith efforts to improperly manipulate the system to gain placement of H.A. Further, through this lawsuit, the Smiths attempt to obtain fraudulent financial gain and to bring further harm to the Dalsings and other defendants.

16. The Dalsings deny the allegations of Paragraph 15 and demand strict proof thereof.

17. The Dalsings deny the allegations of Paragraph 16 and demand strict proof thereof.

18. The Dalsings deny the allegations of Paragraph 17 and demand strict proof thereof.

19. The Dalsings deny the allegations of Paragraph 18, including all subparts contained therein, and demand strict proof thereof. Any factual matters alleged in Paragraph 18 are so grossly misstated and erroneous that the Dalsings are not able to intelligently respond, except to deny the allegations and demand strict proof thereof. Further responding to the allegations of Paragraph 18, the Dalsings would show:

a. Their son did not twist H.A.'s wrist causing bruising and swelling.

b. The child first broke her arm on Friday, December 25, 2015, in the home and care of the Smiths, and the Smiths did not take H.A. for medical treatment until December 27, 2015. The Smiths and Melinda Butler have repeatedly and in bad faith failed to acknowledge this fact, and made false representations to SCDSS, to this Court in this Complaint, to the Family Court and to others. Regarding the other two broken arms, which happened while the child was in the Dalsings home, the Dalsings had promptly sought medical care for the child and promptly reported the same to SCDSS; and SCDSS had properly investigated and found no fault by the Dalsings. Details on these two incidents are as follows:

(1) On May 19, 2016, the child was climbing over a baby gate at the Dalsings' home, when she fell and broke a bone in her LEFT elbow. The Dalsings immediately took her to emergency care and notified SCDSS. The child was also seen the following day by her regular pediatrician, Dr. Ayodele. She had all proper medical care and treatment and had a good result.

(2) On March 9, 2018, the child was playing and tripped over the Dalsings' dog, Biscuit, fell, breaking a bone in her RIGHT elbow. The Dalsings immediately took her for emergency care and notified SCDSS. Her medical care included a pin being surgically installed in the bone on March 15, 2018. She had all proper medical care and treatment and had a good result.

c. The Dalsings did not torture H.A. by forcing her to wear diapers to bed. H.A. was having issues with bed-wetting and, at the recommendation of H.A.'s healthcare providers, pullups were used only at night to help her through this difficult time.

20. Insofar as the allegations of Paragraph 19 require a response, the Dalsings reallege and incorporate by reference their prior answers and allegations as if fully repeated verbatim herein.

21. The Dalsings admit the allegations of Paragraph 20.

22. The Dalsings deny the allegations of Paragraph 21 and demand strict proof thereof.

23. The Dalsings deny the allegations of Paragraph 22 and demand strict proof thereof.

24. Insofar as the allegations of Paragraph 23 require a response, the Dalsings reallege and incorporate by reference their prior answers and allegations as if fully repeated verbatim herein.

25. The allegations of Paragraph 24 do not appear to be directed towards the Dalsings, and therefore, no response by the Dalsings appears to be necessary.

26. The allegations of Paragraph 25 do not appear to be directed towards the Dalsings, and therefore, no response by the Dalsings appears to be necessary.

27. The allegations of Paragraph 26 do not appear to be directed towards the Dalsings, and therefore, no response by the Dalsings appears to be necessary.

28. The allegations of Paragraph 27 do not appear to be directed towards the Dalsings, and therefore, no response by the Dalsings appears to be necessary.

29. The allegations of Paragraph 28 do not appear to be directed towards the Dalsings, and therefore, no response by the Dalsings appears to be necessary. However, to the extent that any of the allegations of these paragraphs are directed towards the Dalsings, they deny the

allegations contained in this paragraph.

30. Insofar as the allegations of Paragraph 29 require a response, the Dalsings reallege and incorporate by reference their prior answers and allegations as if fully repeated verbatim herein.

31. The Dalsings deny the allegations of Paragraph 30 as the allegations may relate to them, and demand strict proof thereof.

32. The Dalsings admit the allegations of Paragraph 31.

33. The Dalsings deny the allegations of Paragraph 32 as the allegations may relate to them, and demand strict proof thereof.

34. The Dalsings deny the allegations of Paragraph 33 and demand strict proof thereof.

35. The Dalsings deny the allegations of Paragraph 34 and demand strict proof thereof.

36. The Dalsings deny the allegations of Paragraph 35, including all subparts contained therein, and demand strict proof thereof.

37. The Dalsings admit the allegations of Paragraph 36 and also demand a trial by jury.

2ND DEFENSE

(Res Judicata, Issue Preclusion, Judicial Estoppel; including prior attorney's fees and costs)

38. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

39. On information and belief, based upon the legal and equitable doctrines of Res Judicata, Issue Preclusion and Judicial Estoppel, the findings, conclusions, rulings and orders in the aforementioned Family Court actions involving the child, which were not modified by subsequent order or appeal, are, for the purpose of this present action brought by the plaintiffs, final and binding upon the parties included in and subject to the above referenced Family Court actions.

40. **All Family Court cases involving this child and parties have ended and no party made required submission for attorney's fees:** On information and belief, all of the above referenced Family Court actions involving the child and the parties (SCDSS Removal

Action; SCDSS TPR Action; Dalsings' TPR and Adoption Action; and Smiths' Adoption Action) have ended.

a. On information and belief, before the cases ended, no party perfected the legal requirements needed to pursue or preserve any claim for attorney's fees against any other party.

b. On information and belief, the SCDSS Removal Action ended shortly after the Smiths' Adoption Action.

c. On information and belief, at the time the SCDSS Removal Action ended, the Smiths's adoption of the child had been granted; SCDSS was no longer the child's legal custodian; and the Smiths were the legal parents of the child.

41. Wherefore, under the principles of res judicata, issue preclusion and judicial estoppel, any potential claim which the Smiths may have had to seek the payment of attorney's fees and costs from any party to these actions, including any claim for attorneys fees and costs which the Smiths may have had as the legal parents of the child, ended when the cases ended, and should be dismissed and excluded from this action.

42. Based upon principles of equity, should this Court find it proper to submit to jury (trier of fact) the issue of plaintiffs' claim for attorney's fees and costs for matters rising in and during the aforementioned Family Court actions involving the child, then the Dalsings should not be precluded by this defense from seeking an award of attorney's fees and costs against the Smiths, Melinda Butler and Stephanie Kitchens, jointly and severally.

3RD DEFENSE

(Greater fault of plaintiffs)

43. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

44. The Dalsings allege that even assuming they were negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on their part operated as a proximate cause of the alleged wrongful conduct and occurrence(s) and plaintiffs' resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that plaintiffs' negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the alleged wrongful conduct and

occurrence(s) and plaintiffs' resulting injuries and damages, if any; and that the Dalsings have no liability to the plaintiffs.

4TH DEFENSE

(Intervening acts and omissions of others)

45. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

46. The Dalsings allege that, even if they were negligent or reckless in any respects, which is expressly denied, and admitted solely for the purpose of this defense and no other, they are not liable to the plaintiffs for the resulting damages of the plaintiffs, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts and omissions of the plaintiffs, Melinda Butler, Stephanie Kitchens, other Defendants, and/or others not presently parties, jointly and severally, which were not reasonably foreseeable and which intervened and acted as a direct and proximate cause of the injuries and damages, if any, sustained by the plaintiffs, or any of them; and that the Dalsings have no liability to the plaintiffs.

5TH DEFENSE

(Superseding acts and omissions of others)

47. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

48. The Dalsings allege that the plaintiffs' injuries and damages, if any, were caused by the superseding negligent, grossly negligent, reckless, willful, wanton and intentional acts and omissions of the plaintiffs, Melinda Butler, Stephanie Kitchens, other Defendants, and/or others not presently parties, jointly and severally; and that the Dalsings have no liability to the plaintiffs.

6TH DEFENSE

(Reduction and setoff for contributing fault and payments of others)

49. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

50. The Dalsings allege that even if they were negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on their part operated as a greater than 50% cause of any allegation of wrongdoing, abuse or neglect, that they

are entitled to the following:

a. The Dalsings are entitled to a determination as to the percentage which the negligent, grossly negligent, reckless, willful and wanton conduct of Jane Smith, John Smith, Melinda Butler, Stephanie Kitchens, other Defendants, and/or others not presently parties, jointly and severally, contributed to the cause and resulting damages;

b. Liability should be apportioned pursuant to the procedure established by SC Code Section 15-38-15 between the Dalsings, the plaintiffs, Melinda Butler, Stephanie Kitchens, codefendants, and/or others who are not named parties in this action, and liability for damages should be allocated between these parties and persons by the percentage of comparative negligence attributable to each; and

51. Pursuant to SC Code Section 15-38-15 and other applicable law, the Dalsings are entitled to a reduction and setoff in any amounts which may be paid by others, whether parties herein or other persons, toward the settlement of the claims set out herein, or for claims which could have been included in this action.

7TH DEFENSE

(Dalsings' Deny Liability to Child. Intervening, Superseding, and Principal Liability of Others)

52. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

53. From August 2013, when the child was 8 months old, until June 11, 2018, when she was 5 years old and was removed from the Dalsings' home, the child had grown up as a loved, cherished and fully participating member of the Dalsing family, which included other children both younger and older than she was.

54. On information and belief, the Smiths, Melinda Butler and Stephanie Kitchens knew, or in the exercise of due care, should have known that their above referenced wrongful acts and omissions would cause harm to the child, and could reasonably be expected to cause her harm, as set out in this pleading, and including any other harm to the child which the Smiths allege in their Complaint.

55. The injuries to the child were the direct and proximate result of and were caused and occasioned by the negligent, gross negligent, reckless, willful, wanton, malicious, bad faith and/or intentional acts and omissions of Jane Smith, John Smith, Melinda Butler and Stephanie

Kitchens, jointly and severally, in one or more of the following particulars:

a. In making false and misleading reports, statements and allegations to the child that caused her to have concerns that she was being harmed by the Dalsing family, that she was not and could not be a part of the Dalsing family, that she was disliked by the Dalsing family, that she could not trust the Dalsing family, and that members of the Dalsing family were being mean to her.

b. By causing the child to experience mental fear, anguish, stress, confusion, embarrassment, mortification, shame, depression, physical pain, assault, battery and the like, which resulted from the following:

(1) The Smiths' repeated body inspections of the child for over four years, making photographs of the child with her clothing removed, showing and distributing said photographs to others, and causing the child fear that she was going to be hurt or further embarrassed;

(2) Causing the child, at 5 years old, to unnecessarily undergo forensic questioning and investigations; and

(3) Causing the child to unnecessarily anticipate and undergo an invasive vaginal examination, resulting in assault and battery against the child.

c. By making statements to the child and providing instruction to the child which were intended to and/or which had the effect of alienating the affections of the child away from the close, loving and intimate relationship which she had developed with the Dalsings and the members of the Dalsing family.

d. On information and belief, by making and allowing statements to be made, in the presence and hearing of the child, which were derogatory toward the Dalsings and members of the Dalsing family, including, but not limited to the following statements which, on information and belief, were made by Jane Smith in the child's presence, on one or more occasions:

- (1) Referring to Tammy Dalsing as "monster mommy,"
- (2) Telling the child that Tammy Dalsing "hurts" her,
- (3) Telling the child that the Dalsing children "hurt" her,
- (4) Telling the child that the Dalsing children are "mean" to her,

(5) Making this threatening sounding statement about Tammy Dalsing:
“I’ll get you next time.”

e. On information and belief, instructing the child to keep secrets about the Smiths and about what happens when she is at the Smiths’ home and care, and to not discuss or disclose these matters with professional counselor(s), who were attempting to provide services to assist the child, thereby hindering the counselor(s) in providing the child with proper services and help.

f. In unreasonably delaying medical evaluation and treatment for the child, when she had fallen at the Smiths’ home on Friday, December 25, 2015, and had broken her right arm (at elbow), when the Smiths knew, or in the exercise of due care should have known of the injury and should have promptly secured medical care for the child. The Smiths waited until Sunday, December 27, 2015, before taking the child for medical treatment at Union Medical Center Emergency Department. On information and belief, the delay caused the child to experience additional pain and suffering which would have been eliminated had medical care been promptly and reasonably provided.

g. In making false and misleading allegations of wrongful acts and neglect by the Dalsings and by members of the Dalsing family to SCDSS, to the Court, to the child and to others; and making false reports to SCDSS in violation of SC Code Section 63-7-440.

h. In wrongfully providing to each other, to the child, and to others, confidential information about the Dalsings and members of their family, including confidential information from other court actions and proceedings involving the Dalsings and other children, in violation of applicable rules requiring confidentiality; including, but not limited to the confidentiality provisions of SC Code Sections 63-7-330, 63-7-940, 63-7-1990, 63-7-2600, 63-9-780 and 63-11-550.

i. In abusing the legal process, including the reporting and investigation process of SCDSS for abuse and neglect cases, by making false, repeated, unwarranted, excessive, exaggerated and/or misleading reports of wrongful acts and neglect by the Dalsings and by members of the Dalsing family to SCDSS, to the Court, to the child, and to others assisting in the legal process; and making false reports to SCDSS in violation of SC Code Sections 63-7-430 and 63-7-440.

j. In colluding and conspiring among themselves and others to engage in the wrongful and abusive conduct described in this pleading, with the plan and intent to injure the child by casting the Dalsings and members of their family in a negative light; by alienate the affections of the child away from the close, loving and intimate relationship which the child had developed with the Dalsings and the members of the Dalsing family; and by causing the child to be removed from the Dalsings care.

k. And in such other wrongful acts and/or omissions as may be established during discovery, or before trial, or during trial.

56. As a direct and proximate result of the negligent, gross negligent, reckless, willful, wanton, malicious, bad faith and/or intentional acts and omissions on the part of Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, in one or more of the particulars set forth above, the child likely suffered injuries which include but are not limited to the following:

- a. Mental and emotional injury, pain, anguish, discomfort, embarrassment, mortification and impairment, past and future;
- b. Physical pain and injury;
- c. Loss of enjoyment of life;
- d. Alienation and loss of her close, caring, intimate and loving affections and relationship she had developed with the Dalsings and the other members of the Dalsing family, past and future.

57. The Dalsings love the child and desire for her the very best life possible. They deny that they have engaged in any wrongful acts or omissions which caused her any harm or injury, and have no liability to the Smiths or to the child.

58. The child's injuries and damages, if any, were caused by the intervening and superseding acts and omissions of Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, along with any wrongful acts and omissions which the court may attribute to others.

8TH DEFENSE

(South Carolina Tort Claims Act, limits and exceptions from liability)

59. All the above allegations, not inconsistent herewith, are realleged as if set out

verbatim in this section.

60. At all times relevant hereto, the Dalsings were serving as foster parents for SCDSS, and who were licensed, trained, regulated and directed by SCDSS.

61. The Dalsings, by virtue of their service as foster parents for SCDSS, allege any and all limitations of liability provided to them by SC Code Section 15-78-10, et seq, the South Carolina Tort Claims Act, and specifically including all exceptions from liability and limits of liability set out therein, including, but not limited to the following:

a. The exceptions from liability and limits of liability found in SC Code Sections 15-78-60, 15-78-70, 15-78-110 and 15-78-120;

b. The facts and allegations against the Dalsings in the Complaint do not fall within the definition of “occurrence” as provided in SC Code Section 15-78-30(g);

c. The facts and allegations against the Dalsings in the Complaint do not fall within the definition of “loss” as provided in SC Code Section 15-78-30(f);

62. Based upon the above defenses, the Dalsings have no personal liability to the plaintiffs.

9TH DEFENSE

(Equitable defenses of waiver, estoppel, laches and unclean hands)

63. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

64. The Dalsings hereby plead the equitable doctrines of waiver, estoppel, laches and unclean hands as affirmative defenses to the plaintiffs' allegations, based upon the following:

a. The wrongful and bad faith acts and omissions of plaintiffs, jointly and severally, and in combination, collusion and conspiracy with the wrongful and bad faith acts and omissions of Melinda Butler, Stephanie Kitchens and others; and

b. The Smiths's failure to pursue in the aforementioned Family Court actions any claims for relief which they may have properly had against the Dalsings.

65. Based upon these equitable defenses, the plaintiffs should be denied the opportunity to seek any relief against the Dalsings.

10TH DEFENSE

(The Smiths' lack of standing to bring claim for H.A.)

66. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

67. The Dalsings submit that plaintiffs' Complaint fails, in whole or in part, because Jane Smith and John Smith, acknowledged to be Darryl Armstrong and Ann Armstrong in footnote 4 of the plaintiffs' Complaint, and who are the adoptive parents for H.A., lack standing to prosecute this action, specifically on behalf of minor H.A., based upon the following:

a. The wrongful and bad faith acts and omissions of Jane Smith and John Smith, jointly and severally, and in combination, collusion and conspiracy with the wrongful and bad faith acts and omissions of Melinda Butler, Stephanie Kitchens and others; which proximately caused and contributed to any injuries and damages which the child may have suffered; and

b. The Smiths, as having caused and contributed to any injuries and damages which the child may have suffered in this matter, should be precluded from any participation in the bringing and prosecuting of any claims on behalf of the child; and further, should be precluded from having any benefit, oversight or control for any funds to which the child may be eligible in this matter.

68. Based upon the Smiths' lack of standing to bring and prosecute this action on behalf of the child, the plaintiffs should be denied the opportunity to seek any relief against the Dalsings.

11TH DEFENSE

(South Carolina Children's Code limits and exceptions from liability)

69. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

70. The Dalsings allege any and all immunities, exceptions, defenses and/or protections from liability set forth in the South Carolina Children's Code, SC Code Section 63-1-10, et seq., and otherwise pertaining to the Dalsings' as foster care providers for the child, and/or which may relate to plaintiffs' claims against them herein.

12TH DEFENSE

(Constitutional challenge against punitive damages)

71. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

72. The Dalsings would show, upon information and belief, that the plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments of the Constitution of the United States of America and that it violates the double jeopardy clause in that the Dalsings could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because the Dalsings can be compelled to give testimony against themselves in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; plaintiffs' claim for punitive damages violates the Dalsings' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments, because the threat of an award of punitive damages chills the Dalsings' exercise of that right; the plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the plaintiffs' claim for punitive damages should be dismissed.

73. The Dalsings would raise the protections of the South Carolina Fairness in Civil Justice Act of 2011, codified as S.C. Code Ann. §15-32-510, et seq., and would show that the plaintiffs' claim for punitive damages should be barred, capped, or reduced in a bifurcated trial pursuant said Act or other similar statutes or limitations.

74. Based upon principles of equity, should this Court find it proper to submit to jury (trier of fact) the issue of plaintiffs' claim for punitive damages, then the Dalsings should not be precluded by this defense from seeking an award of punitive damages against the Smiths, Melinda Butler and Stephanie Kitchens, jointly and severally.

13TH DEFENSE

(Dalsings' Bankruptcy bar to plaintiffs' claims)

75. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

76. The Dalsings assert that the plaintiffs' claims are, or may be, barred and/or discharged by the Dalsings' filing for bankruptcy, as reflected in case no. 7:2019-bk-05767 (scb).

14TH DEFENSE

(Adoption of defenses of other Defendants; addition of future defenses)

77. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

78. The Dalsings allege any and all defenses asserted by any other parties to this action to the extent applicable. The Dalsings also reserve the right to amend this Answer, Counterclaims and Third-Party claims at a later date and time to assert any additional defenses and claims that may be revealed through written discovery, depositions, or otherwise in this case.

15TH DEFENSE

(Statute of Limitations)

79. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

80. The Plaintiffs' claims are or may be barred by applicable statutes of limitations, statutes of repose and/or the equitable doctrine of laches, and the Dalsings claim the protections provided by the same.

16TH DEFENSE

(Improper Venue)

81. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

82. Venue in this case is not proper in Union County, SC.

83. Pursuant to SC Code Section 15-7-30(C), venue in this case should be transferred from Union County to York County.

84. The most substantial part of the facts and events surrounding the allegations made by the Smiths in their Complaint occurred in York County.

85. The Dalsings currently reside in York County and lived there at the time of the facts and events alleged by the Smiths which give rise to the subject Complaint.

86. York County is not inconvenient to any of the parties.

**GENERAL ALLEGATIONS PERTAINING TO DEFENSES, COUNTERCLAIMS
AND THIRD-PARTY COMPLAINT**

87. **Information on the Parties and Third-Party Defendants:**

- a. Defendants, Edward and Tammy Dalsing (“Dalsings” or “defendants” or “defendant Dalsings” or “Third-Party Plaintiffs”) are residents of York County, SC.
- b. Plaintiffs H.A. (“the child”), Jane Smith and John Smith (“Plaintiffs” or “Smiths”), are residents of Union County, SC. The names “Jane Smith” and “John Smith” are fictitious names by which the Smiths have identified themselves in this action. The Smiths are the adoptive parents of the child.
- c. Third-Party Defendants, Melinda Butler and Stephanie Kitchens (“Third-Party Defendants”), are, on information and belief, residents of Union County, SC. The Third-Party Defendants are being included as parties by the Dalsings, based upon the claims set out herein.

88. **Jurisdiction and Venue:** As set out above, pursuant to SC Code Section 15-7-30(C), venue in this case is not proper in Union County, SC, and should be transferred from Union County to York County.

- a. The most substantial part of the facts and events surrounding the allegations made by the Smiths in their Complaint occurred in York County.
- b. The Dalsings currently reside in York County and lived there at the time of the facts and events alleged by the Smiths which give rise to the subject Complaint.
- c. York County is not inconvenient to any of the parties.

89. **Harm to child and removal from biological parents:** When the child (H.A.) was 8 months old, law enforcement took her into emergency protective custody after discovering an active methamphetamine lab at the home of H.A.’s biological parents, in Union, SC.

- a. The report of the child’s Guardian ad litem from the Family Court hearing of September 18, 2013, contained the following description of the of what law enforcement found:

“The Union County Sheriffs Office issued a search warrant on the home of Ms. Boulware and John Stafford on August 27, 2013 at 10am, finding two plastic bottles in the back yard containing meth, Harmony was asleep in the living room in her playpen, Ms. Boulware was asleep in the bedroom, there was a coffee can in the house that had meth inside, on the coffee table was a handmade pipe and substance that looked to be marijuana. Harmony was severely sunburned on her legs, had an advanced case of diaper rash and

several insect bites to her face, legs and ankles. She smelled as if she had not had a bath in days. Her hair appeared matted and brittle, there was wax oozing from her ears and there was congestion coated inside of her nostrils causing breathing difficulties.”

b. The following day, August 28, 2013, SCDSS, Union County Office, initiated a legal action (“SCDSS Removal Action”) and the Family Court issued an Order placing the child into the legal custody of SCDSS. Drug testing found that the child to be positive for cocaine, methamphetamine, benzoylecgonine and marijuana in her system.

c. The child was immediately placed in foster care with the Dalsings, who were foster parents licensed by SCDSS. The Dalsings resided in York County, SC. The Dalsings had been foster parents with SCDSS since 2009, had fostered nine other children for SCDSS, and had adopted two children through SCDSS adoptions. The child remained in foster care with the Dalsings for the next four years, ten months, until June 11, 2018.

d. On October 9, 2013, the Family Court issued an Order finding that the child was placed in substantial risk of physical neglect by the biological parents based upon the following findings:

“[T]hat law enforcement discovered an active methamphetamine lab outside the home of Allyssa Boulware and John Stafford, and as a result, the eight (8) month old child.... The SCDSS caseworker assigned to this case observed that the minor child’s arms and legs were sunburned, that she had hardened dry mucous on her nose, and that she had what appeared to be bite marks on her arms, legs, neck and scalp. The minor child was transported to Wallace Thomson Hospital where the physician observed a severe diaper rash. It appeared that [the child] had been allowed to sit in soiled diapers for extended periods of time causing sores on the child’s bottom. The child’s hair was dry and brittle and appeared to be chemically singed.”

90. **DSS efforts to locate relatives of child willing to take placement of child:** On information and belief, SCDSS made a diligent and good faith effort to locate family member of the biological parents who could take custody of the child while the biological parents worked on their treatment plan and sought return of the child to their custody. On information and belief, DSS sent inquiry letters to approximately 16 different family members of the biological family. Several relatives expressed interest in caring for the child, but could not pass a background safety investigation. Despite the efforts of SCDSS, no relatives who were fit and proper to receive placement of the child could be located or came forward, and the child remained in foster care with the Dalsings.

91. **November 6, 2013 Hearing - Child continued in SCDSS foster care; biological parents on Abuse and Neglect Registry:** On November 6, 2013, the Family Court adopted the agreement between the biological parents and SCDSS for the child to remain in SCDSS foster, for a finding of abuse and neglect against the parents, and for names of the biological parents to be placed on the statewide Central Registry of Child Abuse and Neglect.

92. **FCRB recommends termination of parental rights and adoption:** On January 21, 2014, the South Carolina Foster Care Review Board (“FCRB,” now named “South Carolina Department of Children's Advocacy,” which is a Defendant herein) met and recommended to the Family Court and to SCDSS that the parental rights of the biological parents be terminated and for the child to be adopted within the next six months.

a. **Statutory Duties of FCRB:** SC Code Section 63-11-720, titled “Functions and powers of local boards,” provides under subsection (A) that the functions and powers of local foster care review boards include the following:

”(1) to review once every six months the cases of children who have resided in public foster care for a period of more than four consecutive months to determine what efforts have been made by the supervising agency or child caring facility to acquire a permanent home for the child...;

(2) ...submit written reports and recommendations to the court concerning the case, which shall be addressed on the record by the court at the next permanency planning hearing...;

*(3) to encourage the return of children to their natural parents, or, upon determination during a case review of the local review board that this return is not in the best interest of the child, to recommend to the appropriate agency action be taken for a **maximum effort to place the child for adoption;***

*(4) to promote and encourage all agencies and facilities involved in placing children in foster care **to place children with persons suitable and eligible as adoptive parents;***

*(5) to advise foster parents of their **right** to petition the family court for termination of parental rights and for adoption and to encourage these foster parents to initiate these proceedings in an appropriate case when it has been determined by the local review board that return to the natural parent is not in the best interest of the child;*

*(6) to recommend that a child caring facility or agency exert all possible efforts to make arrangements for permanent foster care or guardianship for children for whom return to natural parents **or adoption is not feasible or possible** as determined during a case review by the local review board.” (Emphasis added).*

93. **February 19, 2014 Hearing - Family Court adopts plan for child of TPR and**

adoption if child is not returned to biological parents: At a court hearing in the SCDSS Removal Action held on February 19, 2014, SCDSS recommended termination of parental rights (“TPR”) and adoption, concurrent with reunification, as being in the child’s best interests. The Family Court issued an Order from the hearing with the following ruling: “*The permanent plan for termination of parental rights and adoption with a concurrent plan of reunification with the defendant parents is in this child's best interest and is approved by this Court.*” The Court’s Order also provided as follows:

“The defendants, Allyssa Boulware and John Stafford have not complied with the plan in the following ways; On December 4, 2013 both of the defendants stopped attending drug and alcohol abuse classes at Union County Commission on Alcohol and Drug Abuse Center. Allyssa Boulware was arrested for DUI and open container on December 6, 2013 and on December 16, 2013, both defendants were arrested for possession of methamphetamines.... [and] The defendants, Allyssa M. Boulware and John A. Stafford, have not supported the minor child.”

94. **SCDSS begins adoption planning for child - Dalsings apply to adopt:** On information and belief, by January 2014, SCDSS had started adoption planning for the child, and had asked the Dalsings if they were interested in adopting the child. The Dalsings said “yes” and promptly moved forward by making written application for adoption of the child with SCDSS Regional Adoption Office, and by meeting with a SCDSS adoption planning worker on January 17, 2014.

95. **Child in foster care for nine months before the Smiths appeared in case:** On information and belief, John Smith is the uncle of the child’s biological father. On information and belief, John Smith represents that he was raised in the same home as the biological father, and grew up with the biological father.

a. On information and belief, the Smiths did not initiate contact with SCDSS to seek placement of the child, but were contacted by SCDSS in or around May 2014 to inquire if they would be interested in receiving placement of the child.

b. On information and belief, prior to this contact by SCDSS, the Smiths represent that they did not know the child was in SCDSS care and that they had only seen the child one time when they saw the biological father and the child in the local Walmart.

96. **SCDSS informs the Dalsings of proposed relative custody:** On Saturday, May 31, 2014, SCDSS County Office caseworker informed the Dalsings that SCDSS County staff had

found relatives of the child who were willing to receive custody of the child, and that SCDSS would be removing the child from the Dalsings' care at the upcoming Family Court hearing on Wednesday, June 4, 2014.

a. The Dalsings expressed to the SCDSS caseworker their surprise and shock at this news, and expressed that they had understood that the permanent plan for the child was TPR and adoption, and that they had applied with SCDSS to adopt the child.

b. On information and belief, SCDSS Regulation 114-140 provides that where a foster child has remained in the same foster home for 120 days more, SCDSS is required to give the foster parents 10 days advance written notice of any plan by SCDSS to move the child from the foster parents' home. The Regulation also provides that the foster parents may appeal the proposed removal and that during the appeal time the child is to remain in their home.

97. **The Dalsings appealed removal; sought to intervene in DSS Removal Action; and sought TPR and Adoption of child:** The Dalsings promptly contacted an attorney who assisted them with accomplishing the following before the June 4, 2014 Family Court hearing: The Dalsings served SCDSS with the written appeal under Regulation 114-140, protesting the removal of the child from their care; filed with the Family Court and served on SCDSS their own legal action seeking TPR, adoption and custody of the child, as the child's psychological parents; and filed and served on SCDSS their motion to intervene in the SCDSS Removal Action.

98. **June 4, 2014 Hearing - visitation with the Smiths authorized:** At the June 4, 2014 hearing in the DSS Removal Action, the Court Order provided that SCDSS sought court approval "to place the minor child with relatives for the purpose of giving the parents more time to work on the SCDSS Treatment Plan...The Court raised concerns about the appropriateness of moving the minor child from foster placement to another home....The Guardian *ad Litem* [Jennifer Cooper] offered testimony that the foster parents had done a great job and the minor child has bonded with the foster parents." The Order maintained the child in DSS custody, found that the child's current placement to be "safe, appropriate and in the best interests of the minor child," and also provide that "[t]he proposed relatives... are not required but shall be permitted unsupervised weekend visitation with the minor child, to be arranged and coordinated by SCDSS." SCDSS objected to the Court hearing the Dalsings' Motion to Intervene, because they had not served it 10 days before the June 4th hearing. The Court scheduled the motion to be heard on July 16, 2104.

99. **Child's visitation with Smiths begins - continues for over four years:** On Friday afternoon, June 6, 2014, SCDSS County staff caseworker and Stephanie Kitchens, who was serving as the supervisor for the Union County Guardian ad Litem program, came to the Dalsings' home and took the child from the Dalsing home in York County and drove the child to Plaintiffs' home in Union, approximately an hour drive, where the child remained until Monday morning. On Monday morning, SCDSS staff went to Plaintiffs' home and picked up the child and returned her to the Dalsings' home. SCDSS continued the every "Friday to Monday" visitation with Plaintiffs for virtually every weekend for the next four years.

100. **July 9, 2014 GAL Report:** On July 9, 2014, Jennifer Cooper was serving as the Guardian ad litem ("GAL") for the child, along with Stephanie Cooper, who was also the Union County GAL Coordinator.

a. The GAL report for July 9, 2014 includes the following statements: "[H.A.] *is doing well in the current foster placement.... She is making progress in therapy, and has adjusted well to the foster home.... The foster parents have provided excellent care to [H.A].*"

b. In responding to questions about the July 9, 2014 GAL report, GAL Jennifer Cooper explained at a deposition held on January 9, 2015, that it was Stephanie Kitchens, and not Ms. Cooper, that had included the following recommendation in the July 9, 2014 GAL report: "*If legal and physical custody is not placed with [John and Jane Smith], that the child be removed from current foster care placement.*"

101. **July 16, 2014 Hearing - Court grants Dalsings' intervention in DSS Removal Action:** At the hearing on July 16, 2014, the Family Court considered the Dalsings' Motion to Intervene in the SCDSS Removal Action and the request of SCDSS to change the permanent plan to relative custody.

a. The Court granted intervention by the Dalsings, stating: "*Based on the record, the oral and written arguments of counsel, and the best interests of the child, I grant the Dalsing's Motion to Intervene and add them as parties in this matter, giving them a seat at the table. The case caption shall list them as "Intervenors, Edward and Tammy Dalsing."*"

b. The Court denied the motion by SCDSS to change the permanent plan to relative custody with the Smiths, and ruled that "*[t]he permanent plan Ordered by the Court in February 2014 remains the permanent plan in this matter.*"

102. **August 27, 2014 Hearing - Court grants Smiths' intervention in DSS Removal**

Action: At a hearing held on August 27, 2014, Plaintiffs were added as intervening parties in the SCDSS Removal Action.

103. **Melinda Butler begins representing the Smiths:** On information and belief, sometime around July through September 2014, the Smiths met with attorney Melinda Butler regarding representing them in this case. Ms. Butler first began representing Jane Smith, and then subsequently began representing John Smith as well.

104. **Visitation issues:** When the every-Fridays visits began and the DSS worker would come to the Dalsings' home to pick up the child and transport her to the Smiths' home, the child would scream and cry and cling to the Dalsings, and the Dalsings would try to soothe the child.

a. **SCDSS directions to the Dalsings:** As the child's response to leaving the Dalsing home continued to occur each Friday, SCDSS then directed the Dalsings to just hand the child to the SCDSS worker and then walk away without saying anything or otherwise trying to soothe the child. The Dalsings complied with the directions of SCDSS.

b. **The Smiths' inspection of child:** On information and belief, every-Friday when the child arrived at Plaintiffs' home, Plaintiffs would remove the child's clothing and would closely inspect the child, searching for and taking pictures of anything observed on the child, such as a mark, scratch or scrape, and would report the same to SCDSS as a complaint against the Dalsings.

c. **Dalsings' efforts to help child with stress from recurring visits:** The child exhibited signs of significant stress and confusion throughout the four year of the every-weekend visits, both before leaving for the visit and after returning. In an effort to try and reduce the child's stress, the Dalsings tried various things to try and help the child and reduce her stress, including, but not limited to, the following:

(1) Helping the child have ample advance notice of the upcoming Friday pick up by SCDSS, and giving her assurances that they would be there when she returned on Monday;

(2) Sending a favorite toy or stuffed animal, and her favorite pink suitcase with her to the visits, until they learned that the Smiths would not allow the child to have these things at their house;

(3) For a long period of time, Tammy Dalsing would drive the child to Union for the visit on Fridays, and would drove back to Union to pick the child up on Mondays; and

(4) They began making requests to SCDSS for the child to have counseling (therapy) to help with her stress and to help the Dalsings know better how to help the child, and worked with SCDSS to secure such counseling

105. **The Smiths begin photographing child and making reports against the Dalsings to SCDSS:** On information and belief, when the child arrived at the Smiths' home on Friday, June 6, 2014, pictures were taken of the child and were provided to SCDSS with allegations being made against the Dalsings for abuse or neglect.

a. On information and belief, Plaintiffs' every-Friday inspection and photographing of the child, and reporting complaints against the Dalsings to SCDSS were done with the knowledge, encouragement and counsel of Melinda Butler and Stephanie Kitchens.

b. **Reports against Dalsings made in bad faith:** On information and belief, Plaintiffs' every-Friday inspection and photographing of the child, and reporting complaints against the Dalsings to SCDSS, were in large part done in bad faith and with the primary motivation of Plaintiffs and Stephanie Kitchens and Melinda Butler to cast the Dalsings in a negative light and to cause the child to be removed from the Dalsings' care, and to secure placement of the child with Plaintiffs.

c. Over the four years of every-weekend visitation, Plaintiffs took over 180 photos of the child's body, without the covering of clothing, and provided these photos to SCDSS County staff along with allegations against the Dalsings for abuse and neglect of the child.

106. **SCDSS investigated each report made against the Dalsings:** On information and belief, SCDSS considered and investigated the scores of allegations which the Smiths and others acting in combination with them made against the Dalsings in 2014, 2015, 2016, 2017 and 2018.

107. **January 13, 2015 Hearing - TPR hearing scheduled:** On January 13, 2015, a permanency planning hearing was held in the SCDSS Removal Action.

a. The Order from the hearing provided that the biological parents remain incarcerated and have not completed their treatment plan; that DSS has assess the viability of

adoption and recommends TPR and adoption to be in the child's best interests; that the child's current placement [foster placement with the Dalsings] is safe, appropriate and in the best interests of the child. The Court ordered a permanent plan of TPR and adoption as being in the best interests of the child; ordered SCDSS to file an action for TPR and to include the Dalsings and the Smiths as parties; and scheduled the TPR hearing for March 11-12, 2015.

b. The Order also provided:

"At that hearing the court will make a determination as to whether the rights of the parents will be terminated and will make a determination as to how this action and the action filed by the Dalsings for adoption (Case No. 2014-DR-44-155) will proceed and where placement will be pending the next proceeding (whether that be a court hearing or a SCDSS adoption placement committee action)."

108. **Dalsings sought hearing before GAL was appointed in SCDSS TPR Action:**

a. On January 20, 2015, the Dalsings' attorney sent a letter to the attorney for SCDSS which stated the following:

'I know that you are getting ready to file the Termination of Parental Rights regarding [the child]. This letter confirms that I represent the foster parents, Ed and Tammy Dalsing, in regard to this matter.'

Request for Hearing Prior for Appointment of GAL: *I am asking that we have a hearing or conference call with the Judge regarding the appointment of a neutral GAL for the child; one that does not have any history or prior service regarding the child or the parents or with my clients. I do not think it appropriate to have the Union County GAL program or supervisor Stephanie Kitchens serving. Please call me to discuss prior to the appointment of any GAL or prior to filing any Petition for appointment of GAL.*

Please accept this letter as my Motion for a hearing for the appointment of a GAL for the child. If you think it necessary, I will file a separate motion once the Complaint is filed and we have a file book number. I look forward to speaking with you regarding my motion."

b. On or about January 23, 2015, the Dalsing's attorney mailed a Motion to the Clerk of Court and SCDSS attorney requesting a hearing in the DSS TPR action that was to be filed, which provided as follows:

"Motion for Hearing so Family Court Judge May Appoint an Independent and Neutral Guardian ad Litem for Child: *The Dalsings move for a hearing so that the Family Court Judge can appoint an independent and neutral GAL for the child. The Dalsings have given notice to DSS attorney David Simpson of their objection to the appointment of any GAL for the child without a hearing in which the Dalsings participate, and specifically*

object to the appointment of Stephanie Kitchens, Supervisor of the Union County GAL office, or any guardian under the supervision of Ms. Kitchens.”

109. **SCDSS TPR Action filed:** On February 27, 2015, SCDSS filed a Complaint for Termination of Parental Rights of the biological parents (“DSS TPR Action”). On March 10, 2015, SCDSS filed an Amended Complaint for Termination of Parental Rights, which added the following statement at paragraph 7:

“The Defendants, Edward Dalsing, Tammy Dalsing, [Jane Smith and John Smith] have indicated a desire to adopt the child and have been included as party defendants herein by order of the court in the underlying abuse and neglect case in order that they may be notified of hearings and have access to the case information and to be in a position to seek placement of the child.”

110. **Stephanie Kitchens was appointed as GAL without hearing or notice to the Dalsings:** Without providing any notice to the Dalsings and without any hearing, Stephanie Kitchens was nevertheless appointed as GAL for the child in the DSS TPR Action

111. **TPR Trial - March 11-12, 2015:** The TPR trial took place in Union, SC, on March 11-12, 2015.

a. **Dalsings’ objected to Stephanie Kitchens’ appointment as GAL:** At the beginning of the TPR trial, the Dalsings’ attorney objected to Stephanie Kitchens being appointed as the GAL for the child. The Court’s Order from the hearing provides as follows:

“4. Following the hearing on January 13, 2015, when Judge Johnson ordered DSS to bring the action for termination of parental rights of the natural parents in and to the child, the Dalsings' attorney, on January 20, 2015, notified DSS attorney of his request to have a motion hearing so the court could appoint a qualified and impartial person to serve as Guardian ad litem for the child, and specifically objected to any effort to appoint Stephanie Kitchens as GAL for the child. DSS' attorney responded that DSS would not interfere with the court's normal process of appointing a Guardian Ad Litem and would simply file the TPR action and allow the GAL appointment process to proceed as is normal. On January 20, 2015, the Dalsings' attorney submitted to the Clerk of Court and to the DSS attorney a written motion requesting a motion hearing with all parties present for the purpose of the Court appointing a GAL for the child, and specifically objected to the GAL being appointed without such hearing. Shortly before this hearing Stephanie Kitchens was appointed as GAL for the child without any notice. The Dalsings objected to Ms. Kitchens appointment as GAL, indicating that such appointment was made without any hearing, as the Dalsings had requested; that the DSS action seeking termination of parental rights had not been filed until February 27, 2015, and the Dalsings had not been served with any notice of a request by any party to appoint a GAL; that they had not been provided any notice that the Court had appointed Ms. Kitchens as GAL for the child;

and requested that the Court dismiss the appointment of Ms. Kitchens, and that the Court appoint a qualified neutral person as GAL for the child. The Court ruled that the Dalsings' Motion was not properly before the court and would not be heard, and that Stephanie Kitchens would continue as Guardian Ad Litem in this case."

b. **Testimony of Stephanie Kitchens:** At the TPR trial, Stephanie Kitchens' testimony included the following:

(1) Ms. Kitchens was asked: *"And, so, the weekend visits were really at your insistence, correct?"* She responded: *"I recommended in the June 4th hearing that there be unsupervised visits."* (Hearing Transcript p.130).

(2) Ms. Kitchens went to the very first weekend visit the child had with the Smiths, and stated: *"While I was there and observing, [the child] was completely, 100 percent fine."* (Tr.p.132).

(3) Then Ms. Kitchens was asked about how often she attended the weekend visits, she responded: *"Approximately, maybe once a month."* (Tr.p.129).

(4) When Ms. Kitchens was asked if she had *"been an advocate of this child going every single weekend to the [Smiths'] house,"* she responded: *"Yes, sir, I have."* (Tr.p.133).

(5) When Ms. Kitchens was asked if the child would have any separation problem if the she was placed full time with the Smiths, she responded: *"I know that the [child] would miss the Dalsings, and she would miss all the siblings at the Dalsings' home. I don't deny that whatsoever. But [she] would be perfectly fine with the [Smiths]."* (Tr.p.112).

(6) Ms. Kitchen's stated: *"From what I have seen and from what I have been told by the foster parents, they are unwilling to let [H.A.] go. They love her. There's no doubt that they love her. They're unwilling to realize that [H.A.] has biological family that is willing and able and capable of giving [H.A.] the love, the safety and the home that she deserves."* She was then asked: *"And the Dalsings can't do that?"* She responded: *"They're not biological family."* (Tr.p.134-135).

(7) Ms. Kitchens read from her report of January 13, 2015: *"If legal and physical custody is not placed with [the Smiths], that the child be removed from current foster placement because of the emotional attachment that has been formed by the foster parents. They are unwilling to recognize that there is biological family that is willing, able, capable in all forms, fashion, manners to take care of [H.A.] and to provide her the knowledge of her biological family."* (Tr.p.135).

(8) *"I've never said that the Dalsings haven't taken good care of [H.A.], that she's not been cared for there, but the [Smiths] are her family. Why should a child be denied knowing their family when it's a good family who can take care of her?"* (Tr.p.139).

(9) *"She's happy to be home with the foster parents, Ed and Tammy Dalsing, there's no doubt. She has lots of kids there to play with. She has love there exactly like she has love in the [Smiths'] home, but the [Smiths] have the love of a family."* (Tr.p.140).

(10) Ms. Kitchens stated: *"I've told the Dalsings on numerous occasions, I think it's awesome that they're foster parents. I think it's awesome that they've opened up their home to so many children and cared for them the way that they have."* (Tr.p.143).

(11) When Ms. Kitchens was asked about the concerns that the Dalsings had raised about how the every weekend visits were affecting the child, she responded: *"I haven't seen that the weekend visits have affected [H.A]."* (Tr.p.146).

c. **Recommendation of Stephanie Kitchens:** The Court's written Order from the TPR trial provides:

"19. The Guardian Ad Litem had distributed a report dated March 6, 2015 to the parties which stated that the best interest of the child, [H.A.], would be served by terminating the parental rights of the Defendants, Allyssa Boulware and John A. Stafford, and placing the child with her relatives, the [Smiths]. However, after speaking with Mr. Stafford immediately prior to the hearing, the GAL no longer felt that termination was the best way to proceed. She altered her report through sworn testimony during the hearing to reflect that she did not recommend termination of parental rights. Nevertheless, she continued to recommend removal from the foster home and relative placement. The Court has taken this into consideration."

d. **Court's Rulings from TPR trial:** The Court Ordered termination of the parental rights of the biological parents to the child, and made the following rulings:

- (1) Dismissed the Dalsings' action (2014-DR-44-155), ruling that "...foster parents, have no standing to file a private action for adoption or custody of a child in DSS custody. Their action for adoption is dismissed."
- (2) Awarded custody of the child to DSS, granting DSS "all rights of guardianship, placement, care and supervision, including the sole authority to consent to any adoption..."
- (3) Ruled that [the Smiths] and "the Dalsings shall have the right to

present their case for adoption to the South Carolina Department of Social Services' adoption committee.

112. **Dalsings appeal court's dismissal of their action seeking to adopt child:** The Dalsings appealed the ruling of the Family Court, indicating, among other things, that the Family Court committed error when it dismissed the Dalsings' action seeking adoption of the child, and when it ruled that the Dalsings lacked standing to bring their action for adoption.

113. **Therapist for child - 2015-2016:** The child continued to show significant stress from the every-weekend visits. The Dalsings then sought the help of a child therapist to help the child with the stress of the every-weekend visits, and to provide direction for the Dalsings to know how to best support the child. The Dalsings worked with SCDSS to secure the services of child therapist Anna Reid. Beginning on August 11, 2015, Anna Reid met with the child most every week through June 20, 2016, followed by a family counseling visit on July 14, 2016 and on August 11, 2016.

114. **Stephanie Kitchens dismissed as GAL - but improperly continued involvement in case:** On or around August 11, 2015, the Dalsings informed the State Guardian ad Litem Program Director of their concerns that Stephanie Kitchens was biased against them, and could not fairly and properly protect the best interests of the child.

a. On information and belief, the State Guardian ad Litem Program Director notified Stephanie Kitchens that she was removed as GAL for H.A., and was also removed as GAL for the second foster child in the Dalsings care, in the above referenced where Ms. Kitchens had testified. On information and belief, the Director also notified Ms. Kitchens that she and the Union County GAL office were removed from providing supervision over the child.

b. **August 18, 2015 Order relieving Stephanie Kitchens as GAL and appointing replacement:** On August 18, 2015, the Clerk of the Family Court issued an Order relieving Stephanie Kitchens as GAL for the child and appointing a new GAL, Amy Gibson, in her place.

c. On information and belief, the State Guardian ad Litem Program Office also moved supervision of the case from Stephanie Kitchens and from the GAL office in Union, to the GAL office in Cherokee County, SC.

d. **Improper involvement by Stephanie Kitchens:** Despite Stephanie

Kitchens being removed as the GAL and despite the case being removed from her supervision, Stephanie Kitchens wrongfully and improperly, and acting outside the scope of her position with the State GAL Program, continued to use her position as Supervisor of the Union County GAL Program to continue her involvement and influence in the case, and to continue to actively work against the position of the Dalsings, and against the welfare of the child. On information and belief, Ms. Kitchens, wrongfully and in bad faith, continued to do the following, with the plan, intent and motivation to harm the position of the Dalsings, and to secure the removal of the child from their home and care:

- (1) She maintained communication with the child's GAL regarding the case;
- (2) She continued to provide the child's GAL and others false, misleading and biased information against the position of the Dalsings;
- (3) She continued to secure information regarding the case through her position with the GAL program, including confidential information;
- (4) She continued having contact with the Smiths and Melinda Butler regarding the case, and continued to provide them and receive from them information, suggestions and directions regarding the case and their common plans against the Dalsings;
- (5) She attended Foster Care Review Board meetings regarding the case, where the Smiths and Melinda Butler would also be in attendance;
- (6) In or around April and May 2018, she made contact with the Heather Flassing of the Children's Advocacy Center and, on information and belief, provided false and misleading information regarding the Dalsings and the case, and secured information and reports regarding the case, including information that was confidential.

115. **Friday, December 25, 2015 - Child broke arm at Smiths' home:** On Friday, December 25, 2015, the SCDSS worker had driven the child from the Dalsings' home to the Smiths' home. Later that evening, the child fell at the Smiths' home and broke her right arm (at elbow).

a. On Friday, December 25, 2015, Jane Smith witnessed the child falling at the Smiths' home, and knew that the child had hurt her right arm. The Smiths did not notify SCDSS and did not seek medical care for the child on Friday.

b. On Saturday, December 26, 2015, Jane Smith saw that the child's right arm was swollen. The Smiths did not notify SCDSS and did not seek medical care for the child on Saturday. On information and belief, on Saturday, when seeing the swelling of the child's right arm, the Smiths knew or in the exercise of due care should have promptly secured medical care for the child and promptly notified SCDSS of the child's injury.

c. On Sunday, December 27, 2015, the Smiths saw that the child's right arm was still swollen. The Smiths waited until late Sunday afternoon before taking the child for medical treatment at Union Medical Center Emergency Department and before notifying SCDSS of the injury. On information and belief, the child's arm was splinted and put in a sling and the Smiths were given instructions that the child should be seen by an Orthopedic doctor the following day.

d. On information and belief, this delay in seeking medical care for the child was unjustified and caused the child to experience additional pain and suffering which would have been eliminated had medical care been promptly and reasonably provided.

e. On information and belief, the Smiths' delay in getting medical care for the child, and delay in providing notice of the injury to SCDSS was due to the Smiths fear and concern that the incident would be held against them in the case.

f. On Monday, December 28, 2015, after the child was returned to the Dalsings home and the SCDSS transportation worker told them of the broken arm, the Dalsings promptly took the child to be seen by her normal pediatrician, Dr. Ayodele with York Pediatrics.

g. The child was referred to Carolina Orthopedic Surgery physicians, where her arm was examined and x-rayed, and put into a hard cast for treatment of a fractured bone and buckled bone. The child wore the cast for approximately one month thereafter.

h. The December 25, 2015 arm break was the first time the child's arm had ever been broken.

i. On information and belief, the Smiths and/or SCDSS staff made Melinda Butler and Stephanie Kitchens aware of this incident by the end of December 2015.

116. **Involvement by Stephanie Kitchens and Melinda Butler with second foster child that SCDSS had placed with the Dalsings:** Stephanie Kitchens was also serving as GAL for a second foster child ("second foster child") which SCDSS had placed in foster care with the

Dalsings. The second foster child is a female born in May 2013, which had been placed in foster care with the Dalsings in June 2013. In or around December 2013, the biological mother of this child executed her written consent for the Dalsings to adopt the child. The biological father of this child was incarcerated and Melinda Butler had been appointed by the Court to serve as his Guardian ad Litem. The biological father had executed his consent for his mother to adopt the child.

a. **Court granted TPR and granted Dalsings' adoption of second foster child**: Following a trial held in July 2015, the Court terminated the parental rights of the biological parents of the second foster child and granted the Dalsings' adoption of the child.

b. **Stephanie Kitchens' testimony at TPR trial**: At the July 2015 TPR trial, Stephanie Kitchens' testimony included the following:

- (1) Ms. Kitchens stated: "*Ms. Dalsing is wonderful with the children, absolutely wonderful with all of them.*" (Tr.p.663).
- (2) In explaining her recommendation that the child be placed with the biological father's mother, rather than with the Dalsings, Ms. Kitchens stated: "*The primary factor is [the paternal grandmother] can keep [the child] safe, happy, and well, and she is a biological relative.*" (Tr.p.671) Ms. Kitchens went on to provide the following responses to the following questions:

Q. So you've also testified that [the Dalsings] have been keeping [the child] safe and well; is that correct?

A. Yes, ma'am.

Q. So really the distinction in the two families is the biological connection?

A. Yes, ma'am." (Tr.p.671)
- (3) Ms. Kitchens stated: "*There is no doubt the [Dalsings] can give [the child] everything she will need and probably everything she will want in the future. That includes love, safety, and a good Christian home. Also, they have stated that [the paternal grandmother] will be able to remain in contact with [the child].*" (Tr.p.711).

(4) Ms. Kitchens was asked: “[H]ow would you describe Ms. Dalsing's behavior when you were in the home.” Ms. Kitchens responded: “She has always been very loving toward the children, all of them. Hugging them, kissing them, interacting with them, playing with them, explaining to me things that they're doing. She's always been very forthcoming with what's been going on with the children, their medical things. Never had to really ask questions of Ms. Dalsing about what was going on with them. She openly gave me that information. Very hands-on, affectionate with the children.” (Tr.p.778).

c. **Melinda Butler’s involvement in second foster child’s case: Filed appeal to overturn Dalsings’ adoption of child; Supreme Court ruled for Dalsings:** After the Court granted the Dalsings’ adoption of the second foster child, Melinda Butler filed an appeal of the decision, on behalf of the child’s biological father. The appeal ended in May 2018, when the South Carolina Supreme Court ruled in the Dalsings’ favor, affirming the Family Court ruling which terminated the parental rights and granted the adoption of the child by the Dalsings.

117. **Half-Sibling of second foster child:** The biological mother of the second foster child which the Dalsings were able to adopt gave birth to another female child born in July 2014, who was a half-sibling of the second foster child. The biological mother asked the Dalsings if they would be willing to adopt the half-sibling, and the Dalsings agreed. The biological mother executed her consent for the adoption.

a. **Family Court terminated rights of parents of the half-sibling:** The parental rights of the biological parents of the half-sibling were terminated in a trial held in September 2015. With the TPR granted, the Dalsing were prepared to move forward with the adoption of the half-sibling.

b. **Melinda Butler’s involvement in half-sibling’s case - Filed appeal to overturn TPR of father’s parental rights:** Melinda Butler, who had not been involved in the case dealing with the half-sibling before the court granted TPR, appealed the decision on behalf of the biological father.

c. **Court of Appeals ruled for Dalsings:** In August 2016, The South Carolina Court of Appeals decided the appeal in the Dalsings’ favor. Melinda Butler then filed a request

with The South Carolina Supreme Court, asking the Supreme Court to hear the appeal. The Supreme Court declined Ms. Butler's request, which ended the appeal in April 2017. In May 2017, the Dalsings' adoption of the half-sibling was completed.

118. **February 22, 2017 Hearing in DSS Removal Action:** At a hearing in the SCDSS Removal Action on February 22, 2017, the Smiths presented the Court with a Motion asking the Court to remove the child from the Dalsings and place the child with them.

a. **The Dalsings Return to the Smiths' Motion:** At the February 22, 2017 hearing, the Dalsings' attorney presented to the Court a Return which included the following:

(1) The Dalsings' Return made the following statement:

"Attorney Melinda Butler... for the birth father in the case involving Braelynn,... [has] participated in media coverage involving Braelynn's case, and should not be able to complain about media coverage by the Dalsings. See attachments to this Return. Further, the Dalsings' affidavit sets out several examples of where the family of the [Smiths] have posted on social media information about [H.A.'s] case directly, as well as detailed knowledge of other cases involving the Dalsings."

(2) The Dalsings Return also provided a reference to a broadcast television interview that Melinda Butler had done on Headline News on February 8, 2017, in the case involving Braelynn. In the interview, Ms. Butler was asked: *"We learned that the biological mother supports the Dalsings in the adoption of Braelynn. What is your client's reaction to that?"* In Ms. Butler's response, she stated: *"She supported that adoption through the proceedings but,... whether she has backtracked or not I don't know that we've heard directly from the mother. The issue is the child was removed from the mother due to mother's drug use...."*

b. **Gag Order:** The Family Court Judge's Order from the February 22, 2017 hearing included the following "gag order:"

*"The Court is aware that another child in the Dalsings' care has been in the news, both locally and nationally. **While the child whom is the subject of this action has not been directly mentioned by the Dalsings in media coverage,** I do find that a gag order is appropriate in this instant case. It is therefore, my very strict orders that no party in the present action, nor their attorneys, nor third-parties within their control may in anyway attempt to influence this matter through social media or through television, or books or newspapers. And these parties and their attorneys and third-parties within their control are hereby and shall be prohibited from discussing this case with media personnel or sharing any activity related to this case via social media or other public venue. It will be presumed that the parties had the ability to control any third-party a who violates this Order and the burden shall be upon the violating party to prove otherwise."* (Emphasis

added).

c. **Deleted social media post:** On information and belief, sometime during or around the Court hearing on February 22, 2017, Melinda Butler provided to SCDSS and to other parties a document which contained a photograph (screenshot) which had been taken of a false, fabricated and defamatory social media post that had appeared on a social media site that belonged to and was managed by Tammy Dalsing. Ms. Dalsing recognized the post as one that she had seen post on the site, and which she had promptly deleted from the site approximately 6 minutes after it had appeared on the site.

(1) Following the hearing, Melinda Butler refused a request from the Dalsings' attorney to tell how she had come to have the screenshot of the social media post.

(2) On information and belief, the social media post was made by someone falsely posing as the biological mother of the other two above referenced children that the Dalsings had adopted. On information and belief, the biological mother had nothing to do with the post; the post did not reflect her position; and she had a positive relationship with the Dalsings.

(3) On information and belief, the text of the social media post stated:

"Tammy and Edward I pray that you lose every child that you have in your home. You bought my silence and due to my habitual drug use I was vulnerable. Braelynn belongs with her father and grandmother just like [H.A.] belongs with her aunt and uncle Darryl and Ann [Smith]. The both of you should be ashamed for keeping children from their biological families." (Post contained the actual names of the child and Smiths).

(4) The contents of the post show that it was made by someone with intimate knowledge of the present case involving H.A., as well as knowledge of the biological mother and child in the other case referenced above, this being a case in which both Melinda Butler and Stephanie Kitchens were also involved.

119. **Therapy for child - 2017-2018:** In November 2017, the Smiths contacted SCDSS about getting the child back into therapy. Child therapist Anna Reid began seeing the child again in November 2017.

120. **H.A.'s case - January 3, 2018 - Supreme Court ruled for Dalsings:** On January 3, 2018, in the Dalsings' appeal in the case involving H.A, where the Family Court had granted TPR but then dismissed the Dalsing's action seeking adoption of H.A., The South Carolina

Supreme Court ruled in the Dalsings' favor. The Supreme Court/s ruling states:

"We hold Petitioners [the Dalsings] have standing to pursue a private action for adoption pursuant to section 63-9-60 because Petitioners are residents of South Carolina and because, at the time Petitioners commenced their adoption action, Child had not yet been placed for adoption by DSS. Accordingly, we reverse the decision of the court of appeals and remand to the family court to proceed with Petitioners' action for adoption." DSS v. Boulware, 422 S.C. 1, 809 S.E.2d 223 (Sup.Ct. 2018)

121. **Dalsings ready to pursue adoption of H.A.**: Now that the Supreme Court had authorized the Dalsings to proceed with their action for adoption, the Dalsing requested that the Family Court set a final adoption hearing.

122. **The Smiths file action seeking adoption of the child**: On or about January 5, 2018, the Smiths filed a private action seeking adoption of the child, H.A.

123. **Cases Consolidated**: On May 25, 2018, the Family Court made the following rulings:

- a. Consolidated the Dalsings' adoption action (2014DR44-155) and the Smiths' adoption action (2018DR44-0007), to be indexed under 2014DR44-155.
- b. The Smiths were also allowed to intervene in the Dalsing action.
- c. The trial of the consolidated cases was set for 5 days, to be scheduled in either Union or York County Family Court.

124. **After Supreme Court decision of January 3, 2018, false allegations against the Dalsings and their family increased**: Following the decision of the SC Supreme Court on January 3, 2018, ruling in favor of the Dalsings' right to have the Family Court hear their case seeking adoption of the child, allegations of abuse and neglect being made against them by the Smiths, Melinda Butler, Stephanie Kitchens, and other related persons, took a new and even more dangerous slant.

- a. **Allegations being attributed to the child**: The allegations that started being made after the Supreme Court ruling began to include allegations which were supposedly coming from the child.
- b. **Alienation of the child away from the Dalsings**: Beginning in November 2017, when the Smiths had requested that the child return to see therapist Anna Reid, the child also began exhibiting signs of being alienated from the Dalsing family, including the following:

(1) Instead of calling the Dalsings, “mommy and daddy,” as she had done for years, it is reported that the child, now 5 years old, began to refer to Edward and Tammy Dalsings as “the other kids’ mommy and daddy.”

(2) Instead of calling the Dalsing children her “sisters” and “brothers,” she began referring to them as “the other kids.”

(3) Instead of referring to the Dalsings’ home as “my house,” she began referring to it as “the other kids’ house.”

c. **Dalsings report to SCDSS concerning statements from the child:** In or around March 2018, the Dalsings reported to SCDSS concerning things that the child was saying to them, including the following: That the child stated had stated to them, “*Aunt Ann says that you hurt me,*” and that Aunt Ann calls Tammy Dalsing “*monster mommy.*”

125. **Melinda Butler’s March 16, 2018 letter:** On information and belief, on March 16, 2018, Melinda Butler, acting with the knowledge, support, encouragement and/or counsel of the Smiths and Stephanie Kitchens, sent a letter to SCDSS which included the following:

“[W]e are very concerned with the extent of the injuries to [the child]. The fact that she had to have surgery after ‘tripping over the dog’ at the foster parents home.... We are hereby requesting that a formal investigation be undertaken to determine what happened. A forensic evaluation should have already been ordered given the circumstances that this is the third time this child has broken her arm and that she has also been bitten by at least one of the dogs at the foster home, and has reported to the therapist that the foster mother smacked her in the face.”

a. The above allegations against the Dalsings are false and misleading, made in bad faith and with the conspired purpose of harming the Dalsings, of casting them in a negative light, of causing the Dalsings to be found responsible for child abuse and neglect by SCDSS, of getting the child removed from their home, and getting the child placed in the Smiths’ home.

b. **First broken arm at Smith home:** The above allegations, in alleging fault to the Dalsings solely, fails to acknowledge that the child first broke her right arm at the home of the Smiths on Friday, December 25, 2015, as set out above. This being the incident where the Smiths waited until Sunday, December 27, 2015, before taking the child for medical treatment at Union Medical Center Emergency Department and before notifying SCDSS of the injury.

c. **Two broken arms at Dalsing home:** Regarding the other two broken arms, which happened while the child was in the Dalsings home, the Dalsings had promptly sought

medical care for the child and promptly reported the same to SCDSS; and SCDSS had properly investigated and found no fault by the Dalsings. Details on these two incidents are as follows:

(1) On May 19, 2016, the child was climbing over a baby gate at the Dalsings' home, when she fell and broke a bone in her LEFT elbow. The Dalsings immediately took her to emergency care and notified SCDSS. The child was also seen the following day by her regular pediatrician, Dr. Ayodele. She had all proper medical care and treatment and had a good result.

(2) On March 9, 2018, the child was playing and tripped over the Dalsings' dog, Biscuit, fell, breaking a bone in her RIGHT elbow. The Dalsings immediately took her for emergency care and notified SCDSS. Her medical care included a pin being surgically installed in the bone on March 15, 2018. She had all proper medical care and treatment and had a good result.

d. **False allegations of dog bite:** The above allegations made by Melinda Butler that the child "*has also been bitten by at least one of the dogs at the foster home*" is false. During the time when the child was in foster care with the Dalsings, the child was never bitten by a dog. The child never had any medical care or evaluation for a dog bite, and there was no time when the child should have been taken for medical evaluation or treatment of a dog bite. Further, the Smiths have never provided the Dalsings with any evidence that the child was taken to any medical provider for evaluation or treatment of a dog bite.

e. **Therapist Anna Reid repeated efforts to stop false representations:** The above allegation made by Melinda Butler that the child "*reported to the therapist that the foster mother smacked her in the face*" is false, and the therapist, Anna Reid, has clearly stated this many times.

(1) On January 8, 2018, Anna Reid sent a letter to SCDSS which stated that "[the child] *has never disclosed 'mommy slaps her in the face.'* She has never disclosed any kind of negative feelings towards Mr. and Mrs. Dalsing nor Mr. and Mrs. [Smith]."

(2) On June 25, 2018, Anna Reid sent a letter to SCDSS which stated that "[the child] *has never disclosed any other kind of physical abuse allegations of any nature to me in sessions. She has never disclosed 'mommy slaps her in the face.'* She has never disclosed any kind of negative feelings towards Mr. and Mrs. Dalsing nor Mr. and Mrs. [Smith]."

(3) On July 5, 2018, Anna Reid sent a letter to SCDSS which stated as follows: *"Like my statement said on June 25, 2018, [the child] did not disclose that "mommy slapped or smacked her in the face." ... The forensic interview social summary also stated that I reported that [the child] had disclosed that her foster mom smacks her in the face, which is not accurate."*

f. Despite being false and misleading, the above allegations, on information and belief, have been continually disseminated and published to others by the Smiths, Melinda Butler, Stephanie Kitchens and others.

126. **SCDSS arranged forensic interview of the child - Monday, April 2, 2018:** On information and belief, acting upon the request and false and misleading allegations made by Melinda Butler, the Smiths and/or Stephanie Kitchens (acting directly or in concert with the GAL for the child), SCDSS staff made arrangements for a forensic interview of the child by Heather Flassing.

a. On Monday, April 2, 2018, the child was taken from the Smiths' home, following the weekend visit, to a forensic interview with Heather Flassing.

b. The child had never before met Heather Flassing. The child saw Ms. Flassing for less than 1 hour.

c. On information and belief, before the interview, the forensic interviewer had been provided the false and misleading allegations of abuse and neglect of the child which had been made against the Dalsings and members of their family by the Smiths, by Melinda Butler, by Stephanie Kitchens, and possibly by others acting in concert with these persons.

d. **Stephanie Kitchens' improper involvement with the forensic interview:** On information and belief, although Stephanie Kitchens was not the GAL for the child, and although case supervision had been removed from her, and although she had no authorization from the State GAL Program Office to have any involvement in the case and was acting outside the scope of her duties and authority, she nevertheless did the following, with the aforementioned and conspired purpose of harming the Dalsings, of casting them in a negative light, of causing the Dalsings to be found responsible for child abuse and neglect by SCDSS, of getting the child removed from their home, and getting the child placed in the Smiths' home:

(1) Improperly made direct contact with Heather Flassing, including

contact by phone call(s) and emails, and with Ms. Flassing's office, regarding the forensic interview, and provided the interviewer with information, including false and misleading information about the Dalsings, the child and others;

(2) Improperly secured from the interviewer confidential information, including a copy of the video and report of the forensic interview on the child, by leading the interviewer to believe that she had authority to receive the confidential information; and

(3) Improperly shared the confidential information she obtained from the forensic interviewer with Melinda Butler, with the Smiths, and others,

e. **Smiths' improper coaching of child:** As set out above, the forensic interview of the child took place on a Monday, immediately after the child's weekend visit with the Smiths.

(1) On information and belief, the Smiths drove the child to the interview.

(2) On information and belief, the Smiths were aware of the upcoming interview and had wrongly and improperly coached or confused the child into believing that she was being hurt and abused at the Dalsings' home, and in particular by Tammy Dalsing.

f. The forensic interview report from Heather Flassing includes the following:

(1) "[H.A.] *Stafford was referred to the Children's Advocacy Center due to allegations that [H.A.] has broken her arm on three occasions, she has been bitten by a dog, and she has been slapped in her face. It is also reported that [H.A.] has a rash in her private area that has been treated with Desitin cream.*"

(2) "[H.A.] *states she stays with her Aunt Ann and Uncle Dew [the Smiths] and that she stays at 'the other kid's house' with her mommy Tammy.*"

(3) "[H.A.] *states she hurt her arm when she tripped over Biscuit, the dog. [H.A.] states she was at the other kid's house when that happened.*"

(4) "[H.A.] *states her mommy Tammy spansks her with her hand on her bottom, on her cheeks, her forehead, her chin, and her eyeballs. [H.A.] demonstrated by slapping her hand on her face, [H.A.] states she does not get in trouble at Aunt Ann and Uncle Dew's house, 'really, I don't. I be good there and they give me toys.'*"

(5) "[H.A.] *states Aunt Ann says 'I'll get you next time' when asked*

what people say about mommy Tammy. [H.A.] states Uncle Dew says 'are you ok [H.A.]?' when asked what Uncle Dew says about mommy Tammy [H.A.] states she does not know what mommy Tammy says about Aunt Ann and Uncle Dew."

- g. The forensic interview report makes the following recommendations:
- (1) *"It is recommended that [H.A.] participate in therapy with a licensed mental health professional."*
 - (2) *"It is recommended that DSS and Law Enforcement conduct thorough investigations of **both** homes."* (Emphasis added).

127. **SCDSS had Therapist Anna Reid meet with the child - May 2, 2018:** After receiving the report from the forensic interview, SCDSS arranged for the child's long-term therapist Anna Reid to meet with the child. On May 2, 2018, Anna Reid met with the child. Her clinical notes from the meeting include the following:

'[H.A.] drew a picture of when she feels angry. She discussed she feels angry when someone hits her and she colored the next picture of a person pink and said, 'When someone hits me, I turn pink.' She reported 'McKenna' [Dalsings' daughter 19 months younger than H.A.] hits her and 'no one else' when MHP [Mental Health Professional] followed up and asked. [H.A.] did not tell MHP why McKenna hits her. [H.A.] reported that 'I turn orange when I get smacked.' MHP asked [H.A.] who smacks her and [H.A.] reported 'No one. I smack myself' and demonstrated by using an open hand and smacking both cheeks on her face. MHP redirected that MHP doesn't want her to hurt herself and asked why she does that to herself. [H.A.] did not answer. The next worksheet [H.A.] reported that her siblings fight over her big nose and the heart that she drew onto the picture on the worksheet. She reported 'nope' to 'Do you ever feel left out?,' She reported no answer at first to 'Has a grown up ever gotten mad at you?' but then she said 'no' when MHP asked again, 'Has any grown up gotten mad at you before?' She reported that it's too loud 'when someone's music is too loud and I hear it.' She reported again that she broke mommy's glass, like she reported in a previous session with the same picture, but this time she reported that 'Hannah got really mad at me.' MHP asked what happened after Hannah [Dalsings' adult daughter] got mad at her and [H.A.] said 'nothing happened.' She reported 'no' to getting picked on and losing a game.... MHP and [H.A.] played a game called 'consequences.' She was able to follow directions, be a good sport when she lost the game, and was able to distinguish good choices versus bad choices from pictures on the cards. [H.A.] cleaned up the game and then wanted to make MHP a pizza with the pizza toy. She asked for 'mommy and daddy' to come back to play with her 'because they might be lonely out there' and MHP reminded her that they will get to play next time.'" (Explanation added inside "[]").

128. **Interview of child by SCDSS Investigator - May 18, 2018:** On or about May 18, 2018, SCDSS investigator Coretta Bush-Etheredge conducted her own interview of the child. Her

report of the interview includes the following statements relating to Tammy Dalsing: “*Harmony does refer to Mr. and Mrs. Dalsing as ‘Mommy and Daddy’.... During the interview Harmony stated that Tammy does not hit her in the face.... Harmony stated that ‘mommy does all things good and has never do anything bad.’*”

129. **May 31, 2018 - Child hit corner of playpen while running-playing and received scratch to chin:** On Thursday, May 31, 2018, while at the Dalsings’ home, the child was playing tag with her siblings and ran into the corner of a playpen, scratching her chin.

a. Although the injury was not something that appeared to need medical attention, because of the Smiths’ history of reporting the Dalsing for abusing the child, Mr. Dalsing immediately took the child to be seen by her pediatrician, Dr. Ayodele.

b. Dr. Ayodele saw the child the same day, May 31, 2018, and prescribed the child a topical anti-bacteria ointment.

c. On Friday, June 1, 2018, when the SCDSS transportation worker arrived to pick up the child for her every-Friday visit with the Smiths, Mr. Dalsing informed the worker of the incident the day before, that the child had been seen by the doctor, and about the antibiotic ointment that had been prescribed for the scratched area.

d. The notes from the SCDSS transportation worker of June 1, 2018, provide as follows:

“CW [Case Worker] assistant Jones Transport [H.A.] from foster parent's home in York to Aunt and Uncle Home in Union. FD brought [H.A.] to the car and said that she had fallen and scratched under her chin while playing tag with the girls. FD [Foster Dad] said that they had taken [H.A.] to the Doctor and was told to keep the area clean and put antibiotic ointment on it. I told FD that I would let the Aunt and Uncle know what care was needed. CW Assistant Jones spoke to Ann [Ms. Smith] about the scratch and care of the area and left. Ann [Smith] arrived at DSS office around 4:15 asked to speak to CW Hames, CW was out of the office so she asked to see CW Assistant Jones. Ann said she was concerned about [H.A.] and ask if I knew if Foster Mom was out of town. I told Ann that I was not aware of it that I would ask the supervisor in the office to come and speak with her. The Director came in to speak with Ann about her concerns and also took some pictures it was decided that the Director and CW Assistant Jones would go to the [Smiths’] Home to take pictures of [H.A.]. CW Assistant Jones asked [H.A.] if she had been to the Doctor's and she said yes at the other kid's house. CW Assistant Jones and Director took some pictures of [H.A.] and briefly spoke to Ann again about her concerns and returned to DSS office.”

e. **June 1, 2018 - Child taken to Palmetto Health Richland Hospital:** On

information and belief, on Friday, June 1, 2018, **the Smiths** took the child to be seen at Palmetto Health Richland Hospital in Columbia, SC; and SCDSS investigator Coretta Bush-Etheredge met them at the hospital.

(1) The hospital notes from the visit provide:

"History of Present Illness

This is a 5-year-old female with a past medical history significant for previous abuse currently in foster care who resents emergency department today with concerns of ongoing abuse. [Name redacted in notes] are in the room to take care of the child on the weekends as is the assist social worker. [Name redacted in notes] feel the child is being abused. [Name redacted in notes] removed from the room child reports that she placed with other kids where she stays. That these kids are mean. She then reveals she has secrets but she cannot tell... her secrets. The child does report that she has a cut on the side of her face. She doesn't know when she got it but says that it might of have yesterday. She denies any headaches. They also complaining about itching around the perirectal area."

(2) On information and belief, the name redacted in the notes is that of the Smiths.

(3) On information and belief, neither the Smiths nor the SCDSS investigator informed hospital staff or attending physician that the child had already been seen for the scratch on her chin the day before by her regular pediatrician. On information and belief, the attending doctor was told that the child had received medical treatment for the strep infection in the perirectal area and had completed antibiotic treatment.

(4) On information and belief, the Smiths provided the hospital staff and physician false and misleading history information regarding the child's, including a history and concerns of abuse of the child by the foster parents; and also failed to inform the medical providers that the foster parents had taken the child to her regular pediatrician on May 31, 2018 for evaluation and treatment of the scratch on her chin, and that the pediatrician had prescribed the child a topical anti-bacteria ointment. On information and belief, these acts and omissions by the Smiths were made in bad faith, with the purpose of harming the Dalsings, of casting them in a negative light, of causing the Dalsings to be found responsible for child abuse and neglect by SCDSS, of getting the child removed from their home, and getting the child placed in the Smiths' home.

(5) The medical notes from the hospital visit conclude with the

following findings and assessment:

“Emergency Department Course

This is a 5-year-old female with a past medical history significant for previous abuse currently in foster care who presents emergency department today with concerns of ongoing abuse with a differential diagnosis includes a child abuse. I did have the DSS out-of-home abuse and neglect unit representative.... accompanied the patient speak with our social work as well as the patient does have a safe place to go home tonight. We all feel that the patient is able to go home with the family members this weekend and will have a follow-up apartment on Monday with Dr. Lam. Patient physical exam did reveal some Scabs and bruising along the right jaw. They also wanted me to look at the patient's rectum as she did have a strep infection previously. She finished antibiotics however upon my exam the patient did have some erythema around the anus. Patient was given a prescription for Cefdinir. At this point in time I feel that the patient is appropriate for discharge. Patient agrees with course and plan verbally states an understanding of the discharge instructions and needs to follow up with primary care provider within 48 hours. Patient agrees to return to the emergency room for any questions concerns or worsening of their symptoms.

Assessment

- 1. Abrasion*
- 2. Perianal strep”*

130. **June 4, 2018 - Child taken to Metropolitan Children’s Advocacy Center:** On information and belief, on Monday, June 4, 2018, following the weekend visit, **the Smiths** took the child to be seen at Metropolitan Children’s Advocacy Center in Columbia, SC, to be evaluated for child abuse or neglect.

a. On information and belief, the Smiths provided the Centers’ staff and physician false and misleading history information regarding the child’s, including a history and concerns of abuse of the child by the foster family. On information and belief, these acts and omissions by the Smiths were made in bad faith, with the purpose of harming the Dalsings, of casting them in a negative light, of causing the Dalsings to be found responsible for child abuse and neglect by SCDSS, of getting the child removed from their home, and getting the child placed in the Smiths’ home.

b. **Center’s Intake Form completed by Jane Smith:** The Center’s intake form, entitled “Caregiver Questionnaire” was completed by Jane Smith on June 4, 2018. In her responses, Ms. Smith includes the following responses to questions on the form:

- (1) For the question: “Who is suspected of harming the child?” Ms.

Smith states: "Dakota has." [Dakota is the Dalsings adult son].

(2) For the question: "Tell us how you came to know there might be a problem..." Ms. Smith states:

"Being left with Hannah all the time, Dakota jerking her arm after surgery. She said ...the other kids are mean to her all the time. Hannah makes her stand facing the wall. That the foster mom slaps her in the face and hits her. She comes to us with dirty underwear all the time. Stays raw in her private area and bottom.... The other kids hit her and she gets hurt all the time. Every weekend when she gets to us something happens over there to where she gets hurt more than average for her age. She also says that Ryan takes her to the bathroom and Hunter takes her to the bathroom and he says hurry up I'm tired of this, and its not right for boys to be in the bathroom with girls. The foster parents are never there. They keep her away from the public no interaction and they don't want her in school."

c. The above derogatory statements against the Dalsing family and caregivers in their home are false and misleading.

d. **Over 180 photographs provided by the Smiths:** On information and belief, the Smiths also provided over 180 photographs, allegedly of the child, mostly without her being covered by clothing, along with their written comments, for use by the Center and possible SCDSS in evaluating whether the child had been abused or neglected by the Dalsing family. These photographs included photographs taken throughout the four years that the child had been going back and forth between the Smiths and the Dalsings, and which had been provided to SCDSS and previously investigated by SCDSS.

e. **Smiths' failure to inform Center staff of the following:** On information and belief, the Smiths failed to inform the Center's staff and physician of the following:

(1) That the photographs had been previously provided to SCDSS and investigated by SCDSS, and SCDSS staff had actually viewed the alleged injuries on the child at the time of the alleged injuries, and that there had been no findings by SCDSS of abuse or neglect against the Dalsings or any of their family members;

(2) That the foster parents had taken the child to her regular pediatrician on May 31, 2018 for evaluation and treatment of the scratch on her chin, and that the pediatrician had prescribed the child a topical antibiotic ointment; and

(3) That the foster parents had taken the child to her regular pediatrician several weeks prior for treatment of the strep in her perirectal area had prescribed antibiotic

medication, and that the antibiotic medication had been applied as prescribed.

f. **Vaginal exam performed on child:** Based upon the above wrongful and bad faith acts and omissions of the Smiths, in combination with the wrongful and bad faith acts of Melinda Butler and Stephanie Kitchens, including statements and innuendoes above giving rise to alleged sexual abuse against the child, the Center's physician conducted an unnecessary and invasive vaginal examination on this 5 year old child. The exam evidence no abuse of the child.

131. **DSS removed H.A. from Dalsings on June 11, 2018:** On June 11, 2018, SCDSS removed H.A. from the Dalsing home and she has not returned.

132. **Allegations of abuse have continued and eventually included every member of the Dalsings' family:** On information and belief, after the ruling of the South Carolina Supreme Court in January 2018, and even after SCDSS removed the child from the Dalsings' home on June 11, 2018, allegations of child abuse and neglect continued to be made against the Dalsing family, to include allegations against every member of the Dalsings' family, causing SCDSS to conduct multiple investigations against members of the Dalsings' family.

133. **Multiple SCDSS investigations against members of the Dalsings' family:** Based upon continuing, false and misleading allegations of abuse and neglect toward the child continuing to be made against members of the Dalsings' family, SCDSS conducted multiple and repeated investigations against the Dalsings and against members of the Dalsing family.

a. On information and belief, these continuing, false and misleading allegations were being made by the Smiths, Melinda Butler, Stephanie Kitchens, and/or others, who were acting in combination with the Smiths, Melinda Butler and/or Stephanie Kitchens, and who were making allegations that were being generated, fabricated and/or repeated by the Smiths, Melinda Butler and/or by Stephanie Kitchens.

b. On information and belief, Melinda Butler and Stephanie Kitchens were acting outside the scope of any legal duty they may have in this matter, with the sole intent to harm the Dalsings and influence the placement of H.A. with the Smiths.

c. As a result of these continuing, false and misleading allegations, and based upon the resulting SCDSS investigations and the Dalsings' defense against these allegations, the Dalsings incurred significant damages and harm which will be more completely described below.

d. **Additional forensic interview on the child:** On information and belief, in

the Summer of 2018, the child was also seen by Flavia Gibson with the Dickerson Child Advocacy Center, and the child denied being hit or hurt by Tammy Dalsing.

e. **All SCDSS investigations ended - Unfounded case determinations:** All of the SCDSS investigations against the Dalsings and members of the Dalsing family have concluded and ended with determinations that the allegations were unfounded.

134. **SCDSS investigations against the Smiths:** On information and belief, in or around the Summer of 2018, SCDSS also conducted an investigation on the Smiths regarding matters having to do with the child. The Dalsings were never provided any information about this investigation or its conclusion.

135. **Dalsings Motion to Dismiss their action to adopt child - to give child chance at peace:** The Dalsings submitted a Motion to the Family Court seeking permission to dismiss their action seeking to adopt the child. The Dalsings' Motion provided as follows:

The Dalsings provide the above information to evidence the scope of the harm being inflicted upon [H.A.] as this contested matter continues. Since the "every weekend visits" began on June 6, 2014, [H.A.]'s life and welfare have been conflicted. She has been caught in this extreme four year struggle between DSS and these two families. [H.A.] has been subject to constant questioning, has been constantly disrobed and photographed, has had three forensic examinations, and has had a vaginal examination to rule out sexual abuse. She has suffered the loss of her entire nuclear family two times in 5 years: First when she was removed from her birth parents in August 2013, when she was 8 months old; and again on June 11, 2018, when she was abruptly removed from the Dalsings and her perceived siblings, with whom she had grown up, with no transition, no explanation, and no follow up visits.

For the Dalsings, it has been their hearts desire to adopt [H.A.] and make her a permanent member of their family, giving her a loving and safe home and upbringing. And while this remains the desire of their hearts, the Dalsings know that this case is not about them and what they want. It is about [H.A.] and what is best for her.

Based upon the posture of this litigation and the substantial increase in the false allegations being made against them and their children, and based upon their observation and belief that [H.A.] is being fed false and misleading information about them and their children, and is being further and further alienated from them, the Dalsings see no way they can protect [H.A.] and keep her from further harm if this litigation continues. The offer they made at the May 25, 2018 pre-trial conference, to let the Family Court decision be the end of the case and give up the right to appeal, was rejected by the [Smiths]. Several more years of appeals will not improve [H.A.]'s opportunity at a more normal life. It is with extreme heartache and out of an abundance of love for [H.A.] that the Dalsings have concluded that the only way to bring her relief is to dismiss their action to

adopt her, thereby allowing the Family Court to place [H.A.] into a permanent adoptive home.”

136. **Order ending Dalsings’ Adoption Action and dismissing Dalsings as parties in Smiths’ Action:**

a. By Order filed on October 16, 2018, Family Court Judge Tony M. Jones ruled on the Dalsings’ Motion to Dismiss and Withdraw from Intervention. The Order made the following ruling:

“A Motion to Dismiss Action and to Withdraw from Intervention was filed by Edward and Tammy Dalsing seeking to dismiss their action, File Book Number 2014-DR-44-155 and withdraw intervention in the [Smiths’] action, File Book Number 2018-DR-44-007. There being no objection from the Guardian ad Litem and the attorney for the [Smiths’], I hereby grant the Motion to Dismiss Action and to Withdraw from Intervention filed by the Dalsings. The issue of attorney's fees will be bifurcated.”

b. By letter dated October 19, 2018, Judge Jones provided the following instructional ruling to the parties:

*“I have decided that the issue of attorney's fees will be handled by affidavits (including exhibits), as well as other submissions and briefs. Upon receipt of the respective submissions from each party, I will give the other side ten days within which to file a response or any objection to that which has been submitted. I will then make my decision regarding attorney's fees. **Each party shall have thirty days from the date of this letter, or November 19, 2018, to provide me with their submissions.**” (Emphasis added).*

c. **Neither party made required submission for attorney’s fees:** Neither the Smiths nor the Dalsings sought attorney’s fees as directed by the ruling of Judge Jones, and both the Dalsings’ case and the Smiths’ case were ended.

137. **All Family Court cases involving this child and parties have ended and no party made required submission for attorney’s fees:** On information and belief, all of the above referenced Family Court actions involving the child and the parties (SCDSS Removal Action; SCDSS TPR Action; Dalsings’ TPR and Adoption Action; and Smiths’ Adoption Action) have ended.

a. On information and belief, before the cases ended, no party perfected the legal requirements needed to pursue or preserve any claim for attorney’s fees against any other party.

b. On information and belief, the SCDSS Removal Action ended shortly after the Smiths' Adoption Action.

c. On information and belief, at the time the SCDSS Removal Action ended, the Smiths's adoption of the child had been granted; SCDSS was no longer the child's legal custodian; and the Smiths were the legal parents of the child.

d. On information and belief, any potential claim which the Smiths may have had to seek the payment of attorney's fees and costs from any party to these actions, including any claim for attorneys fees and costs which the Smiths may have had as the legal parents of the child, were ended and forever extinguished when the cases ended, being ended by operation of law, including, but not limited to, the principles and legal doctrines of equity, res judicata, collateral estoppel and issue preclusion.

138. **Therapist's recommendation for child not followed by Smiths:** Therapist Anna Reid, in her letter of January 8, 2018, made the following recommendation:

"The therapist also recommends that no matter the family that is chosen to adopt [H.A.] that [H.A.] remains in contact with the other family that was not chosen. Losing either family out of her life at this stage of her life would be detrimental to her emotional well-being. Both families have played important and consistent roles in her life and cutting one out, would only cause more distress for [H.A]."

a. Since the child left the Dalsings home on June 11, 2018, they have not heard from the child, or from the Smiths regarding the child, or from anyone regarding the child's welfare. Neither the Dalsings nor their children were allowed to say goodbye to the child, nor was the child able to have any contact or closure with the Dalsing family.

b. On information and belief, the Smiths and SCDSS, during the times when they have respectively controlled the custody of the child, have prevented the child from having any opportunity to say goodbye to the Dalsing family, or to have any other contact or closure with the Dalsing family.

c. On information and belief, such failure has caused harm to the child, and will continue to cause harm to the child, including, but not limited to the following: Mental and emotional injury, shock, sadness, loss, grief, worry, confusion, depression, and loss of enjoyment of life.

139. **Dalsings filed bankruptcy:** As a direct and proximate result of the above matters,

including the continuing, false and misleading allegations of abuse and neglect toward the child being made against the Dalsings and members of their family by Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, acting individually and in combination with themselves and others, and including the very significant attorney's fees, costs, lost wages, and other damages incurred the Dalsings, the Dalsings could not properly and timely pay all of their obligations, causing them to file for bankruptcy protection; and such bankruptcy action has been concluded and ended by a final hearing.

140. **Melinda Butler has continued to repeat false and misleading statements harmful to the Dalsings:** Melinda Butler, acting with the knowledge, agreement and authorization of the Smiths, has continued in bad faith to repeat several of the false, misleading and harmful statements she made against the Dalsings in her above referenced letter to SCDSS of March 16, 2018, including the following statement regarding the child's broken arm

a. Ms. Butler's above referenced March 16, 2018 letter to SCDSS included the following allegations regarding the child's broken arms:

*"[W]e are very concerned with the extent of the injuries to [the child]. The fact that she had to have surgery after 'tripping over the dog' at the foster parents home.... We are hereby requesting that a formal investigation be undertaken to determine what happened. **A forensic evaluation should have already been ordered given the circumstances that this is the third time this child has broken her arm** and that she has also been bitten by at least one of the dogs **at the foster home**, and has reported to the therapist that the foster mother smacked her in the face."* (Emphasis added)

b. Ms. Butler clearly represented in her letter to SCDSS that all three of the child's broken arms occurred in the home of the Dalsings. Her letter failed to accurately explain that the child's first broken arm occurred at the Smith's home on Friday, December 25, 2015, and that the Smiths had waited until Sunday, December 27, 2015, before taking the child for medical treatment.

c. On October 17, 2018, Melinda Butler, in her Return to the Family Court regarding the Dalsings' Motion to dismiss their adoption case, continued to repeat the same allegation regarding the arm break, along with other false and misleading allegations of child abuse and neglect against the Dalsings:

*Fast forward to the foster parents current motion to dismiss. This motion comes only after this child has been removed from the foster home for abuse. **This motion comes only after***

the child has suffered three broken arms; two dog bites, a hit with a hammer, swollen and bruised wrists with finger prints encircling them, scratch marks to her private areas, welts on her face and numerous refusals by the foster parents to allow DSS caseworkers and the Guardian ad litem into their home without prior notification to the foster parents.” (Emphasis added).

d. In the original Compliant which Melinda Butler signed and filed in this action on March 11, 2020, she repeats the same false and misleading allegation as follows:

“18. The following documented incidences of abuse occurred to the child while in the Defendant's foster home:... b. The minor child's arm was broken three (3) separate times from 2014-2018 and is properly documented by medical evidence.” (Emphasis added)

e. Again, in the Amended Compliant which Melinda Butler signed and filed in this action on March 25, 2020, repeats the same false and misleading allegation as follows:

“18. The following documented incidences of abuse occurred to the child while in the Defendant's foster home:... b. The minor child's arm was broken three (3) separate times from 2014-2018 and is properly documented by medical evidence.” (Emphasis added)

f. Under Rule 11 of the South Carolina Rules of Civil Procedures, “[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it.”

141. **The child’s close and intimate relationship with the Dalsing family:** From August 2013, when the child was 8 months old, until June 11, 2018, when she was 5 years old and was removed from the Dalsings’ home:

a. H.A. had grown up as a loved, cherished and fully participating member of the Dalsing family, which included other children both younger and older than she was;

b. She had developed and close and intimate parent-child type relationship with both of the Dalsings; and

c. She had developed a close and intimate sibling relationship with each of the Dalsings’ children.

142. **The Dalsings deny any liability to the child or to the Smiths:** The Dalsings love H.A. only want the best for her in life. They deny that they have engaged in any wrongful acts or omissions which have caused harm or injury to the child, and deny that they have any liability to the child. Further, the Dalsings deny that they have engaged in any wrongful acts or omissions

which have caused harm or injury to the Smiths, and deny that they have any liability to the Smiths.

143. **The child's injuries have been proximately caused by the Smiths, Melinda Butler and Stephanie Kitchens, jointly and severally:** Any injuries and damages which the child has suffered or is alleged to have suffered in this matter have been caused by the wrongful acts and omissions of Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, along with any wrongful acts and omissions which the court may attribute to others, and not by the Dalsings.

a. **Wrongful acts and omissions against the child by the Smiths, Melinda Butler and/or Stephanie Kitchens** On information and belief, the injuries to the child were the direct and proximate result of and were caused and occasioned by the negligent, gross negligent, reckless, willful, wanton, malicious, bad faith and/or intentional acts and omissions of Jane Smith, John Smith, Melinda Butler and/or Stephanie Kitchens, jointly and severally, and in combination, collusion and conspiracy with each other, in one or more of the following particulars:

(1) In making false and misleading reports, statements and allegations to the child that caused her to have concerns that she was being harmed by the Dalsing family, that she was not and could not be a part of the Dalsing family, that she was disliked by the Dalsing family, that she could not trust the Dalsing family, and that members of the Dalsing family were being mean to her.

(2) By causing the child to experience mental fear, anguish, stress, confusion, embarrassment, mortification, shame, depression, physical pain, assault, battery and the like, which resulted from the following:

(a) The Smiths' repeated body inspections of the child for over four years, making photographs of the child with her clothing removed, showing and distributing said photographs to others, and causing the child fear that she was going to be hurt or further embarrassed;

(b) Causing the child, at 5 years old, to unnecessarily undergo forensic questioning and investigations; and

(c) Causing the child to unnecessarily anticipate and undergo an invasive vaginal examination, resulting in assault and battery against the child.

(3) By making statements to the child and providing instruction to the child which were intended to and/or which had the effect of alienating the affections of the child away from the close, loving and intimate relationship which she had developed with the Dalsings and the members of the Dalsing family.

(4) By making and allowing statements to be made, in the presence and hearing of the child, which were derogatory toward the Dalsings and members of the Dalsing family, including, but not limited to the following statements which, on information and belief, were made by Jane Smith in the child's presence, on one or more occasions:

- (a) Referring to Tammy Dalsing as "monster mommy,"
- (b) Telling the child that Tammy Dalsing "hurts" her,
- (c) Telling the child that the Dalsing children "hurt" her,
- (d) Telling the child that the Dalsing children are "mean" to her,
- (e) Making this threatening sounding statement about Tammy Dalsing: "I'll get you next time."

(5) Instructing the child to keep secrets about the Smiths and about what happens when she was at the Smiths' home and care, and instructing her to not discuss or disclose these matters with professional counselor(s), who were attempting to provide services for her benefit, thereby hindering the counselor(s) in providing her with proper services and help.

(6) In unreasonably delaying medical evaluation and treatment for the child, when she had fallen at the Smiths' home on Friday, December 25, 2015, and had broken her right arm (at elbow), when the Smiths knew, or in the exercise of due care should have known of the injury and should have promptly secured medical care for the child. The Smiths waited until Sunday, December 27, 2015, before taking the child for medical treatment at Union Medical Center Emergency Department. On information and belief, the delay caused the child to experience additional pain and suffering which would have been eliminated had medical care been promptly and reasonably provided.

(7) In making false and misleading allegations of wrongful acts and neglect by the Dalsings and by members of the Dalsing family to SCDSS, to the Court, to the child and to others; and making false reports to SCDSS in violation of SC Code Section 63-7-440.

(8) In wrongfully providing to each another, to the child, and to others,

confidential information about the Dalsings and members of their family, including confidential information from other court actions and proceedings involving the Dalsings and other children, in violation of applicable rules requiring confidentiality; including, but not limited to the confidentiality provisions of SC Code Sections 63-7-330, 63-7-940, 63-7-1990, 63-7-2600, 63-9-780 and 63-11-550.

(9) In abusing the legal process, including the reporting and investigation process of SCDSS for abuse and neglect cases, by making false, repeated, unwarranted, excessive, exaggerated and/or misleading reports of wrongful acts and neglect by the Dalsings and by members of the Dalsing family to SCDSS, to the Court, to the child, and to others assisting in the legal process; and making false reports to SCDSS in violation of SC Code Sections 63-7-430 and 63-7-440.

(10) In colluding and conspiring among themselves and others to engage in the wrongful and abusive conduct described in this pleading, with the plan and intent to injure the child by casting the Dalsings and members of their family in a negative light; by alienate the affections of the child away from the close, loving and intimate relationship which the child had developed with the Dalsings and the members of the Dalsing family; and by causing the child to be removed from the Dalsings care.

(11) And in such other wrongful acts and/or omissions as may be established during discovery, or before trial, or during trial.

b. **Knowledge of injuries to child by the Smiths, Melinda Butler and Stephanie Kitchens** On information and belief, Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens knew, or in the exercise of due care, should have known that their above referenced wrongful acts and omissions would cause harm to the child, and could reasonably be expected to cause her harm, including the very type harm and injury which the Smiths' allege in their Complaint.

c. **Injuries caused to child by the Smiths, Melinda Butler and Stephanie Kitchens:** As a direct and proximate result of the negligent, gross negligent, reckless, willful, wanton, malicious, bad faith and/or intentional acts and omissions on the part of Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, in one or more of the particulars set forth above, the child has likely suffered injuries which include but are not limited

to the following:

- (1) Mental and emotional injury, pain, anguish, discomfort, embarrassment, mortification and impairment, past and future;
- (2) Physical pain and injury;
- (3) Loss of enjoyment of life;
- (4) Alienation and loss of her close, caring, intimate and loving affections and relationship she had developed with the Dalsings and the other members of the Dalsing family, past and future.

17TH DEFENSE: COUNTERCLAIM AND THIRD-PARTY CLAIM

(Dalsings' Claims for Civil Conspiracy)

144. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

145. On information and belief, at all times relevant hereto, Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens were acting in combination with each other, colluding and conspiring among themselves, and with others from time to time, to engage in improper, unjustified, wrongful and abusive conduct described in this pleading, with the plan and intent to cause injury to the Dalsings, including, but not limited to the following:

- a. To cast the Dalsings and members of their family in a negative light in the eyes of SCDSS and the Family Court, particularly with regard to the Dalsings' ability to be fit and proper caregivers, protectors, foster parents, and adoptive parents for the subject child;
- b. To alienate the affections of the child away from the close, loving and intimate relationship which had developed between the child and the Dalsings and the members of the Dalsing family;
- c. To cause the child to be removed from the Dalsings care;
- d. To cause the child to be placed with the Smiths, temporarily and permanently; and
- e. To prevent the Dalsings from adopting the child.

146. On information and belief, the combination of these conspirators, along with their abilities, access to confidential information, access to the child, and knowledge of the processes of SCDSS and the Courts, provided them with an enhanced ability to cause injury to the Dalsing, as

set out above.

147. As a direct and proximate result of the wrongful acts and omission of Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, acting jointly, severally and in combination, collusion and conspiracy with each other and with others, the Dalsings have suffered the following injuries:

- a. Alienation and loss of the close, caring, intimate and loving affections and relationship which had developed between the Dalsings and the child, past and future;
- b. Mental and emotional injury, pain, anguish, grief, sorrow, discomfort, embarrassment, mortification, depression, and impairment; past and future;
- c. Damages to reputation;
- d. Loss of enjoyment of life;
- e. Loss of consortium between the Dalsings; and
- f. Pecuniary loss.

148. As a result of the matters set out above, the Dalsings are informed and believe that they are entitled to judgment against Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, for actual damages and punitive damages as this Court shall find just and proper.

18TH DEFENSE: COUNTERCLAIM AND THIRD-PARTY CLAIM

(Dalsing Claims for negligence, gross negligence, reckless, willful, wanton, malicious, bad faith and/or intentional acts and omissions)

149. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

150. Jane Smith and John Smith owed duties to the Dalsings including, but not limited to, presenting true and accurate facts to SCDSS, the Court, the GAL and others.

151. At all times herein, Jane Smith and John Smith owed duties to the Dalsings to refrain from making false statements to SCDSS, the GAL, the Court and/or other agencies or tribunals to attempt to influence the placement and adoption of H.A.

152. Melinda Butler owed duties to the Dalsings including, but not limited to, making truthful and accurate representations to the Court, SCDSS, and others while serving as attorney to the Smiths and while serving as GAL in the other referenced action involving the Dalsings.

153. Melinda Butler owed separate duties to the Dalsings, as an officer of the Court, to avoid conflicts of interest regarding her representation of the Smiths and her services as GAL in the separate referenced case involving the Dalsings.

154. Melinda Butler owed duties to the Dalsings to serve as GAL in the separate referenced case involving the Dalsings within the parameters of S.C. Code Ann. § 63-11-530.

155. Melinda Butler owed duties to the Dalsings to refrain from acting outside the scope of her role as GAL and/or attorney to use her influence and power as GAL in the separate referenced case involving the Dalsings to negatively impact and harm the Dalsings in both the case with the Smiths and the separate case.

156. Stephanie Kitchens owed duties to the Dalsings, H.A., and others including, but not limited to, duties set forth in S.C. Code Ann. § 63-11-530 including, but not limited to, the duty of representation of H.A.'s best interests, duties to avoid conflicts of interest, duties to avoid misconduct, duties to avoid persistent neglect of duties, duties to avoid incompetence and a duty to avoid the knowing and willful violation of program policies and procedures that affect the health, safety and welfare of H.A. while serving as her GAL.

157. Prior to serving as H.A.'s GAL and after being relieved of her duties as serving as H.A.'s GAL, Stephanie Kitchens had duties to H.A. and the Dalsings to avoid any involvement with the case involving H.A. and the Dalsings and had a duty to refrain from improperly interfering with any pending cases or attempting to assert undue influence on the proceedings outside the scope of any current or prior appointment, including a duty to refrain from any efforts to try and influence the child's acting GAL in any manner, including, but not limited to efforts to harm the Dalsings or their efforts to try and adopt the child, or to interfere with the child's relationship with the Dalsings.

158. Each of the duties set forth above were breached by the Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, individually and/or as co-conspirators acting in combination and collusion with one another.

159. The injuries to the Dalsings were the direct and proximate result of and were caused and occasioned by the respective breaches of these duties by the negligent, gross negligent, reckless, willful, wanton, malicious, defamatory, bad faith and/or intentional acts and omissions on the part of Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and

severally, in one or more of the following particulars:

a. In making false and misleading allegations of wrongful conduct and neglect by the Dalsings and by members of the Dalsing family to SCDSS, to the Court, to the child and to others; including the making of false reports to SCDSS in violation of SC Code Section 63-7-440.

b. In wrongfully providing to one another and to others, confidential information about the Dalsings and members of their family, including confidential information from other court actions and proceedings involving the Dalsings and other children, in violation of applicable rules requiring confidentiality; including, but not limited to the confidentiality provisions of SC Code Sections 63-7-330, 63-7-940, 63-7-1990, 63-7-2600, 63-9-780 and 63-11-550.

c. In abusing the legal process, including the process of SCDSS regarding the reporting and investigation of abuse and neglect cases, by making false, repeated, unwarranted, excessive, exaggerated and/or misleading reports of wrongful conduct and neglect by the Dalsings and by members of the Dalsing family to SCDSS, to the Court, and to others assisting in the legal process; and including making false reports to SCDSS in violation of SC Code Sections 63-7-430 and 63-7-440.

d. In colluding and conspiring among themselves and others to engage in the wrongful and abusive conduct described in this pleading, with the plan and intent to injure the Dalsings.

e. And in such other wrongful acts and/or omissions as may be established during discovery, or before trial, or during trial.

160. As a direct and proximate result of the wrongful acts and omission of Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, the Dalsings have suffered the following injuries:

a. Alienation and loss of the close, caring, intimate and loving affections and relationship which had developed between the Dalsings and the child, past and future;

b. Severe mental and emotional injury, pain, anguish, grief, sorrow, discomfort, embarrassment, mortification, depression, and impairment; past and future;

c. Damages to reputation;

d. Loss of enjoyment of life;

- e. Loss of consortium between the Dalsings; and
- f. Pecuniary loss.

161. As a result of the matters set out above, the Dalsings are informed and believe that they are entitled to judgment against Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, for actual damages and punitive damages as this Court shall find just and proper.

19TH DEFENSE: COUNTERCLAIM AND THIRD-PARTY CLAIM

(Defamation)

162. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

163. Jane Smith, John Smith, Melinda Butler and/or Stephanie Kitchens, individually and/or as co-conspirators acting in combination and collusion with one another, published statements, both verbally and in writing, about the Dalsings that were defamatory.

164. Some of these statements suggested that the Dalsings had committed crimes and intentionally harmed H.A. and are therefore, by definition, defamatory per se.

165. The statements at issue are not privileged.

166. The statements by Melinda Butler and Stephanie Kitchens were outside the scope of their respective representations/appointments and, as a result, are not protected.

167. Some of the statements made by Jane Smith, John Smith, Melinda Butler and/or Stephanie Kitchens are actionable per se, meaning that the law presumes they acted with common law malice and damages are presumed.

168. Regardless, Jane Smith, John Smith, Melinda Butler and/or Stephanie Kitchens acted with actual malice when they made the defamatory statements, causing special damages.

169. The aforementioned wrongful acts and omissions of Jane Smith, John Smith, Melinda Butler and/or Stephanie Kitchens, jointly and severally, and in combination, collusion and conspiracy with each other, in making and publishing to others, by writing and by speech, false, malicious, defamatory and bad faith reports of child abuse and neglect against Tammy Dalsing and Edward Dalsing, which evidenced a conscious indifference by these parties regarding the rights of the Dalsings, and which were carried out with the plan and intent to cause injury to the Dalsings, including, but not limited to the following:

- a. To harm the reputation of the Dalsings and their family;
- b. To cast the Dalsings and members of their family in a negative light in the eyes of SCDSS, the Family Court, the child and others, particularly with regard to the Dalsings' ability to be fit and proper caregivers, protectors, foster parents, and adoptive parents for the subject child;
- c. To alienate the affections of the child away from the close, loving and intimate relationship which had developed between the child and the Dalsings and the members of the Dalsing family;
- d. To cause the child to be removed from the Dalsings care;
- e. To cause the child to be placed with the Smiths, temporarily and permanently; and
- f. To prevent the Dalsings from adopting the child.

170. The aforementioned wrongful acts and omissions of Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, were committed, caused and occasioned by their negligent, gross negligent, reckless, willful, wanton, malicious, defamatory, bad faith and/or intentional conduct; and these parties knew with certainty or with substantial certainty that their wrongful acts and omissions would cause the Dalsings injury to their reputation and severe emotional distress.

171. As a direct and proximate result of the false, malicious, defamatory and bad faith reports of child abuse and neglect made against Tammy Dalsing and Edward Dalsing by Jane Smith, John Smith, Melinda Butler and/or Stephanie Kitchens, jointly and severally, and acting in combination, collusion and conspiring with each other and with others, the Dalsings did incur severe emotional distress, damages and injury, including, but not limited to the following:

- a. Injury to reputation and standing in the community;
- b. Embarrassment and personal humiliation;
- c. Severe mental anguish and suffering;
- d. Wounded feelings caused by injury to reputation;
- e. Alienation and loss of the close, caring, intimate and loving affections and relationship which had developed between the Dalsings and the child, past and future; and
- f. Attorney's fees, costs, lost wages, and other damages which the Dalsings

had to incur in defending themselves in the repeated child abuse and neglect investigations by SCDSS, which were caused by the false, defamatory, malicious and bad faith allegations and reports of the Smiths, Melinda Butler and/or Stephanie Kitchens, as aforesaid.

172. As a result of the matters set out above, the Dalsings are informed and believe that they are entitled to judgment against Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, for actual damages and punitive damages as this Court shall find just and proper.

20TH DEFENSE: COUNTERCLAIM AND THIRD-PARTY CLAIM

(Intentional Infliction of Severe Emotional Distress - Outrageous Conduct)

173. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

174. The aforementioned wrongful acts and omissions of Jane Smith, John Smith, Melinda Butler and/or Stephanie Kitchens, jointly and severally, and in combination, collusion and conspiracy with each other, in making and publishing to others false, malicious, defamatory, and bad faith reports of child abuse and neglect against Tammy Dalsing and Edward Dalsing:

- a. Were done intentionally or recklessly by these parties to inflict severe emotional distress in and to the Dalsings, or were done with certainty or substantial certainty that such distress would result from their conduct;
- b. Was conduct so extreme and outrageous as to exceed all possible bounds of decency, and must be regarded as atrocious and utterly intolerable in a civilized community;
- c. Caused the Dalsings' severe emotional distress; and
- d. The conduct and resulting emotional distress to the Dalsings were such that no reasonable person could be expected to endure the same without suffering severe emotional distress.

175. As a direct and proximate result of the wrongful acts and omission of Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, the Dalsings have suffered the following injuries:

- a. Alienation and loss of the close, caring, intimate and loving affections and relationship which had developed between the Dalsings and the child, past and future;
- b. Severe mental and emotional injury, pain, anguish, grief, sorrow,

discomfort, embarrassment, mortification, depression, and impairment; past and future;

- c. Damages to reputation;
- d. Loss of enjoyment of life;
- e. Loss of consortium between the Dalsings; and
- f. Pecuniary loss.

176. As a result of the matters set out above, the Dalsings are informed and believe that they are entitled to judgment against Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, for actual damages and punitive damages as this Court shall find just and proper.

21ST DEFENSE: COUNTERCLAIM AND THIRD-PARTY CLAIM

(Abuse of Process)

177. All the above allegations, not inconsistent herewith, are realleged as if set out verbatim in this section.

178. On information and belief, Jane Smith, John Smith, Melinda Butler and/or Stephanie Kitchens, wilfully, maliciously and intentionally, jointly and severally, and in combination, collusion and conspiracy with each other, and aiding or abetting each other, abused the legal process, including the process of SCDSS regarding the reporting and investigation of abuse and neglect cases, by making false, repeated, unwarranted, excessive, exaggerated and/or misleading reports of wrongful conduct and neglect by the Dalsings and by members of the Dalsing family to SCDSS, to the Court, and to others assisting in the legal process; and including making false reports to SCDSS in violation of SC Code Sections 63-7-430 and 63-7-440; with the following wrongful, harmful and ulterior purposes:

- a. To cause the child to be removed from the Dalsings care and to be placed with the Smiths;
- b. To cause the Dalsings to be legally precluded from being considered for adoption of the child by SCDSS;
- c. To harm the Dalsings' reputation and standing in the community;
- d. To cause them embarrassment, personal humiliation, severe mental anguish and suffering;
- e. To alienate and cause them to lose the close, caring, intimate and loving

affections and relationship which had developed between the Dalsings and the child;

f. To cause the Dalsings to incur attorney's fees, costs, lost wages, and other damages which the Dalsings had to incur in defending themselves and their children in the repeated child abuse and neglect investigations by SCDSS;

g. To cause the Dalsings to lose their foster license, which would have caused the child to be removed from their foster care, and which would prevent them from providing foster care for other foster children;

h. To cause the Dalsings to lose their adoptive Home Study approval which they had received from SCDSS;

i. To harm the Dalsings' other children by alleging these children, individually and in combination, had engaged in child abuse and neglect;

j. To cause the Dalsings and their children to have their names entered on the SCDSS Central Registry for Child Abuse and Neglect; and

k. To harm the Dalsings and their children as a family unit, by making false and misleading allegations of child abuse and neglect against them, individually and collectively.

179. As a direct and proximate result of these wrongful acts and omission of Jane Smith, John Smith, Melinda Butler and/or Stephanie Kitchens, jointly and severally, and in combination, collusion and conspiracy with each other, and aiding or abetting each other, the Dalsings have suffered and will continue to suffer the following injuries:

a. Alienation and loss of the close, caring, intimate and loving affections and relationship which had developed between the Dalsings and the child, past and future;

b. Severe mental and emotional injury, pain, anguish, grief, sorrow, discomfort, embarrassment, mortification, depression, and impairment; past and future;

c. Damages to reputation;

d. Loss of enjoyment of life, including loss of enjoyment of family peace, harmony and security;

e. Loss of consortium between the Dalsings; and

f. Pecuniary loss, including the attorney's fees, costs, lost wages, and other damages which the Dalsings had to incur in defending themselves and their children in the repeated child abuse and neglect investigations by SCDSS.

180. As a result of the matters set out above, the Dalsings are informed and believe that they are entitled to judgment against Jane Smith, John Smith, Melinda Butler and Stephanie Kitchens, jointly and severally, for actual damages and punitive damages as this Court shall find just and proper.

WHEREFORE, having fully answered the Complaint of the plaintiffs, the Dalsings pray that the Complaint be dismissed, for the relief requested in their counterclaims and third-party claims, for the costs and disbursements of this action, and for any such other and further relief as this court shall deem just and proper.

<p><u>s/ James P. Walsh</u> James P. Walsh (15180) P. Christopher Smith, Jr. (74086) Clarkson, Walsh & Coulter, P.A. P.O. Box 6728 Greenville, SC 29606 (864) 232-4400 (864) 235-4399 (fax) jwalsh@clarksonwalsh.com csmith@clarksonwalsh.com Attorneys for defendants Tammy Gaye Causey Dalsing And Edward Anthony Dalsing on claims made against them only (No representation for counterclaims and/or third-party claims)</p> <p><u>s/ Cameodiamond Joseph</u> Cameodiamond Joseph (102749) Haynsworth Sinkler Boyd P.A. 1 North Main Street 2nd Floor Greenville, SC 29601-2772 (864) 240-3200 (864) 240-3300 (fax) cjoseph@hsblawfirm.com Attorneys for defendants Tammy Gaye Causey Dalsing And Edward Anthony Dalsing on claims made against them only (No representation for counterclaims and/or third-party claims)</p>	<p><u>s/ L. Dale Dove</u> L. Dale Dove (1735) Dove Law Group, LLC 125 Hampton St, Suite 200 P.O. Box 907 Rock Hill, SC 29731 (803) 327-1910 (803) 327-2216 (fax) Dale@dovelawgroup.com Attorneys for defendants Tammy Gaye Causey Dalsing And Edward Anthony Dalsing</p> <p>JURY TRIAL DEMANDED</p> <p>May 20, 2020</p>
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1 A. There was enough evidence to initiate it, why couldn't we
2 go all the way?

3 Q. --- and you don't know if it had anything to do with how
4 the evidence played out Monday through Thursday; do you?

5 A. No, we were never in the courtroom.

6 Q. Okay, and so, you don't know what happened there, I don't
7 know what happened there, I wasn't there?

8 A. No, I just know what Chad Mitchell told me; that's all.

9 Q. Okay, and on this issue of accountability, I mean, are you
10 more angry with the Dalsings for simply not walking away
11 and surrendering H [REDACTED] to blood relatives?

12 A. It's not angry, you don't - - something happened to
13 H [REDACTED] I can't get the images out of my head what, the
14 injuries that she sustained all these years, the, what
15 they put her through. It just needs, somebody needs to be
16 accountable.

17 Q. Very quickly, did you know anything about the Dalsings
18 filing bankruptcy?

19 A. Vaguely, I do, yes.

20 Q. Were you notified as a potential creditor in any way?

21 A. No, sir.

22 Q. Okay, did you actually submit a claim and claim to be a
23 potential creditor?

24 A. No, sir.

25 Q. Okay, but you knew that action was going on while it was

1 pending?

2 A. Yes.

3 Q. But you didn't take any actions to try and make a claim at
4 that time?

5 A. No, sir.

6 Q. And why not?

7 A. Why? I just didn't. Why should I make a claim?

8 Q. You're making a claim now, I'm just ---

9 A. Yeah, we're going to court, that's what I'm assuming, that
10 we're gonna go to court.

11 Q. Have you investigated whether your claim may be barred or
12 discharged by the bankruptcy?

13 BY MS. SAUNDERS:

14 Objection to the form.

15 WITNESS ANSWERS:

16 A. I don't understand all that.

17 Q. Okay. And I think I asked you this the last time, but do
18 you have any concerns about H [REDACTED] testifying if she
19 needs to testify in a deposition or a trial?

20 A. No. She'll talk to a, she'll talk to a judge, if she
21 needs to.

22 Q. But have you been coaching her and working on her for the
23 last few years about ---

24 BY MS. SAUNDERS:

25 Objection to the form.