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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Appellate Case No.: 2023-000720
Civil Action Nos.: 2006-CP-18-01310, -01311, -01636

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and
Jane Doe 2 and Rachel Roe, individually and as representatives of a class
of people similarly situated,.....Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald are.....Appellants,

v.

The Bishop of Charleston, a Corporation Sole; The Bishop of the Diocese of
Charleston, in his official capacity,.....Respondents,

And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC.....Intervenors.

**DAVID K. HALLER, LAWRENCE E. RICHTER, JR., AND
RICHTER & HALLER, LLC'S RETURN TO
APPELLANTS' MOTION TO SETTLE THE RECORD AND EXTEND TIME**

Lawrence E. Richter, Jr., David J. Haller, and Richter & Haller, LLC (collectively, "Richter & Haller") submit this return to Appellant's Motion to Settle the Record and Extend Time filed November 13, 2023.

Appellants argue, through their counsel, that they attempted to consult the undersigned on the matter and, in addition, they assume the motion is opposed. First, Richter & Haller have no opposition to Appellants' request for an extension of time to assemble and serve the record.

Second, the undersigned was in contact via e-mail in the days leading up to Appellants' motion, but Appellants' counsel never identified items designated with which he had concern, nor did he indicate he would file a motion. Therefore, to say counsel was consulted in a good faith effort to resolve the subject-matter of the motion is, to borrow words from the Appellants, "pixie dust." It was not until reading the motion that Richter & Haller had the benefit of knowing the matter which Appellants' counsel believe to be improperly designated.

With regard to the merit of Appellants' contention that Richter & Haller improperly designated matter in violation of the Rules 210, SCACR, the argumentative nature of Appellants' statement of the case in their initial brief compelled the designation of the additional matter. Contrary to Rule 208(b)(1)(C)—which prohibits contested matters in a party's statement of the case—Appellants included a twenty-four-page statement of the case that consisted largely of argument and contested matters. While not an exhaustive list, some of the contested matters included the following:

- Argument that class counsel had a conflict of interest that was never disclosed to the class;¹
- Argument that class settlement served the interest of the Diocese but not those of the abuse victims;²
- Argument that the class action was "re-filed in Dorchester County, as part of the parties colluding to judge shop";³
- Over seven pages dedicated to frivolous argument of judge-shopping, the same arguments Appellants' counsel has been advancing for over a decade to no avail;⁴
- Argument that the Diocese paid what Appellants' counsel describes as "an undisclosed contingency fee";⁵

¹ Apps.' Initial Br. at 2.

² Ibid.

³ Ibid. at 3.

⁴ Ibid. at 4-11.

⁵ Ibid. at 11, 12.

- Argument that with regard to the “undisclosed contingency fee” the Diocese and class counsel undertook “a concealment obviously done by agreement between class counsel and the Diocese;”⁶
- Argument that “nearly 100%” of the time and expenses submitted in support of class counsel’s motion for attorney’s fees and costs was paid by the “undisclosed contingency fee”;⁷
- Argument that the class action court blindly awarded attorney’s fees of \$2.5 Million without inquiry;⁸
- Argument that “no order provides” for attorney’s fees to be charged during the arbitration phase of the claims process;⁹
- Argument that attorneys’ fees charged during the arbitration phase of the claims process were hidden or concealed from the class action court when in fact the class action court discussed the prospect of those fees during the March 9, 2007, fairness hearing;¹⁰
- Argument that class counsel charged “unauthorized fees” which Appellants’ counsel estimates to exceed \$900,000;¹¹
- Argument that “[a]n additional 10% fee was charged by class counsel for those class members represented by separate counsel, splitting the 20% overcharge). None of that was disclosed to Judge Goodstein;”¹²
- Argument that class counsel overtly “elevated” its fee over the interests of the class members;¹³
- Argument that class counsel had an economic incentive to restrict notice of the class settlement to limit claims and avoid having to reduce its fee;¹⁴
- Argument that “[c]lass counsel reduced payments to class members anyway, by charging the additional fees and costs no order authorized;”¹⁵

⁶ Ibid. at 12.

⁷ Ibid. at 12, 14.

⁸ Ibid. at 15.

⁹ Ibid.

¹⁰ Ibid. at 15-16. Compare Transcript, March 9, 2007, p. 114, line 8 to p. 115, line 9 (discussing claimants who submit claims after approval of settlement terms hiring counsel to represent them in the damages arbitration phase and paying attorneys’ fees from their arbitration awards as a matter of contract)

¹¹ Ibid. at 16.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

- Argument that the “reverter clause” in the settlement agreement providing that any surplus funds be returned to the Diocese “created the provision created an economic incentive for both class counsel and the Diocese to minimize recovery to class members;”¹⁶
- Two pages of arguments dedicated to so-called “false statements to the court” with the added editorials that class counsel “pretend[ed] the Charleston cases never existed,” and, “Telling the truth would expose pretense on which the judge-shopping rested;”¹⁷
- Argument that the parties and class counsel “[p]ersistently misrepresent[ed]” the history of the class action and “mis-stated history” to obscure their judge-shopping;¹⁸
- Argument that the objectors Appellants’ counsel purported to represent received better settlement terms than other class members and that the parties and class counsel failed to inform the court and class members about that;¹⁹
- Argument that the parties and class counsel failed to disclose to the class the \$2.5 Million court-awarded fee and alleged conflicts “from his lifelong association with the Diocese and his friendships with many priests;”²⁰
- Argument that fees were charged from arbitration awards “[w]ith no court oversight or approval;”²¹
- Argument that the accountings submitted to the court “misrepresents and understates the fee paid to class counsel;”²²
- Argument about “unusual actions in the class action;”²³
- Argument that “[d]espite the September 19, 2009 deadline, and the directive that any extension could come only from the Supreme Court, the parties were content for Judge Goodstein to take no action,” and that the “Supreme Court’s deadline was simply ignored;”²⁴ and
- Argument regarding “extensive collusion, judge-shopping, information withheld from the court, misrepresentations to the court, and the apparently unauthorized charges made by class counsel of the McDonalds and (apparently)

¹⁶ Ibid. at 16-17.

¹⁷ Ibid. at 17.

¹⁸ Ibid. at 18.

¹⁹ Ibid. at 20.

²⁰ Ibid.

²¹ Ibid.

²² Ibid. at 21.

²³ Ibid. at 22.

²⁴ Ibid.

of every other class member, contending the fees and costs charged by class counsel did not comply with Judge Goodstein's orders."²⁵

Because Appellant's statement of the case included these argumentative, fantastical, contested matters, Richter & Haller were compelled to include in their brief a statement of the case that not only accurately recited the procedural history of the three Dorchester County civil actions involved in this appeal but also demonstrates, with citations to court filings, the frivolous and baseless nature of Appellants' allegations of collusion, conflicts of interest, and judge-shopping. Indeed, the arguments the Appellants assert are not novel revelations but rather are the same half-baked theories which have been tested and which have failed for over a decade in the Circuit Court, the Court of Appeals, and the Supreme Court of South Carolina. An appellant cannot in good faith submit a statement of the case with such hyperbolic, unsupported, and contested matters without some expectation that another party will, in response, cite to court orders addressing those same theories in related litigation to set the record straight.

Regarding the merit of Appellants' motion to settle the record, Richter & Haller would show the following:

1. Items 29, 32, 35, 36, and 37.

Appellants seek to exclude Items 29, 32 and 36 of Richter & Haller's designation. Item 29 is described in Appellants' motion as "a pleading in different litigation." That statement is false. That document is the Order entered August 11, 2017 in which Judge Nicholson granted summary judgment in favor of Richter & Haller in the eight legal malpractice cases filed by Appellants' counsel that were pending at the time. (Order, August 11, 2017, C/A No.: 2010-CP-10-5520 (lead case), **Exhibit A**.) Item 32 is the opinion from this Court affirming Judge Nicholson's summary judgment order per curiam. (Opinion filed March 3, 2021, Appellate Case No. 2017-001996,

²⁵ Ibid. at 24.

Exhibit B.) Items 35 and 36 are the orders from the supreme court and court of appeals, respectively, denying the appellants’ motions to recall the remitter that was sent when appellants’ counsel failed to timely petition for certiorari in that appeal. (Order filed August 6, 2021, Appellate Case No. 2021-000668, **Exhibit C**; Order filed October 25, 2021, Appellate Case No. 2017-001996, **Exhibit D**.) The orders denying the motions to recall the remittitur ended the appeal of Judge Nicholson’s order granting Richter & Haller summary judgment; however, appellants’ counsel persisted with yet another motion asking the supreme court to recall the remittitur. The supreme court denied that motion in a January 11, 2022, order designated as Item 37. (Order filed January 11, 2022, Appellate Case No. 2021-001525, **Exhibit E**.) Not only are all these filings public record, but they also demonstrate the finality of this Court’s affirmance of Judge Nicholson’s order and, in turn, the rejection of the collusion, judge-shopping, conflict of interest, and malpractice theories now advanced on behalf of the McDonalds.

In their memorandum in opposition filed with the lower court, Richter & Haller argued,

In all, Meyers and Flowers have filed thirteen different lawsuits against class counsel advancing the same allegations, three of which remain pending. After years of litigation, the Court of Common Pleas for Charleston County granted summary judgment in favor of class counsel in all the then-pending cases. That order was affirmed on appeal. The summary judgment order, however, did not stop the filings.

(Richter & Haller Memorandum in Opposition filed January 26, 2023, at 8.) Richter & Haller argued this point to the lower court to demonstrate (i) that the theories of collusion, judge-shopping, conflicts of interest, breach of fiduciary duty, and malpractice have been tested in the circuit court and rejected, and (ii) that this litigation has persisted nonetheless—an made unnecessarily complex—by what appears to be a personal vendetta Appellants’ counsel has against one of the attorneys appointed as class counsel. Indeed, from time to time in his filings Appellants’ counsel uses the pronouns “him” and “his” to refer to class counsel, rather than the logical “them” and “their”. It is not surprising that the Appellants would move to exclude such matter from the

record, for it reveals the true nature of the campaign that began in 2008 “to disrupt the entire class settlement and completed claims, which had been arbitrated and paid.” (Richter & Haller Memorandum in Opposition, January 26, 2023, at 6.) Judge Nicholson’s order and the appellate court orders were therefore integral to the arguments advanced before the lower court and should be included in the record on appeal.

2. Items 33 and 34, Supreme Court orders in different but related litigation.

Appellants also seek to exclude Items 33 and 34 from Richter & Haller’s designation of matter. Item 33 is an April 19, 2021, order from the Supreme Court of South Carolina denying the Appellant’s petition for that court to hear their complaints in the supreme court’s original jurisdiction. (Order Denying Appellants’ Petition, April 19, 2021, **Exhibit F.**) Item 34 is the subsequent order clarifying the court’s ruling that was issued in response to the McDonalds’ request. (Order Denying McDonald’s Petition, June 15, 2021, **Exhibit G.**)

Before the lower court in this case, one of Richter & Haller’s arguments was the McDonalds’ inexplicable delay in asserting their claims. With regard to the motion for a post-award fairness hearing, Richter & Haller argued—with citations to the petition, attachments, and the court’s orders—that the McDonalds first sought relief through a petition to the supreme court asking that it exercise original jurisdiction over the matter. Furthermore, Richter & Haller argued that the McDonalds failed to offer any explanation to the lower court for (i) the initial delay between the time the McDonalds deposited the class settlement checks and when they first sought relief, or (ii) the additional three-year delay between the date they petitioned the supreme court and when they moved for a post-award fairness hearing before the class action court:

On October 21, 2019, the McDonalds filed a petition in the original jurisdiction of the Supreme Court of South Carolina with a proposed complaint and exhibits. The combined filings were 101 pages and requested that the Court exercise original jurisdiction over claims for declaratory relief, legal malpractice, breach of fiduciary duty and indemnification based upon the same allegations of collusion, judge-

shopping, conflicts of interest and excessive and improper fees.⁵ The Supreme Court denied that petition.⁶ The McDonalds received the order denying their petition, but they did move to intervene in these class action cases. Instead, they waited nearly three years to file the motion. They offer no explanation either for the initial eleven-year delay or for the additional three-year delay.

Footnote 5 cited, “McDonalds’ Petition for Original Jurisdiction and Complaint with Exhibit A through D, October 20, 2020.” Footnote 6 specifically cited Items 33 and 34: “Orders filed in Appellate Case No. 2020-001415, April 19, 2021, and June 15, 2021.” (Richter & Haller Memorandum in Opposition, January 26, 2023, at 17-18.) Therefore, Appellants are incorrect that those orders were not presented to the lower court. This material is public record, was cited in the brief to the lower court, and was properly designated to be included in the record.

3. Items 38, 39, 43, and 44.

The last designations with which Appellants take issue are Items 38, 39, 43, and 44. These items all pertain to the pending action the McDonalds filed against Richter & Haller and the Diocese in the Charleston County Court of Common Pleas. Item 38 is the complaint filed on August 30, 2022, in C/A No: 2022-CP-10-04031. (**Exhibit H.**) Item 39 is the notice of removal the Diocese of Charleston quickly filed removing the case to federal court. (Notice of Removal, C/A No. 2:22-cv-02940-BHH, **Exhibit I.**) Both of those filings were in the public record before Judge Taylor was appointed in the class actions. Item 43 is the federal court order granting Richter & Haller’s motion to remand the case to state court, and Item 44 is the motion to dismiss Richter & Haller filed because they were never served with the summons or complaint in that action. These filings are also public records, and Richter & Haller cited to them on page 7 of their initial brief. As noted above, Richter & Haller wrote on page 9 of their memorandum in opposition to the McDonalds’ motion for a post-award fairness hearing, “Over sixteen months later, on August 29, 2022, the McDonalds’ motion to intervene was filed. The following day, a new lawsuit was filed on their behalf against class counsel, too. That lawsuit is pending.” Richter & Haller, therefore,

presented argument to the lower court about these filings. The filings that existed at the time of the January 27, 2022, hearing should be included. Furthermore, the delay in filing, coupled with the failure to even serve the lawsuit on Richter & Haller, demonstrates a lack of sincerity of the arguments and claims advanced on behalf of the McDonalds. Admittedly, Items 43 and 44 were filed after the lower court's decision and, therefore, were not provided to the lower court. While those filings are indeed relevant to allegations and arguments advanced in this appeal, Richter & Haller concedes Items 43 and 44 and withdraws them.

CONCLUSION

Richter & Haller have no objection to the Appellants' request for a continuance to assemble the record. However, the Appellants are incorrect that the matter listed in their motion violated Rule 210(c), SCRCR. With the exception of two items which are being withdrawn, Richter & Haller stand by their remaining designations, all of which are matters of public record. Had the Appellants provided the list prior to filing their motion, much of this could have been resolved without court involvement, especially since the relief Appellants seek is "leave to include the matter despite SCACR 210(c)." Richter & Haller therefore seek an order that Items 29, 32, 33, 34, 35, 36, 37, 38, and 39 were properly designated and must be included in the record on appeal.

Respectfully Submitted,

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November 27, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-5520; 2010-CP-10-7233; 2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176; 2015-CP-10-5486; 2016-CP-10-1632

John Doe, et al.
PLAINTIFF(S)

The Bishop of Charleston, a Corporation Sole, et al.
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

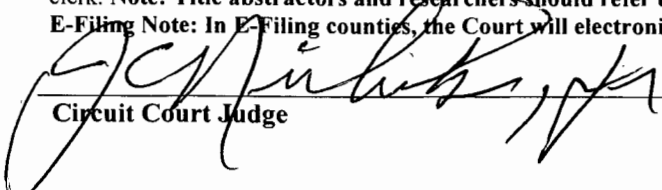
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117
Judge Code

8/8/17
Date



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

John Doe 2 and Jane Doe 4,

Plaintiffs,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2010-CP-10-5520

**ORDER ON
LAWYER DEFENDANTS'
MOTIONS FOR
SUMMARY JUDGMENT**

John Doe 10,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2010-CP-10-7233

Jane Doe 11,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2012-CP-10-5559

John Doe 193,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2013-CP-10-3733

JULIE J. ARMSTRONG
CLERK OF COURT

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Father Doe 194,) CASE NO.: 2013-CP-10-4175
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 194,) CASE NO.: 2013-CP-10-4176
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 245 and Father Doe 245,) CASE NO.: 2015-CP-10-5486
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 297,) CASE NO.: 2016-CP-10-1632
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

THESE MATTERS CAME BEFORE THE COURT on motions of the Defendants
Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC (“the Lawyer Defendants”)
for summary judgment pursuant to Rule 56, SCRCP. The Lawyer Defendants filed an omnibus

motion for summary judgment in each case on the same grounds. The Lawyer Defendants also filed separate motions for summary judgment on additional grounds against Jane Doe 4 (Case No. 2010-CP-10-5520) and John Doe 193 (Case No. 2013-CP-10-3733). This Order will address the omnibus motion in each case as well as the motions for summary judgment against Jane Doe 4 and John Doe 193.¹

BACKGROUND

The above-captioned matters consist of eight (8) separate cases filed between 2010 and 2016 on behalf of ten (10) different plaintiffs. Each case arises out of alleged sexual abuse by priests of the Diocese Defendants. Seven (7) of the plaintiffs are alleged victims of sexual abuse and three (3) are spouses or parents of alleged abuse victims. Nine (9) of the plaintiffs are non-residents of South Carolina and one (1) is a South Carolina resident who alleges he repressed memory of the abuse.

gm
The Lawyer Defendants represented alleged victims of sexual abuse in class action lawsuits against the Diocese Defendants that were settled in 2007 (Case Nos. 2006-CP-18-13109, 1311 and 1636; “the Underlying Case”).² Seven of the Plaintiffs claim that they were members of the Primary Class³ and that the Lawyer Defendants committed legal malpractice while representing

¹ The Lawyer Defendants also filed an omnibus motion for summary judgment as to the civil conspiracy claims in each case. They are now moot because the Plaintiffs abandoned their claims for civil conspiracy at the hearing held on July 20, 2017.

² While the record reflects the negotiation of a Settlement and Arbitration Agreement between the Lawyer Defendants and the Diocese Defendants in 2006, the settlement was not formalized and approved by the court until 2007.

³ The Primary Class of abuse victims was defined as “All individuals born on or before August 30, 1980, who, as minors, were sexually abused at any time by the agents or employees of the Dioceses

them. Three of the Plaintiffs claim that they were members of the "Consortium Class" of spousal and parental victims who allege that the Lawyer Defendants committed legal malpractice while representing them as well.⁴ All of the claims against the Lawyer Defendants arise out of their activities in the Underlying Case.

The crux of all but one of the Plaintiffs' claims is that the Lawyer Defendants defined the Primary and Consortium Classes without geographical limitation but geographically limited the notice that would be given of the settlement by publication to class members in South Carolina.⁵ The non-resident Plaintiffs allege that, as a result, they were bound by the class action settlement but were never given notice of that settlement.

gen If they were bound by the settlement in the Underlying Case, then the doctrine of *res judicata* would deprive them of the opportunity to sue the Diocese Defendants without giving them notice of the settlement that satisfied their due process rights. The allegations in the Complaint filed by John Doe 2 and Jane Doe 4 are typical of each plaintiffs' complaint:

23. If the Diocese agrees, or the court finds, that the plaintiffs are not precluded by the class action from bringing claims against the Diocese, either because the state court's ruling left room for persons not receiving notice or because the deliberate restrictions on notice clearly failed to comply with plaintiffs' due process rights, **then the causes of action against the Richter defendants** who, for a fee, abandoned their clients, and those who conspired against them through the class action, **are irrelevant because plaintiffs can make their claims against the Diocese.** If the court finds that the plaintiffs are precluded for any reasons, including the *res judicata* effect of the class action, charitable immunity, or by the statute of

of Charleston who have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Primary Class").

⁴ The Consortium Class was defined as "The spouses and parents, of all individuals qualified pursuant the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Consortium Class").

⁵ The notice plan approved by the class action court was for publication in ten South Carolina daily newspapers and *The Augusta Chronicle*, and *The Catholic Miscellany*.

limitations, then the causes of action alleged against the Diocese defendants for sexual abuse are irrelevant, and those claims are properly made against those who conspired against them as well as against the Richter defendants who failed to properly represent them. (Emphasis added).

See John Doe 2 and Jane Doe 4 v. The Diocese of Charleston, et. al., Case No. 2010-CP-10-5520, Complaint, ¶ 23 (emphasis added).

The claims alleged by John Doe 193 are slightly different.⁶ John Doe 193 alleges that he repressed the memory of his sexual abuse until 2010. As a result, even though he lived in South Carolina, he claims he did not receive notice of the class action settlement until 2010 (when he recovered his memory) and alleges the Lawyer Defendants failed to make a provision for repressed memory victims like him in the settlement.⁷

The Plaintiffs allege causes of action for professional negligence, breach of fiduciary duty, and unfair trade practices against the Lawyer Defendants.

I. Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551 (2010); *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E. 2d 68, 70 (2007).

⁶ Case No. 2013-CP-10-3733.

⁷ John Doe 193's claim for professional negligence was dismissed by Order of the Honorable Kristi Lea Harrington dated January 16, 2014. His claim for civil conspiracy was abandoned by Plaintiff's counsel at the hearing on July 2017. Thus, only the claim for breach of fiduciary duty remains for John Doe 193.

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E. 2d 537 (1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a ***genuine issue for trial***.'" *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Id.*; *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 545 S.E. 2d 500 (2001).

II. The Lawyer Defendants' Motions

The Lawyer Defendants contend that they are entitled to summary judgment because:

- A. the Court has determined that the Plaintiffs can sue the Diocese Defendants making their respective claims against the Lawyer Defendants "irrelevant";
- B. the Plaintiffs have no damages proximately caused by the Lawyer Defendants;
- C. no attorney-client relationship existed between the Lawyer Defendants and the Plaintiffs, who were unnamed class members; and
- D. the Lawyer Defendants did not breach a fiduciary duty to the Plaintiffs.

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

As noted above, the Plaintiffs' Complaints explicitly allege that if they are not precluded by the class action settlement from bringing claims against the Diocese Defendants, then the causes

of action against the Lawyer Defendants are “irrelevant”. The keystone of their argument revolves around the concept of notice. The Plaintiffs allege that since they were included in the definition of the Primary Class, they should have been given notice of the settlement in accordance with their due process rights. Thus, if the Court were to find that they are precluded from maintaining their claims against the Diocese Defendants as a result of the class settlement, only then can Plaintiffs assert their claims against the Lawyer Defendants for not giving them notice of the settlement. In other words, when viewed in the light most favorable to the Plaintiffs, the complaints make a finding of preclusion by the Court a predicate upon which the Plaintiffs’ claims against the Lawyer Defendants rise or fall.

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In this Court’s Amended Order on Limited Collateral Review dated May 3, 2017, I found that the Plaintiffs’ Complaints, by their own terms, presented a threshold question: Are the Plaintiffs precluded from pursuing claims against the Diocese Defendants? I then answered the question in the negative, finding that the Plaintiffs were not precluded from bringing their claims against the Diocese Defendants because the notice plan approved in the Underlying Case “did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the court substantially outside of the geographic territory of South Carolina.”

I concluded that “the notice plan directed by the class action court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived outside of the areas in which notice was published”.⁸ I further found that it would be inconsistent with due process to bind John Doe 193 to the class action settlement if he could prove a repressed memory

⁸ This finding was consistent with the finding by Judge Roger Young in his Order dated June 17, 2011 in Case No. 2010-CP-10-5520 denying in part and granting in part the Diocese Defendants Motion to Dismiss.

by the preponderance of the evidence. In light of that ruling, even when this Court views the allegations in the complaints in the light most favorable to Plaintiffs, the only reasonable conclusion is the Plaintiffs have no claims against the Lawyer Defendants because the class settlement did not preclude their claims against the Diocese Defendants.

B. Plaintiffs Have No Damages Proximately Caused by the Lawyer Defendants

After the Amended Order on Limited Collateral Review was entered, this Court scheduled several of the cases against the Diocese Defendants for trial in May 2017. Soon thereafter, five (5) Plaintiffs and the Diocese Defendants voluntarily settled four (4) of the cases.⁹ Since all Plaintiffs were allowed to present their claims against the Diocese Defendants and five (5) Plaintiffs in four (4) of the cases voluntarily settled their claims with the Diocese Defendants, the allegations against the Lawyer Defendants are not pertinent and are, in the Plaintiffs' own words, "irrelevant". Those Plaintiffs who have settled with the Diocese Defendants have had "their day in court" and their opportunity to hold the Diocese Defendants financially responsible for their abuse. In so doing, those Plaintiffs stood exactly where they would have stood had the underlying class actions never existed.

The Plaintiffs who did not settle with Diocese Defendants¹⁰ were subject to a motion for summary judgment filed by the Diocese Defendants and scheduled to be heard by the Court on

⁹ The Diocese settled with the Plaintiffs in 2010-CP-10-7233 (filed by John Doe 10), 2013-CP-10-4175 (filed by Father Doe 194), 2013-CP-10-4176 (filed by John Doe 194) and 2015-CP-10-5486 (filed by John Doe 245 and Father Doe 245).

¹⁰ The non-settling Plaintiffs were John Doe 2 and Jane Doe 4, Case No. 2010-CP-10-5520; Jane Doe 11, Case No. 2012-CP-10-5559; John Doe 193, Case No. 2013-CP-10-3733; and John Doe 297, Case No. 2016-CP-10-1632.

June 28, 2017. In that motion, the Diocese Defendants contended that the remaining Plaintiffs' claims were absolutely barred by the defense of charitable immunity. At the outset of the hearing on those motions, Plaintiffs' counsel voluntarily surrendered his clients' claims to the Diocese Defendants' charitable immunity defense and agreed that the Court should grant summary judgment to the Diocese Defendants on all claims in those four cases *except* civil conspiracy (which, as noted above, was later abandoned) and aiding and abetting breach of fiduciary duty.¹¹

Thus, the Plaintiffs have either voluntarily settled with the Diocese Defendants or voluntarily conceded to the defense of charitable immunity. In either event, the Plaintiffs have been allowed to maintain their claims against the Diocese Defendants, have had their day in court and have no damages to assert against the Lawyer Defendants. Nothing the Lawyer Defendants did or failed to do in the Underlying Case caused harmed to the Plaintiffs. Plaintiffs have the same rights, and are subject to the same defenses, that existed prior to the class action settlement.

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Damages are an essential element any plaintiff must prove to prevail on a legal malpractice claim. None of the Plaintiffs' have testified to any damages they believe they have suffered due to the alleged legal malpractice, nor have they offered any competent evidence proving damages as to the Lawyer Defendants. Absent damages, Plaintiffs have no claim for legal malpractice. *RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 732 S.E. 2d 166 (2012) ("plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach.")

¹¹ As previously noted, Plaintiffs' counsel abandoned his clients' claims for civil conspiracy at the hearing on July 20, 2017.

Plaintiffs' counsel argues that the four (4) cases that were settled fall under S.C. Code Ann. §15-38-50 (1976, as amended) and thus do not affect the liability of the Lawyer Defendants. That statute provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

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The Court has carefully considered this argument and concludes §15-38-50 does not apply here. The release given to the Diocese Defendants in those settlements was not given to a joint tortfeasor, notwithstanding what the settlement agreements may say. The Plaintiffs' claims are based upon one loss – the abuse at the hands of the Diocese defendants. They assert claims against the Diocese Defendants and, in the alternative, against the Lawyer Defendants. Nonetheless, they may obtain but one recovery. Civil conspiracy was the only cause of action in the complaints as to which joint and several liability could apply. As previously noted, Plaintiffs' counsel voluntarily conceded at the hearing on July 20, 2017 that summary judgment in favor of all defendants on the cause of action for civil conspiracy was appropriate. That concession resulted from a) the Plaintiffs' having pled civil conspiracy as presuming that "the class action order is interpreted to bind the Plaintiff to its *res judicata* effect...", and b) the Court having determined in its Amended Order on Limited Collateral Review that the Plaintiffs who did not receive actual notice and lived outside of the published notice area were not bound by the *res judicata* effect of the class action settlement.

Consequently, since there is but one recovery for a single wrong, the Plaintiffs who settled with the Diocese Defendants have made their recovery and have no further damages.

C. There was No Attorney-Client Relationship

1. The Majority Rule.

The Lawyer Defendants also contend Plaintiffs' claims are barred because there was no attorney-client relationship with the Plaintiffs. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. *RFT Mgmt. Co., supra*.

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In response, the Plaintiffs, relying on *Premium Investment Corp. v. Green*, 283 S.C. 464, 324 S.E. 2d 72 (Ct. App. 1984), contend that an attorney-client relationship arose between the Lawyer Defendants and the Plaintiffs at the time the lawyers filed the class action complaints in the Underlying Case.

The majority rule in the United States appears to be that class counsel does not represent unnamed, absent class members unless and until the class is certified. *Bobryk v. Durand Glass Mfg. Co.*, No. 12-cv-5360 (NLH/JS), 2013 U.S. Dist. LEXIS 145758, at *29-31 (D.N.J. Oct. 9, 2013) (noting "the majority of case law that holds that the attorney-client relationship with putative class members 'does not begin until the class has been certified and the time for opting out by a potential member of the class has expired'."); *Palumbo v. Tele-Communications, Inc.*, 157 F.R.D. 129, 133 (D.D.C. 1994) (stating class certification confers status of litigant on absent class members and creates attorney-client relationship with class counsel); *Garret v. Metro Life Ins. Co.*, No. 95-CIV-2406, 1996 WL 325725, at *6 (S.D.N.Y. June 12, 1996) ("before class certification, the putative class members are not 'represented' by the class counsel."); *Formento v. Joyce*, 168

Ill. App. 3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. 1 (“prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients”); *Resnick v. Am. Dental Ass’n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) (“Without question the unnamed class members, once the class has been certified, are ‘represented by’ the class counsel.”); *Gillespie v. Scherr*, 987 S.W. 2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) (“[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members”).

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The majority rule is persuasive to this Court for several reasons. The identity of the absent plaintiffs and the exact nature of their interests in the action is not known until class certification. 3 H. Newberg, *Class Actions* § 5050 (1977); *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 415, 100 S.Ct. 1202, 1218, 63 L Ed.2d 479, 502, 1980 U.S. LEXIS 12, *49, 29 Fed. R. Serv. 2d (Callaghan) 20 (U.S. Mar. 19, 1980). Similarly, in federal court, class counsel is appointed by the class action court when the class is certified. Fed. R. Civ. P. 23(c)(1)(B) (“An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)”). Furthermore, under Rule 23(a), SCRCF, the heading specifies that there is no class action until the Court finds certain “Prerequisites”.¹² Only after class certification can the absent class members be bound to the outcome of the case.

In the Underlying Case, the Primary and Consortium Classes were not certified until January 19, 2007 when Judge Goodstein entered the Order Certifying Classes and Giving

¹² When the Underlying Case was filed and adjudicated, South Carolina had enacted Rule 23, SCRCF, drawn principally from Federal Rule 23.

Preliminary Approval to Settlement. In their complaints, the Plaintiffs allege that the Lawyer Defendants abandoned them and breached duties to them as clients by failing to give notice of the settlement to absent putative class members who reside outside of South Carolina. While the initial Motion to Certify Classes and for Preliminary Approval of Class Settlement filed by the Lawyer Defendants in October 2006 indicated that notice would be published in *USA Today*, that motion was amended. Later, on January 16, 2007, an amended Motion to Certify Classes and for Preliminary Approval of Class Settlement was filed by the Lawyer Defendants. In the second motion, notice was limited to ten daily newspapers in South Carolina, *The Augusta Chronicle*, and *The Catholic Miscellany*. The Order Certifying Classes and Giving Preliminary Approval to Settlement was dated January 17, 2007.

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The gravamen of the Plaintiffs' complaints is that notice of the settlement in the Underlying Case was not given to them. It appears from the record that a decision was made between October 2006 and January 2007 to change the scope of the notice and that decision was made before Judge Goodstein signed the Order Certifying Classes and Giving Preliminary Approval to Settlement. Therefore, the very act about which the Plaintiffs complain took place before the classes in the Underlying Case were certified – at a point in time when an attorney-client relationship did not exist between the Plaintiffs and the Lawyer Defendants.

Applying the majority rule to the facts of the Underlying Case, there was no attorney-client relationship between the Lawyer Defendants and the Plaintiffs at the time the alleged duties were allegedly breached. Absent an attorney-client relationship, the Plaintiffs' claims for professional negligence must fail.

2. *Premium Investment Corp. v. Green*

Plaintiffs posit that *Premium Investment Corp. v. Green*, *supra*, supports their contention

that the attorney-client relationship and its attendant duties arose by operation of law when the Lawyer Defendants filed the class action complaints in the Underlying Cases. This is not correct because *Premium Investment Corp.* was a constructive class certification case that predated Rule 23, SCRCF. Moreover, the Underlying Case before me is an actual certification case under Rule 23.

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In the underlying matter discussed in *Premium Investment Corp.*, a lawyer filed a complaint on behalf of a homeowner “individually and as a representative of a class of property owners” against the developer of a subdivision. After a hearing, the trial court entered an order finding that the homeowner brought two class actions: (i) as a member of a class owning property adjoining the lake, and (ii) as a member of a class owning property in the subdivision. The court found in favor of the plaintiffs and enjoined the developer. The developer appealed, and the case settled while on appeal.

Years later, Premium Investment Corp., a property owner in the subdivision, sued the homeowner and the lawyer to recover the proceeds of the two settlements. The Court of Appeals affirmed the trial court’s order granting relief to Premium Investment. In considering whether the underlying case was a class action the Court of Appeals agreed that “court certification of the class is an important step in a class action,” observing:

It represents a judicial finding that injured parties other than the named plaintiff exist. It also provides a definition by which they can be identified. Certification identifies and sharpens the interests of unnamed class members in the outcome; only thereafter will they be bound by the outcome. After certification, class members can be certain that the action will not be settled or dismissed without appropriate notice. *United States Parole Commission v. Geraghty*, 445 U.S. 388, 415 n. 8, 100 S. Ct. 1202, 1218 n. 8, 63 L. Ed. (2d) 479 (1980) (Powell, J., dissenting).

Id. at 470.

The Court of Appeals struggled to determine what constituted class certification where there was no formal class certification and concluded that in the case at hand, where there was no formal certification order, the trial court had “constructively certified” the class when it identified “those persons with an interest in and entitled to benefit” from the action. It found that certification had occurred simultaneous with the judgment on the merits.

Premium Investment Corp. stands for the proposition that where there is a class that has not been formally certified (as under Rule 23, SCRCPP), a lawyer’s and a class representative’s duties to absent class members arise with the constructive certification of the class. *Premium Investment Corp.* is in line with the majority rule that an attorney-client relationship does not arise between absent class members and class counsel until class certification. Since its adoption in 1985, Rule 23(a) has required specific prerequisites to certification and pursuit of a class action, while *Premium Investment Corp.*, which predates Rule 23, allows for constructive certification. It is undisputed in the case before me that Rule 23, SCRCPP, was referenced and observed by Judge Goodstein in her orders in the Underlying Case and that constructive certification is not at issue before me.

3. The Plaintiffs’ Testimony.

As noted above, none of the Plaintiffs have offered any sworn statement or other evidence from which any reasonable fact-finder could conclude they had an attorney-client relationship with the Lawyer Defendants. To the contrary, when examined, none of the Plaintiffs knew who the Lawyer Defendants were or why they had sued them. Instead, as noted above, the Plaintiffs claim, in essence, that the Lawyer Defendants breached duties owed prior to class certification. For the reasons discussed above, the Court finds the Lawyer Defendants owed no duties to the absent class members prior to class certification.

Having found the duties allegedly breached did not exist, I find the Plaintiffs cannot prevail on their claims against the Lawyer Defendants.

D. No Breach of Fiduciary Duty.

The Lawyer Defendants assert the Plaintiffs' claims are also barred because they owed no fiduciary duties to the Plaintiffs before class certification. Plaintiffs, in response, argue a fiduciary duty was owed upon filing the class complaints. That fiduciary duty arose by operation of law, Plaintiffs contend, upon filing the pleading, pursuant to *Premium Investment Corp.*

As discussed above, the Court disagrees with Plaintiffs' argument that *Premium Investment Corp.* stands for the proposition that the filing of a class action complaint gives rise to fiduciary duties to unnamed and unidentified class members. Furthermore, the Court notes that while the Plaintiffs argue a fiduciary duty existed upon filing, they have yet to articulate what that duty was, nor have they explained the scope of it. Rather, they rely on the following excerpt from *Premium Investment Corp.*:

It is now generally conceded that a plaintiff who sues on behalf of a class and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them of proposed compromises of the group action. *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949); *La Sala v. American Savings & Loan Association*, 5 Cal. (3d) 864, 97 Cal. Rptr. 849, 852, 489, P. (2d) 1113 (1971).

Id. at 470.

The Lawyer Defendants contend such statements refer to obligations that arise after class certification, whether certification pursuant to Rule 23, as here, or by constructive certification, as in *Premium Investment Corp.* The line of cases holding that an implied fiduciary duty arises when a lawyer files a complaint alleging a class action was discussed in *Gillespie v. Scherr*, 987 S.W.2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998), where the court observed:

Appellants have cited and we have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members. Appellants urge us to follow federal decisions which, in the context of class certification, recognize the *general* existence of a fiduciary duty to unnamed class members once a class action suit is filed. *See, e.g., In re General Motors Corp. Pick-up Truck Fuel Tank*, 55 F. 3d 768, 801 (3rd Cir. 1995) (stating that class attorneys owe the entire class a fiduciary duty once the class complaint is filed), *cert. denied*, 516 U.S. 824, 116 S. Ct. 88, 133 L. Ed. 2d 45 (1995). However, appellants have cited and we have found no decision which has defined the scope of such a duty or addressed it with regard to an actual claim for recovery against an attorney for its breach. **Although not cited by either side, the only case we have found in which the issue was addressed held that lawyers for named plaintiffs in an uncertified class action owe no duty to unnamed class members.** *See Formento v. Joyce*, 168 Ill. App. 3d 429, 522 N.E. 2d 312, 317, 118 Ill. Dec. 857 (Ill. App. Ct. 1988).

Id. (emphasis added).

Similarly, here the Plaintiffs have not defined the scope of the fiduciary duty they claim was violated by the Lawyer Defendants. One District Court examining the question found:

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Under this analysis, we may venture a few statements about the scope of the fiduciary duty owed by class counsel to putative class members prior to class certification. In short, the scope of those duties is limited to protecting the substantive legal rights of putative class members that form the basis of the class action suit from prejudice in an action against the class defendant resulting from the actions of class counsel.

Schick v. Berg, 2004 U.S. Dist. LEXIS 6842, 2004 WL 856298; *aff'd* 2005 U.S. App. LEXIS 24671 (2d Cir. N.Y. 2005). Even if there were a basis to assume a general fiduciary duty, as asserted by the Plaintiffs, the question then is who are the intended beneficiaries of that fiduciary duty. Here, Plaintiffs claim to be the intended beneficiaries based on the definitions and notice plan of the Primary and Consortium classes. Yet, those class definitions (and the classes themselves) did not exist until the Court certified the class under Rule 23 in its January 19, 2007 Order. If the intended beneficiaries are to be identified based upon the filing of a class complaint, the better approach is to look to the allegations in the class complaints, for it is those individuals

included in the class definitions in the complaints whom the Lawyer Defendants arguably sought to represent and to whom this alleged, general fiduciary duty would run.

The class action complaints in the Underlying Case defined the class of victims of sexual abuse sought to be certified as follows:

41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the catholic church under the supervision and/or control of the defendants.

John Doe #53, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1636, Complaint

¶ 41. Therefore, the complaints relevant to the Primary Class clearly limited the putative classes to individuals within the geographical boundaries of South Carolina. *See also Id.* ¶ 36 (“Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].”).

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With respect to the Consortium Class, the complaint in the Underlying Case alleged:

The spouses, parents, and/or legal guardians of all individuals who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants in South Carolina between January 1, 1950 and December 31, 2000 and who suffered a loss of the abused individual's consortium.

Jane Doe 1, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1310, Complaint

¶ 25. Later, that complaint alleged:

Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].

Id. ¶ 27. Therefore, the same geographical limitation applied to the Consortium Class.

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This examination of the underlying complaints shows the Lawyer Defendants sought to represent a class of South Carolina residents who were sexually abused by priests of the Diocese Defendants and who were not barred by law from asserting a claim against those defendants. In addition, the Lawyer Defendants sought to represent South Carolina residents who were spouses, parents, and/or legal guardians of all individuals sexually abused by priests of the Diocese Defendants and who suffered a loss of the abused individual's consortium. In these cases before me, all of the Plaintiffs, save for John Doe 193, allege themselves to be non-residents of South Carolina. Therefore, even under the Plaintiffs' argument that there is a general fiduciary duty imposed upon lawyers who file a complaint alleging class action claims, I find that the Lawyer Defendants in the cases before me owed no duty to the Plaintiffs because the Plaintiffs all fall outside the class definitions alleged in the underlying class action complaints. The Court further notes that because the definition of the putative class of abuse victims specifically excluded victims whose claims were barred by law, none of the Plaintiffs whose claims are admittedly barred by the Diocese Defendants' defense of charitable immunity can prove any fiduciary duty owed by the Lawyer Defendants.

III. The Claims of Jane Doe 4:

The Lawyer Defendants filed a separate motion for summary judgment as to the claims of Jane Doe 4. The claims Jane Doe 4 alleges against the Lawyer Defendants are professional negligence and breach of fiduciary duty. Since the breach that Jane Doe 4 alleges took place before certification, when there was no attorney-client relationship, her claim for professional negligence must be dismissed. Additionally, since Jane Doe 4 was a non-resident, she was not the intended beneficiary of any general fiduciary duty owed by the Lawyer Defendants upon filing the class action complaints and her claim for breach of fiduciary duty must be dismissed as well. Finally,

and in light of the rulings set forth above, the Court need not address the issue of whether Jane Doe 4 lived in an area in which notice was published.

IV. The Claims of John Doe 193.

John Doe 193's sole surviving claims are those for breach of fiduciary duty and unfair trade practices. Since John Doe 193 is a.) a South Carolina resident, and b.) an abuse victim whose claim against the Diocese Defendants is barred by law, he was not an intended beneficiary of any general fiduciary duty that Plaintiff alleges was owed by the Lawyer Defendants when they filed the complaints. Thus, the Lawyer Defendants breached no fiduciary duty to John Doe 193 and his claim for breach of fiduciary duty must be dismissed.



V. The UTPA Claims.

Five (5) Plaintiffs have alleged claims for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et. seq.* ("UTPA").¹³ In their complaints, the Plaintiffs allege their claims under the UTPA presume the Plaintiffs are precluded, for one reason or another, from maintaining claims against the Diocese Defendants. Since the Court has already determined that the Plaintiffs are not precluded from asserting their claims against the Diocese Defendants as a result of the Lawyer Defendants, those claims also fail.

Additionally, the Court views these UTPA claims as thinly veiled, duplicative claims for legal malpractice. It is well-established that where a plaintiff asserts claims against an attorney for professional negligence and breach of fiduciary duty, both of which arise from the same materials facts, the claims are duplicative and merge into a single cause of action for legal malpractice. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173-74 (2012);

¹³ Those cases in which unfair trade practices claims were alleged are 2013-CP-10-3733, 2013-CP-10-4176, 2015-CP-10-5486 and 2016-CP-10-1632.

Doe v. Howe, 367 S.C. 432, 448 n.27, 626 S.E.2d 25, 33 (Ct. App. 2005). In this case, Plaintiffs' UTPA claims are based upon the same material facts and same loss. Therefore, I find the UTPA claims merge into Plaintiffs' other claims. Because the Lawyer Defendants are entitled to summary judgment on their professional negligence and breach of fiduciary duty claims, as discussed above, the UTPA claims must also be dismissed. I further note the record before the Court contains no evidence from which any fact-finder could reasonably determine the Lawyer Defendants committed any unfair or deceptive act. The Court is compelled, therefore, to grant summary judgment on Plaintiffs' UTPA claims.

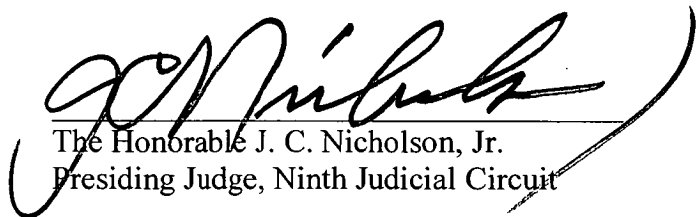
CONCLUSION

Having considered the motions made and filed by the Lawyer Defendants, the supporting and opposing memoranda submitted by the parties, the admissible evidence in the record, the arguments of counsel, and applicable law, I find and conclude that there are no genuine issues of material facts in these cases preventing summary judgment as to the Lawyer Defendants and, therefore, that the Lawyer Defendants are entitled to summary judgment as a matter of law on all claims.

NOW, THEREFORE, IT IS ORDERED that all claims alleged against the Lawyer Defendants in the above-captioned matters should be, and hereby are, dismissed with prejudice.

AND IT IS SO ORDERED.

Dated: 8/8/17
Charleston, SC


The Honorable J. C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Appellants,

v.

The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2017-001996

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2021-UP-060
Heard September 15, 2020 – Filed March 3, 2021

AFFIRMED



Gregg E. Meyers, of Mt. Pleasant, for Appellants.

Richard S. Dukes, Jr., of Turner Padgett Graham &
Laney, PA, of Charleston, for Respondents The Bishop

of Charleston, a Corporation Sole, Robert Gugliemone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official Capacity, and Robert J. Baker, former Bishop of Charleston, in his official capacity.

Benjamin C. Bruner and Chelsea Jaqueline Clark, both of Bruner Powell Wall & Mullins, LLC, of Columbia, for Respondents Lawrence E. Richter, Jr., and Richter and Haller, LLC.

Susan Taylor Wall and Henry Wilkins Frampton, IV, both of Gordon & Rees LLP, of Charleston, for Respondent David K. Haller.

PER CURIAM: In this civil matter, Appellants (Victims) argue the circuit court erred in granting summary judgment to Respondents the Bishop of Charleston, a corporation sole, Robert Gugliemone, the Bishop of Charleston, in his official capacity, Reverend Monsignor Martin Laughlin, former administrator of the Diocese of Charleston, in his official capacity, and Robert J. Baker, former Bishop of Charleston, in his official capacity (collectively, the Diocese) and to Respondents Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC (collectively, Counsel). We affirm.

1. We find the circuit court did not err in granting summary judgment to Counsel on Victims' claims for professional negligence and breach of fiduciary duty. *See Loflin v. BMP Dev., LP*, 427 S.C. 580, 588, 832 S.E.2d 294, 298 (Ct. App. 2019) (providing that this court reviews a grant of summary judgment under the same standard applied by the circuit court under Rule 56(c), SCRCP), *aff'd as modified on other grounds* 432 S.C. 246, 246, 851 S.E.2d 713, 714 (2020); Rule 56(c) (stating that summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). Victims' complaints clearly express in multiple places that their claims against Counsel are alternative claims in the event they are precluded from bringing claims against the Diocese. As established by the circuit court's collateral review order, Victims are not precluded by the settlement from bringing claims against the Diocese. Therefore, Victims are bound by their

pleadings, and their claims against Counsel must fail as a matter of law. *See Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) ("It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are *conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings . . .*" (emphasis added)); *Gary v. Lowcountry Med. Transp., Inc.*, 424 S.C. 18, 23, 817 S.E.2d 291, 294 (Ct. App. 2018) ("[T]he doctrine of binding a party to its pleadings exists to protect the integrity of the court process."); *see also Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 281 (Ct. App. 2010) ("The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder."). Moreover, we find summary judgment was proper because Victims failed to establish damages proximately caused by Counsel's alleged breach of fiduciary duty and legal malpractice. *See Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) ("The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." (quoting *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct. App. 2001))); *see also RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012) ("To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant."); *id.* at 331, 732 S.E.2d at 170 ("A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach.").

2. Victims' claim for aiding and abetting a breach of fiduciary duty is predicated on their claim against Counsel. Because we find the circuit court did not err in granting summary judgment to Counsel on Victims' breach of fiduciary duty claim, we decline to address whether the circuit court erred in granting summary judgment to the Diocese. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

AFFIRMED.

HUFF, WILLIAMS, and GEATHERS, JJ., concur.

The Supreme Court of South Carolina

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Petitioners,

v.

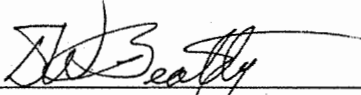
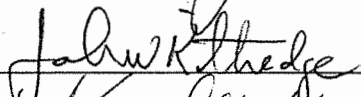
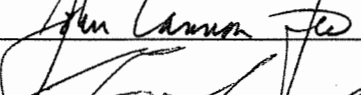
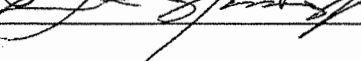
The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2021-000668



ORDER

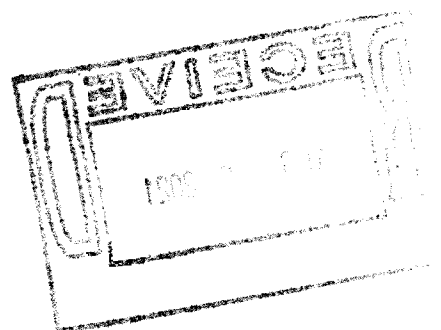
On March 3, 2021, the court of appeals affirmed the order of the circuit court granting summary judgment to Respondents in this matter. Petitioners' petition for rehearing was denied on May 13, 2021. When no petition for a writ of certiorari was received by the court of appeals, it sent the remittitur on June 24, 2021. Petitioner has now filed a motion to recall the remittitur with this Court. We deny the motion without prejudice to Petitioner's right to move the court of appeals to recall the remittitur.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
August 6, 2021

cc:

Richard S. Dukes, Jr., Esquire
Gregg E. Meyers, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
Benjamin C. Bruner, Esquire
Chelsea Jaqueline Clark, Esquire
The Honorable Jenny Abbott Kitchings



The South Carolina Court of Appeals

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Appellants,

v.

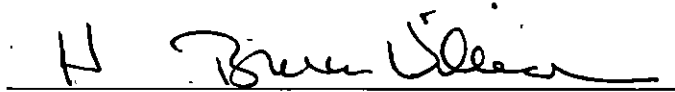
The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2017-001996

ORDER



This Court issued an opinion in this case on March 3, 2021. Appellants thereafter filed a petition for rehearing, which this court denied on May 13, 2021. The remittitur was sent on June 24, 2021. Appellants have now filed a motion to recall the remittitur. After careful consideration, the motion is denied. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court." (internal citations omitted)).


FOR THE COURT

FILED
Oct 25 2021

Columbia, South Carolina

cc:

Gregg E. Meyers, Esquire

Richard S. Dukes, Jr., Esquire

Benjamin C. Bruner, Esquire

Susan Taylor Wall, Esquire

Henry Wilkins Frampton, IV, Esquire

Chelsea Jaqueline Clark, Esquire

Julie J. Armstrong

The Supreme Court of South Carolina

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Petitioners,

v.

The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2021-001525

ORDER



The South Carolina Court of Appeals sent the remittitur in this case on June 24, 2021, after Petitioner failed to serve and file a timely petition for a writ of certiorari with this Court. The sending of the remittitur ended appellate jurisdiction in this matter. *Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568, 784 S.E.2d 669 (2016); *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Accordingly, this Court will take no action on the petition for a writ of certiorari filed on December 29, 2021, and the petition is stricken and dismissed.



FOR THE COURT C.J.

Columbia, South Carolina
January 11, 2022

cc:

Richard S. Dukes, Jr., Esquire

Gregg E. Meyers, Esquire

Susan Taylor Wall, Esquire

Henry Wilkins Frampton, IV, Esquire

Benjamin C. Bruner, Esquire

Chelsea Jaqueline Clark, Esquire

The Supreme Court of South Carolina

John Doe 305, Julie McDonald, and Richard McDonald,
Petitioners,

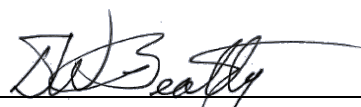
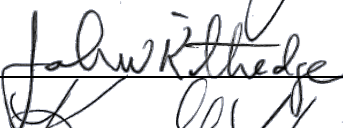
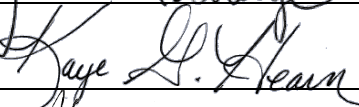
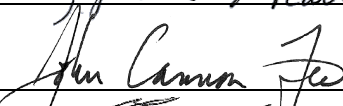
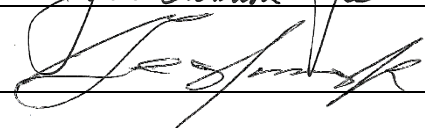
v.

The Bishop of Charleston, a Corporation Solo, Robert
Gugliemone, The Bishop of Charleston, in his official
capacity, Lawrence E. Richter, Jr., David K. Haller, and
Richter and Haller, LLC, Respondents.

Appellate Case No. 2020-001415

ORDER

Petitioners ask this Court to hear this matter in our original jurisdiction. We deny the petition. The Honorable J. Derham Cole is hereby appointed to preside over the remainder of the proceedings below in this matter.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
April 19, 2021

cc: Gregg E. Meyers, Esquire
Lawrence E. Richter, Jr., Esquire



Richard S. Dukes, Jr., Esquire
R. Hawthorne Barrett, Esquire
Chelsea Jaqueline Clark, Esquire
Benjamin C. Bruner, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
The Honorable J. Derham Cole

The Supreme Court of South Carolina

John Doe 305, Julie McDonald, and Richard McDonald,
Petitioners-Plaintiffs,

v.

The Bishop of Charleston, a Corporation Solo, Robert
Gugliemone, The Bishop of Charleston, in his official
capacity, Lawrence E. Richter, Jr., David K. Haller, and
Richter and Haller, LLC, Respondents-Defendants.

Appellate Case No. 2020-001415

ORDER

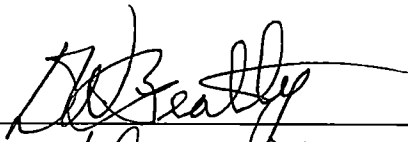
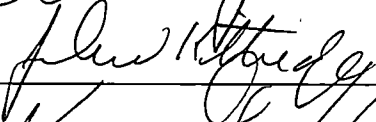
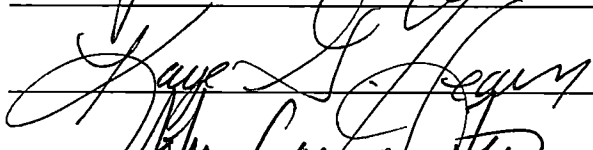
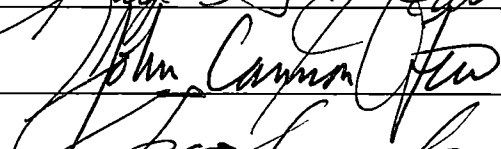
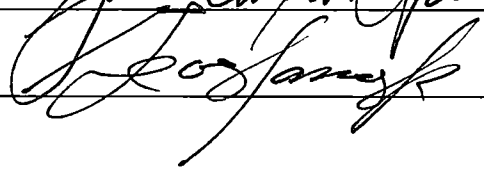
By order dated April 19, 2021, this Court denied Petitioners' petition for original jurisdiction and appointed the Honorable J. Derham Cole "to preside over the remainder of the proceedings below in this matter." Petitioners have now filed a motion seeking clarification of the scope of Judge Cole's appointment.

We grant the motion to clarify. All cases currently pending in this matter not arising from professional negligence and breach of fiduciary duties claims against Respondents Lawrence Richter, David Haller, and Richter and Haller, LLC, are held in abeyance pending resolution of the professional negligence and breach of fiduciary duties claims. The two cases against Respondents Lawrence Richter, David Haller, and Richter and Haller, LLC,¹ shall be heard by Judge Cole on an expedited basis. These are the only actions over which Judge Cole shall preside.

EXHIBIT

G

¹ Case numbers 2018-CP-10-05802 and 2019-CP-10-05892.


C.J.

J.

J.

J.

J.

Columbia, South Carolina

June 15, 2021

cc:

Gregg E. Meyers, Esquire

Lawrence E. Richter, Jr., Esquire

Richard S. Dukes, Jr., Esquire

R. Hawthorne Barrett, Esquire

Chelsea Jaqueline Clark, Esquire

Benjamin C. Bruner, Esquire

Susan Taylor Wall, Esquire

Henry Wilkins Frampton, IV, Esquire

The Honorable J. Derham Cole

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-_____
John Doe 305, Julie McDonald, and	)	
Richard McDonald,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	
Richter and Haller, LLC, and	)	
The Bishop of Charleston a corporation	)	
Sole,	)	
	)	
Defendants.	)	
	)	

Summons

TO: Lawrence E. Richter, Jr.
David K. Haller
Agent for Richter and Haller, LLC
Agent for The Bishop of Charleston, a Corporation Sole

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action. A file-stamped copy of the complaint is served upon you with this summons.

Your answer or other response to the complaint is to be served upon the attorney for the plaintiff at 217 Lucas Street F-1, Mt. Pleasant SC 29464, or served by email at attygm@gmail.com.

According to the South Carolina Rules of Civil Procedure, you are required to appear and defend yourself in this action by making and serving an answer to this complaint within thirty (30) days after the complaint is served upon you. The thirty days begin to run from the date after this summons and complaint are served upon you; the date the service is made is excluded.



If within that time you fail to appear and defend as you are required to do by the Rules of Civil Procedure, the Plaintiff in this action shall apply to the Court for the relief demanded in this Complaint and judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,



Gregg Meyers, SC Bar No. 9908
217 Lucas Street Box 10
Mt. Pleasant SC 29464
843-321589
attygm@gmail.com

Attorney for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-_____
John Doe 305, Julie McDonald, and	)	
Richard McDonald,	)	Jury Trial Requested
	)	
Plaintiffs,	)	- Declaratory Relief
	)	- Legal Malpractice
v.	)	- Breach of Fiduciary Duty
	)	- Aiding and Abetting Breach of that Duty
Lawrence E. Richter, Jr.,	)	- Civil Conspiracy, Conversion,
David K. Haller,	)	Accounting, Disgorgement
Richter and Haller, LLC, and	)	- Breach of Contract
The Bishop of Charleston a corporation	)	
Sole,	)	
	)	
Defendants.	)	
	)	

Complaint

Summary of the Action

1. This action is brought by two actual class members and one putative class member who discovered only recently breaches of duty by class counsel that had been fraudulently concealed.

2. An expert affidavit attached to this complaint as Attachment A supports the allegations of breach of professional duties and fiduciary duty. Its content is incorporated into this complaint pursuant to SCRCP 10(c).

3. This action also seeks declaratory relief, pursuant to SCRCP 57 and S.C. Code § 15-53-10 et seq., to determine, among other things, under SCRCP 23 the propriety of each of the following actions of the defendants:

- a. The conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench,

- b. the extent to which class action settlements are permitted to be collusive,
 - c. the extent to which colluding parties to a class action are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,
 - d. the extent to which class counsel is permitted to manipulate SCRCF 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
 - e. the extent to which class counsel is permitted to manipulate SCRCF 23 to serve the financial interests of his colluding “adversary” at the expense of the class members class counsel purports to represent,
 - f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
 - g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
 - h. the extent to which class counsel may charge class members an unauthorized fee, and
 - i. the extent to which applicable legal standards may vary according to the persons involved.
4. The case arises from a collusive class action in which the class counsel defendants:
- a. colluded with their “adversary” to reach a class settlement;
 - b. colluded with their “adversary” to judge-shop so as to move oversight and approval of that class settlement away from judges not desired to a particular judge in another circuit that was desired;

- c. placed their own financial interests, and the interests of their “adversary,” ahead of the interests of the class they purported to represent;
- d. submitted (without objection) patently false information to the circuit court;
- e. withheld from the circuit court (with cooperation of the “adversary”) information that a contingency fee payment had been made that applied to nearly all of the time in records class counsel submitted in support of a fee request for work done on the class action;
- f. charged individual class members a fee no order authorized them to charge; and
- g. failed to make proper disclosures to class members about class counsel’s conflicts and the fees already paid to class counsel before charging class members that unauthorized fee.

5. Those manipulations of SCRCP 23 have affected and continue to affect the rights and interests of sexual abuse victims perpetrated by priests and other employees of the Diocese of Charleston, as well as family members of those victims. Class counsel engaged in professional malpractice by placing their own interests above those of the class members they purported to represent, engaged in a substantial fraud upon the court, and did so with the full collusive cooperation of the Diocese of Charleston.

Parties and Jurisdiction

6. John Doe 305, Julie McDonald, and Richard McDonald are each a citizen and resident of a state other than South Carolina. Each was affected by actions taken by the defendants in Charleston and Dorchester Counties.

7. Plaintiff John Doe 305 was born prior to August 30, 1980, one of the criteria for inclusion in what was called the “primary class” in the class settlement referred to below.

8. As a minor child John Doe 305 was sexually abused by Eugene Condon, an agent or employee of the Diocese of Charleston, another criterion for inclusion in the “primary class” of the class settlement referred to below. He has had no prior claim as to that abuse resolved, the third, and last, criterion for inclusion in the “primary class,” which had no geographic limit in its definition.

9. The McDonalds learned about the class action and participated in the class action. Class counsel was aware the McDonalds resided in a state other than South Carolina when they participated in the class settlement. Within three years of this filing the McDonalds first learned of information class counsel fraudulently concealed from them before charging them a fee class counsel was not authorized by any order to charge.

10. Until November 2019, John Doe 305 was never informed about the class action. According to class counsel, in 2007 class counsel accommodated the Bishop of Charleston in changing the nationwide notice originally proposed. That change eliminated any notice in the state where John Doe 305 resided. Class counsel fraudulently concealed that information from class members, including John Doe 305.

11. The Bishop of Charleston, a Corporation Sole is an entity organized under the law of South Carolina, created by statute in 1880. The Corporation Sole is known colloquially as the Diocese of Charleston, and in this complaint it is referred to as “the Diocese.” The Diocese operates under authority of its presiding Bishop or, if in between Bishops, it operates under authority of a person designated as “administrator.” Each Bishop is appointed by the Pope presiding in Rome, Italy.

12. Each member of the Diocese, including the Bishop, is required to comply with the laws of South Carolina and is subject to the court's enforcement authority and contempt power over the Diocese.

13. The boundaries of the Diocese include and are consistent with the boundaries of the state of South Carolina. The Diocese holds property and does business in South Carolina. Its principal place of business is in Charleston County.

14. Decisions to assign Eugene Condon to the church named Stella Maris, from which assignment he sexually abused John Doe 305, and decisions about how Eugene Condon should be supervised, were decisions made in Charleston County. The acts associated with the abuse of the plaintiff John Doe 305, as well as the negligent supervision of Eugene Condon, each took place in Charleston County.

15. Decisions by the Diocese to participate in a class settlement for sexual abuse victims were decisions made in Charleston County but in some respects required approval of the Holy See, in Rome, Italy.

16. Decisions by the Diocese about the manner of cooperating with class counsel, including the decisions alleged in this complaint to have been collusive, were decisions made in Charleston County.

17. Lawrence E. Richter, Jr., is an attorney who at all times pertinent to this complaint conducted business in Charleston County.

18. David K. Haller is an attorney who at all times pertinent to this complaint conducted business in Charleston County.

19. Richter and Haller, LLC was an entity organized and existing under the laws of South Carolina which at all times pertinent to this complaint conducted business in Charleston

County. Richter and Haller individually worked for that entity during the time period involved with this complaint.

20. At all times pertinent to this complaint, defendants Richter and Haller were agents for each other and for Richter and Haller, LLC. Each of them individually was designated class counsel as was Richter and Haller, LLC. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as “class counsel” unless otherwise particularly specified.

21. Lawyers other than class counsel were involved on behalf of individual sexual abuse victims in certain of the cases included in the class action settlement. None of them was designated as class counsel. No claims in this action are made against the conduct of any of those lawyers, only against the class counsel defendants.

22. The circuit court has jurisdiction of the subject matter and jurisdiction over the parties to this action.

Nature of Wrongdoing

23. According to time records of class counsel, work on one or more sexual abuse cases began July 21, 2003.

24. In May 2005 defendants Richter and Haller and their firm brought a case in Charleston County against the Diocese for an individual designated as John Doe 66, a person who was sexually abused as a child.

25. In August 2005 defendants Richter and Haller and their firm brought a case in Charleston County against the Diocese for an individual designated as John Doe 66A, a person who was sexually abused as a child.

26. In October 2005 defendants met to discuss a class action settlement. The class settlement that the defendants would reach in 2006 was collusive, in that it would turn out to promote at the expense of the class members and have as its first priority the financial interests of class counsel, and as its second priority the financial interests of the Diocese, and as its third priority the financial interests of persons who objected to and opted out of the class, and as (at best) a fourth priority the financial and other interests of class members.

27. No class action complaint was pending as of October 2005 when the defendants met to discuss a class settlement.

28. At the October 2005 meeting the Bishop at that time expressed a willingness to consider a class action settlement.

29. In December 2005 defendants Richter and Haller and their firm brought a class action case in Charleston County against the Diocese. The plaintiff was designated as John Doe 53, a person who was sexually abused as a child. Paragraph 34 of that complaint alleged that John Doe 53 brought the case “on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.” Paragraph 36 of that complaint alleged that the number of sexual abuse victims “may exceed the hundreds.”

30. Between that December 2005 class action filing and June 2006, when a class settlement was reached, not a single motion was decided in the class action and not a single deposition was taken. No motion was filed to certify a class. The proceedings were not adversarial.

31. In June, 2006 class counsel and the Diocese reached a class settlement during a mediation. Its outlines were embodied in a handwritten document.

32. If not before, once the class settlement was reached the parties began to collude in their own financial interest.

33. The 2006 mediated agreement included each of the three pending cases for, respectively, Johns Doe 66, 66A, and 53, and a fourth individual referred to as John Doe 67.

34. After reaching the class settlement in 2006, the parties engaged in elaborate judge-shopping to move class settlement oversight and approval away from judges not desired in Charleston County to get to a desired judge who was then presiding in Dorchester County.

35. That desired Dorchester County judge agreed to be shopped-for.

36. Various acts of misconduct took place, some of which are discussed below, none of which was examined by the shopped-for circuit judge.

37. To date, no final order was ever entered in the class action, apparently to evade appellate review of the class proceedings.

38. In March 2009 in a related action the South Carolina Supreme Court ordered the class action to be concluded in six months, or by September 2009.

39. That direct order of the South Carolina Supreme Court was inconsistent with the apparent agreement among the defendants to evade appellate review, so the defendants (and the shopped-for judge) all ignored the Supreme Court's order. Nor was any extension of time sought from the Supreme Court, as its 2009 order required.

40. Not later than 2013, the South Carolina Supreme Court was informed that its 2009 order had been ignored. To date the South Carolina Supreme Court has taken no action to compel its order to be enforced.

41. Either this action will address the 2009 Supreme Court order having been ignored, or it will establish that there are some circumstances, or some litigants, or some

attorneys, or some circuit court judges, who are permitted to regard as optional direct orders of the South Carolina Supreme Court, in which case this action seeks to identify the criteria which govern when a given order of the South Carolina Supreme Court may be ignored, if that is the case.

42. Additionally, this action seeks to determine whether ignoring the Rules of Civil Procedure, applicable precedent, and Supreme Court orders is an acceptable method for evading appellate review, and if so, under what criteria.

43. During the course of the class action, class counsel placed their own financial interests, and the financial interests of the Diocese, and the financial interests of those who objected to and opted out of the class action ahead of the interests of the class members they purported to, and did, represent, as well as those absent class members to whom they owed a fiduciary duty. Their fiduciary duty was owed to absent class members both as a matter of law and, independently, because class counsel acknowledged on the record that they had assumed that duty.

44. The Diocese colluded in class counsel's breach of duties to the plaintiffs.

45. As one example of collusive conduct in the class action, the class was never informed that class counsel was, as class counsel put it, a "life-long active member of the Diocese" and that before and during the class action class counsel functioned "in many capacities" on behalf of the Diocese including positions categorized as "Extraordinary Minister," and had "friendships with many priests and bishops of the diocese," and whether those friendships included persons who had engaged in sexual abuse against potential members of the class or specific members of the class.

46. As noted above, a second example of collusion in the class action was the overt judge-shopping after the class settlement was reached in June 2006. Ignoring requirements in SCRCF 23 that a class settlement be submitted for court approval and that no class action be dismissed without notice to the class and court approval, the defendants agreed to judge-shop.

47. The objective of the judge-shopping was to avoid judges in Charleston County for class settlement review and approval and to have that done instead by a particular circuit judge from a different circuit who had long social and professional ties to class counsel.

48. As noted above, when the class settlement was reached in June 2006 the only cases pending were in Charleston County, where the class action had been brought in 2005 and where the class settlement had been agreed to during a mediation.

49. The colluding parties calculated, correctly as it turned out, that the particular circuit judge they desired was willing to be shopped-for and would facilitate the judge-shopping methods for moving the class settlement from Charleston County to Dorchester County.

50. The South Carolina bench and bar will benefit from knowing whether and, if so, what criteria apply when, counsel may collude to (a) ignore the requirement in SCRCF 23 to seek court approval of a class settlement, (b) judge-shop so as to select a particular judge to oversee and approve a class settlement, (c) use judge-shopping as a means of transferring a class settlement from one circuit to another, (d) fail to notify all class members when the Charleston cases within the class settlement were dismissed as part of the judge-shopping, as SCRCF 23 requires, and (e) establish what length of time (in this case four months) and what procedural steps may be taken as the method for colluding parties to choose the judge to review a class settlement for approval.

51. For a third example of collusion, as class counsel have explained on the record, class counsel disadvantaged members of the classes they defined and represented (such as John Doe 305) so they could accommodate a request from their “adversary,” the Diocese. According to class counsel’s representations to the court, class counsel agreed to alter the notice program for the class settlement after Bishop Baker (then presiding Bishop in the Diocese) complained that the original, nationwide notice program proposed (publication once a week for a six-week period in *USA Today*, in addition to publication in newspapers in and around South Carolina. Nationwide notice might have reached John Doe 305.

52. But (according to class counsel) when class counsel’s Bishop objected that notifying all putative class members was “too expensive,” class counsel agreed to eliminate that nationwide notice, and to change the notice to that which had no chance of informing out of state residents such as John Doe 305.

53. The scope of proposed notice was changed by agreement to publication in only newspapers in S.C. and Augusta.

54. Class counsel thus intentionally deprived John Doe 305 and every other out of state class member of the information about the benefits of the class settlement, and did so, according to class counsel, to accommodate the financial interest of of his “adversary,” the Diocese.

55. That voluntary change by class counsel deprived John Doe 305 of any practicable chance of learning about the benefit of defenses waived as to class members, and was plainly less than the “best practicable notice” required by Due Process as it was notice even less than originally proposed by class counsel.

56. For a fourth example of collusion among the defendants, in July 2007 the defendants appeared before the shopped-for circuit judge and represented on the record that the Diocese had agreed to extend the benefits of the class action to abuse victims who got no notice and who later made claims.

57. Class counsel failed to secure that supposed agreement in any written order, breaching a duty to John Doe 305. But it reasonably explains why the shopped-for circuit judge made no inquiry about, and approved, the scope of the notice program being reduced from national notice to (essentially) notice in only South Carolina. It also explains why the shopped-for circuit judge further reduced the notice program from publication once a week for a six-week period to once a week for a three-week period. Both changes were approved by the court after the false representation in the July 2007 hearing about how the Diocese would treat absent class members who did not get notice.

58. The Diocese does not treat absent class members who got no notice (such as John Doe 305) as represented to the shopped-for circuit judge in the July 2007 hearing.

59. For a fifth example of collusion, no post-award fairness hearing under SCRCP 23 has yet been held in the class action, nor (as noted above) has any final order been entered in the class action. That refusal was and is apparently a tactic by the colluding parties to evade appellate review.

60. A motion for a post-award fairness hearing was filed in 2016 by a class representative. That motion has been ignored.

61. For class counsel, that tactic has evaded any review under SCRCP 23 of their *actual performance* in effectuating the class settlement, as opposed to making that assessment on hypothetical performance. Attorney fees were awarded without any review of collusive

conduct, or failures by class counsel such as not making proper conflict disclosures to the classes including the McDonalds, or failing to securing in a written order the relief claimed for persons such as John Doe 305, or charging improper fees to class members such as the McDonalds (a fee of 20%), or withholding material information about the fee from the McDonalds, or submitting fraudulent information to the court as part of the fee claim, or all defendants withholding from the court that nearly all time claimed in the class action to support the fee claim had already been paid for by a contingent fee paid by the Diocese to class counsel in November 2006.

62. Conservatively estimated, it appears that the total of class counsel's unauthorized fees exceeds \$900,000, of which the improper fees charged the McDonalds are a part. In addition, the \$2.5 million fee awarded was based on substantial misrepresentations to the court. No accounting has ever been made of the actual fees charged and collected by class counsel.

63. Class counsel's fiduciary obligation to each alleged class members and to each judicially approved class member is a duty either imposed under SCRCP 23 or assumed, or both, as class counsel acknowledged that fiduciary duty on the record.

64. Under SCRCP 23 both class counsel and the court have a fiduciary obligation to protect the absent members of the class, an obligation unchanged by judge-shopping even if the circuit judge has agreed to be shopped-for by colluding parties to a class settlement, and even if all parties and a shopped-for judge has agreed to ignore their fiduciary obligation.

65. If those duties of either counsel or the circuit judge are variable based on the persons involved, that criteria should be articulated for the benefit of South Carolina bench and bar.

66. As a sixth example of the parties' collusion, between June 2006, when the mediated class settlement was reached and its handwritten outline laid out, and January 2007, when a typed version was submitted to the court for approval, two provisions were added to the agreement. Each served the financial interests of class counsel and the Diocese at the expense of class members.

67. First, on page 13, in paragraph 6B, the attorneys' fees for class counsel were to be paid first, before any claims were made, class members identified, or any class member compensated, explicitly making the fees the highest priority of the class settlement. Awards to class members were subordinated to that fee. Paragraph 6B provides:

In the event that the total due [to class claimants] exceeds the amounts provided for ... then each award shall be reduced on a *pro rata* [sic] of the net settlement fund.

68. As this provision reflects, class counsel negotiated for themselves a fixed fee while simultaneously negotiating for the classes they claimed to represent a variable recovery that would be reduced *pro rata* if claims against the class fund were insufficient to pay the fee and all claims. Class counsel's interest in an attorneys' fee was made the highest priority of the class settlement, explicitly placed above the recovery for class members.

69. Second, on page 14, in paragraph 6C, the parties agreed that once all fees, costs, and claims were paid, then any remaining funds "will be returned to the defendants," meaning the Diocese.

70. Through those two modifications, each of class counsel and the Diocese had a financial interest in limiting the number of class members who made claims.

71. By an order of January 23, 2007 the shopped-for judge preliminarily approved these provisions “subject to the objection period and Fairness Hearing as set out in this order.” (Page 1 of that order).

72. A fairness hearing to complete the preliminary approval process was set for March 9, 2007, (Page 8 of that order).

73. “[N]otice of the settlement” was to be published once a week for the six weeks between January 23 and March 9, 2007. (Page 8 of that order). But the approved notice did not describe any monetary recovery for the class. Nor did the notice describe the attorneys’ fee class counsel would seek at the March 9 hearing. Nor did it mention any of the conflicts of interest class counsel had as to claims for class members against his own Diocese. Nor did it mention any of the collusion associated with the class action.

74. A copy of the settlement could be obtained by making a written request of class counsel. The order required class counsel to file their fee request by February 14 but made no provision for obtaining that request. Any objections to that request had to be filed eight days later, by February 22, before the notice period had run. Potential class members were given eight days to discover there was a class action, obtain by mail from class counsel information about the class action, discover that no information was provided about class counsel’s fee request and make a separate request for that information, obtain that information, then prepare and file any written objections.

75. The notice was designed to limit class members’ ability to review the fee request.

76. Because notice of the class settlement was not even attempted in the state where John Doe 305 lives, and because relief claimed to have been obtained for him was not included in any written order in the class action, John Doe 305 has lost the benefit of the defenses the

Diocese waived in the class settlement. As John Doe 305 was sexually abused by Eugene Condon in 1974 and 1975, before charitable immunity was abolished, class counsel have breached duties owed to John Doe 305 and have damaged him by depriving him of those waived defenses. Their performance fell below the standard of care.

77. Class counsels' conduct also fell below the applicable standard of care as to the McDonalds: by charging unauthorized fees, by failing to make proper disclosures of conflicts, by failing to disclose fees already awarded, and (with cooperation of the Diocese), by submitting material false information to the court, fraudulently withholding material information from the court and withholding the same information from the McDonalds.

78. Specifically, before each of the McDonalds was charged a 20% fee not authorized by any order, neither of them was told, among other things:

- a. that the class action was collusive,
- b. that no order authorized the fee class counsel charged for individual claimant recoveries,
- c. that class counsel had already been awarded a \$2.5 million fee,
- d. that class counsel had been paid by the Diocese, but had not disclosed to the court, a contingency fee for individual cases of the class representatives. That was payment for nearly all of the time submitted in support of the court awarded fee,
- e. of class counsels' conflicts regarding the lifelong relationship with the Diocese and class counsels' functioning, even during the class action proceedings, as an official of the Diocese,

- f. of class counsel's friendships with Diocese personnel, potentially including persons who engaged in sexual abuse,
- g. that class counsel appeared at and participated in settlement discussions for persons who were not members of the class,
- h. that persons who opted out of the class had received more favorable settlement terms than did class members,
- i. that class counsel or his clients had contributed \$100,000.00 to funding the more favorable settlement terms for those who had opted out, or
- j. that with cooperation of the Diocese, class counsel had submitted blatantly false time and expense records to the court, which intentionally overstated time claims.

79. In late 2019 each of the McDonald plaintiffs learned for the first time of the information that class counsel had not disclosed.

80. As noted above, the McDonalds were each charged a 20% fee which no order authorized.

81. The fee charged class members and non-class members without court authorization and without proper disclosure is, upon information and belief, conservatively estimated to have been in excess of \$900,000.

82. As a matter of law, class counsel and class representatives hold in constructive trust funds distributed to them in the class action. Under *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984):

If the class representative or class counsel breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class.

83. Discovery will ascertain and account for the amounts charged by class counsel without court authorization. Accounting records of the class action reflect a \$2.5 million fee was paid to class counsel on September 4, 2007. No accounting record shows the separate contingent fee payment of \$145,000 made to class counsel by the Diocese on November 20, 2006. A document prepared by class counsel described that payment as the “initial settlement disbursement.” The check by which the payment was made appears at Attachment B.

84. The January 2007 “Settlement and Arbitration Agreement” states that as to the claims of class representatives identified as Johns Doe 53, 66, 66A, 67, Janes Doe A and B, and Rachel Roe, “It is understood and agreed that the claims of these claimants are released and these settlement funds [identified for each claimant] will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.” The class representatives had no interest in the settlement that applied to the class members.

85. Nor does any accounting show the unauthorized fees charged the McDonalds and other class members.

86. Class counsel also arranged, with cooperation of the Diocese, to be paid first, within ten days of the court’s orders concluding the preliminary approval, before any class members had an opportunity to make a claim, and before the recovery to the class was known.

87. Fiduciary obligations by class counsel toward each of the plaintiffs were imposed on class counsel as a matter of law, or were assumed, when class counsel (a) pled a class action in December 2005, (b) settled that class action in June 2006 with classes defined so as to include the plaintiffs, (c) sought, and obtained, class certification of those classes in 2007 (in a different county and different judicial circuit by a shopped-for circuit judge), (d) stated on the record they represented absent members of those defined classes, and (e) as to the

McDonalds, by actually representing them.

88. This action has been brought within three years of John Doe 305 learning in November 2019 that class counsel had claimed they had obtained relief for even those absent class members who received no notice of the class action case, without actually securing in any written order that relief for John Doe 305, and within three years of learning that the Diocese defendants aided and abetted that breach of fiduciary duty towards him.

89. Class counsel acknowledged that they had voluntarily assumed fiduciary duties towards absent members of the class such as the plaintiff Doe 305 in a March 9, 2007 hearing. In the transcript of that hearing at page 53, class counsel stated:

we represent the interests of persons who might be here today, may not be here today, may not have made a claim yet, a class, punitive [sic, probably intended to be putative] class or actual class, punitive [sic] initially, now an actual class.

90. Class counsel overtly acknowledged the fiduciary obligations they had assumed to the absent members (such as the plaintiff Doe 305) of the class they chose to define.

91. As noted above, under the holding of *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984), by operation of law any benefits from the class action are held by class counsel in trust for the class, including its absent members. Those benefits held in trust should be used to benefit the Plaintiff Doe 305, and to reimburse the McDonalds.

92. Also a matter of law, under *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003), the class definitions chosen by class counsel which included the plaintiffs was “a strategy choice” class counsel elected, the implications of which presented duties imposed by law and which class counsel voluntarily assumed, and by which class counsel are bound.

93. To gain court approval of the class settlement, the defendants made overtly false representations of fact to the shopped-for circuit judge, particularly in a hearing held July 13,

2007. The transcript for that hearing is unusual in that it has confusing page numbering, with multiple page numbers on each page. Using the numbers that correspond to a 33-page hearing transcript, among those false representations was that there was an “understanding” (on page 3) among all defendants in this action “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese defendants) outside of the class claim procedure. That “understanding” communicated to the shopped-for judge was never placed in any written order.

94. The discussion began concerning a specific group of individuals (called the “actual notice” group), a group of individuals who, according to files of the Diocese, had previously reported their abuse to the Diocese. Four (hearing page 8) or five (hearing pages 4 and 5) of “those particular folks” had not been located. The Diocese represented, without objection by class counsel (at page 3, emphasis added):

I think we [the Diocese and class counsel] have an understanding as to what would happen *to those particular folks*, which would really be our problem, and I think that what we’ve discussed allows us to proceed with the agreement we’ve signed on January 12th [2007]. And then *if that person shows up* then we [the Diocese] would have to deal with that.

95. Then the discussion broadened to include all absent class members who got no notice. At page 12, counsel for the Diocese stated:

Judge, I view that responsibility as ongoing and so that we got to find the other four *and we’ve got to find anybody else* who has kind of, lack of a better word, comes out of the woodwork.

96. Class counsel, on page 14 of that same July 13, 2007 transcript, summarized to the court (emphasis added), that:

what the Diocese has come to is that if *anybody* is missed . . . the diocese *waives all the same defenses* that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards.

97. When the shopped-for judge confirmed the representation by repeating back to counsel, on page 22 of that same transcript, the court stated, emphasis added:

There is nothing more that the diocese could possibly do that I am aware of. I mean, at this point in time when the diocese obligates itself to do as it has been described, ***there is nothing more that they can possibly do as far as I can even imagine***, Mr. Shahid, truly. I mean, what they say is ***if you come forward in the future we will treat you just the same*** as we have treated these individuals and the relief is available for you. ***I know of nothing more that could be done***. So I certainly would approve that.

It is a tautology that the only way there was “nothing more” that could be done, particularly after the scope of notice had been reduced, was if all absent class members who got no notice would get the same class settlement benefits. Yet no written order secured that relief for persons such as John Doe 305, a breach of duty by class counsel to absent members of the class that can be mitigated only by enforcing the agreement pursuant to SCRCP 43(k) as to John Doe 305 and any other absent class member who got not notice.

98. To get a reduced scope of notice approved, the defendants intended in that July 13, 2007 hearing to create the false impression with the shopped-for judge that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend the same class relief to that victim. The discussion started in the context of the four or five unknown “actual notice” victims discussed at the beginning of the hearing, but the assurances to the court broadened so as to include all absent class members.

99. In making the false representation that they made no effort to embody in any court order, class counsel were operating in the interest of themselves and in the interest of the Diocese defendants, rather than in the interest of the absent members of the class such as John Doe 305, to whom class counsel owed, or had assumed, a fiduciary duty. Class counsel intended that the shopped-for judge would rely on the statement, and the shopped-for judge did

rely on the statement. However, when the shopped-for judge did not embody the “understanding” in any written order, none of the defendants requested that the shopped-for judge do so. That fell below the standard of care for class counsel, as aided and abetted by the Diocese.

100. Class counsel had alleged in Paragraph 36 of the John Doe 53 class action complaint filed in Charleston County on December 2, 2005, that the number of abuse victims “may exceed the hundreds.” In originally proposing nationwide notice, counsel were aware or should have been aware that many persons sexually abused in South Carolina had likely moved out of South Carolina and resided out of state.

101. Class counsel were aware, as they had alleged for the class that they and John Doe 53 represented, that the number of sexual abuse victims far exceeded the victims already known from the files of the Diocese. Class counsel were aware the Diocese had a history of concealing sexual abuse yet relied on the Diocese to search their own files for abuse victims. Class counsel were also aware that some abuse victims repressed memories of their childhood sexual abuse (or were incapacitated as a matter of law) and could reasonably be expected not to recall childhood abuse for various lengths of time or were unable to pursue their claims for other reasons.

102. In short, the “Primary class” of sexual abuse victims was known by class counsel, or should have been known by class counsel, to be large and to require widespread notice. The defendants deliberately misrepresented to the shopped-for judge that absent class members later disclosed would receive relief, when in fact those absent members would get no relief unless the agreement placed on the record in open court is enforced through this action.

The defendants have opposed relief for absent class members who got no notice and at present continue to oppose relief for absent class members who got no notice.

103. As to John Doe 305, these actions and inactions by class counsel constituted breach of fiduciary duty imposed by law or assumed. As to the Diocese, the conduct constitutes aiding and abetting that breach of fiduciary duty by class counsel as to John Doe 305.

104. Page 4 of the July 30, 2007 order certifying the class states, “Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members.” In 2007 the defendants were aware that the written orders failed to require nationwide notice (as they have cooperated to omit that notice after it was originally proposed) and failed to secure the full relief for absent class members that had been made in those “representations and stipulations of the Diocese.”

105. The result of class counsels’ failure, which the Diocese aided and abetted, was to exclude John Doe 305 from any recovery for his sexual abuse and to deprive him of the benefit of the defenses that were waived in the class action settlement. Rather than protect the absent class members to whom they had assumed, and the law imposed, fiduciary duties, class counsel protected the interest of the Diocese defendants and class counsels’ own interest in their fee.

106. For the Diocese the benefit of the class action was its potential preclusive effect, the secondary objective class counsel sought for his Bishop and his Diocese, after class counsel’s primary objective in their fee. As explicitly stated in the class settlement agreement, and as noted above, class counsels’ fee was the highest priority of the class action settlement. The fee was fixed, and compelled a *pro rata* reduction of recovery to class members if “too many” abuse victims made claims. Failing to secure relief for absent class members who got no

notice served the purpose of avoiding having to implement the fee provision that compelled a *pro rata* reduction.

107. Correspondingly, not having “too many” class claimants also served the financial interest of the Diocese in that a reduced number of class claimants increased the chances that a residual class fund would remain after claims made and would be returned to the Diocese.

108. The Diocese defendants took various actions in concert so as to aid and abet class counsels’ breach of fiduciary duty to absent members of the class. Among those actions were:

- a. Shopping for a judge and doing so by collaborating to file, and accept service of, a duplicate class action complaint for John Doe 53 and other illicit means of evading SCRCP 23;
- b. Making no objection to the complex case designation, even though the Supreme Court’s July 26, 2006 complex case order applied to cases that could not be settled and the class settlement had already been reached;
- c. Misrepresenting to the court that absent class members who got no notice would receive the same compensation as class members;
- d. Taking no position on whether the class should be certified;
- e. Acquiescing in class counsel failing to disclose to the class his life-long ties to and functions on behalf of the Diocese;
- f. Making no disclosure to the class of the superior settlement terms (compared to those for the class) for the individuals who were the class representatives,

- and whose settlement terms would apply (a) whether or not the class was approved, and (b) for fixed sums not dependent on an arbitration process;
- g. Making no disclosure to the court of the November 20, 2006 contingent fee payment to class counsel for individual cases of class representatives, or that the billing records relied on for the class action fee application was almost entirely (from 2003 through November 20, 2006) for time for which that contingency fee had already compensated class counsel;
 - h. Making no objection that the class representatives referred to in the 2006 version of the class settlement agreement had already been paid and whose claims were already settled in 2006 whether or not the class was later certified;
 - i. Making no objection that the claims of class representatives referred to in the 2007 version of the class settlement agreement had already been paid and their claims released whether or not the class was later certified, meaning the “class representatives” had no stake in the class settlement, and were not representative of either class;
 - j. Not disclosing to the class the superior settlement terms reached with the individuals who objected to the class settlement;
 - k. Not disclosing to the class that those superior settlement terms for objectors were funded in part by class counsel or class members paying \$100,000 from class counsel’s trust account;

- l. Not objecting when class counsel negotiated simultaneously a fixed fee for themselves and a variable recovery for the class, with the compensation for class members being subordinated to that fee;
- m. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range, saying nothing about the blatantly fraudulent time records of class counsel, not disclosing that a contingent fee had already been paid for the time spent on individual cases which formed the vast percentage of time claimed in the fee application (time from 2003 to November 20, 2006), and not disclosing that the class settlement was reached seven months after filing without a single motion having been argued or decided, or a single witness having been deposed;
- n. agreeing that no accounting records of the class fund should include the contingency fee payment to class counsel;
- o. agreeing to the fee being awarded before any member of the class member was even identified, had even submitted a claim, or had been compensated;
- p. Agreeing to ignore the South Carolina Supreme Court's March 2009 directive that the class action should be concluded in six months unless an extension was sought from that court;
- q. agreeing to seek no post-award fairness hearing under SCRCP 23 where the *actual* conduct of the class action, substantively and procedurally, and the *actual* recovery for the class members would be assessed;
- r. ignoring a 2016 motion by one of the class representatives for a post-award fairness hearing; that motion alleged that class counsel had "abandoned" the

class representative and the representation had terminated, and

s. seeking no final order in the class action so as to avoid all appellate review.

109. The defendants caused John Doe 305 special harm in the form of precluding him from making any claim against the Diocese for his sexual abuse, specifically changing the notice to deny him all chance to enjoy the benefits of a waived defense of statute of limitations and a waived defense of charitable immunity. The professional representation of the plaintiff by class counsel was inadequate and failed to meet the standard of care applicable to South Carolina attorneys, and was a breach aided and abetted by the Diocese.

110. The defendants caused the McDonald plaintiffs special harm in the form of a 20% fee which no order authorized, and without proper disclosures as alleged above, proper disclosures having been fraudulently concealed from them. The Diocese aided and abetted that breach by ignoring the Supreme Court's 2009 order and agreeing to omit any judicial review of class counsel's actual conduct.

**For a First Cause of Action:
Declaratory Relief**

111. Allegations above are incorporate into this cause of action as if fully stated.

112. This action seeks declaratory relief, pursuant to SCRCP 57 and S.C. Code § 15-53-10 et seq., to determine, among other things, under SCRCP 23:

- a. The conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench,
- b. the extent to which class action settlements are permitted to be collusive,
- c. the extent to which colluding parties are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,

- d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
- e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his “adversary” the Diocese at the expense of the class members class counsel purports to represent,
- f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
- g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
- h. the extent to which class counsel may charge an unauthorized fee to class members, and
- i. the extent to which applicable legal standards vary according to the persons involved.

113. Declaratory relief is requested, as described above as well as described below in the “relief sought.”

**For a Second Cause of Action:
Professional Negligence by Class Counsel
Breach of Fiduciary Duty, Imposed or Assumed**

114. Allegations above, other than the allegations of intentional conduct by class counsel, are incorporated into this cause of action as if fully stated.

115. Pursuant to S.C. Code § 15-36-100(b), Attachment A to this complaint, and incorporated herein pursuant to SCRCP 10(c), is an affidavit of Michael Virzi specifying certain various negligent acts or omissions of class counsel, and the factual basis of the

negligent acts or omissions of class counsel. That affidavit was prepared for the Supreme Court as part of a petition for original jurisdiction and bears a Supreme Court caption.

116. Class counsel assumed, or by law had imposed, fiduciary duties to John Doe 305, as alleged above and as set forth in Mr. Virzi's affidavit.

117. Unless the agreement placed on the record by class counsel and the Diocese is fully enforced pursuant to SCRCF 43(k) to fully benefit John Doe 305, and to the extent not fully enforced, class counsel breached those duties to him, as alleged above. They eliminated any chance of John Doe 305 getting notice and failed to secure in a written order relief claimed to have been obtained, depriving him of the waived defenses available only in the class action and the relief available to him in the class action.

118. As to John Doe 305, class counsel were professionally negligent, and the Diocese defendants aided and abetted that breach of fiduciary duty, which damaged John Doe 305.

119. As to each of the McDonald plaintiffs, class counsel were professionally negligent in charging each of the McDonalds a fee which no order authorized, without proper disclosures, and in avoiding court review of class counsel's actual performance and actual charges to class members, as alleged above.

120. The Diocese aided and abetted the breach of duty by class counsel, as alleged above. They cooperated to conceal payments made to class counsel. They cooperated in having no accurate accounting of class funds and charges made by class counsel. They collaborated in misrepresentations to the court and in withholding pertinent information from the court. And they cooperated to ignore the Supreme Court, ignore a motion for a post-award fairness hearing

and agreed to seek no final order in the class action so as to keep class counsel's actual performance and actual charges to class members from being reviewed.

121. Each of the plaintiffs is entitled to actual and punitive damages against class counsel as a result of the breaches of fiduciary duty and professionally negligent representation by class counsel.

**For a Third Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty
Against the Diocese defendants**

122. Allegations above are incorporated into this cause of action as if fully stated.

123. The Diocese aided and abetted the breaches of fiduciary duty by class counsel towards each of the plaintiffs, as set forth above.

124. The Diocese defendants joined with class counsel in eliminating nationwide notice of the class settlement while also making false representations on the record to the shopped-for judge, supposedly protecting the interest of absent class members such as John Doe 305 that he would be afforded relief once he learned of the class action. Each defendant then failed to secure those representations in any written order.

125. As to the McDonalds, the Diocese aided and abetted class counsel's breaches of duty by, among other things, cooperating to ignore the 2009 Supreme Court order and the 2016 motion by a class representative, to seek no final order, to require no full accounting of the class funds and class counsel's actual performance and actual fees charges, and in concealing from the court the contingent fee payment made to class counsel for the class representatives.

126. The Diocese defendants knowingly participated in the breach of the fiduciary duties owed by class counsel to each of the plaintiffs because it was in the financial interest of the Diocese to do so. The Diocese took advantage of class counsels' willingness to prioritize over

the interests of abuse victims in the classes they chose to define both their own interest in an attorneys' fee and the interests of class counsel's own Bishop and Diocese.

127. The plaintiffs have each been damaged by the Diocese defendants aiding and abetting class counsels' breaches, and each plaintiff is entitled to actual and punitive damages as a result.

**For a Fourth Cause of Action:
Civil Conspiracy, Conversion, Accounting, Disgorgement
Against all defendants**

128. Allegations above are incorporated into this cause of action as if fully stated.

129. The defendants joined together in common action for the purpose of injuring the plaintiffs. The defendants collaborated in a collusive class action, judge-shopped for review of the class settlement, and agreed to a class settlement which prioritized the defendants' financial interests at the expense of class members. The defendants submitted false information to the court and withheld material information from the court.

130. As to John Doe 305, the defendants collaborated in reducing the notice program so as to deprive him of notice so he and all other class member who resided out of state could not participate in the waived defenses available in the class action or the relief available in the class action.

131. As to the McDonalds, the defendants collaborated in withholding material information from the court and the class members, submitting false information to the court, ignoring the 2009 order of the Supreme Court, ignoring the class representative's 2016 motion, seeking no final order in the class action and in making no proper accounting of the class settlement funds.

132. The defendants caused the plaintiffs special damage. John Doe 305 is required to

confront defenses otherwise waived, and the McDonalds were each charged a fee without authorization and without proper disclosures, which properly concluding the class action settlement by a post-award fairness hearing would disclose.

133. The common design among the defendants was to maximize their own financial interests, even at the expense of the persons in the classes, and regardless of the injuries done to the plaintiffs to whom they owed a fiduciary duty.

134. Class counsel made affirmative misrepresentations to the court and to class members, and wrongfully appropriated what is conservatively estimated to exceed \$900,000 from the class members, without regard to the improperly awarded fee. The Diocese collaborated in that process. Each collaborated to exclude eligible sexual abuse victims from making claims, class counsel acting so as to protect the Diocese at the expense of their class claimants. Funds for class members have been improperly drawn from the class fund and converted by class counsel to their own use.

135. The plaintiffs are entitled to actual and punitive damages against the defendants for the civil conspiracy; as well as an accounting of improper charges to class members and disgorgement of all funds improperly converted by class counsel.

**For a Fifth Cause of Action: Breach of Contract
Against the Diocese Defendants for John Doe 305**

136. Allegations above are incorporated into this cause of action as if fully set forth.

137. Class counsel and counsel for the Diocese placed on the record an agreement between them to provide relief to absent class members who failed to get notice within the claims period.

138. At that time class counsel had pleaded a class action whose definition included John Doe 305. He was an intended beneficiary of that agreement with the Diocese.

139. The essential terms of that agreement are reflected in the class settlement agreement, modified by the representation on the record that any absent class member who got no notice would, once they identified themselves, get the same terms of relief as class members who received notice.

140. As alleged above, class counsel was professionally negligent in failing to secure that relief for the class in the form of a written order, but the agreement was “made in open court and noted upon the record,” as required by SCRCP 43(k).

141. The Diocese has breached that agreement in not providing the agreed upon relief to John Doe 305 and all other absent class members.

142. John Doe 305 is entitled to the relief provided by the agreement entered on the record in open court of which he is an intended third-party beneficiary.

Demand for Jury Trial

143. Plaintiffs demand a trial by jury.

Relief Sought

The plaintiffs seek the following relief:

144. For the court to declare the rights and obligations of the plaintiffs under SCRCP 23 and 57, as authorized by the Uniform Declaratory Judgments Act, S.C. Code §§ 15-53-10 et seq. to declare the “rights, status and other legal relations,” as put in S.C. Code § 15-53-20, and to construe “other writings constituting a contract,” as put in S.C. Code § 15-53-30, in the following respects under SCRCP 23:

- a. Is it proper for parties to reach a class settlement then collude to bypass SCRCP 23 approvals and judge-shop for purposes of moving a settled class action to another county for purposes of class settlement approval and oversight, thereby avoiding judges not desired and selecting a desired judge?
- b. Is it proper for the judge-shopping tactics to include (a) filing new class

action cases, (b) replicating in another circuit an existing and settled class action complaint and (c) accepting service of such new complaints?

- c. Is it proper for class counsel to refuse to notify class members of their substantial conflicts of interest?
- d. Is it proper for class counsel to enter an agreement to settle a class action which simultaneously, and explicitly, creates a fixed fee for class counsel, elevates that fee for class counsel above the interests of class members and makes class recovery subordinate *pro rata* to counsel's fixed fee?
- e. Does it breach class counsel's fiduciary duty to absent class members to accommodate an objection by his "adversary" to eliminate notice for all class members who reside out of state without providing relief to out of state class members?
- f. Is it proper for class counsel to have received a payment to resolve the claims of class representatives, and payment for a fee for that work, without any parties disclosing that fee payment to class members or to the court?
- g. Must a reviewing court examine time records submitted by class counsel in support of a fee award and reject, or at least inquire about, blatantly fraudulent submissions?
- h. Is it proper for class counsel and the Diocese fail to disclose that nearly all of the time submitted by class counsel in support of a fee award (all time between 2003 and November 20, 2006) had been paid for by a prior payment of \$145,000?
- i. Does class counsel breach their fiduciary duty to class members by charging a fee not authorized by any court order?
- j. To what extent does class counsel breach their fiduciary duty to class members by failing to disclose each of (a) substantial conflicts of interest with the Diocese and the shopped-for judge, (b) collusion in the class action, (c) the judge-shopping, (d) that no order authorized the fee charged the class member, (e) that a \$145,000 fee payment had already been made to class counsel, (f) that a \$2.5 million fee payment had already been made to class counsel, (g) that objectors to the class settlement got better settlement terms than class members, (h) that class counsel participated in discussions to obtain better settlement terms for objectors, and (i) that class counsel paid \$100,000 from his trust account to partially fund better settlement terms for objectors?
- k. Does class counsel breach their fiduciary duty to absent class members when they fail to secure in a written order the relief and waived defenses stated on

the record to have been obtained for absent class members who got no notice?

1. Should class counsel be required to disgorge to benefit the class members all improperly charged fees, including the \$2.5 million award and the unauthorized fee charged all class members?

145. Actual and punitive damages as provided by law,

146. An accounting of sums charged to class members such as the McDonalds without proper authorization and without proper disclosures, and of the residual class funds refunded to the Diocese,

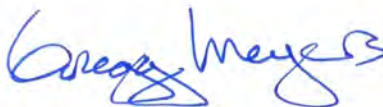
147. Disgorgement for the benefit of the class of sums improperly charged each class member by class counsel, of the class funds refunded to the Diocese, and of all fees paid to class counsel based on misrepresentations and fraudulently withheld information;

148. Costs and disbursements of this action as provided in S.C. Code § 15-53-110;

149. Reasonable attorney fees; and for

150. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



Gregg Meyers, SC Bar No. 9908
217 Lucas Street Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for the Plaintiffs

August 29, 2022

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NUMBER: 2:22-cv-02940-BHH

JOHN DOE 305, JULIE McDONALD,
and RICHARD McDONALD

Plaintiffs,

vs.

LAWRENCE E. RICHTER, JR., DAVID
K. HALLER, RICHTER & HALLER, LLC,
THE BISHOP OF CHARLESTON a
CORPORATION SOLE,

Defendants.

DEFENDANTS' NOTICE OF REMOVAL



YOU WILL PLEASE TAKE NOTICE that Defendants, Bishop of Charleston, a Corporation Sole, hereby invoke the removal jurisdiction of the United States District Court for the District of South Carolina pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446 based upon the following:

1. Plaintiff commenced this action by filing the Summons and Complaint with the Court of Common Pleas for Charleston County, State of South Carolina, on August 30, 2022. (Attached as **Exhibit A** are all Charleston Court of Common Pleas filings).

2. No Defendant has been served with the Summons and Complaint. *See Declaration of Richard Dukes, Exhibit B*

3. This action is currently pending in the Court of Common Pleas for Charleston County, State of South Carolina, located within the above-named Division of this Court. Because no defendant been served with the Complaint, the Notice of Removal is timely under 28 U.S.C. § 1446(b).

4. The Complaint is a civil action seeking recovery for damages based upon alleged legal malpractice and breach of fiduciary duty by Defendants Richter, Haller, and Richter & Haller and aiding and abetting breach of fiduciary duty by Defendants Bishop of Charleston, a Corporation Sole, and civil conspiracy by all defendants. Under these claims for relief, Plaintiff seeks actual, consequential, and punitive damages. Based upon the allegations contained in the Complaint, the amount in controversy exceeds \$75,000. The Corporation Sole denies that Plaintiff is entitled to any of the relief sought and does not waive any defenses with respect to any of Plaintiff's claims. However the amount in controversy is guided by accepting Plaintiff's allegations as true. *Dart Cherokee Basin Operating Co., LLC v. Owens* 135 S.Ct. 553 (2014). A defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. *Id.* at 554.

5. This Court has original jurisdiction based upon diversity of citizenship under 28 USC § 1332, and this action is removable pursuant to 28 U.S.C. § 1441(a). Venue properly lies in the District of South Carolina under 28 U.S.C. § 1391(a)(2) and 28 U.S.C. §95(a)(2). Plaintiffs allege they are residents of state other than South Carolina. (Complaint, ¶ 6). Defendants are alleged to be citizens and residents of South Carolina (Complaint, ¶¶ 11-13, 17-20). Thus complete diversity exists between the parties.

6. To support removal based on diversity jurisdiction, and where it is not facially evident from the Complaint, the Defendants bear the burden of proof that the amount in controversy exceeds the jurisdictional amount. 28 USC § 1446(c)(2)(B). Defendants do not concede the validity of Plaintiff's claims nor attempts to predict what Plaintiff will recover; the amount in controversy is determined by the amount demanded, not what will ultimately be recovered. *St. Paul Mercury Indem. Co. v. Red Cab Co.* 303 U.S. 283, 289-290 (1938).

7. In *Mattison v. Wal-Mart Stores, Inc.* 2011 U.S. Dist. LEXIS 11634, *4-6 (D.S.C. Feb. 4, 2011), this Court recently reviewed the showing required by a party seeking to remove a case to federal court, where no specific amount in controversy is alleged in the Complaint. The removing party must demonstrate that there is more than \$75,000 in controversy "to a reasonable probability". *Id.* at *4. Here, the nature of the unspecified damages, together with the prayer for punitive damages "make it virtually impossible to say that the claim is for less than the jurisdictional amount" *Woodward v. Newcourt Comm. Fin. Corp.*, 60 F. Supp. 2d 530, 532 (D.S.C. 1999).

8. Under 28 USC § 1441(b)(2), "A civil action otherwise removable solely on the basis of jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest **properly joined and served** as defendants is a citizen of the State in which the action is brought." 28 USC § 1441(b)(2)(emphasis added). However Section 1441(b)(2) does not apply because no defendant has been served with the Complaint in this action. *See Dukes declaration; Also Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699 (2d Cir. 2019); *Blankenship v. Napolitano*, 2019 U.S. Dist. Lexis 118731 (S.D. W.Va. July 17, 2019); *Teamsters Local 677 Health Servs. & Ins. Plan v. Friedmand*, 2019 U.S. Dist. Lexis 184186 (D.Md. October 23, 2019); and *Encompass Ins. Co. v. Stone Mansion Restaurant, Inc.*, 902 F.3d 147, 152-54 (3rd Cir. 2018)(holding removal not precluded where resident defendant had not been served); *LaRusso v. St. George's University School*, 747 F.3d 90, 97 (2d Cir. 2014)(nothing in Sections 1441 or 1446

require service upon a defendant before removal); *McCall v. Scott*, 239 F.3d 808, 813 n.2 (6th Cir. 2001)(“Where there is complete diversity of citizenship . . . inclusion of an unserved resident defendant in the action does not defeat removal”); *Zirkin v. Shandy Media, Inc.*, 2019 WL 626138, at *3 (C.D. Cal. Feb. 14, 2019); *Fisher v. Pelstring*, 2009 WL 10664813, at *204 (D.S.C. Sept. 29, 2009)(denying remand of a pre-service removal).

9. Because no defendant has been properly joined and served with the Complaint, the consent of other defendants is not required. 28 USC § 1446(b)(2)(A); *see also United Steel v. Shell Oil Co.*, 549 F.3d 1204, 1208 (9th Cir. 2008).

10. As required by 28 U.S.C. § 1446(d), written Notice of Removal is being given to all adverse parties and a copy of the Notice is being filed with the Clerk of the Common Pleas Court of Charleston County, South Carolina.

WHEREFORE, the Defendants, by counsel, give notice that the within civil action, previously pending in the Court of Common Pleas Court for Charleston County, South Carolina, has been removed to the United States District Court for District of South Carolina, Charleston Division.

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/Richard S. Dukes, Jr.
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September 1, 2022

ATTORNEYS FOR DEFENDANTS
 BISHOP OF CHARLESTON, A CORPORATION
 SOLE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-_____
John Doe 305, Julie McDonald, and	)	
Richard McDonald,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	
Richter and Haller, LLC, and	)	
The Bishop of Charleston a corporation	)	
Sole,	)	
	)	
Defendants.	)	
	)	

Summons

TO: Lawrence E. Richter, Jr.
David K. Haller
Agent for Richter and Haller, LLC
Agent for The Bishop of Charleston, a Corporation Sole

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action. A file-stamped copy of the complaint is served upon you with this summons.

Your answer or other response to the complaint is to be served upon the attorney for the plaintiff at 217 Lucas Street F-1, Mt. Pleasant SC 29464, or served by email at attygm@gmail.com.

According to the South Carolina Rules of Civil Procedure, you are required to appear and defend yourself in this action by making and serving an answer to this complaint within thirty (30) days after the complaint is served upon you. The thirty days begin to run from the date after this summons and complaint are served upon you; the date the service is made is excluded.

If within that time you fail to appear and defend as you are required to do by the Rules of Civil Procedure, the Plaintiff in this action shall apply to the Court for the relief demanded in this Complaint and judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,



Gregg Meyers, SC Bar No. 9908
217 Lucas Street Box 10
Mt. Pleasant SC 29464
843-321589
attygm@gmail.com

Attorney for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-_____
John Doe 305, Julie McDonald, and	)	
Richard McDonald,	)	Jury Trial Requested
	)	
Plaintiffs,	)	- Declaratory Relief
	)	- Legal Malpractice
v.	)	- Breach of Fiduciary Duty
	)	- Aiding and Abetting Breach of that Duty
Lawrence E. Richter, Jr.,	)	- Civil Conspiracy, Conversion,
David K. Haller,	)	Accounting, Disgorgement
Richter and Haller, LLC, and	)	- Breach of Contract
The Bishop of Charleston a corporation	)	
Sole,	)	
	)	
Defendants.	)	
	)	

Complaint

Summary of the Action

1. This action is brought by two actual class members and one putative class member who discovered only recently breaches of duty by class counsel that had been fraudulently concealed.

2. An expert affidavit attached to this complaint as Attachment A supports the allegations of breach of professional duties and fiduciary duty. Its content is incorporated into this complaint pursuant to SCRCP 10(c).

3. This action also seeks declaratory relief, pursuant to SCRCP 57 and S.C. Code § 15-53-10 et seq., to determine, among other things, under SCRCP 23 the propriety of each of the following actions of the defendants:

- a. The conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench,

- b. the extent to which class action settlements are permitted to be collusive,
 - c. the extent to which colluding parties to a class action are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,
 - d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
 - e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his colluding “adversary” at the expense of the class members class counsel purports to represent,
 - f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
 - g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
 - h. the extent to which class counsel may charge class members an unauthorized fee, and
 - i. the extent to which applicable legal standards may vary according to the persons involved.
4. The case arises from a collusive class action in which the class counsel defendants:
- a. colluded with their “adversary” to reach a class settlement;
 - b. colluded with their “adversary” to judge-shop so as to move oversight and approval of that class settlement away from judges not desired to a particular judge in another circuit that was desired;

- c. placed their own financial interests, and the interests of their “adversary,” ahead of the interests of the class they purported to represent;
- d. submitted (without objection) patently false information to the circuit court;
- e. withheld from the circuit court (with cooperation of the “adversary”) information that a contingency fee payment had been made that applied to nearly all of the time in records class counsel submitted in support of a fee request for work done on the class action;
- f. charged individual class members a fee no order authorized them to charge; and
- g. failed to make proper disclosures to class members about class counsel’s conflicts and the fees already paid to class counsel before charging class members that unauthorized fee.

5. Those manipulations of SCRCP 23 have affected and continue to affect the rights and interests of sexual abuse victims perpetrated by priests and other employees of the Diocese of Charleston, as well as family members of those victims. Class counsel engaged in professional malpractice by placing their own interests above those of the class members they purported to represent, engaged in a substantial fraud upon the court, and did so with the full collusive cooperation of the Diocese of Charleston.

Parties and Jurisdiction

6. John Doe 305, Julie McDonald, and Richard McDonald are each a citizen and resident of a state other than South Carolina. Each was affected by actions taken by the defendants in Charleston and Dorchester Counties.

7. Plaintiff John Doe 305 was born prior to August 30, 1980, one of the criteria for inclusion in what was called the “primary class” in the class settlement referred to below.

8. As a minor child John Doe 305 was sexually abused by Eugene Condon, an agent or employee of the Diocese of Charleston, another criterion for inclusion in the “primary class” of the class settlement referred to below. He has had no prior claim as to that abuse resolved, the third, and last, criterion for inclusion in the “primary class,” which had no geographic limit in its definition.

9. The McDonalds learned about the class action and participated in the class action. Class counsel was aware the McDonalds resided in a state other than South Carolina when they participated in the class settlement. Within three years of this filing the McDonalds first learned of information class counsel fraudulently concealed from them before charging them a fee class counsel was not authorized by any order to charge.

10. Until November 2019, John Doe 305 was never informed about the class action. According to class counsel, in 2007 class counsel accommodated the Bishop of Charleston in changing the nationwide notice originally proposed. That change eliminated any notice in the state where John Doe 305 resided. Class counsel fraudulently concealed that information from class members, including John Doe 305.

11. The Bishop of Charleston, a Corporation Sole is an entity organized under the law of South Carolina, created by statute in 1880. The Corporation Sole is known colloquially as the Diocese of Charleston, and in this complaint it is referred to as “the Diocese.” The Diocese operates under authority of its presiding Bishop or, if in between Bishops, it operates under authority of a person designated as “administrator.” Each Bishop is appointed by the Pope presiding in Rome, Italy.

12. Each member of the Diocese, including the Bishop, is required to comply with the laws of South Carolina and is subject to the court's enforcement authority and contempt power over the Diocese.

13. The boundaries of the Diocese include and are consistent with the boundaries of the state of South Carolina. The Diocese holds property and does business in South Carolina. Its principal place of business is in Charleston County.

14. Decisions to assign Eugene Condon to the church named Stella Maris, from which assignment he sexually abused John Doe 305, and decisions about how Eugene Condon should be supervised, were decisions made in Charleston County. The acts associated with the abuse of the plaintiff John Doe 305, as well as the negligent supervision of Eugene Condon, each took place in Charleston County.

15. Decisions by the Diocese to participate in a class settlement for sexual abuse victims were decisions made in Charleston County but in some respects required approval of the Holy See, in Rome, Italy.

16. Decisions by the Diocese about the manner of cooperating with class counsel, including the decisions alleged in this complaint to have been collusive, were decisions made in Charleston County.

17. Lawrence E. Richter, Jr., is an attorney who at all times pertinent to this complaint conducted business in Charleston County.

18. David K. Haller is an attorney who at all times pertinent to this complaint conducted business in Charleston County.

19. Richter and Haller, LLC was an entity organized and existing under the laws of South Carolina which at all times pertinent to this complaint conducted business in Charleston

County. Richter and Haller individually worked for that entity during the time period involved with this complaint.

20. At all times pertinent to this complaint, defendants Richter and Haller were agents for each other and for Richter and Haller, LLC. Each of them individually was designated class counsel as was Richter and Haller, LLC. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as “class counsel” unless otherwise particularly specified.

21. Lawyers other than class counsel were involved on behalf of individual sexual abuse victims in certain of the cases included in the class action settlement. None of them was designated as class counsel. No claims in this action are made against the conduct of any of those lawyers, only against the class counsel defendants.

22. The circuit court has jurisdiction of the subject matter and jurisdiction over the parties to this action.

Nature of Wrongdoing

23. According to time records of class counsel, work on one or more sexual abuse cases began July 21, 2003.

24. In May 2005 defendants Richter and Haller and their firm brought a case in Charleston County against the Diocese for an individual designated as John Doe 66, a person who was sexually abused as a child.

25. In August 2005 defendants Richter and Haller and their firm brought a case in Charleston County against the Diocese for an individual designated as John Doe 66A, a person who was sexually abused as a child.

26. In October 2005 defendants met to discuss a class action settlement. The class settlement that the defendants would reach in 2006 was collusive, in that it would turn out to promote at the expense of the class members and have as its first priority the financial interests of class counsel, and as its second priority the financial interests of the Diocese, and as its third priority the financial interests of persons who objected to and opted out of the class, and as (at best) a fourth priority the financial and other interests of class members.

27. No class action complaint was pending as of October 2005 when the defendants met to discuss a class settlement.

28. At the October 2005 meeting the Bishop at that time expressed a willingness to consider a class action settlement.

29. In December 2005 defendants Richter and Haller and their firm brought a class action case in Charleston County against the Diocese. The plaintiff was designated as John Doe 53, a person who was sexually abused as a child. Paragraph 34 of that complaint alleged that John Doe 53 brought the case “on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.” Paragraph 36 of that complaint alleged that the number of sexual abuse victims “may exceed the hundreds.”

30. Between that December 2005 class action filing and June 2006, when a class settlement was reached, not a single motion was decided in the class action and not a single deposition was taken. No motion was filed to certify a class. The proceedings were not adversarial.

31. In June, 2006 class counsel and the Diocese reached a class settlement during a mediation. Its outlines were embodied in a handwritten document.

32. If not before, once the class settlement was reached the parties began to collude in their own financial interest.

33. The 2006 mediated agreement included each of the three pending cases for, respectively, Johns Doe 66, 66A, and 53, and a fourth individual referred to as John Doe 67.

34. After reaching the class settlement in 2006, the parties engaged in elaborate judge-shopping to move class settlement oversight and approval away from judges not desired in Charleston County to get to a desired judge who was then presiding in Dorchester County.

35. That desired Dorchester County judge agreed to be shopped-for.

36. Various acts of misconduct took place, some of which are discussed below, none of which was examined by the shopped-for circuit judge.

37. To date, no final order was ever entered in the class action, apparently to evade appellate review of the class proceedings.

38. In March 2009 in a related action the South Carolina Supreme Court ordered the class action to be concluded in six months, or by September 2009.

39. That direct order of the South Carolina Supreme Court was inconsistent with the apparent agreement among the defendants to evade appellate review, so the defendants (and the shopped-for judge) all ignored the Supreme Court's order. Nor was any extension of time sought from the Supreme Court, as its 2009 order required.

40. Not later than 2013, the South Carolina Supreme Court was informed that its 2009 order had been ignored. To date the South Carolina Supreme Court has taken no action to compel its order to be enforced.

41. Either this action will address the 2009 Supreme Court order having been ignored, or it will establish that there are some circumstances, or some litigants, or some

attorneys, or some circuit court judges, who are permitted to regard as optional direct orders of the South Carolina Supreme Court, in which case this action seeks to identify the criteria which govern when a given order of the South Carolina Supreme Court may be ignored, if that is the case.

42. Additionally, this action seeks to determine whether ignoring the Rules of Civil Procedure, applicable precedent, and Supreme Court orders is an acceptable method for evading appellate review, and if so, under what criteria.

43. During the course of the class action, class counsel placed their own financial interests, and the financial interests of the Diocese, and the financial interests of those who objected to and opted out of the class action ahead of the interests of the class members they purported to, and did, represent, as well as those absent class members to whom they owed a fiduciary duty. Their fiduciary duty was owed to absent class members both as a matter of law and, independently, because class counsel acknowledged on the record that they had assumed that duty.

44. The Diocese colluded in class counsel's breach of duties to the plaintiffs.

45. As one example of collusive conduct in the class action, the class was never informed that class counsel was, as class counsel put it, a "life-long active member of the Diocese" and that before and during the class action class counsel functioned "in many capacities" on behalf of the Diocese including positions categorized as "Extraordinary Minister," and had "friendships with many priests and bishops of the diocese," and whether those friendships included persons who had engaged in sexual abuse against potential members of the class or specific members of the class.

46. As noted above, a second example of collusion in the class action was the overt judge-shopping after the class settlement was reached in June 2006. Ignoring requirements in SCRCF 23 that a class settlement be submitted for court approval and that no class action be dismissed without notice to the class and court approval, the defendants agreed to judge-shop.

47. The objective of the judge-shopping was to avoid judges in Charleston County for class settlement review and approval and to have that done instead by a particular circuit judge from a different circuit who had long social and professional ties to class counsel.

48. As noted above, when the class settlement was reached in June 2006 the only cases pending were in Charleston County, where the class action had been brought in 2005 and where the class settlement had been agreed to during a mediation.

49. The colluding parties calculated, correctly as it turned out, that the particular circuit judge they desired was willing to be shopped-for and would facilitate the judge-shopping methods for moving the class settlement from Charleston County to Dorchester County.

50. The South Carolina bench and bar will benefit from knowing whether and, if so, what criteria apply when, counsel may collude to (a) ignore the requirement in SCRCF 23 to seek court approval of a class settlement, (b) judge-shop so as to select a particular judge to oversee and approve a class settlement, (c) use judge-shopping as a means of transferring a class settlement from one circuit to another, (d) fail to notify all class members when the Charleston cases within the class settlement were dismissed as part of the judge-shopping, as SCRCF 23 requires, and (e) establish what length of time (in this case four months) and what procedural steps may be taken as the method for colluding parties to choose the judge to review a class settlement for approval.

51. For a third example of collusion, as class counsel have explained on the record, class counsel disadvantaged members of the classes they defined and represented (such as John Doe 305) so they could accommodate a request from their “adversary,” the Diocese. According to class counsel’s representations to the court, class counsel agreed to alter the notice program for the class settlement after Bishop Baker (then presiding Bishop in the Diocese) complained that the original, nationwide notice program proposed (publication once a week for a six-week period in *USA Today*, in addition to publication in newspapers in and around South Carolina. Nationwide notice might have reached John Doe 305.

52. But (according to class counsel) when class counsel’s Bishop objected that notifying all putative class members was “too expensive,” class counsel agreed to eliminate that nationwide notice, and to change the notice to that which had no chance of informing out of state residents such as John Doe 305.

53. The scope of proposed notice was changed by agreement to publication in only newspapers in S.C. and Augusta.

54. Class counsel thus intentionally deprived John Doe 305 and every other out of state class member of the information about the benefits of the class settlement, and did so, according to class counsel, to accommodate the financial interest of of his “adversary,” the Diocese.

55. That voluntary change by class counsel deprived John Doe 305 of any practicable chance of learning about the benefit of defenses waived as to class members, and was plainly less than the “best practicable notice” required by Due Process as it was notice even less than originally proposed by class counsel.

56. For a fourth example of collusion among the defendants, in July 2007 the defendants appeared before the shopped-for circuit judge and represented on the record that the Diocese had agreed to extend the benefits of the class action to abuse victims who got no notice and who later made claims.

57. Class counsel failed to secure that supposed agreement in any written order, breaching a duty to John Doe 305. But it reasonably explains why the shopped-for circuit judge made no inquiry about, and approved, the scope of the notice program being reduced from national notice to (essentially) notice in only South Carolina. It also explains why the shopped-for circuit judge further reduced the notice program from publication once a week for a six-week period to once a week for a three-week period. Both changes were approved by the court after the false representation in the July 2007 hearing about how the Diocese would treat absent class members who did not get notice.

58. The Diocese does not treat absent class members who got no notice (such as John Doe 305) as represented to the shopped-for circuit judge in the July 2007 hearing.

59. For a fifth example of collusion, no post-award fairness hearing under SCRCP 23 has yet been held in the class action, nor (as noted above) has any final order been entered in the class action. That refusal was and is apparently a tactic by the colluding parties to evade appellate review.

60. A motion for a post-award fairness hearing was filed in 2016 by a class representative. That motion has been ignored.

61. For class counsel, that tactic has evaded any review under SCRCP 23 of their *actual performance* in effectuating the class settlement, as opposed to making that assessment on hypothetical performance. Attorney fees were awarded without any review of collusive

conduct, or failures by class counsel such as not making proper conflict disclosures to the classes including the McDonalds, or failing to securing in a written order the relief claimed for persons such as John Doe 305, or charging improper fees to class members such as the McDonalds (a fee of 20%), or withholding material information about the fee from the McDonalds, or submitting fraudulent information to the court as part of the fee claim, or all defendants withholding from the court that nearly all time claimed in the class action to support the fee claim had already been paid for by a contingent fee paid by the Diocese to class counsel in November 2006.

62. Conservatively estimated, it appears that the total of class counsel's unauthorized fees exceeds \$900,000, of which the improper fees charged the McDonalds are a part. In addition, the \$2.5 million fee awarded was based on substantial misrepresentations to the court. No accounting has ever been made of the actual fees charged and collected by class counsel.

63. Class counsel's fiduciary obligation to each alleged class members and to each judicially approved class member is a duty either imposed under SCRCP 23 or assumed, or both, as class counsel acknowledged that fiduciary duty on the record.

64. Under SCRCP 23 both class counsel and the court have a fiduciary obligation to protect the absent members of the class, an obligation unchanged by judge-shopping even if the circuit judge has agreed to be shopped-for by colluding parties to a class settlement, and even if all parties and a shopped-for judge has agreed to ignore their fiduciary obligation.

65. If those duties of either counsel or the circuit judge are variable based on the persons involved, that criteria should be articulated for the benefit of South Carolina bench and bar.

66. As a sixth example of the parties' collusion, between June 2006, when the mediated class settlement was reached and its handwritten outline laid out, and January 2007, when a typed version was submitted to the court for approval, two provisions were added to the agreement. Each served the financial interests of class counsel and the Diocese at the expense of class members.

67. First, on page 13, in paragraph 6B, the attorneys' fees for class counsel were to be paid first, before any claims were made, class members identified, or any class member compensated, explicitly making the fees the highest priority of the class settlement. Awards to class members were subordinated to that fee. Paragraph 6B provides:

In the event that the total due [to class claimants] exceeds the amounts provided for ... then each award shall be reduced on a *pro rata* [sic] of the net settlement fund.

68. As this provision reflects, class counsel negotiated for themselves a fixed fee while simultaneously negotiating for the classes they claimed to represent a variable recovery that would be reduced *pro rata* if claims against the class fund were insufficient to pay the fee and all claims. Class counsel's interest in an attorneys' fee was made the highest priority of the class settlement, explicitly placed above the recovery for class members.

69. Second, on page 14, in paragraph 6C, the parties agreed that once all fees, costs, and claims were paid, then any remaining funds "will be returned to the defendants," meaning the Diocese.

70. Through those two modifications, each of class counsel and the Diocese had a financial interest in limiting the number of class members who made claims.

71. By an order of January 23, 2007 the shopped-for judge preliminarily approved these provisions “subject to the objection period and Fairness Hearing as set out in this order.” (Page 1 of that order).

72. A fairness hearing to complete the preliminary approval process was set for March 9, 2007, (Page 8 of that order).

73. “[N]otice of the settlement” was to be published once a week for the six weeks between January 23 and March 9, 2007. (Page 8 of that order). But the approved notice did not describe any monetary recovery for the class. Nor did the notice describe the attorneys’ fee class counsel would seek at the March 9 hearing. Nor did it mention any of the conflicts of interest class counsel had as to claims for class members against his own Diocese. Nor did it mention any of the collusion associated with the class action.

74. A copy of the settlement could be obtained by making a written request of class counsel. The order required class counsel to file their fee request by February 14 but made no provision for obtaining that request. Any objections to that request had to be filed eight days later, by February 22, before the notice period had run. Potential class members were given eight days to discover there was a class action, obtain by mail from class counsel information about the class action, discover that no information was provided about class counsel’s fee request and make a separate request for that information, obtain that information, then prepare and file any written objections.

75. The notice was designed to limit class members’ ability to review the fee request.

76. Because notice of the class settlement was not even attempted in the state where John Doe 305 lives, and because relief claimed to have been obtained for him was not included in any written order in the class action, John Doe 305 has lost the benefit of the defenses the

Diocese waived in the class settlement. As John Doe 305 was sexually abused by Eugene Condon in 1974 and 1975, before charitable immunity was abolished, class counsel have breached duties owed to John Doe 305 and have damaged him by depriving him of those waived defenses. Their performance fell below the standard of care.

77. Class counsels' conduct also fell below the applicable standard of care as to the McDonalds: by charging unauthorized fees, by failing to make proper disclosures of conflicts, by failing to disclose fees already awarded, and (with cooperation of the Diocese), by submitting material false information to the court, fraudulently withholding material information from the court and withholding the same information from the McDonalds.

78. Specifically, before each of the McDonalds was charged a 20% fee not authorized by any order, neither of them was told, among other things:

- a. that the class action was collusive,
- b. that no order authorized the fee class counsel charged for individual claimant recoveries,
- c. that class counsel had already been awarded a \$2.5 million fee,
- d. that class counsel had been paid by the Diocese, but had not disclosed to the court, a contingency fee for individual cases of the class representatives. That was payment for nearly all of the time submitted in support of the court awarded fee,
- e. of class counsels' conflicts regarding the lifelong relationship with the Diocese and class counsels' functioning, even during the class action proceedings, as an official of the Diocese,

- f. of class counsel's friendships with Diocese personnel, potentially including persons who engaged in sexual abuse,
- g. that class counsel appeared at and participated in settlement discussions for persons who were not members of the class,
- h. that persons who opted out of the class had received more favorable settlement terms than did class members,
- i. that class counsel or his clients had contributed \$100,000.00 to funding the more favorable settlement terms for those who had opted out, or
- j. that with cooperation of the Diocese, class counsel had submitted blatantly false time and expense records to the court, which intentionally overstated time claims.

79. In late 2019 each of the McDonald plaintiffs learned for the first time of the information that class counsel had not disclosed.

80. As noted above, the McDonalds were each charged a 20% fee which no order authorized.

81. The fee charged class members and non-class members without court authorization and without proper disclosure is, upon information and belief, conservatively estimated to have been in excess of \$900,000.

82. As a matter of law, class counsel and class representatives hold in constructive trust funds distributed to them in the class action. Under *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984):

If the class representative or class counsel breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class.

83. Discovery will ascertain and account for the amounts charged by class counsel without court authorization. Accounting records of the class action reflect a \$2.5 million fee was paid to class counsel on September 4, 2007. No accounting record shows the separate contingent fee payment of \$145,000 made to class counsel by the Diocese on November 20, 2006. A document prepared by class counsel described that payment as the “initial settlement disbursement.” The check by which the payment was made appears at Attachment B.

84. The January 2007 “Settlement and Arbitration Agreement” states that as to the claims of class representatives identified as Johns Doe 53, 66, 66A, 67, Janes Doe A and B, and Rachel Roe, “It is understood and agreed that the claims of these claimants are released and these settlement funds [identified for each claimant] will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.” The class representatives had no interest in the settlement that applied to the class members.

85. Nor does any accounting show the unauthorized fees charged the McDonalds and other class members.

86. Class counsel also arranged, with cooperation of the Diocese, to be paid first, within ten days of the court’s orders concluding the preliminary approval, before any class members had an opportunity to make a claim, and before the recovery to the class was known.

87. Fiduciary obligations by class counsel toward each of the plaintiffs were imposed on class counsel as a matter of law, or were assumed, when class counsel (a) pled a class action in December 2005, (b) settled that class action in June 2006 with classes defined so as to include the plaintiffs, (c) sought, and obtained, class certification of those classes in 2007 (in a different county and different judicial circuit by a shopped-for circuit judge), (d) stated on the record they represented absent members of those defined classes, and (e) as to the

McDonalds, by actually representing them.

88. This action has been brought within three years of John Doe 305 learning in November 2019 that class counsel had claimed they had obtained relief for even those absent class members who received no notice of the class action case, without actually securing in any written order that relief for John Doe 305, and within three years of learning that the Diocese defendants aided and abetted that breach of fiduciary duty towards him.

89. Class counsel acknowledged that they had voluntarily assumed fiduciary duties towards absent members of the class such as the plaintiff Doe 305 in a March 9, 2007 hearing. In the transcript of that hearing at page 53, class counsel stated:

we represent the interests of persons who might be here today, may not be here today, may not have made a claim yet, a class, punitive [sic, probably intended to be putative] class or actual class, punitive [sic] initially, now an actual class.

90. Class counsel overtly acknowledged the fiduciary obligations they had assumed to the absent members (such as the plaintiff Doe 305) of the class they chose to define.

91. As noted above, under the holding of *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984), by operation of law any benefits from the class action are held by class counsel in trust for the class, including its absent members. Those benefits held in trust should be used to benefit the Plaintiff Doe 305, and to reimburse the McDonalds.

92. Also a matter of law, under *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003), the class definitions chosen by class counsel which included the plaintiffs was “a strategy choice” class counsel elected, the implications of which presented duties imposed by law and which class counsel voluntarily assumed, and by which class counsel are bound.

93. To gain court approval of the class settlement, the defendants made overtly false representations of fact to the shopped-for circuit judge, particularly in a hearing held July 13,

2007. The transcript for that hearing is unusual in that it has confusing page numbering, with multiple page numbers on each page. Using the numbers that correspond to a 33-page hearing transcript, among those false representations was that there was an “understanding” (on page 3) among all defendants in this action “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese defendants) outside of the class claim procedure. That “understanding” communicated to the shopped-for judge was never placed in any written order.

94. The discussion began concerning a specific group of individuals (called the “actual notice” group), a group of individuals who, according to files of the Diocese, had previously reported their abuse to the Diocese. Four (hearing page 8) or five (hearing pages 4 and 5) of “those particular folks” had not been located. The Diocese represented, without objection by class counsel (at page 3, emphasis added):

I think we [the Diocese and class counsel] have an understanding as to what would happen *to those particular folks*, which would really be our problem, and I think that what we’ve discussed allows us to proceed with the agreement we’ve signed on January 12th [2007]. And then *if that person shows up* then we [the Diocese] would have to deal with that.

95. Then the discussion broadened to include all absent class members who got no notice. At page 12, counsel for the Diocese stated:

Judge, I view that responsibility as ongoing and so that we got to find the other four *and we’ve got to find anybody else* who has kind of, lack of a better word, comes out of the woodwork.

96. Class counsel, on page 14 of that same July 13, 2007 transcript, summarized to the court (emphasis added), that:

what the Diocese has come to is that if *anybody* is missed . . . the diocese *waives all the same defenses* that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards.

97. When the shopped-for judge confirmed the representation by repeating back to counsel, on page 22 of that same transcript, the court stated, emphasis added:

There is nothing more that the diocese could possibly do that I am aware of. I mean, at this point in time when the diocese obligates itself to do as it has been described, *there is nothing more that they can possibly do as far as I can even imagine*, Mr. Shahid, truly. I mean, what they say is *if you come forward in the future we will treat you just the same* as we have treated these individuals and the relief is available for you. *I know of nothing more that could be done*. So I certainly would approve that.

It is a tautology that the only way there was “nothing more” that could be done, particularly after the scope of notice had been reduced, was if all absent class members who got no notice would get the same class settlement benefits. Yet no written order secured that relief for persons such as John Doe 305, a breach of duty by class counsel to absent members of the class that can be mitigated only by enforcing the agreement pursuant to SCRCP 43(k) as to John Doe 305 and any other absent class member who got not notice.

98. To get a reduced scope of notice approved, the defendants intended in that July 13, 2007 hearing to create the false impression with the shopped-for judge that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend the same class relief to that victim. The discussion started in the context of the four or five unknown “actual notice” victims discussed at the beginning of the hearing, but the assurances to the court broadened so as to include all absent class members.

99. In making the false representation that they made no effort to embody in any court order, class counsel were operating in the interest of themselves and in the interest of the Diocese defendants, rather than in the interest of the absent members of the class such as John Doe 305, to whom class counsel owed, or had assumed, a fiduciary duty. Class counsel intended that the shopped-for judge would rely on the statement, and the shopped-for judge did

rely on the statement. However, when the shopped-for judge did not embody the “understanding” in any written order, none of the defendants requested that the shopped-for judge do so. That fell below the standard of care for class counsel, as aided and abetted by the Diocese.

100. Class counsel had alleged in Paragraph 36 of the John Doe 53 class action complaint filed in Charleston County on December 2, 2005, that the number of abuse victims “may exceed the hundreds.” In originally proposing nationwide notice, counsel were aware or should have been aware that many persons sexually abused in South Carolina had likely moved out of South Carolina and resided out of state.

101. Class counsel were aware, as they had alleged for the class that they and John Doe 53 represented, that the number of sexual abuse victims far exceeded the victims already known from the files of the Diocese. Class counsel were aware the Diocese had a history of concealing sexual abuse yet relied on the Diocese to search their own files for abuse victims. Class counsel were also aware that some abuse victims repressed memories of their childhood sexual abuse (or were incapacitated as a matter of law) and could reasonably be expected not to recall childhood abuse for various lengths of time or were unable to pursue their claims for other reasons.

102. In short, the “Primary class” of sexual abuse victims was known by class counsel, or should have been known by class counsel, to be large and to require widespread notice. The defendants deliberately misrepresented to the shopped-for judge that absent class members later disclosed would receive relief, when in fact those absent members would get no relief unless the agreement placed on the record in open court is enforced through this action.

The defendants have opposed relief for absent class members who got no notice and at present continue to oppose relief for absent class members who got no notice.

103. As to John Doe 305, these actions and inactions by class counsel constituted breach of fiduciary duty imposed by law or assumed. As to the Diocese, the conduct constitutes aiding and abetting that breach of fiduciary duty by class counsel as to John Doe 305.

104. Page 4 of the July 30, 2007 order certifying the class states, “Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members.” In 2007 the defendants were aware that the written orders failed to require nationwide notice (as they have cooperated to omit that notice after it was originally proposed) and failed to secure the full relief for absent class members that had been made in those “representations and stipulations of the Diocese.”

105. The result of class counsels’ failure, which the Diocese aided and abetted, was to exclude John Doe 305 from any recovery for his sexual abuse and to deprive him of the benefit of the defenses that were waived in the class action settlement. Rather than protect the absent class members to whom they had assumed, and the law imposed, fiduciary duties, class counsel protected the interest of the Diocese defendants and class counsels’ own interest in their fee.

106. For the Diocese the benefit of the class action was its potential preclusive effect, the secondary objective class counsel sought for his Bishop and his Diocese, after class counsel’s primary objective in their fee. As explicitly stated in the class settlement agreement, and as noted above, class counsels’ fee was the highest priority of the class action settlement. The fee was fixed, and compelled a *pro rata* reduction of recovery to class members if “too many” abuse victims made claims. Failing to secure relief for absent class members who got no

notice served the purpose of avoiding having to implement the fee provision that compelled a *pro rata* reduction.

107. Correspondingly, not having “too many” class claimants also served the financial interest of the Diocese in that a reduced number of class claimants increased the chances that a residual class fund would remain after claims made and would be returned to the Diocese.

108. The Diocese defendants took various actions in concert so as to aid and abet class counsels’ breach of fiduciary duty to absent members of the class. Among those actions were:

- a. Shopping for a judge and doing so by collaborating to file, and accept service of, a duplicate class action complaint for John Doe 53 and other illicit means of evading SCRCF 23;
- b. Making no objection to the complex case designation, even though the Supreme Court’s July 26, 2006 complex case order applied to cases that could not be settled and the class settlement had already been reached;
- c. Misrepresenting to the court that absent class members who got no notice would receive the same compensation as class members;
- d. Taking no position on whether the class should be certified;
- e. Acquiescing in class counsel failing to disclose to the class his life-long ties to and functions on behalf of the Diocese;
- f. Making no disclosure to the class of the superior settlement terms (compared to those for the class) for the individuals who were the class representatives,

- and whose settlement terms would apply (a) whether or not the class was approved, and (b) for fixed sums not dependent on an arbitration process;
- g. Making no disclosure to the court of the November 20, 2006 contingent fee payment to class counsel for individual cases of class representatives, or that the billing records relied on for the class action fee application was almost entirely (from 2003 through November 20, 2006) for time for which that contingency fee had already compensated class counsel;
 - h. Making no objection that the class representatives referred to in the 2006 version of the class settlement agreement had already been paid and whose claims were already settled in 2006 whether or not the class was later certified;
 - i. Making no objection that the claims of class representatives referred to in the 2007 version of the class settlement agreement had already been paid and their claims released whether or not the class was later certified, meaning the “class representatives” had no stake in the class settlement, and were not representative of either class;
 - j. Not disclosing to the class the superior settlement terms reached with the individuals who objected to the class settlement;
 - k. Not disclosing to the class that those superior settlement terms for objectors were funded in part by class counsel or class members paying \$100,000 from class counsel’s trust account;

- l. Not objecting when class counsel negotiated simultaneously a fixed fee for themselves and a variable recovery for the class, with the compensation for class members being subordinated to that fee;
- m. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range, saying nothing about the blatantly fraudulent time records of class counsel, not disclosing that a contingent fee had already been paid for the time spent on individual cases which formed the vast percentage of time claimed in the fee application (time from 2003 to November 20, 2006), and not disclosing that the class settlement was reached seven months after filing without a single motion having been argued or decided, or a single witness having been deposed;
- n. agreeing that no accounting records of the class fund should include the contingency fee payment to class counsel;
- o. agreeing to the fee being awarded before any member of the class member was even identified, had even submitted a claim, or had been compensated;
- p. Agreeing to ignore the South Carolina Supreme Court's March 2009 directive that the class action should be concluded in six months unless an extension was sought from that court;
- q. agreeing to seek no post-award fairness hearing under SCRCP 23 where the *actual* conduct of the class action, substantively and procedurally, and the *actual* recovery for the class members would be assessed;
- r. ignoring a 2016 motion by one of the class representatives for a post-award fairness hearing; that motion alleged that class counsel had "abandoned" the

class representative and the representation had terminated, and

s. seeking no final order in the class action so as to avoid all appellate review.

109. The defendants caused John Doe 305 special harm in the form of precluding him from making any claim against the Diocese for his sexual abuse, specifically changing the notice to deny him all chance to enjoy the benefits of a waived defense of statute of limitations and a waived defense of charitable immunity. The professional representation of the plaintiff by class counsel was inadequate and failed to meet the standard of care applicable to South Carolina attorneys, and was a breach aided and abetted by the Diocese.

110. The defendants caused the McDonald plaintiffs special harm in the form of a 20% fee which no order authorized, and without proper disclosures as alleged above, proper disclosures having been fraudulently concealed from them. The Diocese aided and abetted that breach by ignoring the Supreme Court's 2009 order and agreeing to omit any judicial review of class counsel's actual conduct.

**For a First Cause of Action:
Declaratory Relief**

111. Allegations above are incorporate into this cause of action as if fully stated.

112. This action seeks declaratory relief, pursuant to SCRCP 57 and S.C. Code § 15-53-10 et seq., to determine, among other things, under SCRCP 23:

- a. The conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench,
- b. the extent to which class action settlements are permitted to be collusive,
- c. the extent to which colluding parties are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,

- d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
- e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his “adversary” the Diocese at the expense of the class members class counsel purports to represent,
- f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
- g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
- h. the extent to which class counsel may charge an unauthorized fee to class members, and
- i. the extent to which applicable legal standards vary according to the persons involved.

113. Declaratory relief is requested, as described above as well as described below in the “relief sought.”

**For a Second Cause of Action:
Professional Negligence by Class Counsel
Breach of Fiduciary Duty, Imposed or Assumed**

114. Allegations above, other than the allegations of intentional conduct by class counsel, are incorporated into this cause of action as if fully stated.

115. Pursuant to S.C. Code § 15-36-100(b), Attachment A to this complaint, and incorporated herein pursuant to SCRCP 10(c), is an affidavit of Michael Virzi specifying certain various negligent acts or omissions of class counsel, and the factual basis of the

negligent acts or omissions of class counsel. That affidavit was prepared for the Supreme Court as part of a petition for original jurisdiction and bears a Supreme Court caption.

116. Class counsel assumed, or by law had imposed, fiduciary duties to John Doe 305, as alleged above and as set forth in Mr. Virzi's affidavit.

117. Unless the agreement placed on the record by class counsel and the Diocese is fully enforced pursuant to SCRCF 43(k) to fully benefit John Doe 305, and to the extent not fully enforced, class counsel breached those duties to him, as alleged above. They eliminated any chance of John Doe 305 getting notice and failed to secure in a written order relief claimed to have been obtained, depriving him of the waived defenses available only in the class action and the relief available to him in the class action.

118. As to John Doe 305, class counsel were professionally negligent, and the Diocese defendants aided and abetted that breach of fiduciary duty, which damaged John Doe 305.

119. As to each of the McDonald plaintiffs, class counsel were professionally negligent in charging each of the McDonalds a fee which no order authorized, without proper disclosures, and in avoiding court review of class counsel's actual performance and actual charges to class members, as alleged above.

120. The Diocese aided and abetted the breach of duty by class counsel, as alleged above. They cooperated to conceal payments made to class counsel. They cooperated in having no accurate accounting of class funds and charges made by class counsel. They collaborated in misrepresentations to the court and in withholding pertinent information from the court. And they cooperated to ignore the Supreme Court, ignore a motion for a post-award fairness hearing

and agreed to seek no final order in the class action so as to keep class counsel's actual performance and actual charges to class members from being reviewed.

121. Each of the plaintiffs is entitled to actual and punitive damages against class counsel as a result of the breaches of fiduciary duty and professionally negligent representation by class counsel.

**For a Third Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty
Against the Diocese defendants**

122. Allegations above are incorporated into this cause of action as if fully stated.

123. The Diocese aided and abetted the breaches of fiduciary duty by class counsel towards each of the plaintiffs, as set forth above.

124. The Diocese defendants joined with class counsel in eliminating nationwide notice of the class settlement while also making false representations on the record to the shopped-for judge, supposedly protecting the interest of absent class members such as John Doe 305 that he would be afforded relief once he learned of the class action. Each defendant then failed to secure those representations in any written order.

125. As to the McDonalds, the Diocese aided and abetted class counsel's breaches of duty by, among other things, cooperating to ignore the 2009 Supreme Court order and the 2016 motion by a class representative, to seek no final order, to require no full accounting of the class funds and class counsel's actual performance and actual fees charges, and in concealing from the court the contingent fee payment made to class counsel for the class representatives.

126. The Diocese defendants knowingly participated in the breach of the fiduciary duties owed by class counsel to each of the plaintiffs because it was in the financial interest of the Diocese to do so. The Diocese took advantage of class counsels' willingness to prioritize over

the interests of abuse victims in the classes they chose to define both their own interest in an attorneys' fee and the interests of class counsel's own Bishop and Diocese.

127. The plaintiffs have each been damaged by the Diocese defendants aiding and abetting class counsels' breaches, and each plaintiff is entitled to actual and punitive damages as a result.

**For a Fourth Cause of Action:
Civil Conspiracy, Conversion, Accounting, Disgorgement
Against all defendants**

128. Allegations above are incorporated into this cause of action as if fully stated.

129. The defendants joined together in common action for the purpose of injuring the plaintiffs. The defendants collaborated in a collusive class action, judge-shopped for review of the class settlement, and agreed to a class settlement which prioritized the defendants' financial interests at the expense of class members. The defendants submitted false information to the court and withheld material information from the court.

130. As to John Doe 305, the defendants collaborated in reducing the notice program so as to deprive him of notice so he and all other class member who resided out of state could not participate in the waived defenses available in the class action or the relief available in the class action.

131. As to the McDonalds, the defendants collaborated in withholding material information from the court and the class members, submitting false information to the court, ignoring the 2009 order of the Supreme Court, ignoring the class representative's 2016 motion, seeking no final order in the class action and in making no proper accounting of the class settlement funds.

132. The defendants caused the plaintiffs special damage. John Doe 305 is required to

confront defenses otherwise waived, and the McDonalds were each charged a fee without authorization and without proper disclosures, which properly concluding the class action settlement by a post-award fairness hearing would disclose.

133. The common design among the defendants was to maximize their own financial interests, even at the expense of the persons in the classes, and regardless of the injuries done to the plaintiffs to whom they owed a fiduciary duty.

134. Class counsel made affirmative misrepresentations to the court and to class members, and wrongfully appropriated what is conservatively estimated to exceed \$900,000 from the class members, without regard to the improperly awarded fee. The Diocese collaborated in that process. Each collaborated to exclude eligible sexual abuse victims from making claims, class counsel acting so as to protect the Diocese at the expense of their class claimants. Funds for class members have been improperly drawn from the class fund and converted by class counsel to their own use.

135. The plaintiffs are entitled to actual and punitive damages against the defendants for the civil conspiracy; as well as an accounting of improper charges to class members and disgorgement of all funds improperly converted by class counsel.

**For a Fifth Cause of Action: Breach of Contract
Against the Diocese Defendants for John Doe 305**

136. Allegations above are incorporated into this cause of action as if fully set forth.

137. Class counsel and counsel for the Diocese placed on the record an agreement between them to provide relief to absent class members who failed to get notice within the claims period.

138. At that time class counsel had pleaded a class action whose definition included John Doe 305. He was an intended beneficiary of that agreement with the Diocese.

139. The essential terms of that agreement are reflected in the class settlement agreement, modified by the representation on the record that any absent class member who got no notice would, once they identified themselves, get the same terms of relief as class members who received notice.

140. As alleged above, class counsel was professionally negligent in failing to secure that relief for the class in the form of a written order, but the agreement was “made in open court and noted upon the record,” as required by SCRCP 43(k).

141. The Diocese has breached that agreement in not providing the agreed upon relief to John Doe 305 and all other absent class members.

142. John Doe 305 is entitled to the relief provided by the agreement entered on the record in open court of which he is an intended third-party beneficiary.

Demand for Jury Trial

143. Plaintiffs demand a trial by jury.

Relief Sought

The plaintiffs seek the following relief:

144. For the court to declare the rights and obligations of the plaintiffs under SCRCP 23 and 57, as authorized by the Uniform Declaratory Judgments Act, S.C. Code §§ 15-53-10 et seq. to declare the “rights, status and other legal relations,” as put in S.C. Code § 15-53-20, and to construe “other writings constituting a contract,” as put in S.C. Code § 15-53-30, in the following respects under SCRCP 23:

- a. Is it proper for parties to reach a class settlement then collude to bypass SCRCP 23 approvals and judge-shop for purposes of moving a settled class action to another county for purposes of class settlement approval and oversight, thereby avoiding judges not desired and selecting a desired judge?
- b. Is it proper for the judge-shopping tactics to include (a) filing new class

action cases, (b) replicating in another circuit an existing and settled class action complaint and (c) accepting service of such new complaints?

- c. Is it proper for class counsel to refuse to notify class members of their substantial conflicts of interest?
- d. Is it proper for class counsel to enter an agreement to settle a class action which simultaneously, and explicitly, creates a fixed fee for class counsel, elevates that fee for class counsel above the interests of class members and makes class recovery subordinate *pro rata* to counsel's fixed fee?
- e. Does it breach class counsel's fiduciary duty to absent class members to accommodate an objection by his "adversary" to eliminate notice for all class members who reside out of state without providing relief to out of state class members?
- f. Is it proper for class counsel to have received a payment to resolve the claims of class representatives, and payment for a fee for that work, without any parties disclosing that fee payment to class members or to the court?
- g. Must a reviewing court examine time records submitted by class counsel in support of a fee award and reject, or at least inquire about, blatantly fraudulent submissions?
- h. Is it proper for class counsel and the Diocese fail to disclose that nearly all of the time submitted by class counsel in support of a fee award (all time between 2003 and November 20, 2006) had been paid for by a prior payment of \$145,000?
- i. Does class counsel breach their fiduciary duty to class members by charging a fee not authorized by any court order?
- j. To what extent does class counsel breach their fiduciary duty to class members by failing to disclose each of (a) substantial conflicts of interest with the Diocese and the shopped-for judge, (b) collusion in the class action, (c) the judge-shopping, (d) that no order authorized the fee charged the class member, (e) that a \$145,000 fee payment had already been made to class counsel, (f) that a \$2.5 million fee payment had already been made to class counsel, (g) that objectors to the class settlement got better settlement terms than class members, (h) that class counsel participated in discussions to obtain better settlement terms for objectors, and (i) that class counsel paid \$100,000 from his trust account to partially fund better settlement terms for objectors?
- k. Does class counsel breach their fiduciary duty to absent class members when they fail to secure in a written order the relief and waived defenses stated on

the record to have been obtained for absent class members who got no notice?

1. Should class counsel be required to disgorge to benefit the class members all improperly charged fees, including the \$2.5 million award and the unauthorized fee charged all class members?

145. Actual and punitive damages as provided by law,

146. An accounting of sums charged to class members such as the McDonalds without proper authorization and without proper disclosures, and of the residual class funds refunded to the Diocese,

147. Disgorgement for the benefit of the class of sums improperly charged each class member by class counsel, of the class funds refunded to the Diocese, and of all fees paid to class counsel based on misrepresentations and fraudulently withheld information;

148. Costs and disbursements of this action as provided in S.C. Code § 15-53-110;

149. Reasonable attorney fees; and for

150. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Attorney for the Plaintiffs

August 29, 2022

State of South Carolina
In The Original Jurisdiction Of The Supreme Court

Case No. 2020_____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

The Bishop of Charleston, a Corporation Sole; Robert Gugliemone,
The Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr.,
David K. Haller, and Richter and Haller, LLC,

Respondents - Defendants

Affidavit of Michael J. Virzi

NOW COMES Michael J. Virzi, and states, under oath, the following:

1. I am offering this affidavit, pursuant to S.C. Code Ann. § 15-36-100(b), as an expert witness on behalf of Plaintiffs to support their Complaint against Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Class Counsel") for professional negligence.

2. My qualifications to give expert testimony include the following:

- A. I am a lawyer licensed to practice law in South Carolina, and my practice for the past seventeen years has focused exclusively on matters of legal malpractice, ethics, and lawyer discipline;
- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, I served a three-year term as Chair of the former from 2007 to 2010 and a two-year term as chair of the latter

from 2018-2020, and I serve as Ethics Chair for the South Carolina Association for Justice;

- C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;
 - D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught Fundamentals of Law Practice and Professionalism; I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice, ethics, and lawyer discipline; I am an instructor for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;
 - E. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and
 - F. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this matter.
3. My opinion is based on review of the following documents:
- A. Petition for Original Jurisdiction in the above-captioned case;
 - B. Complaint in the above-captioned case;
 - C. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
 - D. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
 - E. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
 - F. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;
 - G. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636 (collectively hereinafter "the Consolidated Class Actions");

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- H. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
- I. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
- J. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
- K. November 7, 2006, letter from A. Peter Shahid, Jr., to Lawrence E. Richter, Jr., regarding the Consolidated Class Actions;
- L. November 10, 2006, letter from Lawrence E. Richter, Jr., to Albert P. Shahid, Jr., regarding the Consolidated Class Actions;
- M. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in the Consolidated Class Actions;
- N. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in the Consolidated Class Actions;
- O. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in the Consolidated Class Actions with exhibits, including:
 - i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;
 - ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;
 - iii. Affidavit of Angela Pittard, with attached timesheets;
 - iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and
 - v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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- P. July 12, 2007, letter from Lawrence E. Richter, Jr., to The Honorable Diane S. Goodstein regarding the Consolidated Class Actions;
- Q. Transcript of July 13, 2007, hearing before The Honorable Diane S. Goodstein;
- R. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in the Consolidated Class Actions;
- S. Order Approving Settlement, dated and filed July 30, 2007, in the Consolidated Class Actions;
- T. Order of the Court, dated and filed August 31, 2007, in the Consolidated Class Actions;
- U. February 19, 2008, letter from Lawrence E. Richter, Jr., to Richard McDonald regarding "John Doe 538 vs. The Diocese of Charleston, et al." and enclosing a Settlement Statement;
- V. Order of the Supreme Court of South Carolina, dated March 19, 2009, in John Doe v. Lawrence E. Richter, Jr., et al.;
- W. Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, dated June 17, 2011, and filed June 27, 2011, in John Doe 2 and Jane Doe 4 vs. The Bishop of Charleston, et al., Case No. 10-CP-10-5520;
- X. Notice of Motion and Motion to Enforce Settlement, dated April 16, 2012, in the Consolidated Class Actions;
- Y. Transcript of Record before The Honorable Edgar W. Dickson, dated April 12, 2013, in the Consolidated Class Actions;
- Z. Order on Motion to Enforce Settlement, dated November 21, 2013, and filed on December 17, 2013, in the Consolidated Class Actions;
- AA. Transcript of Motions Hearing before The Honorable J.C. Nicholson, Jr., dated April 10, 2014, in Father Doe 194 vs. Bishop of Charleston, et al.;
- BB. Motion for Post-Award Fairness Hearing by Allen Sires, dated and filed on May 11, 2016, in 2006-CP-18-1310 and 2006-CP-18-1311;
- CC. Affidavit of Lawrence E. Richter, Jr., dated March 31, 2015, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176;

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DD. Order on Lawyer Defendants' Motion for Summary Judgment, dated August 8, 2017, and filed August 11, 2017, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176

4. These factual and legal materials are of the type reasonably relied upon by experts in the field of legal malpractice in forming their opinions.

5. Based on my experience, education, training, and knowledge of the standard of care for lawyers, and on my review of the above-listed documents, it is my opinion that Class Counsel engaged in negligent acts and omissions in their representation of Plaintiffs and that Class Counsel's conduct fell below the standard of care.

6. It appears from the above-referenced documents that Class Counsel represented classes of persons of which Plaintiffs were members in class action litigation beginning in 2005. The "primary class" included all individuals of a certain age "who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston," a group that apparently included Plaintiff John Doe 305. The "consortium class" included spouses, parents, and guardians of individuals who met the primary class definition, a group that apparently included Plaintiffs Julie McDonald and Richard McDonald (hereinafter "the McDonald Plaintiffs"). Prior to class certification, Class Counsel had a duty to act in the best interest of the putative classes as a whole, which included Plaintiffs. It further appears that Class Counsel later undertook to individually represent Plaintiffs Julie McDonald and Richard McDonald as their counsel in pursuing their individual claims, thereby undertaking additional fiduciary duties of competence, diligence, loyalty, and communication.

7. It appears Class Counsel failed to protect the rights and interests of Plaintiffs in several ways, breaching duties owed to them. In particular, it appears that Class Counsel failed to

inform the classes or Plaintiffs of Defendant Richter's extensive personal relationship with the primary adverse party, the Diocese of Charleston, and Defendant Richter's continuing work on behalf of the Diocese during the litigation in which the classes were adverse to the Diocese. It is apparent from Richter's own affidavit (identified in paragraph 3.O.i above) that he has a lifelong, extensive personal relationship with the Diocese and many of its then-current and former constituents, in addition to being a constituent himself and continuing to perform official functions during the pendency of the cases in which he represented the classes that included Plaintiffs. This presented a conflict of interests, requiring Class Counsel to disclose the nature and extent of that relationship to the classes and to their individual clients, along with the risks of the representation and the reasonably available alternatives, and to obtain their consent to representing them under those circumstances. Class Counsel apparently did not do so.

8. It further appears that Class Counsel initially filed a Motion to Certify Classes on October 6, 2006, that included nationwide notice but later filed a renewed Motion to Certify Classes on January 17, 2007, that removed the nationwide portion of the notice and reduced notice to only South Carolina and neighboring cities despite that the same motion defined a class with no geographic boundaries and despite that Class Counsel undertook to represent several out-of-state clients as class participants, including the McDonald Plaintiffs. The only change in the notice paragraph between the October motion and the January motion, beyond renumbering the exhibits, was the deletion of the words "USA Today," which was the only nationwide publication proposed in the October 2006 motion. Thus Class Counsel appear to have taken affirmative steps to exclude from class notice nearly the entire country outside of South Carolina despite identifying and ultimately obtaining certification of a class defined without a geographical boundary, thereby excluding from notice those putative class members, like Plaintiffs, who lived elsewhere.

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9. Statements by Defendant Richter at the July 13, 2007, hearing indicated that any class members who did not receive notice (a group that included Plaintiffs) would be entitled to bring claims after the claims period and that the Diocese would waive all defenses to such later claims. Other discussions at that hearing involved the same waiver and late-claim entitlement issues specifically with respect to several individual class members who had contacted the Diocese previously regarding allegations of abuse. The July 30, 2007, order preserves the late-claim rights of (i.e., requires the Diocese to waive defenses as to) only those individuals that had previously contacted the Diocese, not of other class members who were entitled to notice but did not receive it, such as Plaintiffs. In a June 15, 2011, order Judge Harrington ruled that the July 13, 2007, hearing colloquy and the July 30, 2007, order referred only to the individuals who had previously come forward with abuse claims but not received actual notice, and not to the broader group of class members, like Plaintiffs, who lived outside the area of notice by publication. Regardless of whether Defendants intended at the July 13 hearing to address this broader group or only the individuals who had come forward already, Class Counsel failed to protect the interests of the broader group of putative class members outside the notice zone, of which Plaintiffs are members. Class Counsel did so either by not attempting to address their rights at the hearing or by addressing them at the hearing but making no effort to secure their rights in a final order, despite that they were within the putative classes as defined by Class Counsel in the pleadings and motions. Thus, as Class Counsel appears to have admitted in the April 12, 2013 hearing, they protected the interests of a few of the unnamed members of the putative classes but sacrificed the interests of others, including Plaintiffs, either by including them in the classes but failing to provide notice to them or by excluding them from the classes and thus from the substantial benefits provided to the

classes through the Diocese's waiver of all defenses (such as charitable immunity and the Statute of Limitations).

10. It further appears that Class Counsel's conduct fell below the standard of care by failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review, and further sacrificing the opportunity of clients and other class members to obtain a post-claim review. Class Counsel did so by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal, or suit and that, by participating in the claims process, claimants expressly waive the right to appeal.

11. It further appears that Class Counsel engaged in an impermissible conflict of interests and breached their duty to the classes as a whole by settling the claims of the class representatives prior to, and regardless of, class certification and court approval of the class settlement, not subjecting the class representatives to the claim scrutiny and damages matrix that applied to all other class members such as Plaintiffs.

12. Finally, it appears that Class Counsel charged or attempted to charge the McDonald Plaintiffs and other class members a fee of 20% of their individual recoveries of class settlement funds without informing them that Class Counsel has already been paid a \$2,500,000.00 fee for their work and that the additional 20% fees were not approved by the court.

13. As a result, it is my opinion that Class Counsel's conduct as alleged in the above-captioned Complaint and shown in the above-listed documents fell below the degree of skill, knowledge, and judgment usually possessed and exercised by members of the legal profession in South Carolina, and that they breached duties of competence, diligence, communication, and loyalty to Plaintiffs.



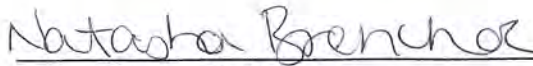
14. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the evidence listed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

Further affiant sayeth naught.


Michael J. Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me
This 9th day of September, 2020


Notary Public

My Commission Expires : 10/18/2026

Look for: yellow background on the front of this check, and the imageSafe® logo on back. If not present, do not cash.

DIOCESE OF CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42983

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller LLC - Client Trust Accounts DATE 11-20-06

DIOCESE OF CHARLESTON 345,000.00 DOLLARS 345,000.-

Bank of America

FOR _____

John I. Barker
Pres. Matthew R. Langford

MP

⑈042983⑈

Look for: yellow background on the front of this check, and the imageSafe® logo on back. If not present, do not cash.

DIOCESE OF CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42982

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller, LLC DATE 11-20-06

DIOCESE OF CHARLESTON 145,000.00 DOLLARS \$ 145,000.-

Bank of America

FOR _____

John I. Barker
Pres. Matthew R. Langford

MP

⑈042982⑈

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NUMBER: _____

JOHN DOE 305, JULIE McDONALD,
and RICHARD McDONALD

Plaintiffs,

vs.

LAWRENCE E. RICHTER, JR., DAVID
K. HALLER, RICHTER & HALLER, LLC,
THE BISHOP OF CHARLESTON a
CORPORATION SOLE,

Defendants.

DECLARATION OF RICHARD DUKES

I, Richard S. Dukes, declare as follows:

1. I am attorney at law licensed to practice in the State of South Carolina and before the United States District Court for the District of South Carolina. I am a shareholder in the law firm of Turner, Padgett, Graham, & Laney, P.A. and counsel of record for Defendants Bishop of Charleston, a Corporation Sole,. The matters set forth are within my personal knowledge, and if called upon as a witness I could and would testify competently as follows:

2. Attached as **Exhibit A** to the Diocese defendants' concurrently filed Notice of Removal is a true and correct copy of the Complaint that Plaintiffs John Doe 3045, Richard McDonald, and Julie McDonald filed on August 30, 2022 in this action against the Diocese in the Court of Common Pleas for Charleston County, South Carolina.

3. No defendants have been served with the Complaint or any other process, pleading, or order in this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this the 1st day of September, 2022, in Charleston, South Carolina.

s/Richard S. Dukes, Jr.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
: CASE NOS. 2006-CP-18-1310,
COUNTY OF DORCHESTER) 1311, 1636

JOHN DOE 53, JOHN DOE) TRANSCRIPT OF RECORD
66, JOHN DOE 66A, JANE)
DOE 1 AND JANE DOE 2 AND) SETTLEMENT AGREEMENT
RACHEL ROE INDIVIDUALLY)
AND AS REPRESENTATIVES) March 9, 2007
OF A CLASS OF PEOPLE)
SIMILARLY SITUATED,) St. George, South Carolina
Plaintiffs,)

-versus-)

THE BISHOP OF CHARLESTON,)
A CORPORATION SOLE, AND)
THE BISHOP OF THE DIOCESE)
OF CHARLESTON, IN HIS)
OFFICIAL CAPACITY)
Defendants.)

B E F O R E:

The Honorable Diane S. Goodstein

A P P E A R A N C E S:

Lawrence Richter, Esquire
David Haller, Esquire
Richter & Haller
622 Johnnie Dodds Boulevard
Mt. Pleasant, SC 29464
For the Plaintiffs

A. Peter Shahid, Jr., Esquire
Shahid Law Offices, LLC
15 State Street
P. O. Box 591
Charleston, SC 29402-0591

-and-

James C. Geoly, Esquire
Burke, Warren, McKay & Serritella, PC
22nd Floor, IBM Plaza
330 North Wabash Avenue
Chicago, IL 60611-3607
For the Defendants

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

EXHIBIT

J

A L S O P R E S E N T:

Gregg Meyers, Esquire
Walter Bilbro, Esquire
Matthew Creech, Esquire
Marvin Infinger, Esquire
Lionel Lofton, Esquire
Jack Sinclair, Esquire
Glenn Churchill, Esquire

COURT'S EXHIBIT(S):

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Crimen Sollicitationis	157	

John Doe, et al v. The Bishop of Charleston, et al

1 That was hard bargained on both
2 ends, on the low end and on the high end, and
3 we at least deserve the benefit of that
4 bargain. I don't think there should be a
5 back door, I don't think there is one, I just
6 want to make clear that that's our
7 understanding.

8 THE COURT: Let me be clear. Based on
9 my reading while Mr. Richter was arguing, I
10 want to be sure, as I understand it, there
11 can be a contractual arrangement with each
12 claimant for fees for the work done on each
13 individual claim, but that amount is to be
14 approved by the arbitrator with an
15 appreciation for the amounts awarded for
16 class counsel.

17 Now, that would -- what I'm
18 speaking of would not entail an arrangement,
19 a fee request from the diocese, but would be
20 a matter of contract between class counsel
21 and the individual claimants.

22 MR. GEOLY: That's my understanding,
23 too.

24 THE COURT: Okay.

25 MR. GEOLY: In that instance it's really

John Doe, et al v. The Bishop of Charleston, et al

1 the claimant who is providing the funding --

2 THE COURT: Yes. Yes.

3 MR. GEOLY: -- even though the funding
4 is coming out of the claimant's award.

5 THE COURT: I just wanted to be clear on
6 that.

7 MR. GEOLY: Yes, Your Honor, that's my
8 understanding as well.

9 THE COURT: Okay.

10 MR. GEOLY: Let me turn to our
11 objections. We think that the Court in the
12 first instance in addition to the factors
13 raised by Mr. Richter, should look at the
14 bargain that's been struck. And I think that
15 the range of 950,000 to 2.5 million suggests
16 to the Court that a fair outcome would not
17 necessarily be either extreme in that range,
18 that that obviously was as far as the parties
19 got in their bargaining, and we were hoping
20 that the Court would do the rest of the work
21 for us because we wanted the settlement to
22 happen and didn't want it to break up over an
23 attorney fee award.

24 And this is really a plea to the
25 Court's equitable instincts, I suppose.

STATE OF SOUTH CAROLINA)
: C E R T I F I C A T E
COUNTY OF DORCHESTER)

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 16th day of March 2007.



Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

RECEIVED

Nov 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Appellate Case No.: 2023-000720
Civil Action Nos.: 2006-CP-18-01310, -01311, -01636

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and
Jane Doe 2 and Rachel Roe, individually and as representatives of a class
of people similarly situated,.....Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald are.....Appellants,

v.

The Bishop of Charleston, a Corporation Sole; The Bishop of the Diocese of
Charleston, in his official capacity,.....Respondents,

And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC.....Intervenors.

PROOF OF SERVICE

I, Bridge Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, counsel for
Lawrence E. Richter, Jr., Richter & Haller, LLC, certify that I have served a copy of the attached
**DAVID K. HALLER, LAWRENCE E. RICHTER, JR., AND RICHTER & HALLER,
LLC'S RETURN TO APPELLANTS' MOTION TO SETTLE THE RECORD AND
EXTEND TIME** by e-mail and by depositing a copy of it in the U.S. Mail, postage prepaid, on
November 27, 2023, addressed to the following:

Gregg E. Meyers, Esquire
attygm@gmail.com
114 4th Ave. NW
Byron, MN 55920
Attorney for Appellants

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RDukes@TurnerPadget.com
Carmelo Barone Sammataro
ssammataro@turnerpadget.com
Turner Padget Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29413-2129
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John E. Cuttino, Esquire (S.C. Bar # 1519)
jcuttino@gwblawfirm.com
P.O. Box 7368
Columbia, S.C. 29202
Attorneys for David K. Haller

November 27, 2023


Bridget S. Steele