

Jun 20 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,
vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

RECORD ON APPEAL VOLUME 1 OF 2

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STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fagnoli, LLC; Samuel R. Clawson,
Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC,

Defendants.

**ORDER DENYING PLAINTIFFS'
MOTION FOR RECONSIDERATION
AND TO ALTER OR AMEND THE
ORDERS GRANTING DEFENDANTS'
MOTIONS TO DISMISS**

The Court has now considered Plaintiffs' Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss. On June 23, 2022, in two separate orders, this Court granted the motion to dismiss of Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, and Christina R. Fagnoli and the motion to dismiss of Defendants Barrett R. Brewer and the Brewer Law Firm, LLC. The orders disposed of all of Plaintiffs' claims in the Second Amended Complaint. On July 5, 2022, Plaintiffs filed their Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss. The Court has considered the motion, pleadings, arguments of counsel, and governing legal authority at issue. Following its review and consideration of the issues, the Court finds that Plaintiffs' Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss should be DENIED.

AND IT IS SO ORDERED.

October ____, 2023

Orangeburg, South Carolina

The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Other

IT IS SO ORDERED.

Edgar W. Dickson

Electronically signed on 2023-10-23 11:43:06 page 2 of 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1001343

John Doe et al
PLAINTIFF(S)

Clawson Fagnoli Llc et al
DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

This matter came before the Court on March 2, 2022, via Webex. Present at the hearing were Thomas A. Pendarvis, representing the Plaintiffs, James M. Dedman, representing Clawson Fagnoli, LLC, Samuel R. Clawson, and Christina R. Fagnoli, and Robert B. Wallace, representing Brewer Law Firm, LLC and Barrett R. Brewer. Taken up by the Court were Defendants' Motions to Prohibit Plaintiffs from Using Pseudonyms. After consideration of the arguments presented, Defendants' Motions are hereby Granted. Plaintiffs shall proceed in litigation using their proper true names.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/04/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Electronic Form 4

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2022-03-04 12:29:28 page 3 of 3

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fagnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fagnoli, Esq.;
Barrett R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

Case No. 2021-CP-10-01343

**ORDER GRANTING
MOTION TO DISMISS
FOR DEFENDANTS
BARRETT R. BREWER AND
BREWER LAW FIRM, LLC**

This Court heard a Motion to Dismiss¹ on March 2, 2022 filed by Defendants Barrett R. Brewer and Brewer Law Firm, LLC (“Brewer Defendants”). Thomas A. Pendarvis, Esquire, of Pendarvis Law Office, PC appeared at the hearing for Plaintiffs Andrew Pampu, Amanda Pampu, and John Pampu (“Plaintiffs”)². R. Bruce Wallace, Esquire, of Nexsen Pruet, LLC appeared at the hearing for the Brewer Defendants. James A. Dedman, Esquire, of Gallivan, White & Boyd, PA appeared at the hearing for Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (“Clawson Fagnoli Defendants”). Following the hearing, this Court took the Motion to Dismiss under advisement. Upon review of the Second Amended

¹ The Clawson Fagnoli Defendants and Brewer Defendants filed a joint Memorandum of Law in Support of their Motions to Dismiss. I granted both of their motions but directed counsel to submit a separate proposed order for their clients. This order will focus solely on the Brewer Defendants’ representation of Plaintiff Andrew Pampu.

² By Order dated March 4, 2022, the Court granted Defendants’ motions to prohibit Plaintiffs from proceeding anonymously and ordered the Plaintiffs to proceed in this case in their proper true names.

Complaint and relevant case law, along with memoranda submitted by the parties, the Motion to Dismiss is **GRANTED**.

FACTUAL BACKGROUND

This case arises out of Plaintiff's allegations of legal professional negligence and breach of fiduciary duty against the Brewer Defendants and Clawson Fagnoli Defendants which stems in part from their representation of Plaintiff Andrew Pampu in a federal court lawsuit. Specifically, Plaintiffs' complaint contained allegations of legal professional negligence, breach of contract, and breach of fiduciary duty against Defendants.

On November 2, 2017, Defendants agreed to represent Plaintiff Andrew Pampu in two related, ongoing lawsuits. Plaintiffs filed the first suit in the United States District Court for the District of South Carolina (the "Federal Lawsuit") and asserted Title IX and related claims against Clemson University. Plaintiffs filed the second suit in the Pickens County Court of Common Pleas (the "State Lawsuit") and asserted claims for defamation, civil conspiracy, and other causes of action arising out of accusations of sexual misconduct submitted to Clemson University against Plaintiff Andrew Pampu. (See Second Am. Compl. at ¶ 13). These accusations spurred the Title IX investigation which was the subject of the Federal Lawsuit. Notably, neither Plaintiff Amanda Pampu nor Plaintiff John Pampu were parties to the Federal Lawsuit or State Lawsuit.

The underlying facts are taken from the Complaint. While attending Clemson University in the Fall of 2015, a female student accused Plaintiff Andrew Pampu of sexual misconduct. (See Second Am. Compl. at ¶ 19). After conducting an administrative hearing, the University found Plaintiff Andrew Pampu to have engaged in "nonconsensual sexual activities" and suspended him. (*Id.*). Plaintiff Andrew Pampu appealed this

determination, which only resulted in the University issuing heavier disciplinary action, including an additional suspension. (*Id.*, ¶ 20-21). Plaintiff Andrew Pampu subsequently sued the University in the Federal Lawsuit. After the Brewer Defendants substituted as counsel for Andrew, the Brewer Defendants represented Plaintiff Andrew Pampu in a court-ordered mediation on March 21, 2018. (*Id.*, ¶ 16, 37).

On March 2, 2018, prior to the mediation, Plaintiffs sent the Brewer Defendants an email containing the supposed goals for the mediation which included:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against [Andrew Pampu], which by implication would have limited the University's future treatment of [Andrew Pampu's] academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) [Andrew Pampu's] arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

(*Id.*, ¶ 36). When the mediation session concluded, Plaintiff Andrew Pampu signed a written settlement agreement³ on March 21, 2018 with Clemson University, but he soon developed "buyer's remorse" and attempted to abandon the settlement. (*Id.*, ¶ 39). Plaintiffs contend the settlement conflicted with the goals outlined in their aforementioned email to the Brewer Defendants and the goals of the Federal Lawsuit and State Lawsuit. (*Id.*, ¶ 41). Plaintiffs terminated their attorney-client relationship with the Brewer Defendants on or about May 8, 2018 and sought new counsel. (*Id.*, ¶ 47-48).

³ Because Amanda Pampu and John Pampu were not parties to the Federal Lawsuit, they did not sign the settlement agreement. (*Id.*, ¶ 39).

Meanwhile, the University filed a motion to enforce the settlement, which the district court ultimately granted. (*Id.*, ¶ 55-57).

PROCEDURAL BACKGROUND

Plaintiffs initially filed a Complaint in the Charleston County Court of Pleas on March 19, 2021, without any affidavit as required by S.C. Code Ann. § 15-36-100. Plaintiffs then filed an Amended Complaint on April 30, 2021 to include an expert witness affidavit from Justin Dillon, Esquire. When Defendants filed motions to dismiss the first Amended Complaint, Plaintiffs then filed the Second Amended Complaint on June 16, 2021 to address arguments raised by the Brewer Defendants and Clawson Fargnoli Defendants' initial Motions to Dismiss directed to the deficiencies of the expert's affidavit filed with the first Amended Complaint. The Brewer Defendants filed the instant motion to dismiss on June 30, 2021.

STANDARD OF REVIEW

South Carolina Rule of Civil Procedure 12(b)(6) provides that, upon a defendant's motion, a court may dismiss a plaintiff's claim for "failure to state facts sufficient to constitute a cause of action." In considering a motion to dismiss, the court must base its decision on the plaintiff's allegations, as set forth in the complaint." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The question for the Court is whether the pleadings, taken in the light most favorable to the plaintiff, articulate a valid claim for relief. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). A Rule 12(b)(6) motion must be granted if the facts alleged and the inferences reasonably deducible from the pleadings show that the plaintiff could not prevail on any theory of the case. See *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

DISCUSSION

A. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.

Plaintiffs' claims are dismissed for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because Plaintiffs' "buyer's remorse" is not proper grounds for legal malpractice. Plaintiffs only allege facts demonstrating their unhappiness with the settlement agreement that Plaintiff Andrew Pampu voluntarily signed. While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the Brewer Defendants committed professional error in advising him whether or not to accept the settlement. Nor does the Second Amended Complaint present any allegation that Plaintiff Andrew Pampu was improperly induced by the Brewer Defendants to sign the agreement.

Plaintiffs claimed in their response to the Motion to Dismiss that the Brewer Defendants committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the Brewer Defendants' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the Brewer Defendants. Second, there is no allegation (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second

Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

Plaintiffs failed to state a claim in the Second Amended Complaint upon which relief can be granted and, therefore, the Motion to Dismiss is **GRANTED**.

B. Plaintiffs Amanda Pampu and John Pampu lack standing.

Plaintiffs' claims are dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rules of Civil Procedure 12(b)(1) as neither Amanda Pampu or John Pampu have standing to assert these claims. Neither Amanda Pampu nor John Pampu were parties to the State Lawsuit or Federal Lawsuit, and because Andrew Pampu was the only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing to assert the alleged claims.

Plaintiffs' argue that their allegations the Brewer Defendants undertook representation of all named Plaintiffs (See Second Am. Compl. at ¶ 13) in this action. Such allegations are insufficient to confer subject matter jurisdiction. Plaintiffs cite to *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 826 S.E.2d 270, 426 S.C. 154 (2019) in arguing that an attorney-client relationship existed between Amanda Pampu, John Pampu, and the Brewer Defendants. However, that case pertains to the contractual relationships between insurers, insureds, and the attorneys hired to defend insureds pursuant to insurance policies. It is therefore factually and legally distinct from the case at bar. Plaintiffs have provided no evidence of the existence of either an attorney-client relationship or fiduciary duty between Plaintiffs Amanda Pampu and John Pampu and the Brewer Defendants. As such, no legal malpractice action can stand.

Therefore, the claims of Plaintiffs Amanda Pampu and John Pampu should be dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1). Brewer Defendants' motion to dismiss is hereby **GRANTED**.

C. Plaintiffs' required expert witness affidavit was untimely and is insufficient as a matter of law.

Plaintiffs' Second Amended Complaint is dismissed because the required expert witness affidavit was untimely and is insufficient as a matter of law. Plaintiffs filed their initial complaint against the Brewer Defendants on March 19, 2021 but did not include an expert witness affidavit. South Carolina law requires that:

in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) [...], the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

S.C. Code Ann. § 15-36-100(B). Plaintiffs' original Complaint, although it alleged professional negligence, contained no reference to the lack of an expert affidavit required by section 15-36-100.

Plaintiffs then amended their Complaint forty-two (42) days later and included an expert witness affidavit. Plaintiffs now argue that simply by filing the initial Complaint only three (3) days before the expiration of the statute of limitations for their legal malpractice claims, the Brewer Defendants should have presumed an affidavit of an expert witness could not be filed due to time constraints.⁴ However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint which blatantly fails to comply with the

⁴ Legal malpractice claims are subject to three-year statute of limitations under South Carolina Code § 15-3-535.

requirements of S.C. Code § 15-36-100(B)-(C).⁵ Therefore, Plaintiffs' claims against the Brewer Defendants are dismissed because their expert witness affidavit was untimely filed.

Furthermore, even if Plaintiffs had fully complied with the contemporaneous filing requirement or any of its exceptions, Plaintiffs' expert witness affidavit is insufficient as a matter of law because he lacks relevant experience. South Carolina Code § 15-36-100(A)(3) states that an expert witness:

means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who: [...] (3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

Id. In his affidavit, Plaintiffs' proposed expert witness, Mr. Dillon, holds himself out as having expert knowledge of proper attorney action to be undertaken in South Carolina district court litigation. There are several reasons why his claims of expertise in this area are insufficient. First, Mr. Dillon has never been licensed to practice law in South Carolina state or federal courts, nor is he licensed in the Fourth Circuit Court of Appeals. Second,

⁵ South Carolina Code § 15-36-100(C)(1) provides that:

[t]he contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of time constraints, the *plaintiff alleges that an affidavit of an expert could not be prepared.*

Mr. Dillon makes no claim to have obtained *pro hac vice* admission to any court in South Carolina. Third, Mr. Dillon makes no mention of familiarity with the nature of federal practice in the district courts of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina. Lastly, Mr. Dillon notes he has reviewed few materials related to the underlying facts at issue.

Though Plaintiff is correct in stating the Rules do not require an expert to be a South Carolina barred attorney, it is the Brewer Defendants' advice to Plaintiff Andrew Pampu during the mediation in the Federal Lawsuit for a South Carolina case that is at the heart of Plaintiffs' legal malpractice claims. Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint. Based on the forgoing, both Mr. Dillon's affidavit and credentials are deficient. Therefore, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

D. Plaintiffs' claim for breach of fiduciary duty is duplicative.

"Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship." *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011). Where a breach of fiduciary duty claim and a legal malpractice claim arise out of the attorney-client relationship and the same facts support both claims, the claim for breach of fiduciary duty is duplicative of the claim for legal malpractice. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019). Moreover, where the

Complaint fails to allege facts demonstrating the fiduciary relationship arises from some source other than the attorney-client relationship, the court should dismiss the breach of fiduciary duty claim as duplicative. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173 (2012). Plaintiffs' Second Amended Complaint alleges both a negligence cause of action and a breach of fiduciary duty claim arising out of the same attorney-client relationship and the same set of operative facts. As a result, the breach of fiduciary duty is also dismissed as duplicative.

While counsel for Plaintiffs argues this is an election of remedies issue, the above cited cases clearly demonstrate that dismissal is the appropriate remedy because the alleged breach of fiduciary duty arises out of the same operative facts as the attorney-client relationship and is therefore "encompassed by the claim for legal malpractice." *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt.*, *supra*, 399 S. at 336, 732 S.E.2d at 173). Duplicative matters are always subject to dismissal at this stage. See *also* Rule 12(f), SCRPC (authorizing the court to strike any redundant matter).

Therefore, the Brewer Defendants' Motion to Dismiss the breach of fiduciary duty cause of action is **GRANTED**.

E. Plaintiffs' claims are averse to public policy.

Plaintiffs' claims will also be dismissed because they violate the important public policy on the finality of mediation in civil cases. South Carolina courts "greatly favor the settlement of cases and allowing litigants to achieve their own resolution to disputes." *Riddle v. City of Anderson*, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015). In fact, the public policy of South Carolina favors settlement of cases and early resolution to disputes so much so that mediation is required in every case

in both the state and federal courts of South Carolina. See, e.g., Local Civ. Rule 16.05 (D.S.C.); Rule 3 of the South Carolina ADR Rules.

While mediation is an invaluable tool for South Carolina litigants, participants rarely, if ever, leave mediation completely satisfied with the outcome and having had all of their desires met, because mediation is about compromising to reach a solution that all parties can tolerate. Here, the allegations of legal malpractice center almost exclusively on the fact that Plaintiff Andrew Pampu did not get everything that he wanted at mediation. In response, Plaintiffs argue the Brewer Defendants did not cite to any controlling law and that an attorney's negligent representation in settlement agreements can give rise to legal malpractice lawsuits. But as previously stated, Plaintiffs failed to allege facts showing the Brewer Defendants committed professional error in advising or representing Plaintiff Andrew Pampu in the relevant matters, and the Plaintiffs' claims against the Brewer Defendants are merely that the settlement agreement did not accomplish all of their goals.

If this Court were to permit Plaintiffs' "buyer's remorse" masquerading as a malpractice claim to continue against Defendants, it would essentially open the flood gates to frivolous claims made by unhappy litigants who were not completely satisfied with the outcome of mediation. Plaintiffs' claims are little more than a thinly veiled attempt to relitigate the validity of the underlying settlement – an issue that has already been litigated and ruled on by the federal courts of South Carolina. Therefore, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

CONCLUSION

The Court has considered all of the arguments made by the parties, including Plaintiffs' written memoranda in opposition, and the oral arguments they set forth at the

hearing on the Motion. To the extent such arguments are not discussed hereinabove, the court has considered them and rules in favor of the Brewer Defendants on the motion to dismiss. Therefore, for the reasons stated above, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

AND IT IS SO ORDERED.

Electronic signature on following page
The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2022-06-23 10:20:31 page 13 of 13

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fargnoli, LLC; Samuel R. Clawson,
Jr., Esq.; Christina R. Fargnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC,

Defendants.

**ORDER GRANTING DEFENDANTS
CLAWSON FARGNOLI, LLC, SAMUEL
R. CLAWSON, JR., ESQ., AND
CHRISTINA R. FARGNOLI, ESQ.'S
MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

On March 2, 2022, this Court heard a Motion to Dismiss¹ filed by Defendants Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fargnoli, Esq. (“Clawson Fargnoli Defendants”). Appearing at the hearing for Plaintiffs Andrew Pampu, Amanda Pampu, and John Pampu (“Plaintiffs”) was Thomas A. Pendarvis, Esquire, of Pendarvis Law Office, PC. Appearing at the hearing for the Clawson Fargnoli Defendants was James A. Dedman, Esquire, of Gallivan, White & Boyd, PA. Appearing at the hearing for Defendants Barrett R. Brewer, Esq. and Brewer Law Firm, LLC (“Brewer Defendants”) was R. Bruce Wallace, Esquire, of Nexsen Pruet, LLC. Following the hearing, this Court took the Motion to Dismiss the Second Amended Complaint under advisement. After careful consideration and review of the Second Amended Complaint and caselaw, along with memoranda submitted by the Clawson Fargnoli Defendants, the Motion to Dismiss is **GRANTED**.

¹ The Clawson Fargnoli Defendants and Brewer Defendants filed a joint Memorandum of Law in Support of their Motions to Dismiss. I granted both of their motions but directed counsel to submit a separate proposed order for their client. This order will focus solely on the Clawson Fargnoli Defendants’ representation of Plaintiff Andrew Pampu.

FACTUAL BACKGROUND

This case arises out of Plaintiffs' allegations of legal professional negligence and breach of fiduciary duty by the Clawson Fagnoli Defendants. Plaintiffs' allegations center primarily around the Clawson Fagnoli Defendants' representation of Plaintiff Andrew Pampu in a federal court lawsuit mediation.

On November 2, 2017, the Clawson Fagnoli Defendants agreed to represent Plaintiff Andrew Pampu in two separate lawsuits: (1) a case pending in the United States District Court for the District of South Carolina asserting Title IX and other claims against Clemson University (the "Federal Lawsuit") and (2) a case pending in the Pickens County Court of Common Pleas² asserting causes of action for defamation, civil conspiracy, and other tort claims against an accuser who submitted claims of sexual misconduct against Plaintiff Andrew Pampu to Clemson University (the "State Lawsuit").

The facts underlying the two lawsuits involved an accusation of sexual misconduct against Plaintiff Andrew Pampu. In Fall 2015, Plaintiff Andrew Pampu attended Clemson University as a freshman student. He was accused of and ultimately found by Clemson University to have engaged in "nonconsensual sexual activities" at an administrative hearing, resulting in Plaintiff Andrew Pampu's suspension from the school. (*See* Second Amended Complaint, ¶ 19). Plaintiff Andrew Pampu appealed Clemson University's administrative hearing decision but this appeal resulted in the imposition of heavier sanctions, including an additional suspension. (*Id.*, ¶ 20, 21).

As part of the Clawson Fagnoli Defendants' representation of Plaintiff Andrew Pampu, they participated in mediation with Clemson University. (*Id.*, ¶ 37). On March 2, 2018, prior to the

² A Pickens County jury returned a verdict in favor of Plaintiff Andrew Pampu following his jury trial in March 2022. There are pending post-trial motions that have not yet been ruled upon.

mediation, Plaintiffs emailed the Clawson Fagnoli Defendants with the goals for the mediation, including:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against Andrew Pampu, which by implication would have limited the University's future treatment of Andrew Pampu's academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) Andrew Pampu's arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

Id., ¶ 36.

On March 21, 2018, following a lengthy mediation, Plaintiff Andrew Pampu signed a settlement agreement with Clemson University.³ However, Plaintiff Andrew Pampu developed "buyer's remorse" in the days after the mediation and attempted to abandon the settlement. In the Second Amended Complaint, Plaintiffs contend that the settlement with Clemson University conflicted with the goals explained in the March 2, 2018 email and the goals for both the Federal Lawsuit and State Lawsuit. (*Id.*, ¶ 41).

On May 8, 2018, Plaintiff Andrew Pampu terminated his attorney-client relationship with the Clawson Fagnoli Defendants and sought new counsel. (*Id.*, ¶ 47-48). Clemson University filed a motion to enforce the settlement in the Federal Lawsuit, which was ultimately granted. (*Id.*, ¶ 55-57).

³ Plaintiffs Amanda Pampu and John Pampu were not signatories to the Settlement Agreement. (*Id.*, ¶ 39).

PROCEDURAL BACKGROUND

On June 16, 2021, Plaintiffs filed a Second Amended Summons and Complaint against Defendants in the Charleston County Court of Pleas.⁴ In their Second Amended Complaint, Plaintiffs assert claims against the Clawson Fagnoli Defendants for legal professional negligence and breach of fiduciary duty. They allege:

[t]he Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the Does to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the Does; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

Id., ¶ 83.

On June 28, 2021, the Clawson Fagnoli Defendants filed a Motion to Dismiss the Second Amended Complaint. A hearing on that Motion was held before this Court on March 2, 2022.

STANDARD OF REVIEW

Rule 12(b)(6) motions challenge the legal sufficiency of a complaint. In considering a motion to dismiss, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). SCRCP Rule 12(b)(6) permits a trial judge to dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the Court. *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App.

⁴ Plaintiffs initially filed suit against Defendants on March 19, 2021 and did not include an expert witness affidavit as required by the statute. The Amended Complaint was filed on April 30, 2021 to include an expert witness affidavit from Justin Dillon, Esquire. The Complaint was then amended for a second time on June 16, 2021 to include arguments from the Defendants' respective Motions to Dismiss that asserted Mr. Dillon's affidavit was defective. The substantive allegations across the three (3) Complaints remained virtually the same.

2002). The court “must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). When reviewing a Rule 12(b)(6) motion, a court must view the complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff’s favor. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case,” then the court may not grant a Rule 12(b)(6) motion. *Sloan Constr. Co. v. Southco Grassing Co.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

DISCUSSION

I. Plaintiffs fail to state a claim upon which relief can be granted.

Plaintiffs’ claims are dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Plaintiffs’ allegations of legal malpractice center almost exclusively around Plaintiff Andrew Pampu’s unhappiness with the settlement following the Federal Lawsuit mediation. While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the Clawson Fargnoli Defendants committed professional error in advising Plaintiff Andrew Pampu whether or not to accept the settlement. There are no allegations of professional error on the part of the Clawson Fargnoli Defendants in advising Plaintiff Andrew Pampu as to whether he should accept the terms of the settlement in the Federal Lawsuit. There are also no allegations that the Clawson Fargnoli Defendants induced Plaintiff Andrew Pampu into signing the mediation agreement. Plaintiff Andrew Pampu’s later regret regarding the terms of the settlement agreement is not a proper ground for a legal malpractice claim.

In their Memorandum Law in Opposition to the Motion to Dismiss, Plaintiffs claimed that the Clawson Fagnoli Defendants committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the Clawson Fagnoli Defendants' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the Clawson Fagnoli Defendants. Second, there are no allegations (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

Therefore, Plaintiffs failed to state a claim in the Second Amended Complaint upon which relief can be granted and, therefore, the Motion to Dismiss is **GRANTED**.

II. Plaintiffs Amanda Pampu and John Pampu lack standing.

Plaintiffs Amanda Pampu and John Pampu's claims are dismissed for lack of subject matter jurisdiction pursuant to the South Carolina Rules of Civil Procedure 12(b)(1) as Plaintiffs Amanda Pampu and John Pampu lack standing to assert claims in this lawsuit. Neither Amanda Pampu and John Pampu were parties to the Federal Lawsuit or the State Lawsuit. The only named party is Plaintiff Andrew Pampu. While Plaintiffs Amanda Pampu and John Pampu attended the mediation, Plaintiff Andrew Pampu alone signed the settlement agreement. The only individual that could assert any allegations of legal malpractice by the Clawson Fagnoli Defendants is Plaintiff Andrew Pampu as he was the only party to the Federal Lawsuit and the State Lawsuit. Plaintiff Andrew Pampu was also the only signatory to the Federal Lawsuit settlement agreement.

Plaintiffs assert that their allegation contained within the Second Amended Complaint that the Clawson Fargnoli Defendants undertook representation of all of the Plaintiffs, including Plaintiffs Amanda Pampu and John Pampu, is sufficient for this Court to have subject matter jurisdiction over Plaintiffs Amanda Pampu and John Pampu. Plaintiffs cite to *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 826 S.E.2d 270, 426 S.C. 154 (2019) in arguing that an attorney-client relationship existed between Amanda Pampu, John Pampu, and the Clawson Fargnoli Defendants. However, that case pertains to the contractual relationships between insurers, insureds, and the attorneys hired to defend insureds pursuant to insurance policies. It is therefore factually and legally distinct from the case at bar.

Therefore, the claims of Plaintiffs Amanda Pampu and John Pampu are dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1). The Clawson Fargnoli Defendants' Motion to Dismiss is **GRANTED**.

III. Plaintiffs' required expert witness affidavit was untimely and insufficient as a matter of law.

Plaintiffs' Second Amended Complaint is dismissed as the required expert witness affidavit was untimely and insufficient as a matter of law. On March 19, 2021, Plaintiffs initially filed their Complaint against Defendants in the Charleston County Court of Common Pleas. That Complaint did not include an expert witness affidavit as required by South Carolina statute. South Carolina Code § 15-36-100(B) requires that:

in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) [...], the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

Id.

Plaintiffs amended their Complaint forty-two (42) days later and included an expert witness affidavit. Plaintiffs argue that the Complaint was originally filed three (3) days before the three (3) year anniversary of the date on which any reasonable person would know or should have known of a claim against Defendants (i.e., the date of the Federal Lawsuit mediation). However, this argument does not address their original failure to file an expert witness affidavit. It merely suggests that, based on the filing date of the original Complaint, the Clawson Fargnoli Defendants should have **presumed** that there were time limitations to obtaining an expert witness affidavit. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint, which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C).⁵ Therefore, Plaintiffs' claims against the Clawson Fargnoli Defendants are dismissed because their expert witness affidavit was untimely filed.

Even if Plaintiffs had asserted that there was not time for an expert witness affidavit to be prepared to be filed with the original Complaint, Plaintiffs' expert witness affidavit is insufficient as a matter of law because he lacks relevant experience. South Carolina Code § 15-36-100(A)(3) states that an expert witness:

means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who: [...] (3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to

⁵ South Carolina Code § 15-36-100(C)(1) provides that:

[t]he contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of time constraints, the *plaintiff alleges that an affidavit of an expert could not be prepared.*

subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

Id.

In the expert witness affidavit, Mr. Dillon holds himself out as an expert in legal malpractice claims in South Carolina district court litigation. However, Mr. Dillon is not, and apparently has never been, licensed to practice in the state and federal courts of South Carolina or the U.S. District Court for the Fourth Circuit Court of Appeals. Mr. Dillon makes no claim of familiarity with the nature of federal practice in the U.S. District Court for the District of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina. Mr. Dillion admits in his affidavit that he has reviewed few materials related to the underlying federal and state litigation at issue.

While Plaintiffs are correct that the Rules do not require a South Carolina barred attorney to serve as an expert witness, the crux of the legal malpractice claim centers almost solely around the Clawson Fagnoli Defendant's advice to Plaintiff Andrew Pampu during the mediation in the Federal Lawsuit. Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint. Based on the forgoing, both Mr. Dillon's affidavit and credentials are deficient. Therefore, the Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

IV. Plaintiffs' claim for breach of fiduciary duty is duplicative.

“Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship.” *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011). Where a breach of fiduciary duty claim and a legal malpractice claim arise out of the attorney-client relationship and the same facts support both claims, the claim for breach of fiduciary duty is duplicative of the claim for legal malpractice. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019). Moreover, where the Complaint fails to allege facts demonstrating the fiduciary relationship arises from some source other than the attorney-client relationship, the court should dismiss the breach of fiduciary duty claim as duplicative. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173 (2012). Plaintiffs' Second Amended Complaint alleges both a negligence cause of action and a breach of fiduciary duty claim arising out of the same attorney client relationship and the same set of operative facts. As a result, the breach of fiduciary duty is also dismissed as duplicative.

While counsel for Plaintiffs argues this is an election of remedies issue, the above cited cases clearly demonstrate that dismissal is the appropriate remedy because the alleged breach of fiduciary duty arises out of the same operative facts as the attorney-client relationship and is therefore “encompassed by the claim for legal malpractice.” *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt.*, *supra*, 399 S. at 336, 732 S.E.2d at 173). Duplicative matters are always subject to dismissal at this stage. *See also* Rule 12(f), SCRCP (authorizing the court to strike any redundant matter).

Therefore, the Clawson Fagnoli Defendants' Motion to Dismiss the breach of fiduciary duty cause of action is **GRANTED**.

V. Plaintiffs' claims are adverse to public policy.

Plaintiffs' claims should be dismissed because they violate the important public policy on the finality of mediation in civil cases. South Carolina courts "greatly favor the settlement of cases and allowing litigants to achieve their own resolution to disputes." *Riddle v. City of Anderson*, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015). In fact, the public policy of South Carolina favors settlement of cases and early resolution to disputes so much so that mediation is required in every case in both the state and federal courts of South Carolina. *See, e.g.*, Local Civ. Rule 16.05 (D.S.C.); Rule 3 of the South Carolina ADR Rules.

While mediation is an invaluable tool for South Carolina litigants, participants rarely, if ever, leave mediation completely satisfied with the outcome and having had all of their desires met. Mediation is about compromising to reach a solution that all parties can tolerate. Plaintiffs' allegations of legal malpractice center almost exclusively on the fact that Plaintiff Andrew Pampu did not get everything that he wanted at mediation. Plaintiffs' response to the argument that their claims are against public policy is merely that the Clawson Fargnoli Defendants did not cite to any controlling law. Again, Plaintiffs reiterate that an attorney's act or omissions into leading a client to sign a settlement agreement permit legal malpractice lawsuits. However, the crux of Plaintiffs' claim against the Clawson Fargnoli Defendants is merely that the settlement agreement did not accomplish all of their goals. Plaintiffs did not identify any acts or omissions by the Clawson Fargnoli Defendants that led Plaintiff Andrew Pampu to sign the settlement agreement.

If this Court were to permit Plaintiffs' malpractice claims to continue against the Clawson Fargnoli Defendants, it would essentially open the flood gates to frivolous claims made by unhappy litigants who were not completely satisfied with the outcome of mediation. Therefore,

the Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is
GRANTED.

CONCLUSION

The Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is
GRANTED.

AND IT IS SO ORDERED.

The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court

Orangeburg, South Carolina

June _____, 2022



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2022-06-23 10:20:41 page 13 of 13

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-_____

John Doe; Jane Doe Mother; and John
Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fagnoli,
Esq; Barrett R. Brewer, Esq., and
BREWER LAW FIRM, LLC,

Defendants.

**PLAINTIFFS' MOTION TO
PROCEED ANONYMOUSLY
UNDER PSEUDONYMS**

NOTICE

YOU WILL PLEASE TAKE NOTICE of Plaintiffs' motion under Rules 10(a) and 17(a), SCRCP, and Doe v. Howe, 607 S.E.2d 354, 362 S.C. 212 (Ct. App. 2004), to proceed anonymously under the pseudonyms, John Doe; Jane Doe Mother; and John Doe Father.

MOTION

Plaintiffs move under Rules 10(a) and 17, SCRCP, and Doe v. Howe, 607 S.E.2d 354, 362 S.C. 212 (Ct. App. 2004), for an Order permitting them to proceed anonymously and requiring Defendants, their counsel, and any expert witnesses who may be consulted or designated by the Defendants from directly or indirectly publicly divulging the true names of the Plaintiffs until further Order of the Court. This motion is based based on the sensitive nature of the allegations and evidence supporting the claims in this case; the likelihood public disclosure of Plaintiffs' identities will cause embarrassment and humiliation; and

the lack of prejudice to Defendants.

While the Rules of Civil Procedure generally require that every action to be prosecuted in the name of the real party in interest, see Rule 17(a), SCRCP, and generally require the Summons and Complaint “include the names of all parties,” see Rule 10(a), SCRCP, our Courts have held that in appropriate circumstances the use of fictitious names is permitted where the sensitive nature of the allegations and evidence involved in the lawsuit and the public disclosure of plaintiffs’ identities will cause embarrassment and humiliation and there is a lack of prejudice to defendants. See Doe v. Howe, 607 S.E.2d 354, 362 S.C. 212 (Ct. App. 2004).

In a legal malpractice matter styled, Doe v. Howe, 362 S.C. 212, 607 S.E.2d 354, (Ct. App. 2004), the South Carolina Court of Appeals held the trial court abused its discretion in denying a motion to allow the legal malpractice plaintiff to proceed anonymously through a pseudonym where underlying allegations concerned sexual conduct/misconduct. The allegations in this Complaint also concern alleged sexual conduct/misconduct. The Court of Appeals held:

We are firmly persuaded that the general presumption of public identification of parties should yield under the record before us to Doe’s request that he be permitted to proceed anonymously prior to trial.

Id. 362 S.C. at 219, 607 S.E.2d at 357.

This is an action for legal professional negligence, breach of fiduciary duty, and breach contract brought by the Plaintiffs seeking to redress the damages caused by the actions of the Defendants. The underlying subject matter on which Defendants formerly represented Plaintiffs involves defamatory allegations of sexual misconduct as to Plaintiff John Doe, and are therefore matters of a highly sensitive and personal nature and highly inflammatory and

prejudicial if repeated. Plaintiffs are informed and believe it is in the interests of justice to permit them to proceed in this matter anonymously, at least during the pretrial phases, to protect them from further embarrassment, harassment, or divulging of personal information. Plaintiffs are informed and believe this Court has permitted other Plaintiffs in the same or similar circumstances to proceed anonymously and they wish to be granted the protection of the Court for this purpose.

Wherefore, having set forth the grounds for the relief sought, Plaintiffs move for an order permitting them to proceed anonymously, and requiring the Defendants and their counsel, and any expert witnesses who may be consulted or designated by the parties, from directly or indirectly divulging the true name of the Plaintiffs, until further order of the Court. Plaintiffs have not yet sought consent of opposing counsel for this request, because the pleadings have not been served and no appearance has yet been made for the Defendants.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

March 19, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-_____

John Doe; Jane Doe Mother; and John
Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fagnoli,
Esq; Barrett R. Brewer, Esq., and
BREWER LAW FIRM, LLC,

Defendants.

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office, PENDARVIS LAW OFFICES, P.C., 710 Boundary Street, Unit A-1, Beaufort, SC 29902-4188, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

March 19, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-_____

John Doe; Jane Doe Mother; and John Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq.,

Defendants.

COMPLAINT
(Jury Trial Demanded)

1. Professional Negligence
2. Breach of Fiduciary Duty
3. Breach of Contract

Plaintiffs, John Doe; Jane Doe Mother; and John Doe Father, (collectively “the Does”), complaining of Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (collectively “the Lawyers”), respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case seeks recovery of damages caused by the Lawyers’ errors during their representation of the Does in a) a federal court lawsuit against a University for violations of Title IX, the United States Constitution, and the University’s own disciplinary process arising from errors and mishandling of an investigation of an incident of John Doe’s alleged nonconsensual sex with another student and b) a state court lawsuit against the individuals and others who made false statements and gave false testimony supporting the University’s investigation. The Lawyers were negligent in 1) allowing their client, John Doe, to sign a deficient handwritten settlement agreement that did not contain

necessary language and terms dedicated to the University's future treatment of John Doe's academic records, the results of which were contrary to what the Lawyers knew were the clients' desires and objectives, which was a key component of the Does' "consideration" to settle, and without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to John Doe the full implication of this handwritten settlement agreement and how the University could refer to his student records to future schools, especially medical or dental schools; and 3) in the manner in which they prosecuted the state court action, including substantial discovery deficiencies; and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of the Does. One or more of these negligent actions or related omissions resulted in substantial financial losses to the Does, including their payment of and continuing payment of substantial legal fees to successor counsel to mitigate their damages caused by the Lawyers and frustrating the purpose of the underlying litigation.

2. After the Lawyers were discharged as counsel for the Does, the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties, including disclosing information related to their representation of the Does to counsel for the opposing parties without the Does' consent.

PARTIES

3. Defendant, CLAWSON FARGNOLI, LLC ("CLAWSON FARGNOLI"), is, upon information and belief, a Limited Liability Corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Charleston County, South Carolina.

4. Defendant, Samuel R. Clawson, Jr., Esq. ("Mr. Clawson"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina; and is a lawyer licensed to practice law in South Carolina.

5. Defendant, Christina R. Fagnoli, Esq. ("Ms. Fagnoli"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina; and is a lawyer licensed to practice law in South Carolina.

6. Defendant, BREWER LAW FIRM, LLC ("BREWER LAW FIRM"), is, upon information and belief, a Limited Liability Corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Charleston County, South Carolina.

7. Defendant, Barrett R. Brewer, Esq. ("Mr. Brewer"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina; and is a lawyer licensed to practice law in South Carolina.

8. Plaintiff, John Doe ("John Doe"), is a citizen and resident of Charleston County, South Carolina.

9. Plaintiff, Jane Doe Mother ("Jane Doe Mother"), is a citizen and resident of Charleston County, South Carolina.

10. Plaintiff, John Doe Father ("John Doe Father"), is a citizen and resident of Charleston County, South Carolina.¹

¹ Due to the subject matter of these underlying cases, information in this Complaint will refer only to John Doe, Jane Doe Mother, and John Doe Father by those pseudonyms or will be otherwise redacted to preserve John Doe's anonymity.

JURISDICTION

11. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

12. Venue is proper in Charleston County because it is, upon information and belief, Mr. Clawson, Ms. Fagnoli, and Mr. Barrett reside in Charleston County, and CLAWSON FARGNOLI and BREWER LAW FIRM operate in offices in Charleston County, South Carolina.

FACTS

13. On or around November 2, 2017, the Lawyers accepted the representation of the Does to provide legal advice, services, and representation of the Does in a lawsuit pending in the United States District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against a University (“the University”); and representing the Does in a lawsuit pending in the Court of Common Pleas in a County in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against individuals involved in submitting to the University false claims against John Doe, which led to a disciplinary action that was mishandled by the University.

14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively “the Law Firms”) contracted to represent the Does in the Federal Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.”

15. At the commencement of this representation, the Federal Case, with its Complaint filed on June 15, 2016, had been pending approximately a year and a half while the State Case, with its Complaint filed on June 15, 2017, had been pending for approximately six months.

16. In the Federal Case, John Doe filed a lawsuit against the University and several related defendants (collectively “the University Defendants”) alleging, among other things, violation Title IX of the Education Amendments of 1972, failure to provide John Doe with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment.

17. The primary claims against the University Defendants in the Federal Case were premised on theories the University Defendants deprived John Doe of due process and certain protections under Title IX of the Education Amendments of 1972 and related federal regulations during: the investigation the University Defendants undertook regarding false allegations by a female student (“Jane Doe”); the deliberating processes that the University Defendants applied to conclude that John Doe had engaged Jane Doe in nonconsensual sexual activity; and the appeals process the University Defendants applied to John Doe’s appeal.

18. The Federal Case and the State Case involved common facts in that both concerned the allegations by Jane Doe claiming John Doe engaged in nonconsensual sexual activity with her; and the allegations by a male student, “Charles Doe,” made during the University’s investigation allegedly corroborating Jane Doe’s claims.

19. Through a variety of errors and omissions by the University Defendants, in an administrative hearing conducted on February 26, 2016, John Doe was found to have

engaged Jane Doe in nonconsensual sexual activities and punished with a one-semester suspension.

20. Thereafter John Doe followed the University's appeal process to appeal the incorrect administrative hearing decision.

21. The appeals process actually resulted in greater sanctions imposed by the University upon John Doe, including an additional year of suspension.

22. On or about January 14, 2017, Charles Doe sent John Doe text messages admitting that he and Jane Doe lied regarding Jane Doe's allegations, both during the investigation of those allegations and at the hearing regarding those allegations.

23. Despite receiving notice of the January 2017 texts sent by Charles Doe, the University Defendants refused or failed to undertake additional action to address the content of those text messages from Charles Doe to John Doe.

24. On or about June 15, 2017, the State Case was filed against Jane Doe, Charles Doe, and Richard Doe (Charles Doe's father), asserting claims for defamation, intentional infliction of emotional distress, and civil conspiracy. The State Case also asserted a claim for abuse of process against Jane Doe and Charles Doe based on the two strategically utilizing the University's Title IX process for an illegitimate objective, that is, to further harass, defame, retaliate against, and punish John Doe.

25. These three defendants will be collectively referred to as the "State Case Defendants");

26. By November 27, 2017, the Federal Court substituted the Lawyers for John Doe's previous counsel.

27. During the Lawyers' representation of the Does, the Lawyers drafted and, upon information and belief, disclosed to third parties an "apology letter" purportedly from John Doe to one of the State Case Defendants falsely conceding critical matters.

28. During the Lawyers' representation of the Does, the Lawyers served discovery requests tailored to personal injury claims when representing the Does on slander and defamation claims.

29. During the Lawyers' representation of the Does, the Lawyers did not provide the Does with copies of materials obtained during discovery.

30. Following extensive written discovery, the parties to the Federal Case scheduled a meditation.

31. In February of 2018, the Lawyers and the Does received an eighty-page report from expert witness Daniel C. Swinton, Ed.D., J.D., B.A. (the "Swinton Report"), detailing a variety of errors and omissions by the University Defendants in the procedural, investigatory, and adjudicative processes the University Defendants applied regarding Jane Doe's allegations and John Doe's prosecution.

32. Based on the text messages from Charles Doe, the Lawyers knew or should have known that John Doe's claims against the University Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

33. Based on the Swinton Report, the Lawyers knew or should have known that John Doe's claims against the University Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

34. Based on the text messages from Charles Doe, the Lawyers knew or should have known that John Doe's claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

35. Based on the Swinton Report, the Lawyers knew or should have known that John Doe's claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

36. Before the mediation, the Lawyers received an email from the Does stating John Doe's mediation goals, including:

a. Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against John Doe, which by implication would have limited the University's future treatment of John Doe's academic records;

b. The State Case remain separate and unaffected by any settlement of the Federal Case;

c. there be no confidentiality or silencing provisions restricting sharing of the settlement terms; and

d. John Doe's arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

37. On March 21, 2018, the Lawyers, the Does, and the University Defendants and their counsel participated in the mediation for the Federal Case.

38. After a grueling eleven (11) hour mediation, allegedly the terms that the parties came to agree upon were memorialized in a short-form "Settlement Agreement," which the Lawyers approved and strongly urged John Doe to sign. To accomplish their objective to have the Does agree to settle so they could get their contingent fee, the Lawyers took advantage of an opportunity when John Doe Father and John Doe Mother were out of the room to forcefully urge John Doe to agree to the University's proposed

settlement terms. John Doe (and later the John Doe's parents) conceded to the Lawyers' pressure to settle.

39. Based on the Lawyers' advice and counsel, John Doe signed the "Settlement Agreement."

40. On March 23, 2018, the Lawyers received an email from the Does explaining John Doe's unawareness of the effect and import of the Settlement Agreement and the negative ramifications of the Settlement Agreement.

41. The Settlement Agreement conflicted with the goals explained in the March 2, 2018, email and conflicted with the goals of both the Federal Case and the State Case.

42. The Settlement Agreement the Lawyers convinced the Does to sign did not contain necessary language and terms dedicated to the University's future treatment of John Doe's academic records, the results of which were contrary to what the Lawyers knew or should have known were the Does' desires and objectives, which was a key component of the Does' "consideration" to settle, and the Settlement Agreement did not address many other issues necessary to resolve the underlying dispute with the University.

43. The Lawyers knew or should have known of the tremendous physical, mental and emotional strain that Jane Doe's underlying allegations and the errors and omissions of the University Defendants were causing John Doe; and that John Doe was or had received counseling and other therapeutic services in connection with the same.

44. The Lawyers knew or should have known of the tremendous physical, mental and emotional strain or exacerbation of the same that John Doe would experience

because of the errors and omissions of the Lawyers before, during and after the Federal Case Mediation.

45. Additional physical, mental and emotional harm to John Doe and consequent additional counseling and therapeutic services for John Doe directly and proximately caused by the errors and omissions of the Lawyers was foreseeable to the Lawyers.

46. On March 27, 2018, the District Court entered an Order of Dismissal in the Federal Case providing the parties opportunity to consummate the settlement and providing either party sixty (60) days petition the Court to enforce the settlement.

47. On May 4, 2018, counsel for the University Defendants forwarded a proposed release to the Lawyers under the Settlement Agreement. That same day, the Lawyers sent the Settlement Agreement with proposed revisions back to counsel for the University Defendants.

48. On May 8, 2018, the Lawyers informed counsel for the University Defendants their representation of John Doe had been terminated and that John Doe had not yet retained new counsel.

49. On May 9, 2018, the Lawyers memorialized the Does' May 8, 2018, termination of their representation in a letter to the Does, with language impliedly recognized the Doe's terminated the attorney-client relationship for cause and attempting to refute some of the bases for termination of the representation for cause.

50. On May 10, 2018, counsel for the University Defendants sent John Doe a letter with a five (5) day deadline for response enclosing a Settlement Agreement and Mutual Release ("Release"), a Stipulation of Dismissal with Prejudice, and a copy of the

settlement check, which would be provided upon execution of the Release and the Stipulation of Dismissal.

51. On May 11, 2018, John Doe emailed counsel for the University Defendants indicating he had received the May 8, 2018 letter, he wanted to make changes to the proposed Release, he was retaining new counsel, the five (5) day deadline was not feasible, and his new attorneys would be in contact early the following week.

52. On May 16, 2018, newly retained counsel ("Successor Counsel") for John Doe contacted counsel for the University Defendants requesting the proposed Release document in Word format to make revisions.

53. On May 18, 2018, upon consent motion, a text order was entered by the Federal Court this Court substituting Successor Counsel for the Lawyers as counsel of record for John Doe.

54. On May 23, 2018, Successor Counsel submitted revisions to the Release to counsel for the University Defendants.

55. On May 24, 2018, counsel for the University Defendants contended that the revisions materially changed the terms of the Settlement Agreement reached in mediation and in response, the University Defendants moved the Federal Court to enforce the Settlement Agreement.

56. Thereafter, the Does expended substantial funds by way of legal fees and expenses in the Federal Case attempting to void the Settlement Agreement the Lawyers had directed John Doe to sign and oppose its enforcement because of the Lawyers' errors and omissions.

57. The Federal Court's "Redacted Order" upheld and enforced the Settlement Agreement against John Doe, finding the Settlement Agreement terms were clear and unambiguous; and the plain and unambiguous language of the Settlement Agreement did not support the Does' representations the University promised more during the settlement negotiations.

58. The Settlement Agreement:

- a. did not contain the necessary language and terms dedicated to the University's future treatment of John Doe's academic records;
- b. contained language leading to results contrary to what the Lawyers knew were the Does' desires and objectives, which was a key component of the Does' "consideration" to settle;
- c. did not address multiple issues necessary to resolve the underlying dispute with the University; and
- d. did not contain the necessary language addressing the University's ability to disclose any settlement agreement when confronted with a public records information request for same and, if so, whether John Doe's identity would be safeguarded.

59. On January 1, 2019, the Federal Court entered an order by way of minute entry to the docket, requiring the University to make its counsel and an individual with decision-making authority available by telephone for an upcoming mediation in the State Court case, scheduled for March 1, 2019.

60. The Settlement Agreement had a negative impact on the State Case , where the Does have been forced to expend additional funds to litigate that case because of the impact of the Settlement Agreement.

61. On February 28, 2019, the Lawyers sent a letter to the mediator **and counsel for all parties in the State Case and other third parties** asserting a lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of

the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case.

62. On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case's opposing counsel and mediation mediator, interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation, all of which added and continued to cause damages to John Doe.

63. The February 28, 2019, letter from the Lawyers interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation.

64. Thereafter, John Doe expended and continue to spend several hundred-thousands of dollars litigating the State Court case that was not resolved at mediation.

65. Thereafter, John Doe expended several hundred-thousands of dollars litigating the State Court case because John Doe's positions on law and facts in dispute were irreparably damaged by errors and omissions by the Lawyers at the mediation of the Federal Case that directly, proximately and foreseeably caused damage to John Doe's position in the State Case.

66. From February 28, 2019, through the present, the Lawyers have continued to assert a charging lien for legal fees against the Does' settlement proceeds from the University, despite John Doe having terminated the Fee Agreement with the Lawyers for cause, thereby generating additional expenses for John Doe to contest those allegations.

67. As a direct, proximate and foreseeable result of the Lawyers' actions and inactions before and after their being relieved as counsel, Plaintiffs suffered damages,

including loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the Lawyers' actions and inactions.

68. Had the Lawyers met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice John Doe in the State Court mediation and litigation, a substantial portion of the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

69. Had the Lawyers met the fiduciary standard of conduct by properly, accurately or timely attempting to assert an alleged charging lien, a substantial portion of the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

70. As a direct, proximate and foreseeable result of the Lawyers' actions and inactions in the Federal Case and its mediation, the Does suffered damages, including loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm caused by the Lawyers' actions and inactions.

71. Had the Lawyers met the standard of care by properly, accurately or timely advising John Doe before, during and after the Federal Case mediation regarding any terms of the Federal Case mediation, the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

72. Had the Lawyers met the standard of care by properly, accurately or timely advising John Doe before, during and after the Federal Case mediation regarding the interplay of the Federal Case mediation, any settlement of that case and the State Case, the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

73. Mr. Clawson, Ms. Fagnoli, and other lawyers acting in CLAWSON FARGNOLI were Members or Associates of CLAWSON FARGNOLI.

74. The negligent acts, omissions, and liability of CLAWSON FARGNOLI includes its own acts and/or omissions and the acts and omissions of its agents, principals, employees and/or servants, including but not limited to those its Member or Associate lawyers, both directly and vicariously, under principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

75. Upon information and belief, CLAWSON FARGNOLI acted through its employees and agents, including but not limited to its Member or Associate lawyers, who acted within the course and scope of their employment and/or agency with all implied, inherent, apparent and express authority to so bind its Member or Associate lawyers and CLAWSON FARGNOLI as master and principal by any negligent, willful, wanton and reckless actions and/or omissions making CLAWSON FARGNOLI vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

76. Mr. Brewer and other lawyers acting in BREWER LAW FIRM were Members or Associates of BREWER LAW FIRM.

77. The negligent acts, omissions, and liability of BREWER LAW FIRM includes its own acts and/or omissions and the acts and omissions of its agents, principals, employees and/or servants, including but not limited to those its Member or Associate lawyers, both directly and vicariously, under principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

78. Upon information and belief, BREWER LAW FIRM acted through its employees and agents, including but not limited to its Member or Associate lawyers, who acted within the course and scope of their employment and/or agency with all implied, inherent, apparent and express authority to so bind its Member or Associate lawyers and BREWER LAW FIRM as master and principal by any negligent, willful, wanton and reckless actions and/or omissions making BREWER LAW FIRM vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)

79. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

80. A client-lawyer relationship existed between the Does, on the one hand as clients, and the Lawyers, on the other, as the lawyers, regarding all claims and causes of action involving the Federal Case and the State Case.

81. The scope of the Lawyers' representation was to provide legal services, counsel, and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case.

82. The Lawyers owed professional duties to the Does to adequately and competently provide legal services, counsel, and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case.

83. The Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the Does to adequately and competently provide legal services, counsel, and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advance the rights and interests of the Does; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

84. The Lawyers breached professional duties and otherwise failed to meet the minimum standard of care thereby breaching professional duties to the Does by other such particulars as the evidence in this case may demonstrate.

85. As a direct, proximate, and foreseeable result of the Lawyers' professional errors, the Does sustained financial damages.

86. As a direct, proximate, and foreseeable result of the Lawyers' professional errors, the Does sustained additional damages in the form of physical, mental and emotional suffering because of creation or exacerbation of conditions the Lawyers either knew about, should have known about, or could foresee.

87. The Does are entitled to judgment against the Lawyers for all damages, actual and consequential, suffered that were directly, proximately, and foreseeably caused by the Lawyers' negligence in an amount to be proven at the trial of this case.

88. WHEREFORE, the Does pray for judgment on this cause of action against the Lawyers for actual, special, consequential, and incidental damages suffered, pre-judgment interest, and for such other relief as the Court may deem reasonable and proper.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duties)

87. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

88. At all relevant times, a client-lawyer relationship existed between the Does, on the one hand as clients, and the Lawyers, on the other, as the lawyers, regarding all claims and causes of action involving the Federal Case and the State Case.

89. The Lawyers owed fiduciary duties to the Does.

90. The Lawyers' fiduciary duties included the duties of confidentiality and loyalty, and the duty to act single-mindedly in preserving, protecting and advancing the rights and interests of the Does.

91. The Lawyers failed to meet the minimum standard of conduct and acted in a manner establishing a clear and serious breach of their fiduciary duties of confidentiality and loyalty when the Lawyers disclosed information related to their representation of the Does to counsel for the opposing parties (and others) without the Does' consent.

92. The Lawyers failed to meet the minimum standard of conduct and thereby breached their fiduciary duties to the Does in such other particulars as the evidence in this case may demonstrate.

93. The Lawyers' acts and omissions in breach of his fiduciary duties to the Does were a substantial factor in causing financial harm to the Does, and as such the

Does are entitled to recover actual damages, consequential damages, incidental damages, and pre-judgment interest, all in an amount to be more specifically proven at trial.

94. As a direct and proximate result of the Lawyers' carelessness, recklessness, and utter disregard of their fiduciary duties the Does are entitled to recover punitive damages from the Lawyers.

95. Based on clear and serious breach of their fiduciary duties, and because Lawyers knew of these duties and their various breaches of the same, the Lawyers should be ordered to disgorge any legal fees obtained while in derogation of their duties and forfeit their claims to additional legal fees and other benefits.

96. WHEREFORE, the Does pray for judgment on this cause of action against the Lawyers for actual, consequential, and incidental damages suffered, pre-judgment interest, for punitive damages, for disgorgement of legal fees and other benefits obtained by Defendants, forfeiture of their claims for additional legal fees, and such other relief as the Court may deem reasonable and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)
(Against the Law Firms)

97. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

98. Law Firms entered into a Contract with the Does agreeing and contracting to provide legal services to represent the Does in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

99. Law Firms breached the contract by failing to provide such services.

100. The Does satisfied all necessary preconditions, if any, and performed their part of the contract, and/or was, at the appropriate time, able, ready, and willing to perform.

101. As a direct and proximate result of the Law Firms' breach of their contractual duties, the Does sustained actual, consequential and incidental damages in an amount to be determined by the jury at the trial of this case.

WHEREFORE, the Does pray for judgment on this cause of action against the Law Firms for actual, special, consequential and incidental damages suffered, pre-judgment interest, and such other relief as the Court may deem reasonable and proper.

TRIAL BY JURY

102. The Does request and demand a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

103. Under S.C. CODE ANN. § 15-36-100(C)(1), because this Complaint is being filed when there is a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire, it is filed without an affidavit by expert licensed by the Supreme Court of the State of South Carolina specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. The Does intends to file an Amended Complaint with an expert affidavit within forty-five (45) days.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, John Doe, Jane Doe Mother, and John Doe Father, pray

for judgment against Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq; Barrett R. Brewer, Esq., and BREWER LAW FIRM, LLC, for all actual damages, consequential damages, and incidental damages; punitive damages, and prejudgment interest, all in an amount to be more specifically proven at trial, together with the costs of this action and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

March 19, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John
Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fagnoli,
Esq; Barrett R. Brewer, Esq., and
BREWER LAW FIRM, LLC,

Defendants.

AMENDED SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office, PENDARVIS LAW OFFICES, P.C., 710 Boundary Street, Unit A-1, Beaufort, SC 29902-4188, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

April 30, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq.,

Defendants.

**AMENDED COMPLAINT
(Jury Trial Demanded)**

1. Professional Negligence
2. Breach of Fiduciary Duty
3. Breach of Contract

Plaintiffs, John Doe; Jane Doe Mother; and John Doe Father, (collectively “the Does”), complaining of Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (collectively “the Lawyers”), respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case seeks recovery of damages caused by the Lawyers’ errors during their representation of the Does in a) a federal court lawsuit against a University for violations of Title IX, the United States Constitution, and the University’s own disciplinary process arising from errors and mishandling of an investigation of an incident of John Doe’s alleged nonconsensual sex with another student and b) a state court lawsuit against the individuals and others who made false statements and gave false testimony supporting the University’s investigation. The Lawyers were negligent in 1) allowing their client, John Doe, to sign a deficient handwritten settlement agreement that did not contain

necessary language and terms dedicated to the University's future treatment of John Doe's academic records, the results of which were contrary to what the Lawyers knew were the clients' desires and objectives, which was a key component of the Does' "consideration" to settle, and without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to John Doe the full implication of this handwritten settlement agreement and how the University could refer to his student records to future schools, especially medical or dental schools; and 3) in the manner in which they prosecuted the state court action, including substantial discovery deficiencies; and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of the Does. One or more of these negligent actions or related omissions resulted in substantial financial losses to the Does, including their payment of and continuing payment of substantial legal fees to successor counsel to mitigate their damages caused by the Lawyers and frustrating the purpose of the underlying litigation.

2. After the Lawyers were discharged as counsel for the Does, the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties, including disclosing information related to their representation of the Does to counsel for the opposing parties without the Does' consent.

PARTIES

3. Defendant, CLAWSON FARGNOLI, LLC ("CLAWSON FARGNOLI"), is, upon information and belief, a Limited Liability Corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Charleston County, South Carolina.

4. Defendant, Samuel R. Clawson, Jr., Esq. ("Mr. Clawson"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina; and is a lawyer licensed to practice law in South Carolina.

5. Defendant, Christina R. Fagnoli, Esq. ("Ms. Fagnoli"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina; and is a lawyer licensed to practice law in South Carolina.

6. Defendant, BREWER LAW FIRM, LLC ("BREWER LAW FIRM"), is, upon information and belief, a Limited Liability Corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Charleston County, South Carolina.

7. Defendant, Barrett R. Brewer, Esq. ("Mr. Brewer"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina; and is a lawyer licensed to practice law in South Carolina.

8. Plaintiff, John Doe ("John Doe"), is a citizen and resident of Charleston County, South Carolina.

9. Plaintiff, Jane Doe Mother ("Jane Doe Mother"), is a citizen and resident of Charleston County, South Carolina.

10. Plaintiff, John Doe Father ("John Doe Father"), is a citizen and resident of Charleston County, South Carolina.¹

¹ Due to the subject matter of these underlying cases, information in this Complaint will refer only to John Doe, Jane Doe Mother, and John Doe Father by those pseudonyms or will be otherwise redacted to preserve John Doe's anonymity.

JURISDICTION

11. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

12. Venue is proper in Charleston County because it is, upon information and belief, Mr. Clawson, Ms. Fagnoli, and Mr. Barrett reside in Charleston County, and CLAWSON FARGNOLI and BREWER LAW FIRM operate in offices in Charleston County, South Carolina.

FACTS

13. On or around November 2, 2017, the Lawyers accepted the representation of the Does to provide legal advice, services, and representation of the Does in a lawsuit pending in the United States District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against a University (“the University”); and representing the Does in a lawsuit pending in the Court of Common Pleas in a County in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against individuals involved in submitting to the University false claims against John Doe, which led to a disciplinary action that was mishandled by the University.

14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively “the Law Firms”) contracted to represent the Does in the Federal Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.”

15. At the commencement of this representation, the Federal Case, with its Complaint filed on June 15, 2016, had been pending approximately a year and a half while the State Case, with its Complaint filed on June 15, 2017, had been pending for approximately six months.

16. In the Federal Case, John Doe filed a lawsuit against the University and several related defendants (collectively “the University Defendants”) alleging, among other things, violation Title IX of the Education Amendments of 1972, failure to provide John Doe with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment.

17. The primary claims against the University Defendants in the Federal Case were premised on theories the University Defendants deprived John Doe of due process and certain protections under Title IX of the Education Amendments of 1972 and related federal regulations during: the investigation the University Defendants undertook regarding false allegations by a female student (“Jane Doe”); the deliberating processes that the University Defendants applied to conclude that John Doe had engaged Jane Doe in nonconsensual sexual activity; and the appeals process the University Defendants applied to John Doe’s appeal.

18. The Federal Case and the State Case involved common facts in that both concerned the allegations by Jane Doe claiming John Doe engaged in nonconsensual sexual activity with her; and the allegations by a male student, “Charles Doe,” made during the University’s investigation allegedly corroborating Jane Doe’s claims.

19. Through a variety of errors and omissions by the University Defendants, in an administrative hearing conducted on February 26, 2016, John Doe was found to have

engaged Jane Doe in nonconsensual sexual activities and punished with a one-semester suspension.

20. Thereafter John Doe followed the University's appeal process to appeal the incorrect administrative hearing decision.

21. The appeals process actually resulted in greater sanctions imposed by the University upon John Doe, including an additional year of suspension.

22. On or about January 14, 2017, Charles Doe sent John Doe text messages admitting that he and Jane Doe lied regarding Jane Doe's allegations, both during the investigation of those allegations and at the hearing regarding those allegations.

23. Despite receiving notice of the January 2017 texts sent by Charles Doe, the University Defendants refused or failed to undertake additional action to address the content of those text messages from Charles Doe to John Doe.

24. On or about June 15, 2017, the State Case was filed against Jane Doe, Charles Doe, and Richard Doe (Charles Doe's father), asserting claims for defamation, intentional infliction of emotional distress, and civil conspiracy. The State Case also asserted a claim for abuse of process against Jane Doe and Charles Doe based on the two strategically utilizing the University's Title IX process for an illegitimate objective, that is, to further harass, defame, retaliate against, and punish John Doe.

25. These three defendants will be collectively referred to as the "State Case Defendants");

26. By November 27, 2017, the Federal Court substituted the Lawyers for John Doe's previous counsel.

27. During the Lawyers' representation of the Does, the Lawyers drafted and, upon information and belief, disclosed to third parties an "apology letter" purportedly from John Doe to one of the State Case Defendants falsely conceding critical matters.

28. During the Lawyers' representation of the Does, the Lawyers served discovery requests tailored to personal injury claims when representing the Does on slander and defamation claims.

29. During the Lawyers' representation of the Does, the Lawyers did not provide the Does with copies of materials obtained during discovery.

30. Following extensive written discovery, the parties to the Federal Case scheduled a meditation.

31. In February of 2018, the Lawyers and the Does received an eighty-page report from expert witness Daniel C. Swinton, Ed.D., J.D., B.A. (the "Swinton Report"), detailing a variety of errors and omissions by the University Defendants in the procedural, investigatory, and adjudicative processes the University Defendants applied regarding Jane Doe's allegations and John Doe's prosecution.

32. Based on the text messages from Charles Doe, the Lawyers knew or should have known that John Doe's claims against the University Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

33. Based on the Swinton Report, the Lawyers knew or should have known that John Doe's claims against the University Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

34. Based on the text messages from Charles Doe, the Lawyers knew or should have known that John Doe's claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

35. Based on the Swinton Report, the Lawyers knew or should have known that John Doe's claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

36. Before the mediation, the Lawyers received an email from the Does stating John Doe's mediation goals, including:

a. Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against John Doe, which by implication would have limited the University's future treatment of John Doe's academic records;

b. The State Case remain separate and unaffected by any settlement of the Federal Case;

c. there be no confidentiality or silencing provisions restricting sharing of the settlement terms; and

d. John Doe's arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

37. On March 21, 2018, the Lawyers, the Does, and the University Defendants and their counsel participated in the mediation for the Federal Case.

38. After a grueling eleven (11) hour mediation, allegedly the terms that the parties came to agree upon were memorialized in a short-form "Settlement Agreement," which the Lawyers approved and strongly urged John Doe to sign. To accomplish their objective to have the Does agree to settle so they could get their contingent fee, the Lawyers took advantage of an opportunity when John Doe Father and John Doe Mother were out of the room to forcefully urge John Doe to agree to the University's proposed

settlement terms. John Doe (and later the John Doe's parents) conceded to the Lawyers' pressure to settle.

39. Based on the Lawyers' advice and counsel, John Doe signed the "Settlement Agreement."

40. On March 23, 2018, the Lawyers received an email from the Does explaining John Doe's unawareness of the effect and import of the Settlement Agreement and the negative ramifications of the Settlement Agreement.

41. The Settlement Agreement conflicted with the goals explained in the March 2, 2018, email and conflicted with the goals of both the Federal Case and the State Case.

42. The Settlement Agreement the Lawyers convinced the Does to sign did not contain necessary language and terms dedicated to the University's future treatment of John Doe's academic records, the results of which were contrary to what the Lawyers knew or should have known were the Does' desires and objectives, which was a key component of the Does' "consideration" to settle, and the Settlement Agreement did not address many other issues necessary to resolve the underlying dispute with the University.

43. The Lawyers knew or should have known of the tremendous physical, mental and emotional strain that Jane Doe's underlying allegations and the errors and omissions of the University Defendants were causing John Doe; and that John Doe was or had received counseling and other therapeutic services in connection with the same.

44. The Lawyers knew or should have known of the tremendous physical, mental and emotional strain or exacerbation of the same that John Doe would experience

because of the errors and omissions of the Lawyers before, during and after the Federal Case Mediation.

45. Additional physical, mental and emotional harm to John Doe and consequent additional counseling and therapeutic services for John Doe directly and proximately caused by the errors and omissions of the Lawyers was foreseeable to the Lawyers.

46. On March 27, 2018, the District Court entered an Order of Dismissal in the Federal Case providing the parties opportunity to consummate the settlement and providing either party sixty (60) days petition the Court to enforce the settlement.

47. On May 4, 2018, counsel for the University Defendants forwarded a proposed release to the Lawyers under the Settlement Agreement. That same day, the Lawyers sent the Settlement Agreement with proposed revisions back to counsel for the University Defendants.

48. On May 8, 2018, the Lawyers informed counsel for the University Defendants their representation of John Doe had been terminated and that John Doe had not yet retained new counsel.

49. On May 9, 2018, the Lawyers memorialized the Does' May 8, 2018, termination of their representation in a letter to the Does, with language impliedly recognized the Doe's terminated the attorney-client relationship for cause and attempting to refute some of the bases for termination of the representation for cause.

50. On May 10, 2018, counsel for the University Defendants sent John Doe a letter with a five (5) day deadline for response enclosing a Settlement Agreement and Mutual Release ("Release"), a Stipulation of Dismissal with Prejudice, and a copy of the

settlement check, which would be provided upon execution of the Release and the Stipulation of Dismissal.

51. On May 11, 2018, John Doe emailed counsel for the University Defendants indicating he had received the May 8, 2018 letter, he wanted to make changes to the proposed Release, he was retaining new counsel, the five (5) day deadline was not feasible, and his new attorneys would be in contact early the following week.

52. On May 16, 2018, newly retained counsel ("Successor Counsel") for John Doe contacted counsel for the University Defendants requesting the proposed Release document in Word format to make revisions.

53. On May 18, 2018, upon consent motion, a text order was entered by the Federal Court this Court substituting Successor Counsel for the Lawyers as counsel of record for John Doe.

54. On May 23, 2018, Successor Counsel submitted revisions to the Release to counsel for the University Defendants.

55. On May 24, 2018, counsel for the University Defendants contended that the revisions materially changed the terms of the Settlement Agreement reached in mediation and in response, the University Defendants moved the Federal Court to enforce the Settlement Agreement.

56. Thereafter, the Does expended substantial funds by way of legal fees and expenses in the Federal Case attempting to void the Settlement Agreement the Lawyers had directed John Doe to sign and oppose its enforcement because of the Lawyers' errors and omissions.

57. The Federal Court's "Redacted Order" upheld and enforced the Settlement Agreement against John Doe, finding the Settlement Agreement terms were clear and unambiguous; and the plain and unambiguous language of the Settlement Agreement did not support the Does' representations the University promised more during the settlement negotiations.

58. The Settlement Agreement:

- a. did not contain the necessary language and terms dedicated to the University's future treatment of John Doe's academic records;
- b. contained language leading to results contrary to what the Lawyers knew were the Does' desires and objectives, which was a key component of the Does' "consideration" to settle;
- c. did not address multiple issues necessary to resolve the underlying dispute with the University; and
- d. did not contain the necessary language addressing the University's ability to disclose any settlement agreement when confronted with a public records information request for same and, if so, whether John Doe's identity would be safeguarded.

59. On January 1, 2019, the Federal Court entered an order by way of minute entry to the docket, requiring the University to make its counsel and an individual with decision-making authority available by telephone for an upcoming mediation in the State Court case, scheduled for March 1, 2019.

60. The Settlement Agreement had a negative impact on the State Case , where the Does have been forced to expend additional funds to litigate that case because of the impact of the Settlement Agreement.

61. On February 28, 2019, the Lawyers sent a letter to the mediator **and counsel for all parties in the State Case and other third parties** asserting a lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of

the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case.

62. On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case's opposing counsel and mediation mediator, interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation, all of which added and continued to cause damages to John Doe.

63. The February 28, 2019, letter from the Lawyers interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation.

64. Thereafter, John Doe expended and continue to spend several hundred-thousands of dollars litigating the State Court case that was not resolved at mediation.

65. Thereafter, John Doe expended several hundred-thousands of dollars litigating the State Court case because John Doe's positions on law and facts in dispute were irreparably damaged by errors and omissions by the Lawyers at the mediation of the Federal Case that directly, proximately and foreseeably caused damage to John Doe's position in the State Case.

66. From February 28, 2019, through the present, the Lawyers have continued to assert a charging lien for legal fees against the Does' settlement proceeds from the University, despite John Doe having terminated the Fee Agreement with the Lawyers for cause, thereby generating additional expenses for John Doe to contest those allegations.

67. As a direct, proximate and foreseeable result of the Lawyers' actions and inactions before and after their being relieved as counsel, Plaintiffs suffered damages,

including loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the Lawyers' actions and inactions.

68. Had the Lawyers met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice John Doe in the State Court mediation and litigation, a substantial portion of the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

69. Had the Lawyers met the fiduciary standard of conduct by properly, accurately or timely attempting to assert an alleged charging lien, a substantial portion of the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

70. As a direct, proximate and foreseeable result of the Lawyers' actions and inactions in the Federal Case and its mediation, the Does suffered damages, including loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm caused by the Lawyers' actions and inactions.

71. Had the Lawyers met the standard of care by properly, accurately or timely advising John Doe before, during and after the Federal Case mediation regarding any terms of the Federal Case mediation, the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

72. Had the Lawyers met the standard of care by properly, accurately or timely advising John Doe before, during and after the Federal Case mediation regarding the interplay of the Federal Case mediation, any settlement of that case and the State Case, the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

73. Mr. Clawson, Ms. Fargnoli, and other lawyers acting in CLAWSON FARGNOLI were Members or Associates of CLAWSON FARGNOLI.

74. The negligent acts, omissions, and liability of CLAWSON FARGNOLI includes its own acts and/or omissions and the acts and omissions of its agents, principals, employees and/or servants, including but not limited to those its Member or Associate lawyers, both directly and vicariously, under principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

75. Upon information and belief, CLAWSON FARGNOLI acted through its employees and agents, including but not limited to its Member or Associate lawyers, who acted within the course and scope of their employment and/or agency with all implied, inherent, apparent and express authority to so bind its Member or Associate lawyers and CLAWSON FARGNOLI as master and principal by any negligent, willful, wanton and reckless actions and/or omissions making CLAWSON FARGNOLI vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

76. Mr. Brewer and other lawyers acting in BREWER LAW FIRM were Members or Associates of BREWER LAW FIRM.

77. The negligent acts, omissions, and liability of BREWER LAW FIRM includes its own acts and/or omissions and the acts and omissions of its agents, principals, employees and/or servants, including but not limited to those its Member or Associate lawyers, both directly and vicariously, under principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

78. Upon information and belief, BREWER LAW FIRM acted through its employees and agents, including but not limited to its Member or Associate lawyers, who acted within the course and scope of their employment and/or agency with all implied, inherent, apparent and express authority to so bind its Member or Associate lawyers and BREWER LAW FIRM as master and principal by any negligent, willful, wanton and reckless actions and/or omissions making BREWER LAW FIRM vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)

79. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

80. A client-lawyer relationship existed between the Does, on the one hand as clients, and the Lawyers, on the other, as the lawyers, regarding all claims and causes of action involving the Federal Case and the State Case.

81. The scope of the Lawyers' representation was to provide legal services, counsel, and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case.

82. The Lawyers owed professional duties to the Does to adequately and competently provide legal services, counsel, and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case.

83. The Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the Does to adequately and competently provide legal services, counsel, and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advance the rights and interests of the Does; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

84. The Lawyers breached professional duties and otherwise failed to meet the minimum standard of care thereby breaching professional duties to the Does by other such particulars as the evidence in this case may demonstrate.

85. As a direct, proximate, and foreseeable result of the Lawyers' professional errors, the Does sustained financial damages.

86. As a direct, proximate, and foreseeable result of the Lawyers' professional errors, the Does sustained additional damages in the form of physical, mental and emotional suffering because of creation or exacerbation of conditions the Lawyers either knew about, should have known about, or could foresee.

87. The Does are entitled to judgment against the Lawyers for all damages, actual and consequential, suffered that were directly, proximately, and foreseeably caused by the Lawyers' negligence in an amount to be proven at the trial of this case.

88. WHEREFORE, the Does pray for judgment on this cause of action against the Lawyers for actual, special, consequential, and incidental damages suffered, pre-judgment interest, and for such other relief as the Court may deem reasonable and proper.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duties)

87. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

88. At all relevant times, a client-lawyer relationship existed between the Does, on the one hand as clients, and the Lawyers, on the other, as the lawyers, regarding all claims and causes of action involving the Federal Case and the State Case.

89. The Lawyers owed fiduciary duties to the Does.

90. The Lawyers' fiduciary duties included the duties of confidentiality and loyalty, and the duty to act single-mindedly in preserving, protecting and advancing the rights and interests of the Does.

91. The Lawyers failed to meet the minimum standard of conduct and acted in a manner establishing a clear and serious breach of their fiduciary duties of confidentiality and loyalty when the Lawyers disclosed information related to their representation of the Does to counsel for the opposing parties (and others) without the Does' consent.

92. The Lawyers failed to meet the minimum standard of conduct and thereby breached their fiduciary duties to the Does in such other particulars as the evidence in this case may demonstrate.

93. The Lawyers' acts and omissions in breach of his fiduciary duties to the Does were a substantial factor in causing financial harm to the Does, and as such the

Does are entitled to recover actual damages, consequential damages, incidental damages, and pre-judgment interest, all in an amount to be more specifically proven at trial.

94. As a direct and proximate result of the Lawyers' carelessness, recklessness, and utter disregard of their fiduciary duties the Does are entitled to recover punitive damages from the Lawyers.

95. Based on clear and serious breach of their fiduciary duties, and because Lawyers knew of these duties and their various breaches of the same, the Lawyers should be ordered to disgorge any legal fees obtained while in derogation of their duties and forfeit their claims to additional legal fees and other benefits.

96. WHEREFORE, the Does pray for judgment on this cause of action against the Lawyers for actual, consequential, and incidental damages suffered, pre-judgment interest, for punitive damages, for disgorgement of legal fees and other benefits obtained by Defendants, forfeiture of their claims for additional legal fees, and such other relief as the Court may deem reasonable and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)
(Against the Law Firms)

97. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

98. Law Firms entered into a Contract with the Does agreeing and contracting to provide legal services to represent the Does in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

99. Law Firms breached the contract by failing to provide such services.

100. The Does satisfied all necessary preconditions, if any, and performed their part of the contract, and/or was, at the appropriate time, able, ready, and willing to perform.

101. As a direct and proximate result of the Law Firms' breach of their contractual duties, the Does sustained actual, consequential and incidental damages in an amount to be determined by the jury at the trial of this case.

WHEREFORE, the Does pray for judgment on this cause of action against the Law Firms for actual, special, consequential and incidental damages suffered, pre-judgment interest, and such other relief as the Court may deem reasonable and proper.

TRIAL BY JURY

102. The Does request and demand a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

103. Under S.C. CODE ANN. § 15-36-100(B), included with the filing of this Amended Complaint and marked as Exhibit 1 is the affidavit of Justin Dillon, Esq., an expert witness and lawyer with experience in litigating Title IX matters, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, John Doe, Jane Doe Mother, and John Doe Father, pray for judgment against Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fargnoli, Esq; Barrett R. Brewer, Esq., and BREWER LAW FIRM, LLC, for all actual damages, consequential damages, and incidental damages; punitive damages,

and prejudgment interest, all in an amount to be more specifically proven at trial, together with the costs of this action and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

April 30, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John
Doe Father,

Plaintiffs,

vs.

**EXPERT AFFIDAVIT BY
JUSTIN DILLON, ESQ.**

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fagnoli,
Esq; Barrett R. Brewer, Esq.; and
BREWER LAW FIRM, LLC,

Defendants.

WASHINGTON,
DISTRICT OF COLUMBIA

)
) SS:
)

1. It is my expert opinion, held to a reasonable degree of professional certainty based upon my review of available evidence and the Complaint, that the Lawyers at the defendant Law Firms, as defined below, committed at least one act of professional negligence proximately causing damage to the Plaintiffs as more particularly set forth below.

2. Defendants Samuel R. Clawson, Jr., Esq. and Christina R. Fagnoli, Esq. were practicing law at the relevant times under the auspices of CLAWSON FARGNOLI, LLC. Defendant, Barrett R. Brewer, Esq. was practicing law at the relevant times under the auspices of BREWER LAW FIRM, LLC.

3. Mr. Clawson, Ms. Fagnoli, and Mr. Barrett will be referred to collectively as “the Lawyers.” CLAWSON FARGNOLI, LLC and BREWER LAW FIRM, LLC will be referred to as “the Law Firms.”

4. The Lawyers jointly represented Plaintiffs in Doe v. Clemson University et al., 8:16-cv-01957-DCC (D.S.C.). The lawsuit accused the Defendants of violating Plaintiff John Doe’s rights under Title IX of the Educational Amendments of 1972, the Due Process Clause of Fourteenth Amendment to the U.S. Constitution, and other state laws.

5. The Lawyers had, among other duties, professional duties as lawyers representing Plaintiffs to, among other things, protect the interests of Plaintiffs, provide competent representation, including, but not limited to:

- a. Provide competent advice and representation;
- b. Use the legal knowledge, skill, thoroughness, and preparation reasonably necessary in the circumstances;
- c. Maintain the standard of care, which required the Lawyers to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the legal profession; and
- d. Otherwise act to protect Plaintiffs’ interests.

6. The Lawyers failed to perform their duties and were professionally negligent in multiple ways, including but not limited to:

- a. Accepting a monetary settlement from Clemson University that contained no provision for cleaning up Mr. Doe’s disciplinary record regarding the sexual misconduct and related findings that Clemson

had made against him. I am not aware of any Title IX lawyer who believes that one files these lawsuits simply for money. What matters most, and certainly matters more than money, is cleaning up the student's disciplinary record. It is inconceivable to me that the attorneys who settled this case would have done so for only an amount of money (\$100,000.00) that, I suspect, constituted just a fraction of the Plaintiffs' actual litigation costs.

- b. Moreover, as far as I am aware, the original negative finding against Mr. Doe was never struck from Clemson's records, so there was no need to agree that it would be "reinstated," as the settlement agreement did. One need not reinstate something that was never "de-instated." So it was all the more strange to see that not only would the Lawyers fail to secure a *clean* record, but that they would affirmatively agree to a *dirty* one. It is the equivalent of steering the Titanic into the iceberg in exchange for free gas.
- c. Any attorney who practices in the Title IX area would be well aware of the downstream implications of a sexual misconduct finding and the paramount importance of a clean disciplinary record. Many schools to which a student might transfer will ask if he has ever been disciplined, as will most graduate or professional schools to which he applies. Moreover, there could be future professional-licensing implications of a negative finding for anyone who is interested in practicing medicine, law, or the like. My understanding is that Mr.

Doe hopes to practice medicine and that the Lawyers knew that at the time—and that, indeed, they knew that safeguarding those hopes was the reason Plaintiffs sued in the first place. So the harm of a sexual misconduct finding to a future doctor or lawyer is potentially even worse than it is to a student who does not intend to pursue one of the professions—which is all the more reason why settling solely for money made so little sense in this case.

- d. Moreover, schools will often agree to clean up a student's record during settlement negotiations. Schools, like courts, can vacate and expunge disciplinary findings.
- e. It is particularly striking that the Lawyers settled the case without cleaning up Mr. Doe's disciplinary record given that Plaintiffs sent them a five-page, single-spaced written document, entitled "Mediator Proposed Mediation Terms," that contemplated exactly what such a resolution would look like. The Lawyers appear to have ignored virtually that entire document and settled only for money—and, incredibly, for an amount of money that was a mere 25% of the \$400,000 contemplated in the document.

7. For the reasons I have explained above, the available evidence indicates that the Lawyers were negligent, failed to meet the standard of care, and thereby breached their professional duties to Plaintiffs, by, among other things, failing to provide competent representation, including, but not limited to, each of the acts or omissions identified above.

8. For the reasons I have explained above, the available evidence indicates Plaintiffs accepted and followed the advice provided by the Lawyers, and also would have accepted and followed the appropriate advice from the Lawyers that should have been reasonably provided by the Lawyers to meet the standard of care and thereby satisfy the Lawyers' professional and fiduciary duties.

9. It is my opinion based upon the available evidence, that as a direct and proximate result of the Lawyers' acts and omissions, Plaintiffs missed a crucial opportunity to clean up Mr. Doe's disciplinary record, which will likely have serious personal, professional, and financial consequences for his future.

10. In my opinion, had the Lawyers met the standard of care, more likely than not, Plaintiffs would not have suffered these losses.

11. I am a lawyer licensed to practice law in the Commonwealth of Virginia (since 2002) and the District of Columbia (since 2007). I have also been admitted to practice in the United States District Court for the Eastern District of Virginia, the United States District Court for the District of Columbia, the United States District Court for the Central District of Illinois, the United States District Court for the Eastern District of Michigan, the United States District Court for the Northern District of Ohio, the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court.

12. I have gained nationwide attention for my work representing students and professors in Title IX and other campus misconduct cases, which my firm and I have handled at more than 100 schools across the country. I was the first lawyer in the country to win summary judgment against a university in a campus sexual misconduct case in the

modern era, which I did against George Mason University in 2016. I have settled numerous lawsuits and potential lawsuits against colleges nationwide. Along with my partner Matt Kaiser, I am the author of *The KaiserDillon PLLC Guide to Representing Yourself in a Campus Sexual Assault Case*. I have been published or quoted regarding campus sexual misconduct issues in more than a dozen national newspapers and magazines, including *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Philadelphia Inquirer*, *National Review*, *The Nation*, and *The Weekly Standard*. I have also spoken on these issues before organizations such as the American Bar Association, the Association of Title IX Administrators, Harvard Law School, the University of Kentucky's Center for Research on Violence Against Women, the Higher Education Consultants Association, the District of Columbia Bar, the Virginia State Bar, and the Colorado Bar Association. Immediately before joining KaiserDillon PLLC, I spent five and a half years as an Assistant United States Attorney in Washington, DC, where I led more than 100 Grand Jury investigations, tried more than 60 criminal cases, and handled more than a dozen appeals. Earlier in my career, I worked at the Civil Rights Division of the U.S. Department of Justice. I am a Georgia native and a graduate of Duke University and Harvard Law School.

13. My resume is attached as Exhibit 1.
14. I have been retained by Thomas A. Pendarvis with PENDARVIS LAW OFFICES, P.C. as an expert witness in this matter.
15. In rendering my opinion, I have reviewed the following materials:
 - a. 06/15/16 – Plaintiff John Doe's Complaint, Doe v. Clemson University et al.

- b. 07/19/16 – Defendants’ Answer, Doe v. Clemson University et al.
- c. 06/15/17 – Summons and Complaint, Doe v. Doe et al., 2017 CP 39-0709 (S.C. Ct. Com. Pl.).
- d. 11/17/17 – Defendant Jane Doe and Richard Doe’s Answer and Defenses, Doe v. Doe et al.
- e. 11/08/17 – Defendant Charles Doe’s Answer, Doe v. Doe et al.
- f. 03/08/18 – Mediator Proposed Settlement Terms
- g. 03/21/18 – Settlement Agreement, Doe v. Clemson University et al.
- h. 05/24/18 – Motion to Enforce Settlement Agreement, Doe v. Clemson University et al.
- i. 02/28/19 – Letter Re: Pampu v. Clemson University, et al. and Pampu v. Wingo, et al.
- j. 03/27/19 – Opinion and Order, Doe v. Clemson University et al.
- k. 03/29/19 – Letter Re: Pampu v. Clemson University, et al. and Pampu v. Wingo, et al.
- l. 07/01/19 – Settlement Agreement and Release, Doe v. Clemson University et al.
- m. 03/19/21 – Summons, Doe v. Clawson Fargnoli LLC et al., 2021 CP 10-01343

The Affiant further sayeth naught.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



Justin Dillon, KAISERDILLON PLLC, Affiant

Exhibit 1

JUSTIN DILLON

1099 14th St. NW, 8th Floor West
Washington, DC 20005

(202) 421-5298
jdillon@kaiserdillon.com

EXPERIENCE

Partner, KaiserDillon PLLC, Washington, DC, 2014 to present

- Handle wide variety of white-collar criminal, campus disciplinary, and civil litigation matters.

Assistant U.S. Attorney, U.S. Attorney's Office for the District of Columbia, Washington, DC, 2008-2014

- Conducted 22 jury trials and more than 40 bench trials on wide array of criminal charges ranging from homicide to deceptive labeling to perjury and obstruction of justice.
- Conducted more than 100 Grand Jury investigations into homicides and other major crimes.
- Drafted more than a dozen briefs and argued appeals in both D.C. Court of Appeals and D.C. Circuit.

Associate, Harris, Wiltshire & Grannis LLP, Washington, DC, 2006-2008

Assistant, Reveille LLC, Los Angeles, CA, 2005-2006

- Worked at television production company responsible for shows such as *The Office*, *The Biggest Loser*, *Ugly Betty*, *Nashville Star*, and *30 Days*.

Trial Attorney, Attorney General's Honors Program

Housing & Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, Washington, DC, 2003-2005

- Served as co-lead counsel in first lawsuit filed by the Housing Section under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and investigated numerous RLUIPA cases nationwide.
- Investigated Fair Housing Act violations related to race, sex, religious, and disability discrimination.

Law Clerk to The Honorable David M. Ebel, U.S. Court of Appeals for the Tenth Circuit, Denver, CO, 2002-2003

EDUCATION

Harvard Law School, Cambridge, MA, J.D., 2002

Honors: Editor, *Harvard Law Review*
Captain, Winning Team, Ames Moot Court Competition
Best Brief Award, Final, Semifinal, and First Year Rounds, Ames Moot Court Competition
Recipient, Dean's Award for Community Leadership
Recipient, Heyman Fellowship

Activities: Teaching Assistant, Professor Laurence H. Tribe, Constitutional Law

Publications: Note, *Gone with the Wind Done Gone*: "Re-writing" and Fair Use, 115 *Harvard Law Review* 1193 (2002); Case Comment, First Amendment Law, *Bartnicki v. Vopper*, 121 S. Ct. 1753 (2001), 115 *Harvard Law Review* 406 (2001); Recent Case, Copyright Law, *Worldwide Church of God v. Philadelphia Church of God*, 227 F.3d 1110 (9th Cir. 2000), 114 *Harvard Law Review* 1807 (2001)

Duke University, Durham, NC, A.B. English, *magna cum laude*, 1996

Honors: Editor-in-chief, *The Chronicle* (daily student newspaper, circulation 15,000), 1995-96
William J. Griffith Award for University Service, 1996
Finalist, Rhodes Scholarship, 1995

ORGANIZATIONS: Former Chair, D.C. Bar CLE Committee; Edward Bennett Williams Inn of Court; John Carroll Society; Board of Directors, Families Advocating for Campus Equality; Trial Advocacy Instructor, Harvard Law School

RECOGNITION: Chambers-rated in White Collar Crime & Government Investigations in Washington, DC; Superlawyers; Best Lawyers in America; Washingtonian's Best Lawyers—Criminal Defense

BAR MEMBERSHIP: Commonwealth of Virginia; District of Columbia

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

John Doe; Jane Doe Mother; and
John Doe Father,

Plaintiffs,

v.

Clawson Fagnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fagnoli, Esq.;
Barret R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

**NOTICE OF MOTION AND
MOTION TO DISMISS**

Pursuant to South Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(6) and South Carolina Code § 15-36-100, Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (“Defendants”) move to dismiss all claims brought by Plaintiffs John Doe, Jane Doe Mother, and John Doe Father (“Plaintiffs”) in this matter.

GROUND FOR MOTION

1. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiffs’ claims should be dismissed for failure to state a claim upon which relief can be granted.

2. Pursuant to South Carolina Rule of Civil Procedure 12(b)(1), the claims of Plaintiffs Jane Doe Mother and Jane Doe Father should be dismissed for lack of subject matter jurisdiction. Specifically, Plaintiffs Jane Doe Mother and Jane Doe Father lack standing to assert the claims set forth in the Amended Complaint, and as such, their claims should be dismissed.

3. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100, Plaintiffs’ claims should be dismissed because they failed to timely provide

the required expert witness affidavit. Specifically, when Plaintiffs filed their original Complaint against Defendants, they failed to contemporaneously file an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim on the available evidence at the time of the filing of the affidavit as required by South Carolina Code § 15-36-100(B). Accordingly, Plaintiffs' claims against Defendants should be dismissed pursuant to South Carolina Code § 15-36-100(C)(1) for failure to state a claim.

4. To the extent that Plaintiffs have now filed a tardy affidavit following the filing of their original Complaint, Plaintiffs' claims should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100 because the exceptions to contemporaneously filing an expert witness affidavit found in § 15-36-100(C)(1) do not apply based on the facts and circumstances of this matter. Specifically, Plaintiffs did not show that the statute of limitations would expire on the claims in the original Complaint within ten (10) days of filing, and Plaintiffs did not allege that an affidavit of an expert could not be prepared due to time constraints. Therefore, Plaintiffs' claims against Defendants should be dismissed.

5. The claims set forth in Plaintiffs' Amended Complaint should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100(A)(3) due to the insufficiency of the credentials of Plaintiffs' purported expert, Justin Dillon. Although Mr. Dillon purports to offer opinions about the actions of South Carolina attorneys involved in litigation pending in federal court in South Carolina, Mr. Dillon is not, and apparently has never been, licensed to practice in the state and federal courts of South Carolina or the U.S. District Court for the Fourth Circuit Court of Appeals. Further, Mr. Dillon makes no claim in his affidavit that he has ever been specially admitted to practice *pro hac vice* in any state or federal court in South Carolina. Further, in his affidavit, Mr. Dillon makes no claim of

familiarity with the nature of federal practice in the U.S. District Court for the District of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina (including, but not limited to, the South Carolina state ADR Rules). Finally, Mr. Dillion notes in his affidavit that he has reviewed only scant materials related to the underlying federal and state litigation at issue (indicating that his review of materials is insufficient to render any opinions in this matter). As such, Mr. Dillon's credentials and affidavit are insufficient. For the same reasons, pursuant to South Carolina Code § 15-36-100(E), Mr. Dillon's affidavit is defective, and as such, Plaintiffs' claims set forth in the Amended Complaint should be dismissed.

6. Pursuant to South Carolina Rule of Civil Procedure 12(b)(1) and 12(b)(6), the claims of Plaintiff Jane Doe Mother and Plaintiff John Doe Father should be dismissed for lack of standing. Specifically, neither Plaintiff Jane Doe Mother nor Plaintiff John Doe Father were parties to the federal litigation brought by Plaintiff John Doe in the U.S. District Court for the District of South Carolina or the state court litigation brought by Plaintiff John Doe. Further, neither Plaintiff Jane Doe Mother nor Plaintiff John Doe Father signed the memorandum of understanding generated at the mediation in the federal litigation that serves as the primary basis for the claims asserted by Plaintiffs in this matter. Thus, Plaintiff Jane Doe Mother and Plaintiff John Doe Father lack standing to pursue the claims asserted against Defendants in this matter. For the same reasons, they fail to state a claim upon which relief can be granted in this matter.

7. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted because the gravamen of Plaintiffs' Amended Complaint is simply post-mediation "buyer's remorse." Plaintiff John Doe participated in a formal mediation in the federal litigation referenced in the

Amended Complaint and personally signed a memorandum of settlement agreeing to the terms of a settlement to which he now objects. As such, Plaintiffs fail to state a claim upon which relief can be granted.

CONCLUSION

For these reasons, Defendants respectfully request that this Court grant their motion.

Respectfully Submitted,

May 9, 2021

/s/ James M. Dedman, IV

James M. Dedman, IV (S.C. Bar No. 70664)

GALLIVAN, WHITE, & BOYD, P.A.

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Samuel R. Clawson, Jr., Esq., and

Christina R. Fagnoli, Esq.

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

John Doe; Jane Doe Mother; and
John Doe Father,

Plaintiffs,

v.

Clawson Fargnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fargnoli, Esq.;
Barret R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

**NOTICE OF MOTION AND MOTION TO
PROHIBIT PLAINTIFFS FROM USING
PSEUDONYMS**

Pursuant to South Carolina Rules of Civil Procedure 10(a) and 17(a), Defendants Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fargnoli, Esq. (“Defendants”) move to prohibit Plaintiffs John Doe, Jane Doe Mother, and John Doe Father (“Plaintiffs”) from using pseudonyms in this litigation. For the reasons set forth below, the Court should grant the Motion and require Plaintiffs to proceed in their proper true names.

GROUND FOR MOTION

1. On March 19, 2021, Plaintiffs filed this litigation under fictitious and/or pseudonymous names but elected to identify each of the five defendants by their true names. In footnote one to the original and Amended Complaint, Plaintiffs note that “[d]ue to the subject matter of these underlying cases, information in this Complaint will refer only to John Doe, Jane Doe Mother, and John Doe Father by those pseudonyms or will be otherwise redacted to preserve John Doe’s anonymity.” However, in one of those “underlying cases,” Plaintiff John Doe is litigating his claims under his own true name. In that underlying state court action

pending in South Carolina, Plaintiff John Doe is prosecuting the underlying claims at issue under his own true name and has been doing so for nearly two years. In fact, in September of 2019, the trial court in the underlying case specifically rejected Plaintiff John Doe's request to proceed under a pseudonym based upon the very same set of operative facts. Thus, there is no basis for any plaintiff to litigate this case under fictitious, anonymous, or pseudonymous names. This Court should disallow Plaintiffs from using pseudonyms for themselves in this action.

2. In South Carolina, there is a presumption of openness in judicial proceedings. South Carolina Rule of Civil Procedure 10(a) mandates that the summons and complaint "shall include the names of all parties" Further, South Carolina Rule of Civil Procedure 17(a) requires that "[e]very action shall be prosecuted in the name of the real party in interest." The exceptions to these rules in *Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2005) simply do not apply to permit Plaintiffs to conceal their identities from the public in this matter. Here, Defendants will suffer great prejudice if Plaintiffs are permitted to litigate under pseudonyms (particularly when Plaintiff John Doe is simultaneously litigating the underlying facts under his own name in another county in this state).

3. Plaintiffs have waived any claim to litigate under fictitious and/or pseudonymous names because their own expert, Justin Dillon, disclosed sufficient information to identify Plaintiffs in his publicly filed expert affidavit (including Plaintiffs' surname). On April 30, 2021, Plaintiffs filed an Amended Complaint along with an affidavit of their purported expert, Mr. Dillon. On page seven of that affidavit, Mr. Dillon thrice disclosed the surname of Plaintiffs and also provided the cause number of the underlying litigation in which Plaintiff John Doe is litigating the underlying claims under his own true name. As such, by filing this expert affidavit, Plaintiffs have already disclosed their own surnames and sufficient information to enable any

individual to locate the underlying litigation in which Plaintiff John Doe is litigating under his own name. Thus, there is no basis to permit Plaintiffs to continue using fictitious or pseudonymous names.

4. Defendants anticipate issuing a number of subpoenas to third parties and taking a number of depositions of third parties in this litigation. However, Defendants' ability to litigate this matter and defend themselves will be prejudiced if they are unable to issue proper subpoenas because of the fictitious and/or pseudonymous names utilized by Plaintiffs in this matter.

5. For the foregoing reasons, Plaintiffs should be prohibited from using any fictitious and/or pseudonymous names when prosecuting their claims in this litigation.

CONCLUSION

Defendants respectfully request that this Court prohibit Plaintiffs from using pseudonyms in this action and order Plaintiffs to file amended pleadings in their true names. Defendants further request that this Court deny Plaintiffs' March 19, 2021 motion to seal.

Respectfully Submitted,

May 9, 2021

/s/ James M. Dedman, IV
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 Samuel R. Clawson, Jr., Esq., and
 Christina R. Fagnoli, Esq.*

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

JOHN DOE; JANE DOE MOTHER; and
JOHN DOE FATHER,

Plaintiffs,

v.

CLAWSON FARGNOLI, LLC;
SAMUEL R. CLAWSON, JR., ESQ.;
CHRISTINA R. FARGNOLI, ESQ.;
BARRET R. BREWER, ESQ.; and
BREWER LAW FIRM, LLC,

Defendants.

**NOTICE OF MOTION AND
MOTION TO DISMISS**

Pursuant to South Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(6) and South Carolina Code § 15-36-100, Defendants Barrett R. Brewer and Brewer Law Firm, LLC ("Defendants") move to dismiss all claims brought by Plaintiffs John Doe, Jane Doe Mother, and John Doe Father ("Plaintiffs") in this matter.

GROUND FOR MOTION

1. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted.
2. Pursuant to South Carolina Rule of Civil Procedure 12(b)(1), the claims of Plaintiffs Jane Doe Mother and Jane Doe Father should be dismissed for lack of subject matter jurisdiction. Specifically, Plaintiffs Jane Doe Mother and Jane Doe Father lack standing to assert the claims set forth in the Complaint, and as such, their claims should be dismissed.

3. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100, Plaintiffs' claims should be dismissed because they failed to timely provide the required expert witness affidavit. Specifically, when Plaintiffs filed their Complaint against Defendants, they failed to contemporaneously file an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim on the available evidence at the time of the filing of the affidavit as required by South Carolina Code § 15-36-100(B). Accordingly, Plaintiffs' claims against Defendants should be dismissed pursuant to South Carolina Code § 15-36-100(C)(1) for failure to state a claim.

4. Plaintiffs have now filed a tardy affidavit following the filing of their original Complaint, such that Plaintiffs' claims should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100 because the exceptions to contemporaneously filing an expert witness affidavit found in § 15-36-100(C)(1) do not apply based on the specific facts and circumstances of this matter. Specifically, Plaintiffs have not shown the statute of limitations will expire on the claim set forth in the Complaint within ten (10) days of filing, and Plaintiffs did not allege that an affidavit of an expert could not be prepared due to time constraints. Therefore, Plaintiffs' claims against Defendants should be dismissed.

5. Plaintiffs' expert affidavit is deficient because the expert is not licensed in South Carolina and the affidavit fails to comply with S.C. Code Ann. § 15-36-100(B) as a matter of law.

6. Pursuant to South Carolina Rule of Civil Procedure 12(b)(1) and 12(b)(6), the claims of Plaintiff Jane Doe Mother and Plaintiff John Doe Father should be dismissed

for lack of standing. Specifically, neither Plaintiff Jane Doe Mother nor Plaintiff John Doe Father were parties to the federal litigation brought by Plaintiff John Doe in the U.S. District Court for the District of South Carolina or the state court litigation brought by Plaintiff John Doe in the Pickens County Court of Common Pleas. Further, neither Plaintiff Jane Doe Mother nor Plaintiff John Doe Father were signatories to the memorandum of understanding generated at the mediation in the federal litigation that serves as the primary basis for the claims asserted by Plaintiffs in this matter. Accordingly, Plaintiff Jane Doe Mother and Plaintiff John Doe Father lack standing to pursue the claims asserted against Defendants in this matter. For the same reasons, they fail to state a claim upon which relief can be granted in this matter.

7. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted because the gravamen of Plaintiffs' complaint is simply post-mediation "buyer's remorse." Plaintiff John Doe participated in a formal mediation in the federal litigation referenced in the Complaint and personally signed a memorandum of settlement agreeing to the terms of a settlement to which he now objects. As such, Plaintiffs fail to state a claim upon which relief can be granted.

8. Alternatively, Plaintiff's second cause of action for breach of fiduciary duty should be dismissed pursuant to Rule 12(b)(6), because it is duplicative of the first cause of action.

CONCLUSION

For these reasons, Defendants respectfully request that this Court grant their motion.

s/ Bruce Wallace

R. Bruce Wallace, SC Bar No. 11653

NEXSEN PRUET, LLC

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Attorneys for Defendants

Barrett R. Brewer and Brewer Law Firm, LLC

May 10, 2021

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

JOHN DOE; JANE DOE MOTHER; and
JOHN DOE FATHER,

Plaintiffs,

v.

CLAWSON FARGNOLI, LLC;
SAMUEL R. CLAWSON, JR., ESQ.;
CHRISTINA R. FARGNOLI, ESQ.;
BARRET R. BREWER, ESQ.; and
BREWER LAW FIRM, LLC,

Defendants.

**NOTICE OF MOTION AND MOTION TO
UNMASK PLAINTIFFS USING
PSEUDONYMS**

Pursuant to South Carolina Rules of Civil Procedure 10(a) and 17(a), Defendants Barrett R. Brewer and the Brewer Law Firm, LLC ("Defendants") move to ban Plaintiffs John Doe, Jane Doe Mother, and John Doe Father ("Plaintiffs") from using aliases or pseudonyms in this litigation. For the reasons set forth below, and based in part on the Order of the Circuit Court dated September 4, 2019, attached as Exhibit 1 to this Motion¹, the Court should grant the Motion and require Plaintiffs to proceed in their proper true names.

GROUND FOR MOTION

1. On March 19, 2021, Plaintiffs commenced this action by filing a summons and complaint using fictitious aliases or pseudonyms.² However, Plaintiffs elected to sue

¹ The 2019 Order unmasking Plaintiff John Doe has been redacted pursuant to Rule 41.2 of the South Carolina Rules of Civil Procedure. Plaintiff John Doe did not appeal that Order unmasking him.

² As of the date of this Motion, Plaintiffs have not served the Summons and Complaint on Defendant Brewer or his law firm.

each of the five defendants by their true names. In footnote 1 to the initial complaint and the Amended Complaint, Plaintiffs note that “[d]ue to the subject matter of these underlying cases, information in this Complaint will refer only to John Doe, Jane Doe Mother, and John Doe Father by those pseudonyms or will be otherwise redacted to preserve John Doe’s anonymity.” However, in the state court action, which is one of those “underlying cases,” Plaintiff John Doe is prosecuting the action in his own true name, and has been doing so for almost two years. In September of 2019, the trial court judge in that state court action specifically rejected Plaintiff John Doe’s request to proceed under an alias based upon the very same set of operative facts. Plaintiffs have alleged Defendants’ “were negligent ... in the manner in which they prosecuted the state court action”. Am. Complaint, ¶ 1. Accordingly, there is no basis for any plaintiff in this action to litigate this matter under fictitious aliases, anonymous names, or pseudonyms. Accordingly, this Court should ban Plaintiffs from using aliases or pseudonyms for themselves in this action.

2. In South Carolina, civil actions proceed under a presumption of openness. Rule 10(a) of the South Carolina Rule of Civil Procedure mandates that the summons and complaint “shall include the names of all parties” Further, South Carolina Rule of Civil Procedure 17(a) requires that “[e]very action shall be prosecuted in the name of the real party in interest.” The factors set forth in *Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2005) simply do not apply, and the Court should not permit Plaintiffs to conceal their identities from the public in this matter. Here, Defendants will suffer prejudice and unfairness if Plaintiffs litigate this action under aliases or pseudonyms,

particularly when Plaintiff John Doe is simultaneously litigating the underlying facts under his own name.

3. This action arises out of accusations that Plaintiff John Doe engaged in a “sexual encounter ... while [the victim] was incapacitated due to intoxication” while Plaintiff John Doe was a student at Clemson University. See Exhibit 1 at 1. Plaintiff sued his accuser for slander in an action filed in the Court of Common Pleas for Pickens County. In 2019, the circuit court denied Plaintiff John Doe’s request to proceed anonymously against his accuser. Because Plaintiff John Doe is prosecuting the action in state court without aliases or pseudonyms, this case, which allegedly arises out of negligent representation in that state court action, should similarly be prosecuted in the Plaintiffs’ real names.

4. Plaintiffs’ own proposed expert witness’s affidavit identifies John Doe Plaintiff by last name, identifies the underlying state court action by case number, and identifies Plaintiff John Doe’s accuser by name. Specifically, Dillon identified the subparagraphs of Paragraph 15 of the Affidavit of Justin Dillon, filed April 30, 2021, identify Plaintiff John Doe by last name and identify the underlying action in which the circuit court unmasked Plaintiff John Doe:

- Subparagraph 15.c. – “... Summons and Complaint, ... 2017 CP 39-0709 (S.C.Ct.Com. Pl.)” (emphasis added);
- Subparagraph 15.i. – “... Letter Re: Pampu v. Clemson University, et al. and Pampu v. Wingo, et al.”; and
- Subparagraph 15.k. – “... Letter Re: Pampu v. Clemson University, et al. and Pampu v. Wingo, et al.”

As a result of publication of their names in this action, Plaintiffs have waived any potential privacy claims they may have.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court ban Plaintiffs from using aliases, fictitious names, pseudonyms, or other anonymous monikers in this action and order Plaintiffs to file and serve amended pleadings in their true names.

s/ Bruce Wallace

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Attorneys for Defendants
BARRETT R. BREWER and
BREWER LAW FIRM, LLC

May 10, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: [REDACTED]

[REDACTED],
 v.
 [REDACTED]
 [REDACTED],
 Defendants.

**ORDER DISALLOWING PLAINTIFF
 FROM USING PSEUDONYMS
 FOR HIMSELF, JANE DOE,
 AND RICHARD DOE**

This matter came before this Court on Defendant's Jane Doe ([REDACTED]) and Richard Doe ([REDACTED]), motion for an Order disallowing Plaintiff John Doe ([REDACTED]) from using pseudonyms in this action. A hearing was held on August 9, 2019. Appearing on behalf of the Plaintiff, John Doe, was Chad Graham, Esquire, and appearing for the Defendants Jane Doe and Richard Doe, was Susan O. Porter, Esquire, as well as Bill Coates, Esquire, appearing on behalf of behalf of Defendant Charles Doe.

FACTS

On, June 15, 2017, the Plaintiff, [REDACTED], brought this action against [REDACTED] and [REDACTED] for Defamation and Civil Conspiracy. The legal claims in this suit and others relate to an October 24, 2015, sexual encounter between [REDACTED] and [REDACTED], while [REDACTED] was incapacitated due to intoxication. At the time of the encounter, both [REDACTED] and [REDACTED] were students enrolled in [REDACTED] University ("[REDACTED]"). Shortly after the sexual encounter, a Title IX investigation was initiated and on February, 26, 2016, [REDACTED]'s five person Administrative Hearing Board conducted a formal hearing. Subsequent to the hearing, on February 29, 2016, [REDACTED] issued a written determination that [REDACTED] was in violation of the student code of conduct by a

preponderance of the evidence, specifically for: (1) sexual misconduct, (2) harm to person, (3) disorderly conduct, and (4) alcohol. [REDACTED] filed two appeals both of which were denied by [REDACTED]'s administration.

When [REDACTED] brought this civil action in the Pickens County Court of Common Pleas in June 2017, he filed an Ex Parte Motion to Proceed Under Pseudonym and For Protective Order. Even though he never obtained an Order from the Court granting that Motion, this matter has proceeded under the names, John Doe for [REDACTED], Jane Doe for [REDACTED], Richard Doe for [REDACTED], and Charles Doe for [REDACTED].

LAW

In Doe v. Howe, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2004), the South Carolina Court of Appeals set forth the factors to be considered in determining whether a party should be allowed to proceed anonymously. In Howe, the Court of Appeals recognized that "there is a presumption of openness of judicial proceedings." Id. at 218, 357. When considering whether a party should be allowed to proceed anonymously, the court should consider the following factors:

- (1) Whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature;
- (2) Whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties;
- (3) The ages of the persons whose privacy interests are sought to be protected;
- (4) Whether the action is against a governmental or private party; and

- (5) The risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Id., (quoting James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993)). The Court of Appeals also pointed out in Howe that the better approach for a trial court to use when considering a motion to proceed anonymously is one which avoids a rigid, formulaic application of the listed factors, and instead allows the trial court a degree of flexibility in this fact-sensitive area. Id., at 217.

During the hearing, [REDACTED] argued that the Court should not focus on applying the factors set out in Howe and asked the Court to consider applying similar standards used by the Second Circuit Court of Appeals and the Ninth Circuit Court of Appeals. Both of the Plaintiff's suggested standards included substantially the same list of factors as those set out in Howe. Ultimately, [REDACTED] failed to establish any of the factors which would support proceeding in this matter under pseudonyms.

CONCLUSION

After hearing the arguments of both parties, and for the reasons stated above, it is therefore ORDERED, ADJUDGED, and DECREED that [REDACTED] Ex Parte Motion to Proceed Under Pseudonym and For Protective Order is DENIED and [REDACTED] and [REDACTED]'s Motion to Disallow Plaintiff from Using Pseudonyms is GRANTED.

IT IS SO ORDERED.

The Honorable [REDACTED]
13th Judicial Circuit

August __, 2019
Columbia, South Carolina



Pickens Common Pleas

Case Caption: John Doe VS Jane Doe , defendant, et al

Case Number: [REDACTED]

Type: Order/Other

So Ordered

s/ [REDACTED]

Electronically signed on 2019-09-04 13:46:36 page 4 of 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John
Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fargnoli,
Esq; Barrett R. Brewer, Esq., and
BREWER LAW FIRM, LLC,

Defendants.

ACCEPTANCE OF SERVICE

Pursuant to Rule 4(j), SCRCP, the undersigned, as counsel for Defendants, Samuel R. Clawson, Jr., Esq., Christina R. Fargnoli, Esq., and CLAWSON FARGNOLI, LLC, hereby accepts service of the SUMMONS, COMPLAINT, AMENDED SUMMONS, and AMENDED COMPLAINT in the above-captioned matter effective May 13, 2021.

Respectfully submitted,

GALLIVAN WHITE & BOYD, P.A.

s/ James M. Dedman, IV
James M. Dedman, IV (SC Bar # 70664)
6805 Morrison Blvd., Suite 200
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Charlotte, North Carolina
May 13, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John
Doe Father,

Plaintiffs,

vs.

ACCEPTANCE OF SERVICE

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fagnoli,
Esq; Barrett R. Brewer, Esq., and
BREWER LAW FIRM, LLC,

Defendants.

Pursuant to Rule 4(j), SCRCP, the undersigned, as counsel for Defendants, Barrett R. Brewer and BREWER LAW FIRM, LLC, hereby accepts service of the SUMMONS, COMPLAINT, AMENDED SUMMONS, and AMENDED COMPLAINT in the above-captioned matter effective May 13, 2021.

Respectfully submitted,

NEXSEN PRUET, LLC

s/ R. Bruce Wallace
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Charleston, South Carolina

May 13, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John
Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fagnoli,
Esq; Barrett R. Brewer, Esq., and
BREWER LAW FIRM, LLC,

Defendants.

SECOND AMENDED SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office, PENDARVIS LAW OFFICES, P.C., 710 Boundary Street, Unit A-1, Beaufort, SC 29902-4188, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
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Counsel for Plaintiffs

Beaufort, South Carolina

June 16, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John
Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fagnoli,
Esq; BREWER LAW FIRM, LLC; and Barrett
R. Brewer, Esq.,

Defendants.

**SECOND AMENDED COMPLAINT
(Jury Trial Demanded)**

1. Professional Negligence
2. Breach of Fiduciary Duty
3. Breach of Contract

Plaintiffs, John Doe; Jane Doe Mother; and John Doe Father, (collectively “the Does”), complaining of Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (collectively “the Lawyers”), respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case seeks recovery of damages caused by the Lawyers’ errors during their representation of the Does in a) a federal court lawsuit against a University for violations of Title IX, the United States Constitution, and the University’s own disciplinary process arising from errors and mishandling of an investigation of an incident of John Doe’s alleged nonconsensual sex with another student and b) a state court lawsuit against the individuals and others who made false statements and gave false testimony supporting the University’s investigation. The Lawyers were negligent in 1) allowing their client, John Doe, to sign a deficient handwritten settlement agreement that did not contain

necessary language and terms dedicated to the University's future treatment of John Doe's academic records, the results of which were contrary to what the Lawyers knew were the clients' desires and objectives, which was a key component of the Does' "consideration" to settle, and without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to John Doe the full implication of this handwritten settlement agreement and how the University could refer to his student records to future schools, especially medical or dental schools; and 3) in the manner in which they prosecuted the state court action, including substantial discovery deficiencies; and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of the Does. One or more of these negligent actions or related omissions resulted in substantial financial losses to the Does, including their payment of and continuing payment of substantial legal fees to successor counsel to mitigate their damages caused by the Lawyers and frustrating the purpose of the underlying litigation.

2. After the Lawyers were discharged as counsel for the Does, the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties, including disclosing information related to their representation of the Does to counsel for the opposing parties without the Does' consent.

PARTIES

3. Defendant, CLAWSON FARGNOLI, LLC ("CLAWSON FARGNOLI"), is, upon information and belief, a Limited Liability Corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Charleston County, South Carolina.

4. Defendant, Samuel R. Clawson, Jr., Esq. ("Mr. Clawson"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina; and is a lawyer licensed to practice law in South Carolina.

5. Defendant, Christina R. Fagnoli, Esq. ("Ms. Fagnoli"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina; and is a lawyer licensed to practice law in South Carolina.

6. Defendant, BREWER LAW FIRM, LLC ("BREWER LAW FIRM"), is, upon information and belief, a Limited Liability Corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Charleston County, South Carolina.

7. Defendant, Barrett R. Brewer, Esq. ("Mr. Brewer"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina; and is a lawyer licensed to practice law in South Carolina.

8. Plaintiff, John Doe ("John Doe"), is a citizen and resident of Charleston County, South Carolina.

9. Plaintiff, Jane Doe Mother ("Jane Doe Mother"), is a citizen and resident of Charleston County, South Carolina.

10. Plaintiff, John Doe Father ("John Doe Father"), is a citizen and resident of Charleston County, South Carolina.¹

¹ Due to the subject matter of these underlying cases, information in this Complaint will refer only to John Doe, Jane Doe Mother, and John Doe Father by those pseudonyms or will be otherwise redacted to preserve John Doe's anonymity.

JURISDICTION

11. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

12. Venue is proper in Charleston County because it is, upon information and belief, Mr. Clawson, Ms. Fagnoli, and Mr. Barrett reside in Charleston County, and CLAWSON FARGNOLI and BREWER LAW FIRM operate in offices in Charleston County, South Carolina.

FACTS

13. On or around November 2, 2017, the Lawyers accepted the representation of the Does to provide legal advice, services, and representation of the Does in a lawsuit pending in the United States District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against a University (“the University”); and representing the Does in a lawsuit pending in the Court of Common Pleas in a County in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against individuals involved in submitting to the University false claims against John Doe, which led to a disciplinary action that was mishandled by the University.

14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively “the Law Firms”) contracted to represent the Does in the Federal Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.”

15. At the commencement of this representation, the Federal Case, with its Complaint filed on June 15, 2016, had been pending approximately a year and a half while the State Case, with its Complaint filed on June 15, 2017, had been pending for approximately six months.

16. In the Federal Case, John Doe filed a lawsuit against the University and several related defendants (collectively “the University Defendants”) alleging, among other things, violation Title IX of the Education Amendments of 1972, failure to provide John Doe with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment.

17. The primary claims against the University Defendants in the Federal Case were premised on theories the University Defendants deprived John Doe of due process and certain protections under Title IX of the Education Amendments of 1972 and related federal regulations during: the investigation the University Defendants undertook regarding false allegations by a female student (“Jane Doe”); the deliberating processes that the University Defendants applied to conclude that John Doe had engaged Jane Doe in nonconsensual sexual activity; and the appeals process the University Defendants applied to John Doe’s appeal.

18. The Federal Case and the State Case involved common facts in that both concerned the allegations by Jane Doe claiming John Doe engaged in nonconsensual sexual activity with her; and the allegations by a male student, “Charles Doe,” made during the University’s investigation allegedly corroborating Jane Doe’s claims.

19. Through a variety of errors and omissions by the University Defendants, in an administrative hearing conducted on February 26, 2016, John Doe was found to have

engaged Jane Doe in nonconsensual sexual activities and punished with a one-semester suspension.

20. Thereafter John Doe followed the University's appeal process to appeal the incorrect administrative hearing decision.

21. The appeals process actually resulted in greater sanctions imposed by the University upon John Doe, including an additional year of suspension.

22. On or about January 14, 2017, Charles Doe sent John Doe text messages admitting that he and Jane Doe lied regarding Jane Doe's allegations, both during the investigation of those allegations and at the hearing regarding those allegations.

23. Despite receiving notice of the January 2017 texts sent by Charles Doe, the University Defendants refused or failed to undertake additional action to address the content of those text messages from Charles Doe to John Doe.

24. On or about June 15, 2017, the State Case was filed against Jane Doe, Charles Doe, and Richard Doe (Charles Doe's father), asserting claims for defamation, intentional infliction of emotional distress, and civil conspiracy. The State Case also asserted a claim for abuse of process against Jane Doe and Charles Doe based on the two strategically utilizing the University's Title IX process for an illegitimate objective, that is, to further harass, defame, retaliate against, and punish John Doe.

25. These three defendants will be collectively referred to as the "State Case Defendants");

26. By November 27, 2017, the Federal Court substituted the Lawyers for John Doe's previous counsel.

27. During the Lawyers' representation of the Does, the Lawyers drafted and, upon information and belief, disclosed to third parties an "apology letter" purportedly from John Doe to one of the State Case Defendants falsely conceding critical matters.

28. During the Lawyers' representation of the Does, the Lawyers served discovery requests tailored to personal injury claims when representing the Does on slander and defamation claims.

29. During the Lawyers' representation of the Does, the Lawyers did not provide the Does with copies of materials obtained during discovery.

30. Following extensive written discovery, the parties to the Federal Case scheduled a meditation.

31. In February of 2018, the Lawyers and the Does received an eighty-page report from expert witness Daniel C. Swinton, Ed.D., J.D., B.A. (the "Swinton Report"), detailing a variety of errors and omissions by the University Defendants in the procedural, investigatory, and adjudicative processes the University Defendants applied regarding Jane Doe's allegations and John Doe's prosecution.

32. Based on the text messages from Charles Doe, the Lawyers knew or should have known that John Doe's claims against the University Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

33. Based on the Swinton Report, the Lawyers knew or should have known that John Doe's claims against the University Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

34. Based on the text messages from Charles Doe, the Lawyers knew or should have known that John Doe's claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

35. Based on the Swinton Report, the Lawyers knew or should have known that John Doe's claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision.

36. Before the mediation, the Lawyers received an email from the Does stating John Doe's mediation goals, including:

a. Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against John Doe, which by implication would have limited the University's future treatment of John Doe's academic records;

b. The State Case remain separate and unaffected by any settlement of the Federal Case;

c. there be no confidentiality or silencing provisions restricting sharing of the settlement terms; and

d. John Doe's arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

37. On March 21, 2018, the Lawyers, the Does, and the University Defendants and their counsel participated in the mediation for the Federal Case.

38. After a grueling eleven (11) hour mediation, allegedly the terms that the parties came to agree upon were memorialized in a short-form "Settlement Agreement," which the Lawyers approved and strongly urged John Doe to sign. To accomplish their objective to have the Does agree to settle so they could get their contingent fee, the Lawyers took advantage of an opportunity when John Doe Father and John Doe Mother were out of the room to forcefully urge John Doe to agree to the University's proposed

settlement terms. John Doe (and later the John Doe's parents) conceded to the Lawyers' pressure to settle.

39. Based on the Lawyers' advice and counsel, John Doe signed the "Settlement Agreement."

40. On March 23, 2018, the Lawyers received an email from the Does explaining John Doe's unawareness of the effect and import of the Settlement Agreement and the negative ramifications of the Settlement Agreement.

41. The Settlement Agreement conflicted with the goals explained in the March 2, 2018, email and conflicted with the goals of both the Federal Case and the State Case.

42. The Settlement Agreement the Lawyers convinced the Does to sign did not contain necessary language and terms dedicated to the University's future treatment of John Doe's academic records, the results of which were contrary to what the Lawyers knew or should have known were the Does' desires and objectives, which was a key component of the Does' "consideration" to settle, and the Settlement Agreement did not address many other issues necessary to resolve the underlying dispute with the University.

43. The Lawyers knew or should have known of the tremendous physical, mental and emotional strain that Jane Doe's underlying allegations and the errors and omissions of the University Defendants were causing John Doe; and that John Doe was or had received counseling and other therapeutic services in connection with the same.

44. The Lawyers knew or should have known of the tremendous physical, mental and emotional strain or exacerbation of the same that John Doe would experience

because of the errors and omissions of the Lawyers before, during and after the Federal Case Mediation.

45. Additional physical, mental and emotional harm to John Doe and consequent additional counseling and therapeutic services for John Doe directly and proximately caused by the errors and omissions of the Lawyers was foreseeable to the Lawyers.

46. On March 27, 2018, the District Court entered an Order of Dismissal in the Federal Case providing the parties opportunity to consummate the settlement and providing either party sixty (60) days petition the Court to enforce the settlement.

47. On May 4, 2018, counsel for the University Defendants forwarded a proposed release to the Lawyers under the Settlement Agreement. That same day, the Lawyers sent the Settlement Agreement with proposed revisions back to counsel for the University Defendants.

48. On May 8, 2018, the Lawyers informed counsel for the University Defendants their representation of John Doe had been terminated and that John Doe had not yet retained new counsel.

49. On May 9, 2018, the Lawyers memorialized the Does' May 8, 2018, termination of their representation in a letter to the Does, with language impliedly recognized the Doe's terminated the attorney-client relationship for cause and attempting to refute some of the bases for termination of the representation for cause.

50. On May 10, 2018, counsel for the University Defendants sent John Doe a letter with a five (5) day deadline for response enclosing a Settlement Agreement and Mutual Release ("Release"), a Stipulation of Dismissal with Prejudice, and a copy of the

settlement check, which would be provided upon execution of the Release and the Stipulation of Dismissal.

51. On May 11, 2018, John Doe emailed counsel for the University Defendants indicating he had received the May 8, 2018 letter, he wanted to make changes to the proposed Release, he was retaining new counsel, the five (5) day deadline was not feasible, and his new attorneys would be in contact early the following week.

52. On May 16, 2018, newly retained counsel ("Successor Counsel") for John Doe contacted counsel for the University Defendants requesting the proposed Release document in Word format to make revisions.

53. On May 18, 2018, upon consent motion, a text order was entered by the Federal Court this Court substituting Successor Counsel for the Lawyers as counsel of record for John Doe.

54. On May 23, 2018, Successor Counsel submitted revisions to the Release to counsel for the University Defendants.

55. On May 24, 2018, counsel for the University Defendants contended that the revisions materially changed the terms of the Settlement Agreement reached in mediation and in response, the University Defendants moved the Federal Court to enforce the Settlement Agreement.

56. Thereafter, the Does expended substantial funds by way of legal fees and expenses in the Federal Case attempting to void the Settlement Agreement the Lawyers had directed John Doe to sign and oppose its enforcement because of the Lawyers' errors and omissions.

57. The Federal Court's "Redacted Order" upheld and enforced the Settlement Agreement against John Doe, finding the Settlement Agreement terms were clear and unambiguous; and the plain and unambiguous language of the Settlement Agreement did not support the Does' representations the University promised more during the settlement negotiations.

58. The Settlement Agreement:

- a. did not contain the necessary language and terms dedicated to the University's future treatment of John Doe's academic records;
- b. contained language leading to results contrary to what the Lawyers knew were the Does' desires and objectives, which was a key component of the Does' "consideration" to settle;
- c. did not address multiple issues necessary to resolve the underlying dispute with the University; and
- d. did not contain the necessary language addressing the University's ability to disclose any settlement agreement when confronted with a public records information request for same and, if so, whether John Doe's identity would be safeguarded.

59. On January 1, 2019, the Federal Court entered an order by way of minute entry to the docket, requiring the University to make its counsel and an individual with decision-making authority available by telephone for an upcoming mediation in the State Court case, scheduled for March 1, 2019.

60. The Settlement Agreement had a negative impact on the State Case , where the Does have been forced to expend additional funds to litigate that case because of the impact of the Settlement Agreement.

61. On February 28, 2019, the Lawyers sent a letter to the mediator **and counsel for all parties in the State Case and other third parties** asserting a lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of

the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case.

62. On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case's opposing counsel and mediation mediator, interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation, all of which added and continued to cause damages to John Doe.

63. The February 28, 2019, letter from the Lawyers interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation.

64. Thereafter, John Doe expended and continue to spend several hundred-thousands of dollars litigating the State Court case that was not resolved at mediation.

65. Thereafter, John Doe expended several hundred-thousands of dollars litigating the State Court case because John Doe's positions on law and facts in dispute were irreparably damaged by errors and omissions by the Lawyers at the mediation of the Federal Case that directly, proximately and foreseeably caused damage to John Doe's position in the State Case.

66. From February 28, 2019, through the present, the Lawyers have continued to assert a charging lien for legal fees against the Does' settlement proceeds from the University, despite John Doe having terminated the Fee Agreement with the Lawyers for cause, thereby generating additional expenses for John Doe to contest those allegations.

67. As a direct, proximate and foreseeable result of the Lawyers' actions and inactions before and after their being relieved as counsel, Plaintiffs suffered damages,

including loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the Lawyers' actions and inactions.

68. Had the Lawyers met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice John Doe in the State Court mediation and litigation, a substantial portion of the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

69. Had the Lawyers met the fiduciary standard of conduct by properly, accurately or timely attempting to assert an alleged charging lien, a substantial portion of the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

70. As a direct, proximate and foreseeable result of the Lawyers' actions and inactions in the Federal Case and its mediation, the Does suffered damages, including loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm caused by the Lawyers' actions and inactions.

71. Had the Lawyers met the standard of care by properly, accurately or timely advising John Doe before, during and after the Federal Case mediation regarding any terms of the Federal Case mediation, the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

72. Had the Lawyers met the standard of care by properly, accurately or timely advising John Doe before, during and after the Federal Case mediation regarding the interplay of the Federal Case mediation, any settlement of that case and the State Case, the damages sustained by Doe (recounted throughout this Complaint) should have been avoided.

73. Mr. Clawson, Ms. Fargnoli, and other lawyers acting in CLAWSON FARGNOLI were Members or Associates of CLAWSON FARGNOLI.

74. The negligent acts, omissions, and liability of CLAWSON FARGNOLI includes its own acts and/or omissions and the acts and omissions of its agents, principals, employees and/or servants, including but not limited to those its Member or Associate lawyers, both directly and vicariously, under principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

75. Upon information and belief, CLAWSON FARGNOLI acted through its employees and agents, including but not limited to its Member or Associate lawyers, who acted within the course and scope of their employment and/or agency with all implied, inherent, apparent and express authority to so bind its Member or Associate lawyers and CLAWSON FARGNOLI as master and principal by any negligent, willful, wanton and reckless actions and/or omissions making CLAWSON FARGNOLI vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

76. Mr. Brewer and other lawyers acting in BREWER LAW FIRM were Members or Associates of BREWER LAW FIRM.

77. The negligent acts, omissions, and liability of BREWER LAW FIRM includes its own acts and/or omissions and the acts and omissions of its agents, principals, employees and/or servants, including but not limited to those its Member or Associate lawyers, both directly and vicariously, under principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

78. Upon information and belief, BREWER LAW FIRM acted through its employees and agents, including but not limited to its Member or Associate lawyers, who acted within the course and scope of their employment and/or agency with all implied, inherent, apparent and express authority to so bind its Member or Associate lawyers and BREWER LAW FIRM as master and principal by any negligent, willful, wanton and reckless actions and/or omissions making BREWER LAW FIRM vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)

79. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

80. A client-lawyer relationship existed between the Does, on the one hand as clients, and the Lawyers, on the other, as the lawyers, regarding all claims and causes of action involving the Federal Case and the State Case.

81. The scope of the Lawyers' representation was to provide legal services, counsel, and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case.

82. The Lawyers owed professional duties to the Does to adequately and competently provide legal services, counsel, and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case.

83. The Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the Does to adequately and competently provide legal services, counsel, and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advance the rights and interests of the Does; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

84. The Lawyers breached professional duties and otherwise failed to meet the minimum standard of care thereby breaching professional duties to the Does by other such particulars as the evidence in this case may demonstrate.

85. As a direct, proximate, and foreseeable result of the Lawyers' professional errors, the Does sustained financial damages.

86. As a direct, proximate, and foreseeable result of the Lawyers' professional errors, the Does sustained additional damages in the form of physical, mental and emotional suffering because of creation or exacerbation of conditions the Lawyers either knew about, should have known about, or could foresee.

87. The Does are entitled to judgment against the Lawyers for all damages, actual and consequential, suffered that were directly, proximately, and foreseeably caused by the Lawyers' negligence in an amount to be proven at the trial of this case.

88. WHEREFORE, the Does pray for judgment on this cause of action against the Lawyers for actual, special, consequential, and incidental damages suffered, pre-judgment interest, and for such other relief as the Court may deem reasonable and proper.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duties)

87. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

88. At all relevant times, a client-lawyer relationship existed between the Does, on the one hand as clients, and the Lawyers, on the other, as the lawyers, regarding all claims and causes of action involving the Federal Case and the State Case.

89. The Lawyers owed fiduciary duties to the Does.

90. The Lawyers' fiduciary duties included the duties of confidentiality and loyalty, and the duty to act single-mindedly in preserving, protecting and advancing the rights and interests of the Does.

91. The Lawyers failed to meet the minimum standard of conduct and acted in a manner establishing a clear and serious breach of their fiduciary duties of confidentiality and loyalty when the Lawyers disclosed information related to their representation of the Does to counsel for the opposing parties (and others) without the Does' consent.

92. The Lawyers failed to meet the minimum standard of conduct and thereby breached their fiduciary duties to the Does in such other particulars as the evidence in this case may demonstrate.

93. The Lawyers' acts and omissions in breach of his fiduciary duties to the Does were a substantial factor in causing financial harm to the Does, and as such the

Does are entitled to recover actual damages, consequential damages, incidental damages, and pre-judgment interest, all in an amount to be more specifically proven at trial.

94. As a direct and proximate result of the Lawyers' carelessness, recklessness, and utter disregard of their fiduciary duties the Does are entitled to recover punitive damages from the Lawyers.

95. Based on clear and serious breach of their fiduciary duties, and because Lawyers knew of these duties and their various breaches of the same, the Lawyers should be ordered to disgorge any legal fees obtained while in derogation of their duties and forfeit their claims to additional legal fees and other benefits.

96. WHEREFORE, the Does pray for judgment on this cause of action against the Lawyers for actual, consequential, and incidental damages suffered, pre-judgment interest, for punitive damages, for disgorgement of legal fees and other benefits obtained by Defendants, forfeiture of their claims for additional legal fees, and such other relief as the Court may deem reasonable and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)
(Against the Law Firms)

97. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

98. Law Firms entered into a Contract with the Does agreeing and contracting to provide legal services to represent the Does in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

99. Law Firms breached the contract by failing to provide such services.

100. The Does satisfied all necessary preconditions, if any, and performed their part of the contract, and/or was, at the appropriate time, able, ready, and willing to perform.

101. As a direct and proximate result of the Law Firms' breach of their contractual duties, the Does sustained actual, consequential and incidental damages in an amount to be determined by the jury at the trial of this case.

WHEREFORE, the Does pray for judgment on this cause of action against the Law Firms for actual, special, consequential and incidental damages suffered, pre-judgment interest, and such other relief as the Court may deem reasonable and proper.

TRIAL BY JURY

102. The Does request and demand a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

103. In February and early March 2021, the Lawyers refused to enter into a statute of limitations tolling agreement to toll the statute of limitations on Plaintiffs' legal professional negligence claims against the Lawyers. As stated in Paragraphs 37-39, a substantial portion of the Lawyers' liability arises from the Lawyers' acts and omissions during a mediation on March 21, 2018 in the Federal Case. As a result, Plaintiffs had a good faith basis to believe the three-year statute of limitations on Plaintiffs' legal professional negligence cause of action against the Lawyers would expire on March 21, 2021, which was within 10 days of the date the Summons & Complaint was filed on March 19, 2021. Because of time constraints, an affidavit of an expert could not be prepared in time to file the Summons & Complaint before March 21, 2021.

Under S.C. CODE ANN. § 15-36-100(C)(1), included with the filing of the Amended Summons & Amended Complaint and marked as Exhibit 1 was the affidavit of Justin Dillon, Esq., an expert witness and lawyer licensed to practice law in the Commonwealth of Virginia and in the District of Columbia, which satisfies S.C. CODE ANN. § 15-36-100(A)(1) to qualify Mr. Dylan to serve as an expert in this matter. Another copy of Mr. Dillion's affidavit is filed with this Second Amended Summons & Amended Complaint as **Exhibit 1**. Mr. Dillon has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in the active practice litigating Title IX matters for at least three of the last five years immediately preceding his opinions, which satisfies S.C. CODE ANN. § 15-36-100(A)(2)(b)(i) to qualify Mr. Dylan to serve as an expert in this matter. Mr. Dillion has been invited to speak before organizations including the American Bar Association, the National Association of Criminal Defense Lawyers, the Association of Title IX Administrators, the Higher Education Consultants Association, the Colorado Bar Association, the Virginia State Bar, the District of Columbia Bar, and has guest lectured on Title IX matters at Harvard Law School, George Washington University, American University, and the University of Maryland. Mr. Dillion has other specialized knowledge in Title IX matters, which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of his study, experience, or both, which satisfies S.C. CODE ANN. § 15-36-100(A)(3) to qualify Mr. Dylan to serve as an expert in this matter.

Mr. Dillon's affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of Mr. Dillon's affidavit.

This Second Amended Summons & Amended Complaint is being filed under S.C. CODE ANN. § 15-36-100(E), which permits an amended pleading to be filed to cure the alleged defects. This Second Amended Summons & Amended Complaint is being filed based on the specious arguments contained in the Lawyers' respective Motions to Dismiss claiming Mr. Dillon's affidavit is defective because he is not licensed in South Carolina, when the Lawyers knew or should have known there is no such requirement under S.C. CODE ANN. § 15-36-100.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, John Doe, Jane Doe Mother, and John Doe Father, pray for judgment against Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq; Barrett R. Brewer, Esq., and BREWER LAW FIRM, LLC, for all actual damages, consequential damages, and incidental damages; punitive damages, and prejudgment interest, all in an amount to be more specifically proven at trial, together with the costs of this action and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

June 16, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John Doe Father,

Plaintiffs,

vs.

**EXPERT AFFIDAVIT BY
JUSTIN DILLON, ESQ.**

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC,

Defendants.

WASHINGTON,
DISTRICT OF COLUMBIA

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) SS:
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1. It is my expert opinion, held to a reasonable degree of professional certainty based upon my review of available evidence and the Complaint, that the Lawyers at the defendant Law Firms, as defined below, committed at least one act of professional negligence proximately causing damage to the Plaintiffs as more particularly set forth below.

2. Defendants Samuel R. Clawson, Jr., Esq. and Christina R. Fagnoli, Esq. were practicing law at the relevant times under the auspices of CLAWSON FARGNOLI, LLC. Defendant, Barrett R. Brewer, Esq. was practicing law at the relevant times under the auspices of BREWER LAW FIRM, LLC.

3. Mr. Clawson, Ms. Fagnoli, and Mr. Barrett will be referred to collectively as “the Lawyers.” CLAWSON FARGNOLI, LLC and BREWER LAW FIRM, LLC will be referred to as “the Law Firms.”

4. The Lawyers jointly represented Plaintiffs in Doe v. Clemson University et al., 8:16-cv-01957-DCC (D.S.C.). The lawsuit accused the Defendants of violating Plaintiff John Doe’s rights under Title IX of the Educational Amendments of 1972, the Due Process Clause of Fourteenth Amendment to the U.S. Constitution, and other state laws.

5. The Lawyers had, among other duties, professional duties as lawyers representing Plaintiffs to, among other things, protect the interests of Plaintiffs, provide competent representation, including, but not limited to:

- a. Provide competent advice and representation;
- b. Use the legal knowledge, skill, thoroughness, and preparation reasonably necessary in the circumstances;
- c. Maintain the standard of care, which required the Lawyers to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the legal profession; and
- d. Otherwise act to protect Plaintiffs’ interests.

6. The Lawyers failed to perform their duties and were professionally negligent in multiple ways, including but not limited to:

- a. Accepting a monetary settlement from Clemson University that contained no provision for cleaning up Mr. Doe’s disciplinary record regarding the sexual misconduct and related findings that Clemson

had made against him. I am not aware of any Title IX lawyer who believes that one files these lawsuits simply for money. What matters most, and certainly matters more than money, is cleaning up the student's disciplinary record. It is inconceivable to me that the attorneys who settled this case would have done so for only an amount of money (\$100,000.00) that, I suspect, constituted just a fraction of the Plaintiffs' actual litigation costs.

- b. Moreover, as far as I am aware, the original negative finding against Mr. Doe was never struck from Clemson's records, so there was no need to agree that it would be "reinstated," as the settlement agreement did. One need not reinstate something that was never "de-instated." So it was all the more strange to see that not only would the Lawyers fail to secure a *clean* record, but that they would affirmatively agree to a *dirty* one. It is the equivalent of steering the Titanic into the iceberg in exchange for free gas.
- c. Any attorney who practices in the Title IX area would be well aware of the downstream implications of a sexual misconduct finding and the paramount importance of a clean disciplinary record. Many schools to which a student might transfer will ask if he has ever been disciplined, as will most graduate or professional schools to which he applies. Moreover, there could be future professional-licensing implications of a negative finding for anyone who is interested in practicing medicine, law, or the like. My understanding is that Mr.

Doe hopes to practice medicine and that the Lawyers knew that at the time—and that, indeed, they knew that safeguarding those hopes was the reason Plaintiffs sued in the first place. So the harm of a sexual misconduct finding to a future doctor or lawyer is potentially even worse than it is to a student who does not intend to pursue one of the professions—which is all the more reason why settling solely for money made so little sense in this case.

- d. Moreover, schools will often agree to clean up a student's record during settlement negotiations. Schools, like courts, can vacate and expunge disciplinary findings.
- e. It is particularly striking that the Lawyers settled the case without cleaning up Mr. Doe's disciplinary record given that Plaintiffs sent them a five-page, single-spaced written document, entitled "Mediator Proposed Mediation Terms," that contemplated exactly what such a resolution would look like. The Lawyers appear to have ignored virtually that entire document and settled only for money—and, incredibly, for an amount of money that was a mere 25% of the \$400,000 contemplated in the document.

7. For the reasons I have explained above, the available evidence indicates that the Lawyers were negligent, failed to meet the standard of care, and thereby breached their professional duties to Plaintiffs, by, among other things, failing to provide competent representation, including, but not limited to, each of the acts or omissions identified above.

8. For the reasons I have explained above, the available evidence indicates Plaintiffs accepted and followed the advice provided by the Lawyers, and also would have accepted and followed the appropriate advice from the Lawyers that should have been reasonably provided by the Lawyers to meet the standard of care and thereby satisfy the Lawyers' professional and fiduciary duties.

9. It is my opinion based upon the available evidence, that as a direct and proximate result of the Lawyers' acts and omissions, Plaintiffs missed a crucial opportunity to clean up Mr. Doe's disciplinary record, which will likely have serious personal, professional, and financial consequences for his future.

10. In my opinion, had the Lawyers met the standard of care, more likely than not, Plaintiffs would not have suffered these losses.

11. I am a lawyer licensed to practice law in the Commonwealth of Virginia (since 2002) and the District of Columbia (since 2007). I have also been admitted to practice in the United States District Court for the Eastern District of Virginia, the United States District Court for the District of Columbia, the United States District Court for the Central District of Illinois, the United States District Court for the Eastern District of Michigan, the United States District Court for the Northern District of Ohio, the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court.

12. I have gained nationwide attention for my work representing students and professors in Title IX and other campus misconduct cases, which my firm and I have handled at more than 100 schools across the country. I was the first lawyer in the country to win summary judgment against a university in a campus sexual misconduct case in the

modern era, which I did against George Mason University in 2016. I have settled numerous lawsuits and potential lawsuits against colleges nationwide. Along with my partner Matt Kaiser, I am the author of *The KaiserDillon PLLC Guide to Representing Yourself in a Campus Sexual Assault Case*. I have been published or quoted regarding campus sexual misconduct issues in more than a dozen national newspapers and magazines, including *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Philadelphia Inquirer*, *National Review*, *The Nation*, and *The Weekly Standard*. I have also spoken on these issues before organizations such as the American Bar Association, the Association of Title IX Administrators, Harvard Law School, the University of Kentucky's Center for Research on Violence Against Women, the Higher Education Consultants Association, the District of Columbia Bar, the Virginia State Bar, and the Colorado Bar Association. Immediately before joining KaiserDillon PLLC, I spent five and a half years as an Assistant United States Attorney in Washington, DC, where I led more than 100 Grand Jury investigations, tried more than 60 criminal cases, and handled more than a dozen appeals. Earlier in my career, I worked at the Civil Rights Division of the U.S. Department of Justice. I am a Georgia native and a graduate of Duke University and Harvard Law School.

13. My resume is attached as Exhibit 1.

14. I have been retained by Thomas A. Pendarvis with PENDARVIS LAW OFFICES, P.C. as an expert witness in this matter.

15. In rendering my opinion, I have reviewed the following materials:

- a. 06/15/16 – Plaintiff John Doe's Complaint, Doe v. Clemson University et al.

- b. 07/19/16 – Defendants’ Answer, Doe v. Clemson University et al.
- c. 06/15/17 – Summons and Complaint, Doe v. Doe et al., 2017 CP 39-0709 (S.C. Ct. Com. Pl.).
- d. 11/17/17 – Defendant Jane Doe and Richard Doe’s Answer and Defenses, Doe v. Doe et al.
- e. 11/08/17 – Defendant Charles Doe’s Answer, Doe v. Doe et al.
- f. 03/08/18 – Mediator Proposed Settlement Terms
- g. 03/21/18 – Settlement Agreement, Doe v. Clemson University et al.
- h. 05/24/18 – Motion to Enforce Settlement Agreement, Doe v. Clemson University et al.
- i. 02/28/19 – Letter Re: Pampu v. Clemson University, et al. and Pampu v. Wingo, et al.
- j. 03/27/19 – Opinion and Order, Doe v. Clemson University et al.
- k. 03/29/19 – Letter Re: Pampu v. Clemson University, et al. and Pampu v. Wingo, et al.
- l. 07/01/19 – Settlement Agreement and Release, Doe v. Clemson University et al.
- m. 03/19/21 – Summons, Doe v. Clawson Fargnoli LLC et al., 2021 CP 10-01343

The Affiant further sayeth naught.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



Justin Dillon, KAISERDILLON PLLC, Affiant

Exhibit 1

JUSTIN DILLON

1099 14th St. NW, 8th Floor West
Washington, DC 20005

(202) 421-5298
jdillon@kaiserdillon.com

EXPERIENCE

Partner, KaiserDillon PLLC, Washington, DC, 2014 to present

- Handle wide variety of white-collar criminal, campus disciplinary, and civil litigation matters.

Assistant U.S. Attorney, U.S. Attorney's Office for the District of Columbia, Washington, DC, 2008-2014

- Conducted 22 jury trials and more than 40 bench trials on wide array of criminal charges ranging from homicide to deceptive labeling to perjury and obstruction of justice.
- Conducted more than 100 Grand Jury investigations into homicides and other major crimes.
- Drafted more than a dozen briefs and argued appeals in both D.C. Court of Appeals and D.C. Circuit.

Associate, Harris, Wiltshire & Grannis LLP, Washington, DC, 2006-2008

Assistant, Reveille LLC, Los Angeles, CA, 2005-2006

- Worked at television production company responsible for shows such as *The Office*, *The Biggest Loser*, *Ugly Betty*, *Nashville Star*, and *30 Days*.

Trial Attorney, Attorney General's Honors Program

Housing & Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, Washington, DC, 2003-2005

- Served as co-lead counsel in first lawsuit filed by the Housing Section under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and investigated numerous RLUIPA cases nationwide.
- Investigated Fair Housing Act violations related to race, sex, religious, and disability discrimination.

Law Clerk to The Honorable David M. Ebel, U.S. Court of Appeals for the Tenth Circuit, Denver, CO, 2002-2003

EDUCATION

Harvard Law School, Cambridge, MA, J.D., 2002

Honors: Editor, *Harvard Law Review*
Captain, Winning Team, Ames Moot Court Competition
Best Brief Award, Final, Semifinal, and First Year Rounds, Ames Moot Court Competition
Recipient, Dean's Award for Community Leadership
Recipient, Heyman Fellowship

Activities: Teaching Assistant, Professor Laurence H. Tribe, Constitutional Law

Publications: Note, *Gone with the Wind Done Gone*: "Re-writing" and Fair Use, 115 *Harvard Law Review* 1193 (2002); Case Comment, First Amendment Law, *Bartnicki v. Vopper*, 121 S. Ct. 1753 (2001), 115 *Harvard Law Review* 406 (2001); Recent Case, Copyright Law, *Worldwide Church of God v. Philadelphia Church of God*, 227 F.3d 1110 (9th Cir. 2000), 114 *Harvard Law Review* 1807 (2001)

Duke University, Durham, NC, A.B. English, *magna cum laude*, 1996

Honors: Editor-in-chief, *The Chronicle* (daily student newspaper, circulation 15,000), 1995-96
William J. Griffith Award for University Service, 1996
Finalist, Rhodes Scholarship, 1995

ORGANIZATIONS: Former Chair, D.C. Bar CLE Committee; Edward Bennett Williams Inn of Court; John Carroll Society; Board of Directors, Families Advocating for Campus Equality; Trial Advocacy Instructor, Harvard Law School

RECOGNITION: Chambers-rated in White Collar Crime & Government Investigations in Washington, DC; Superlawyers; Best Lawyers in America; Washingtonian's Best Lawyers—Criminal Defense

BAR MEMBERSHIP: Commonwealth of Virginia; District of Columbia

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

John Doe; Jane Doe Mother; and
John Doe Father,

Plaintiffs,

v.

Clawson Fargnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fargnoli, Esq.;
Barret R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

**ANSWER TO SECOND AMENDED
COMPLAINT AND COUNTERCLAIM
AGAINST ALL PLAINTIFFS**

(JURY TRIAL DEMANDED)

Pursuant to South Carolina Rule of Civil Procedure 12(a)(1) and 15(a),¹ Defendants Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fargnoli, Esq. (“Defendants”) answer the Complaint of Plaintiffs John Doe, Jane Doe Mother, and John Doe Father (“Plaintiffs”).

FOR A FIRST DEFENSE

1. Defendants deny the allegations contained in paragraph 1 of the Second Amended Complaint.
2. Defendants deny the allegations contained in paragraph 2 of the Second Amended Complaint.

¹ On June 16, 2021, Plaintiffs filed a Second Amended Complaint which was accompanied by a Second Amended Summons. In the Second Amended Summons, which was directed to all Defendants, Plaintiffs’ counsel, Thomas A. Pendarvis, noted that “YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office [...] within Thirty (30) days after the service hereof, exclusive of the date of such service.” The Second Amended Summons went on to say that “if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.” Because the complaint is an amended complaint, Defendants file this answer within the timeframe contemplated by South Carolina Rule of Civil Procedure 15(a).

3. Defendants admit the allegations contained in paragraph 3 of the Second Amended Complaint.

4. Defendants admit the allegations contained in paragraph 4 of the Second Amended Complaint.

5. Defendants admit the allegations contained in paragraph 5 of the Second Amended Complaint.

6. On information and belief, Defendants admit the allegations contained in paragraph 6 of the Second Amended Complaint.

7. On information and belief, Defendants admit the allegations contained in paragraph 7 of the Second Amended Complaint.

8. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 8 of the Second Amended Complaint and, therefore, deny them.

9. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 9 of the Second Amended Complaint and, therefore, deny them.

10. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 10 of the Second Amended Complaint and, therefore, deny them.²

² At this time, Defendants will refer to the Plaintiffs using the pseudonyms; however, Defendants request that they be able to replead and use Plaintiffs' real names if the Court grants Defendants' Motion to Prohibit Plaintiffs from Using Pseudonyms. Defendants would also note that Plaintiffs appear to have waived their purported right to proceed using pseudonyms, as the expert affidavit filed with the Second Amended Complaint includes Plaintiffs' real surname in multiple places. The filing of this affidavit into the public record and its inclusion of Plaintiffs' real surname constitutes waiver of Plaintiffs' ability to now demand anonymity through use of pseudonyms.

11. The allegations contained in paragraph 11 of the Second Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 11 of the Second Amended Complaint to the extent that they are contrary to the statutory and/or common law of the State of South Carolina.

12. The allegations contained in paragraph 12 of the Second Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 12 of the Second Amended Complaint to the extent that they are contrary to the statutory and/or common law of the State of South Carolina.

13. Defendants admit the allegations contained in paragraph 13 of the Second Amended Complaint.

14. Defendants admit the allegations contained in paragraph 14 of the Second Amended Complaint.

15. Defendants admit the allegations contained in paragraph 15 of the Second Amended Complaint.

16. Defendants admit the allegations contained in paragraph 16 of the Second Amended Complaint.

17. The allegations contained in paragraph 17 of the Second Amended Complaint reference the federal pleadings in a related matter. As such, Defendants deny the allegations contained in paragraph 17 of the Second Amended Complaint to the extent that they are contrary to the representations in the federal pleadings in that matter. Defendants deny the remaining allegations contained in paragraph 17 of the Second Amended Complaint.

18. Defendants admit the allegations contained in paragraph 18 of the Second Amended Complaint.

19. Defendants admit so much of the allegations contained in paragraph 19 of the Second Amended Complaint as allege that John Doe was found to have engaged in nonconsensual sexual activities with Jane Doe. Defendants lack sufficient information to form a belief as to the remaining allegations contained in paragraph 19 of the Second Amended Complaint and, therefore, deny them.

20. Defendants admit so much of the allegations contained in paragraph 20 of the Second Amended Complaint as allege that John Doe followed the University's appeal process to appeal the hearing decision. Defendants lack sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 20 of the Second Amended Complaint and, therefore, deny them.

21. Defendants admit the allegations contained in paragraph 21 of the Second Amended Complaint.

22. The allegations contained in paragraph 22 of the Second Amended Complaint reference a "Charles Doe" who is not identified in any other fashion in this litigation. As such, Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 22 of the Second Amended Complaint and, therefore, deny them.

23. The allegations contained in paragraph 23 of the Second Amended Complaint reference a "Charles Doe" who is not identified in any other fashion in this litigation. As such, Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 23 of the Second Amended Complaint and, therefore, deny them.

24. On information and belief, Defendants admit the allegations contained in paragraph 24 of the Second Amended Complaint.

25. On information and belief, Defendants admit the allegations contained in paragraph 25 of the Second Amended Complaint.

26. Defendants admit the allegations contained in paragraph 26 of the Second Amended Complaint.

27. Defendants deny the allegations contained in paragraph 27 of the Second Amended Complaint.

28. Defendants admit so much of the allegations contained in paragraph 28 of the Second Amended Complaint as allege that there were some references to bodily injuries in an initial set of discovery requests. Defendants deny the remaining allegations contained in paragraph 28 of the Second Amended Complaint.

29. Defendants deny the allegations contained in paragraph 29 of the Second Amended Complaint.

30. Defendants admit the allegations contained in paragraph 30 of the Second Amended Complaint.

31. Defendants admit the allegations contained in paragraph 31 of the Second Amended Complaint.

32. Defendants deny the allegations contained in paragraph 32 of the Second Amended Complaint.

33. Defendants deny the allegations contained in paragraph 33 of the Second Amended Complaint.

34. Defendants deny the allegations contained in paragraph 34 of the Second Amended Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Second Amended Complaint.

36. Defendants admit so much of the allegations contained in paragraph 36 of the Second Amended Complaint as allege that they received an email from the Does stating mediation goals and that a subsequent meeting was conducted with the Does wherein their mediation goals were discussed at length and substantially revised. Defendants deny the remaining allegations contained in paragraph 36 of the Second Amended Complaint.

37. Defendants admit the allegations contained in paragraph 37 of the Second Amended Complaint.

38. Defendants admit so much of the allegations contained in paragraph 38 of the Second Amended Complaint as allege that Plaintiff John Doe, after consulting with his parents, agreed to settle the litigation that he had initiated in the federal case. Defendants deny the remaining allegations contained in paragraph 38 of the Second Amended Complaint.

39. Defendants admit so much of the allegations contained in paragraph 39 of the Second Amended Complaint as allege that Plaintiff John Doe signed the settlement agreement based on the representations of the parties at the mediation, the advice and counsel of his attorneys, the advice and counsel of his parents, and his consultations with the mediator. Defendants deny the remaining allegations contained in paragraph 39 of the Second Amended Complaint.

40. The allegations contained in paragraph 40 of the Second Amended Complaint reference a March 23, 2018 email from the Does to Defendants. As such, Defendants deny the

allegations contained in paragraph 40 of the Second Amended Complaint to the extent that they are contrary to the representations contained in the March 23, 2018 email. Defendants deny the remaining allegations contained in paragraph 40 of the Second Amended Complaint.

41. Defendants deny the allegations contained in paragraph 41 of the Second Amended Complaint.

42. Defendants deny the allegations contained in paragraph 42 of the Second Amended Complaint.

43. Defendants deny the allegations contained in paragraph 43 of the Second Amended Complaint.

44. Defendants deny the allegations contained in paragraph 44 of the Second Amended Complaint.

45. Defendants deny the allegations contained in paragraph 45 of the Second Amended Complaint.

46. Defendants admit the allegations contained in paragraph 46 of the Second Amended Complaint.

47. Defendants admit the allegations contained in paragraph 47 of the Second Amended Complaint.

48. Defendants admit the allegations contained in paragraph 48 of the Second Amended Complaint.

49. The allegations contained in paragraph 49 of the Second Amended Complaint reference a May 9, 2018 letter. As such, Defendants deny the allegations contained in paragraph 49 of the Second Amended Complaint to the extent that they are contrary to the representations

contained in that letter. Defendants deny the remaining allegations contained in paragraph 49 of the Second Amended Complaint.

50. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 50 of the Second Amended Complaint and, therefore, deny them.

51. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 51 of the Second Amended Complaint and, therefore, deny them.

52. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 52 of the Second Amended Complaint and, therefore, deny them.

53. On information and belief, Defendants admit the allegations contained in paragraph 53 of the Second Amended Complaint.

54. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 54 of the Second Amended Complaint and, therefore, deny them.

55. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 55 of the Second Amended Complaint and, therefore, deny them.

56. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 56 of the Second Amended Complaint and, therefore, deny them.

57. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 57 of the Second Amended Complaint and, therefore, deny them.

58. Defendants deny the allegations contained in paragraph 58 of the Second Amended Complaint, including, but not limited to, subparts (a) through (d).

59. On information and belief, Defendants admit the allegations contained in paragraph 59 of the Second Amended Complaint.

60. Defendants deny the allegations contained in paragraph 60 of the Second Amended Complaint.

61. Defendants admit the allegations contained in paragraph 61 of the Second Amended Complaint.

62. The allegations contained in paragraph 62 of the Second Amended Complaint reference a March 26, 2019 letter. As such, Defendants deny the allegations contained in paragraph 62 of the Second Amended Complaint to the extent that they are contrary to the representations contained in that letter. Defendants deny the remaining allegations contained in paragraph 62 of the Second Amended Complaint, including, but not limited to, any suggestion or contention that Defendants interfered with the mediation process, disrupted negotiations, and/or disadvantaged John Doe's position in the mediation.

63. Defendants deny the allegations contained in paragraph 63 of the Second Amended Complaint.

64. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 64 of the Second Amended Complaint and, therefore, deny them.

65. Defendants deny the allegations contained in paragraph 65 of the Second Amended Complaint.

66. Defendants admit so much of the allegations contained in paragraph 66 of the Second Amended Complaint as allege that the Does are delinquent in paying their legal fees to Defendants. Defendants deny the remaining allegations contained in paragraph 66 of the Second Amended Complaint.

67. Defendants deny the allegations contained in paragraph 67 of the Second Amended Complaint.

68. Defendants deny the allegations contained in paragraph 68 of the Second Amended Complaint.

69. Defendants deny the allegations contained in paragraph 69 of the Second Amended Complaint.

70. Defendants deny the allegations contained in paragraph 70 of the Second Amended Complaint.

71. Defendants deny the allegations contained in paragraph 71 of the Second Amended Complaint.

72. Defendants deny the allegations contained in paragraph 72 of the Second Amended Complaint.

73. Defendants admit the allegations contained in paragraph 73 of the Second Amended Complaint.

74. Defendants deny the allegations contained in paragraph 74 of the Second Amended Complaint.

75. Defendants deny the allegations contained in paragraph 75 of the Second Amended Complaint.

76. On information and belief, Defendants admit the allegations contained in paragraph 76 of the Second Amended Complaint.

77. Defendants deny the allegations contained in paragraph 77 of the Second Amended Complaint.

78. Defendants deny the allegations contained in paragraph 78 of the Second Amended Complaint.

79. In response to the allegations of paragraph 79 of the Second Amended Complaint, Defendants incorporate their responses to paragraphs 1 through 78 of the Second Amended Complaint as if stated herein verbatim.

80. Defendants admit the allegations contained in paragraph 80 of the Second Amended Complaint.

81. Defendants admit the allegations contained in paragraph 81 of the Second Amended Complaint.

82. The allegations contained in paragraph 82 of the Second Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 82 of the Second Amended Complaint to the extent that they are contrary to the statutory and/or common law of the State of South Carolina.

83. Defendants deny the allegations contained in paragraph 83 of the Second Amended Complaint.

84. Defendants deny the allegations contained in paragraph 84 of the Second Amended Complaint.

85. Defendants deny the allegations contained in paragraph 85 of the Second Amended Complaint.

86. Defendants deny the allegations contained in paragraph 86 of the Second Amended Complaint.

87. Defendants deny the allegations contained in paragraph 87 of the Second Amended Complaint.

88. Defendants deny the allegations contained in paragraph 88 of the Second Amended Complaint.³

87. In response to the allegations of paragraph 87 of the Second Amended Complaint, Defendants incorporate their responses to paragraphs 1 through 88 of the Second Amended Complaint as if stated herein verbatim.⁴

88. Defendants admit the allegations contained in paragraph 88 of the Second Amended Complaint.⁵

89. The allegations contained in paragraph 89 of the Second Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 89 of the Second Amended Complaint to the extent that they are contrary to the statutory and/or common law of the State of South Carolina.

³ Defendants note that the paragraph numbering in the Second Amended Complaint is not sequential beginning on page 18. The numbering beginning on page 18 starts with paragraph 88, followed by paragraph 87 and another paragraph 88. Defendants' paragraph numbering on this page mirrors the paragraph numbering in the Second Amended Complaint in an attempt to avoid further confusion.

⁴ As noted above, this is the second paragraph 87 in the Second Amended Complaint.

⁵ As noted above, this is the second paragraph 88 in the Second Amended Complaint.

90. The allegations contained in paragraph 90 of the Second Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 90 of the Second Amended Complaint to the extent that they are contrary to the statutory and/or common law of the State of South Carolina.

91. Defendants deny the allegations contained in paragraph 91 of the Second Amended Complaint.

92. Defendants deny the allegations contained in paragraph 92 of the Second Amended Complaint.

93. Defendants deny the allegations contained in paragraph 93 of the Second Amended Complaint.

94. Defendants deny the allegations contained in paragraph 94 of the Second Amended Complaint.

95. Defendants deny the allegations contained in paragraph 95 of the Second Amended Complaint.

96. Defendants deny the allegations contained in paragraph 96 of the Second Amended Complaint.

97. In response to the allegations of paragraph 97 of the Second Amended Complaint, Defendants incorporate their responses to paragraphs 1 through 96 of the Second Amended Complaint as if stated herein verbatim.

98. Defendants admit the allegations contained in paragraph 98 of the Second Amended Complaint.

99. Defendants deny the allegations contained in paragraph 99 of the Second Amended Complaint.

100. Defendants deny the allegations contained in paragraph 100 of the Second Amended Complaint.

101. Defendants deny the allegations contained in paragraph 101 of the Second Amended Complaint, including the subparagraph beginning with “WHEREFORE [...].”

102. The allegations contained in paragraph 102 of the Second Amended Complaint contain a jury demand and do not require a response from Defendants. To the extent that a response is required, Defendants admit that the Does appear to have requested a jury trial in their Second Amended Complaint. Defendants note that they, too, also request a jury trial.

103. Defendants deny the allegations contained in paragraph 103 of the Second Amended Complaint.

104. Defendants deny the allegations contained in footnote 1 of the Second Amended Complaint. As noted above, Defendants contend that Plaintiffs have waived their purported right to proceed using pseudonyms.

105. Defendants deny the allegations set forth in the Prayer for Relief of the Complaint.

106. To the extent that Defendants have not addressed any of the allegations of the Complaint, Defendants deny them, each and every, all and singular.

FOR A SECOND DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Pursuant South Carolina Code § 15-36-100, Plaintiffs' claims should be dismissed because they failed to timely provide the required expert witness affidavit. Specifically, when Plaintiffs filed their original Complaint against Defendants, they failed to contemporaneously file an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim on the available evidence at the time of the filing of the affidavit as required by South Carolina Code § 15-36-100(B). Accordingly, Plaintiffs' claims against Defendants should be dismissed pursuant to South Carolina Code § 15-36-100(C)(1).

3. To the extent that Plaintiffs have now filed a tardy affidavit following the filing of their original Complaint, Plaintiffs' claims should be dismissed pursuant to South Carolina Code § 15-36-100 because the exceptions to contemporaneously filing an expert witness affidavit found in § 15-36-100(C)(1) do not apply based on the facts and circumstances of this matter. Specifically, Plaintiffs did not show that the statute of limitations would expire on the claims in the original Complaint within ten (10) days of filing, and Plaintiffs did not allege that an affidavit of an expert could not be prepared due to time constraints. Plaintiff's attempts to correct or otherwise address these issues in their Second Amended Complaint fail as a matter of law. Therefore, Plaintiffs' claims against Defendants should be dismissed.

4. The claims set forth in Plaintiffs' Second Amended Complaint should be dismissed pursuant to South Carolina Code § 15-36-100(A)(3) due to the insufficiency of the credentials of Plaintiffs' purported expert, Justin Dillon. Although Mr. Dillon purports to offer opinions about the actions of South Carolina attorneys involved in litigation pending in federal court in South Carolina, Mr. Dillon is not, and apparently has never been, licensed to practice in the state and federal courts of South Carolina or the U.S. District Court for the Fourth Circuit Court of Appeals. Further, Mr. Dillon makes no claim in his affidavit that he has ever been

specially admitted to practice *pro hac vice* in any state or federal court in South Carolina. Further, in his affidavit, Mr. Dillon makes no claim of familiarity with the nature of federal practice in the U.S. District Court for the District of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina (including, but not limited to, the South Carolina state ADR Rules). Finally, Mr. Dillon notes in his affidavit that he has reviewed only scant materials related to the underlying federal and state litigation at issue (indicating that his review of materials is insufficient to render any opinions in this matter). As such, Mr. Dillon's credentials and affidavit are insufficient. For the same reasons, pursuant to South Carolina Code § 15-36-100(E), Mr. Dillon's affidavit is defective, and as such, Plaintiffs' claims set forth in the Second Amended Complaint should be dismissed.

FOR A THIRD DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted because the gravamen of Plaintiffs' Second Amended Complaint is simply post-mediation "buyer's remorse." Plaintiff John Doe participated in a formal mediation in the federal litigation referenced in the Second Amended Complaint and personally signed a memorandum of settlement agreeing to the terms of a settlement to which he now objects. As such, Plaintiffs fail to state a claim upon which relief can be granted.

FOR A FOURTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Plaintiffs' claims are barred by the doctrines waiver, laches, and unclean hands.

FOR A FIFTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. To the extent that Plaintiffs recover from Defendants in this matter, Defendants are entitled to a credit and/or set-off to the extent Plaintiffs have recovered proceeds from other sources.

FOR A SIXTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert the affirmative defense of the statutory cap for any award of punitive damages found at South Carolina Code §§ 15-32-520 and 15-32-530. Defendants assert all protections set forth in South Carolina Code §§ 15-32-520 and 15-32-530 and further assert any and all defenses and limitations to punitive damages, including, but not limited to, any and all additional statutory caps pursuant to South Carolina statutory and case law.

FOR A SEVENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Standing is determined at the time of the filing of a complaint. Based on the facts and circumstances of this matter, Plaintiff Jane Doe Mother and Plaintiff John Doe Father lack standing to pursue the claims asserted in the Complaint. As such, this Court lacks subject matter jurisdiction to hear their claims.

FOR AN EIGHTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Plaintiffs' damages were caused by the actions or omissions of third parties and/or others over whom Defendant has no authority and/or control.

FOR A NINTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Any damages allegedly suffered by Plaintiffs, without admitting same to be true, are due to and caused by the sole acts/omissions or negligence, recklessness, willfulness, wantonness, carelessness and gross negligence of Plaintiffs, and were not caused by Defendants. The negligence of Plaintiffs is a complete bar to Plaintiffs' attempt to recover from Defendants.

3. Alternatively, Plaintiffs' claimed damages, which are denied, should be reduced in accordance with their fault.

FOR A TENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that any injuries or damages sustained by Plaintiffs was due to and caused by Plaintiffs' negligence, carelessness, and/or recklessness ("negligence"), combining, concurring, and contributing with the alleged negligence of Defendants, if any, without which, the Plaintiffs' alleged injuries and damages would not have been incurred or sustained. Should the negligence of Plaintiffs be shown to be greater than that of the Defendants, Plaintiffs are not entitled to any recovery. Should the negligence of Plaintiffs be shown to be less

than that of the Defendants, Plaintiffs' recovery should be reduced by Plaintiffs' percentage of fault.

FOR AN ELEVENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that any alleged injuries or damages sustained by Plaintiffs, which injuries and/or damages are hereby specifically denied, was due to and was the proximate result of the sole negligence and/or recklessness of third persons or parties, for whose conduct Defendants are not liable to the Plaintiffs in any sum whatsoever. Plaintiffs have not suffered any damages caused by the action of Defendants.

FOR A TWELFTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that Plaintiffs' claim for punitive damages violates both the Fourteenth Amendment of the United States and Article I, Section 3 of the South Carolina Constitution in one or more of the following particulars:

- a. that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees;
- b. that, even if a standard governing the award of punitive damages does exist, this standard is void for vagueness; and
- c. that the amount of punitive damages awarded is based upon the wealth of the Defendants in violation of their right to equal protection of the laws.

FOR A THIRTEENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that Plaintiffs' claim for punitive damages is barred by South Carolina Code Ann. §15-78-180.

FOR A FOURTEENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that Plaintiffs' claims are barred by the Statute of Limitations and/or the applicable Statute of Repose.

FOR A FIFTEENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that Plaintiffs failed to mitigate damages, and therefore, all claims asserted by Plaintiffs against Defendants should be either barred or reduced to the extent that Plaintiffs could have taken prompt and reasonable action to avoid the occurrence of the alleged damages.

FOR A SIXTEENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that any damages alleged in Plaintiffs' Second Amended Complaint were caused by the intervening and superseding acts or omissions on the part of

someone other than Defendants, over whom Defendants had no control or right of control, thereby barring or diminishing Plaintiffs' alleged right of recovery.

FOR A SEVENTEENTH DEFENSE

1. Plaintiffs accepted and ratified the settlement of the federal case described in the Complaint, and such ratification bars Plaintiffs' claims.

FOR AN EIGHTEENTH DEFENSE

1. One or more of Plaintiffs' causes of action are duplicative and should be dismissed as a matter of law.

FOR A NINETEENTH DEFENSE

1. Plaintiffs must elect their remedy.

FOR A TWENTIETH DEFENSE

1. Plaintiffs assumed the risks of litigation, such that their claims should be barred or Plaintiffs' claim damages, which are denied, should be reduced in accordance with their fault in assuming the risk.

FOR A TWENTY-THIRD DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants reserve the right to plead and/or proof any additional affirmative defenses that may become known during the course of discovery investigation. Defendants also avail themselves of, and adopt such other defenses, raised by any other Defendants as may be applicable.

**FOR A TWENTY-FOURTH DEFENSE AND BY WAY OF COUNTERCLAIMS
AGAINST PLAINTIFFS JOHN DOE, JANE DOE MOTHER,
AND JOHN DOE FATHER**

1. Defendants restate and reassert the prior paragraphs to the extent not inconsistent herewith.

PARTIES

2. Counterclaim-Plaintiff Clawson Fagnoli, LLC is a Limited Liability Corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

3. Counterclaim-Plaintiff Samuel R. Clawson, Jr., Esq., is a citizen and resident of Charleston County, South Carolina, and is a lawyer licensed to practice law in South Carolina.

4. Counterclaim-Plaintiff Christina R. Fagnoli, Esq., is a citizen and resident of Charleston County, South Carolina, and is a lawyer licensed to practice law in South Carolina.

5. Upon information and belief, Counterclaim-Defendant John Doe is a citizen and resident of Charleston County, South Carolina.

6. Upon information and belief, Counterclaim-Defendant Jane Doe Mother is a citizen and resident of Charleston County, South Carolina.

7. Upon information and belief, Counterclaim-Defendant John Doe Father is a citizen and resident of Charleston County, South Carolina.

JURISDICTION AND VENUE

8. Counterclaim Plaintiffs expressly incorporate by reference their other pleadings and motions, and repeats all allegations asserted therein as if fully set forth herein verbatim.

9. A portion of the events upon which these counterclaims are based occurred in Charleston County, South Carolina, or, to the extent any events occurred outside of Charleston

County, South Carolina, they are inextricably linked to Plaintiffs' Second Amended Complaint, which was filed in Charleston County, South Carolina.

10. These matters are compulsory counterclaims, therefore this Court has jurisdiction and venue is proper.

FACTUAL ALLEGATIONS

11. In late-2017, Counterclaim-Plaintiff Clawson Fagnoli, LLC, Counterclaim-Plaintiff Samuel R. Clawson, Jr., Esq., and Counterclaim-Plaintiff Christina R. Fagnoli, Esq. (collectively the "Counterclaim Plaintiffs"), along with Barret R. Brewer, Esq. and Brewer Law Firm, LLC (collectively "Brewer"), agreed to represent Counterclaim-Defendant John Doe, Counterclaim-Defendant Jane Doe Mother, and Counterclaim-Defendant Father John Doe (collectively the "Counterclaim Defendants") in a lawsuit pending in the United States District Court for the District of South Carolina (the "federal case").

12. At or around the same time, Counterclaim Plaintiffs, along with Brewer, agreed to represent the Counterclaim Defendants in another lawsuit pending in the Court of Common Pleas in a County in South Carolina (the "state case").

13. Counterclaim Plaintiffs and Counterclaim Defendants had a contingency fee agreement setting the fee for Counterclaim Plaintiffs' services at forty (40) percent of any recovery by Counterclaim Defendants. The contingency fee was to be divided equally between Counterclaim Plaintiffs and Brewer.

14. On or about March 21, 2018, Counterclaim Plaintiffs and Counterclaim Defendants participated in mediation of the federal case. Counterclaim Defendants agreed to settle the case for \$100,000 and executed a Mediation Settlement Agreement indicating such agreement to settle for that amount.

15. On or about March 23, 2018, Counterclaim Defendant John Doe signed Counterclaim Plaintiffs' Disbursement Statement, which specifically indicated that Counterclaim Defendant John Doe had read and understood the Disbursement Statement, and that he consented to the disbursement.

16. On or about May 8, 2018, Counterclaim Defendants met with Counterclaim Plaintiffs and terminated their representation and attorney-client relationship.

17. On or about May 9, 2018, Counterclaim Plaintiffs sent a letter to Counterclaim Defendant John Doe asserting a lien in the amount of \$40,000 on the federal case (i.e., 40% of the \$100,000 settlement amount).

18. On or about May 24, 2018, the defendant in the underlying federal case filed a Motion to Enforce Settlement.

19. On or about June 15, 2018, Counterclaim Defendant John Doe filed a Memorandum in Opposition to [underlying defendant]'s Motion to Enforce, as well as a Cross-Motion to Void Settlement in Principle and Reopen the Instant Action.

20. On or about November 9, 2018, the Court held a hearing on the underlying defendant's Motion to Enforce. The matter was taken under advisement.

21. On or about March 25, 2019, the Court issued an Order granting the underlying defendant's Motion to Enforce the Settlement Agreement and denying Counterclaim Defendant John Doe's Cross-Motion to Void Settlement in Principle and Reopen the Instant Action.

22. On or about May 21, 2019, the Court held a status conference to discuss the disbursement of the settlement. The Court issued a Minute Entry stating that any disputed attorneys' fees were to remain in a South Carolina trust account pending resolution of any liens.

23. Counterclaim Plaintiffs have not yet received their portion of the settlement funds, despite numerous requests to Counterclaim Defendants and their various attorneys.

AS A FIRST CAUSE OF ACTION AGAINST COUNTERCLAIM DEFENDANTS
JOHN DOE, JANE DOE MOTHER, AND JOHN DOE FATHER
(Breach of Contract)

24. Counterclaim Defendants restate and reassert the prior paragraphs to the extent not inconsistent herewith.

25. Counterclaim Defendants entered into valid contractual obligations with Counterclaim Plaintiffs, whereby Counterclaim Defendants agreed to pay Counterclaim Plaintiffs for legal representation in the two underlying lawsuits.

26. Counterclaim Plaintiffs fully performed all obligations owed to Counterclaim Defendants.

27. In spite of Counterclaim Plaintiffs' good faith performance, Counterclaim Defendants breached their contractual obligations by, among other things, failing to pay Counterclaim Plaintiffs the amounts owed for legal services rendered.

28. As a result of Counterclaim Defendants' breaches, Counterclaim Plaintiffs have suffered actual damages.

29. Counterclaim Plaintiffs are entitled to judgment against Counterclaim Plaintiffs for the amount of its actual, general, compensatory, special, and consequential damages relating to Counterclaim Defendants' contractual breaches, including attorneys' fees incurred in pursuing these counterclaims.

AS A SECOND CAUSE OF ACTION AGAINST COUNTERCLAIM DEFENDANTS
JOHN DOE, JANE DOE MOTHER, AND JOHN DOE FATHER
(Unjust Enrichment)

30. Counterclaim Defendants restate and reassert the prior paragraphs to the extent not inconsistent herewith.

31. Counterclaim Defendants have performed certain services for the benefit and/or at the request of Counterclaim Plaintiffs.

32. In connection with the provision of these services, Counterclaim Plaintiffs incurred certain costs.

33. Counterclaim Defendants realized the benefit of these services and expenditures.

34. Counterclaim Defendants retained the benefit of these services and expenditures.

35. Counterclaim Plaintiffs did not authorize Counterclaim Defendants to retain these benefits without compensating Counterclaim Plaintiffs.

36. Permitting Counterclaim Defendants to retain the benefit of these services and expenditures without compensation to Counterclaim Plaintiffs would be unjust and inequitable.

37. Counterclaim Defendants have been unjustly enriched and should pay restitution such that Counterclaim Plaintiffs are fairly compensated for the services provided to Counterclaim Defendants in the underlying lawsuits.

CONCLUSION

Having fully answered each and every allegation contained in Plaintiffs' Second Amended Complaint, Defendants Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fargnoli, Esq. pray to the Court as follows:

1. That Plaintiffs have and recover nothing of Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq.;
2. For dismissal of Plaintiffs' action with prejudice;
3. Judgment in favor of Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. on their counterclaims;
4. An award of prejudgment and post-judgment interest at the maximum rates allowed by law;
5. A trial by jury;
6. The recovery of its costs and fees to the extent permitted by law; and
7. That the Court order such other and further relief as it may deem just and proper.

Respectfully Submitted,

June 28, 2021

/s/ James M. Dedman, IV

James M. Dedman, IV (S.C. Bar No. 70664)
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Samuel R. Clawson, Jr., Esq., and
Christina R. Fagnoli, Esq.*

Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. demand trial by jury of all issues triable by jury.

/s/ James M. Dedman, IV

James M. Dedman, IV (S.C. Bar #70664)