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SC Court of Appeals

The State of South Carolina
In The Court of Appeals

Appeal from Dorchester County
Hon. Heath P. Taylor, Circuit Court Judge

Appellate Case 2023-000720

Case Nos. 2006-CP-18-01310
2006-CP-18-01311
2006-CP-18-01636

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

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

v.

The Bishop of Charleston a Corporation sole, and the Bishop of The Diocese of Charleston, in his official capacity, Respondents,

And

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

Record on Appeal
Volume Four of Four

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2006-07-26-01

The Supreme Court of South Carolina

ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that the following procedures shall be followed in the management and disposition of all complex common pleas cases now pending or hereafter filed in each circuit:

On the Chief Administrative Judge's own motion or on motion of counsel on an **approved form**, a copy of which is attached and made a part of this order, made after the filing of the original complaint, the Chief Administrative Judge can designate a case as complex, establish a date prior to which the case will not be called for trial and assign the case to a judge assigned to the circuit or an adjoining circuit who will be given exclusive jurisdiction to handle that case from beginning to end.

The motion may be granted on the information contained in the motion or the Chief Administrative Judge may require a hearing to determine whether the case justifies special handling.

If the motion is granted, the case will not be called for trial prior to the date designated in the order. The Chief Administrative Judge will assign the case to a judge assigned to the circuit or an adjoining circuit and all pretrial motions and other matters pertaining to that case will be under the exclusive jurisdiction of the judge assigned to the case. When appropriate, the case should be given a date certain for trial with the trial of the case also handled by the assigned judge.

If the Chief Administrative Judge believes that the case is not so complex as to require the assignment of a specific judge to handle the case from beginning to end, the Chief Administrative Judge can partially grant the motion by providing a date in his or her order before which the case cannot be called to trial. This will allow counsel adequate time to prepare the case for trial without the necessity of having to attend roster meetings and justify a continuance. Continuances beyond the date established in the scheduling order should not be requested or granted by the Chief Administrative Judge without exceptional circumstances being shown. Once the continuance has expired, the case will be handled in the same manner as all other normal

cases.

If the Chief Administrative Judge does not believe that the case is complex or requires additional time for preparation, the motion will be denied and the case will be placed on the trial roster and handled in the same manner as all other normal cases.

If the motion is granted and a specific judge is assigned to handle the case from beginning to end, copies of the motion and order granting the motion will be provided by the clerk of court to counsel of record and the judge assigned to the case.

This Order shall be effective immediately and shall remain in effect until rescinded or modified by future Order of the Chief Justice. All previous Orders regarding procedures to be followed in the management and disposition of complex common pleas cases are hereby rescinded.

s/Jean Hoefer Toal
Jean Hoefer Toal
Chief Justice

July 26, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER John Doe #53, John Doe 66, John Doe 66A John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, Plaintiffs, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE No. 06-CP-18-1310 CASE No. 06-CP-18-1311 CASE No. 06-CP-18-1636
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	**AFFIDAVIT OF MARVIN D. INFINGER**

PERSONALLY APPEARED before me Marvin D. Infinger who, first being duly sworn, deposes and says:

1. He is a member of Haynsworth Sinkler Boyd, P.A. and has been associated with said firm or its predecessors since October 1978.

2. He has been licensed to practice law in South Carolina since November, 1977.

3. He was asked to provide this affidavit by both Lawrence E. Richter, Jr., Esquire and Albert P. Shahid, Jr., Esquire, who on information and belief are the subjects of attorney grievance complaints filed by Gregg E. Meyers, Esquire.

4. Although he has not seen the grievance complaints filed, the undersigned has seen and reviewed an affidavit dated June 18, 2008 by Mr. Meyers, as well as a "Petition to Appear as

Amicus Curiae" by David Flowers on behalf of the South Carolina Victims' Assistance Network. The date of Flowers' petition is June 19, 2008.

5. The affidavit and petition contain some matters as to which the undersigned has no personal knowledge (such as the suggestion Mr. Meyers was inappropriately investigated on order of the Court). However, the undersigned participated in the settlement and arbitration process, dealing with the disposition of claims against the Catholic Diocese of Charleston ("the Diocese"), first as a mediator and then, after Court approval of the class action settlement, as arbitrator of the class claims.

6. The undersigned's first involvement centered around mediation of the claims of certain alleged victims and the mediation of a class action which either had been instituted or was about to be instituted versus the Diocese.

7. The mediation took place over a full two days in June of 2006, and resulted in the mediation settlement agreement attached hereto as **Exhibit 1**. The attached **Exhibit 2** is a copy of my handwritten rendition of the offer of agreement before acceptance by the individual plaintiffs.

8. The mediation was extremely contentious and the efficacy of many of the class claims were hotly disputed on grounds of statute of limitations (particularly after Doe v. Crooks, 364 S.C. 349, 613 S.E. 2d 536 (2005)), whether or not parental consortium claims even exist under the laws of this State, among other issues. Having said this, the Diocese was aware of the verdict received by a parent of a former Porter Gaud student abuse victim in the Court of Commons Pleas, in the nine figure range, just as Plaintiffs' counsel were aware of these legal issues as potential bars to their claims.

9. Thereafter, the undersigned received calls from both parties asking for assistance in issues surrounding the initial funding of the settlement fund for the proposed class action settlement. As I understood it, a big problem with the funding issue was that as a matter of church law the Pope or His delegatee was required to approve same. This created a huge atmospheric problem and I recall on several occasions counsel for the class suggesting that the settlement was "off."

10. Ultimately, a hearing on the propriety of the class settlement was held and I attended it. Objections were received by the Court both from Gregg Meyers on behalf of certain alleged victims and, if my memory serves me, by Walter Bilbro representing one or more claimants. Also, there were several brothers there who were outside the class definitions proposed, who expressed their displeasure with the state of affairs.

11. During the hearing there was exhibited a degree of acrimony by counsel for the class leveled at counsel for the Diocese which I found unbecoming. However, the consequence of the outbursts was that the presiding judge ordered a solicitor's investigation of the Diocese to determine whether any criminal conduct was committed by the Diocese. I have no personal knowledge of the result of the investigation, but assume the Diocese was cleared.

12. My recollection is that the class settlement was approved by the court, but Gregg Meyers had preserved objections to it on behalf of clients he represented individually.

13. Because the Diocese and the classes had reached an approved settlement after a hard fought series of efforts, some of which I was personally involved in as mediator, they wished to remove this final roadblock (the preserved objections) from preventing its execution.

14. I was then requested by counsel for the Diocese, counsel for the class, and counsel for the individual claimants with objections through their counsel, Gregg Meyers and David

Flowers, to mediate a settlement with Meyers' and Flowers' clients and a settlement was reached on these claims, but the funds were not to be paid until after conclusion of the class arbitration awards process.

15. The settlement of the objectors' claims was the first and only time that I witnessed a true concurrence of positions between the Diocese and the Class, and this concurrence of positions was required so that their respective clients could execute the settlement they had worked so hard to obtain for the benefit of their respective clients.

16. Thereafter, in February of this year, I arbitrated the claims of the individuals who had come into the classes created by the settlement. There continued to be contention between the parties. For example, before the arbitration began, class counsel raised the issue that as to certain claimants, the Diocese had failed to timely object to the efficacy of the claims and thereby waived said objections. I ruled the Diocese had not waived the objections. Also, on the first day of the arbitration, I heard objections by the Diocese to the efficacy of the number of claims, some of which I sustained.

17. In my dealings with the parties and their counsel I witnessed strong advocacy, from time to time strong emotions and, at times, the prospect that the settlement would not materialize because of same. It is hard to imagine a harder fought negotiation than what I observed and there was never in my experience any "collusion" between counsel for the parties.

FURTHER DEPONENT SAYETH NOT.

[SIGNATURE ON FOLLOWING PAGE]

Marvin D. Infinger

Sworn to and subscribed

before me this 22 day of July, 2008.

(L.S.)

Notary Public for SC

My Commission expires: 8/16/2011

393 S.C. 147
Supreme Court of South Carolina.

Ex parte Johns DOE C, D, H, J, K, L, M, and B; Janes Doe G, I, and M; and the mother of John Doe J, Appellants,
In re John Doe # 53, John Doe # 66, John Doe # 66A, John Doe # 67, Jane Doe 1, Jane Doe 2 and Rachel Roe, individually and as representatives of classes of people similarly situated, Respondents,
v.
The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity, Respondents.

No.
26984
.
|
Heard Feb. 3, 2011.
|
Decided June 13, 2011.

Synopsis
Background: While several motions for interest were pending, class members who had opted out of settlement agreement with religious organization arising out of childhood sexual abuse by agents of organization entered into separate settlement agreement with organization. The Circuit Court, Dorchester County, Diane Schafer Goodstein, J., denied motions. Class members appealed.

Holding: The Supreme Court held that releases in settlement agreement waived any claim for interest.

Appeal dismissed.

West Headnotes (1)

[1] Release
Release of damages for injury to the person

Releases of liability contained in settlement agreement between victims of childhood sexual abuse and religious organization released all of members' claims against organization, including claims for interest; members waived any right to interest when they signed releases discharging the organization from liability for all "actions, causes of action, claims, demands and compensation, up to and including the date of the release," and the releases did not reserve any rights as to any pending motions, rather, by their plain language, the releases resolved all of the members' claims.

1 Cases that cite this headnote

Attorneys and Law Firms

****892** Gregg Meyers, of Charleston, for Appellants.

David K. Haller and Lawrence E. Richter, Jr., of Mt. Pleasant, for Respondents John Doe # 53, et al.

A. Peter Shahid, Jr., of Charleston, for Respondents the Bishop of Charleston, a Corporation Sole, et al.

Opinion

PER CURIAM.

***148** This appeal follows a long and complex series of motions related to a class action settlement that was administered in Dorchester County. The underlying class action dealt with allegations that certain minors ****893** were victims of sexual abuse at the hands of agents of the Diocese of Charleston.[1] Appellants objected to and opted out of the class action, then reached an independent settlement with the Diocese. Pursuant to that settlement, Appellants executed releases that explicitly discharged *all* claims against the Diocese. We dismiss this appeal as moot.

[1] For simplicity, we refer to both "the Bishop of Charleston, a Corporation Sole," and the Bishop of the Diocese of Charleston, in his official capacity, as "the Diocese."

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I.

The plaintiffs in the underlying class action consisted of two classes: one for victims of childhood sexual abuse by agents of the Diocese and one for the spouses and parents of victims. As chief administrative judge for Dorchester County, Judge Goodstein designated the case "complex," and she assigned ***149** herself exclusive jurisdiction over it. Judge Goodstein subsequently approved a settlement in the class action over Appellants' objections. Appellants moved to alter or amend the order approving the settlement.

While Appellants' motion to alter or amend was pending, they reached a separate settlement agreement ("the opt-out agreement") with the Diocese and class counsel. This agreement provided that the Diocese would pay Appellants $1.375 million to settle their claims, in exchange for Appellants' agreement to opt out of the class action, execute releases, and withdraw all pending motions and objections with prejudice. Judge Goodstein entered an order dated August 31, 2007, approving the agreement and adopting it as the order of the court to the extent that it resolved the pending motions and objections.

On March 6, 2008, Appellants filed a complaint in Charleston County alleging payment was due under the opt-out agreement. Because the opt-out agreement arose from the Dorchester County class action, the Diocese moved to enforce the opt-out agreement in Dorchester County and to deposit the $1.375 million with the Dorchester County clerk of court. Appellants moved to dismiss the Diocese's Dorchester County motions and moved for Judge Goodstein to recuse herself.

Judge Goodstein held a hearing on these motions on January 29, 2009. After Judge Goodstein orally denied Appellants' motions to dismiss and to recuse, Appellants moved to compel the Diocese to pay the $1.375 million plus pre or postjudgment interest.

Following the January 29 hearing, and while Appellants' motions for interest remained under advisement, Appellants signed releases bearing the title "FULL AND COMPLETE RELEASE," which provided in relevant part:

> For and in consideration of my having received payment ... I hereby release, acquit, and forever discharge: The Diocese of Charleston ... from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, up to and including the date of this release, on account of, or in any way growing out of:
>
> 1. The obligations under the letter agreement dated August 30, 2007, incorporated into and adopted as an order ***150** of the Dorchester County Court of Common Pleas dated August 31, 2007 ...;
>
> ....
>
> 3. Any and all claims and/or allegations contained in or relating to the civil action styled *Johns Doe C et al. v. The Diocese of Charleston, et al.* ... now pending in the Court of Common Pleas for the Ninth Judicial Circuit (the "Charleston case"), or which could have been alleged in the Charleston case;
>
> 4. Further, in consideration of said payment, I do hereby authorize and direct my attorney to dismiss with prejudice the Charleston case, now pending in the Circuit Court for Charleston County.
>
> ....
>
> It is further understood and agreed that there is no promise or agreement on the part of the persons, firms and corporations who are hereby released to do or omit to do any act or thing not herein mentioned, that this Release contains the entire agreement between the parties hereto, and that ****894** the terms of this Release are contractual and not a mere recital.

The releases were provided to the Dorchester County clerk of court in exchange for payment of the $1.375 million on deposit with the clerk. As a result, Appellants' counsel received the funds due under the opt-out agreement. Thereafter, by order dated March 23, 2009, Judge Goodstein ended the matter and denied Appellants' motions for pre and postjudgment interest.

Appellants now appeal the denial of their motions and raise challenges to the class action settlement from which they opted out. We certified the appeal pursuant to Rule 204, SCACR.

II.

Appellants opted out of the class action settlement, released all claims against the Diocese, and received payment in exchange for their releases. Thus, as a practical matter, the only relief Appellants could receive from a judgment in their favor is an award of prejudgment interest.[2] However, Appellants ***151** waived any right to interest when they signed releases discharging the

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Diocese from liability for all "actions, causes of action, claims, demands ... and compensation, **up to and including the date of th[e] release.**" The releases did not reserve any rights as to any pending motions. Rather, by their plain language, the releases resolved **all** of Appellants' claims. *See Southern Glass & Plastics Co. v. Duke,* 367 S.C. 421, 428, 626 S.E.2d 19, 22 (Ct.App.2005) ("A release is a contract, and the scope of a release is gathered by its terms." (citing *Gardner v. City of Columbia Police Dep't,* 216 S.C. 219, 223, 57 S.E.2d 308, 309–10 (1950))). Therefore, this appeal is moot. *Sloan v. Friends of the Hunley, Inc.,* 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.").

[2] If Appellants were entitled to interest, it would be prejudgment interest, not postjudgment interest, because the funds due under the opt-out agreement were not payable immediately upon entry of the August 31, 2007, order. The opt-out agreement provided: "The $1.375 million will be paid from the surplus funds, if any, after the [class action] claims process has been completed.... Payment is expected sometime after January 1, 2008."

Moreover, while Appellants now present us with complaints about the administration of the class action, Appellants opted out of the class and thus could not be harmed by any of the irregularities they allege. In fact, Appellants assert their opt-out agreement afforded them more favorable relief than the class action settlement would have. Thus, Appellants can claim no harm from the manner in which the class action settlement was handled. *See Bivens v. Knight,* 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) ("A party ... cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.").

At oral argument, perhaps in recognition of the fact that Appellants have waived all claims by their releases, Appellants' counsel insisted that this appeal was not moot because John Doe B did not sign the release quoted above. This assertion is without merit. John Doe B's claim is not before this Court. John Doe B did not fall within the definition of the class, nor was he a party to the opt-out agreement the ***152** Diocese sought to enforce. Rather, it appears that the Appellants may have agreed among themselves to distribute a portion of their settlement to John Doe B. No exceptions to the order on appeal were made on John Doe B's behalf, and Appellants' counsel conceded at oral argument that John Doe B's separate claim against the Diocese has been resolved by agreement and John Doe B has signed a release. In sum, the attempt by Appellants to resurrect this appeal through John Doe B is without merit.

III.

We dismiss this appeal as moot. Appellants executed full and complete releases without any reservation of rights, and they received the funds due to them under the opt-out agreement in return. Moreover, Appellants have no stake in the issues they ****895** raise regarding the class action settlement because they opted out of the class. Thus, a decision in Appellants' favor would have no practical effect.

APPEAL DISMISSED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

All Citations

393 S.C. 147, 711 S.E.2d 892

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

John Doe 2 and Jane Doe 4,) CASE NO.: 2010-CP-10-5520
)
Plaintiffs,)
) **ORDER ON**
v.) **LAWYER DEFENDANTS'**
) **MOTIONS FOR**
The Bishop of Charleston, et. al.) **SUMMARY JUDGMENT**
)
Defendants.)

John Doe 10,) CASE NO.: 2010-CP-10-7233
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

Jane Doe 11,) CASE NO.: 2012-CP-10-5559
)
Plaintiff,)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 193,) CASE NO.: 2013-CP-10-3733
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

FILED
2017 AUG 11 PM 2:39
JULIE J. ARMSTRONG
CLERK OF COURT

Father Doe 194, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2013-CP-10-4175
John Doe 194, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2013-CP-10-4176
John Doe 245 and Father Doe 245, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2015-CP-10-5486
John Doe 297, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2016-CP-10-1632

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

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motion for summary judgment in each case on the same grounds. The Lawyer Defendants also filed separate motions for summary judgment on additional grounds against Jane Doe 4 (Case No. 2010-CP-10-5520) and John Doe 193 (Case No. 2013-CP-10-3733). This Order will address the omnibus motion in each case as well as the motions for summary judgment against Jane Doe 4 and John Doe 193.[1]

BACKGROUND

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

The Lawyer Defendants represented alleged victims of sexual abuse in class action lawsuits against the Diocese Defendants that were settled in 2007 (Case Nos. 2006-CP-18-13109, 1311 and 1636; "the Underlying Case").[2] Seven of the Plaintiffs claim that they were members of the Primary Class[3] and that the Lawyer Defendants committed legal malpractice while representing

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

I. Summary Judgment Standard

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

---

[6] Case No. 2013-CP-10-3733.

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

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

II. The Lawyer Defendants' Motions

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

A. the Court has determined that the Plaintiffs can sue the Diocese Defendants making their respective claims against the Lawyer Defendants "irrelevant";

B. the Plaintiffs have no damages proximately caused by the Lawyer Defendants;

C. no attorney-client relationship existed between the Lawyer Defendants and the Plaintiffs, who were unnamed class members; and

D. the Lawyer Defendants did not breach a fiduciary duty to the Plaintiffs.

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

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

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

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

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

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

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

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

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

The Plaintiffs who did not settle with Diocese Defendants[10] were subject to a motion for summary judgment filed by the Diocese Defendants and scheduled to be heard by the Court on

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

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

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

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

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

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

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

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
>
> (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

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

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

C. There was No Attorney-Client Relationship

1. The Majority Rule.

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

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

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

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

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

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

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

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

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

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

2. *Premium Investment Corp. v. Green*

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

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

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

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

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

Id. at 470.

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

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

3. The Plaintiffs' Testimony.

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

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

D. No Breach of Fiduciary Duty.

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

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

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

Id. at 470.

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

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

Id. (emphasis added).

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

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

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

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

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

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

John Doe #53, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1636, Complaint ¶ 41. Therefore, the complaints relevant to the Primary Class clearly limited the putative classes to individuals within the geographical boundaries of South Carolina. *See also Id.* ¶ 36 ("Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].").

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

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

Jane Doe 1, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1310, Complaint ¶25. Later, that complaint alleged:

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

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

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

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III. The Claims of Jane Doe 4.

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

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

IV. The Claims of John Doe 193.

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

V. The UTPA Claims.

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

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

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

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

CONCLUSION

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

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

AND IT IS SO ORDERED.

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

Dated: 8/8/17
Charleston, SC

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State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020-_____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Petition for Original Jurisdiction

Pursuant to SCACR 245(a), petitioners request the Court exercise its original jurisdiction (a) to resolve conflicting circuit court orders that affect the rights of the parties and the public on matters involving sexual abuse by priests and other employees of the Diocese of Charleston, (b) to address what has recently been disclosed as a substantial apparent fraud on the court in that ongoing class action, and (c) to address class counsel placing their own financial interest ahead of and at the expense of the interest of the classes they chose to represent.

The class action at issue was filed in 2005. Despite a 2009 order from this Court that it be concluded, which order was ignored, that class action has never been concluded. Without further action by this Court, the apparent fraud on the court will apparently never be examined, the

improprieties alleged in the case will never be examined, and that class action will apparently never be concluded.

Many of the underlying facts alleged in the attached complaint are in the public record and are indisputable, but this Petition requests that the court assert its original jurisdiction in the manner it did in, e.g., *Ex parte Smith*, 756 S.E.2d 386 (S.C. 2014), where a special referee was appointed to make recommendations to the Court; or in the manner used in *Johnson v. Catoe*, 345 S.C. 389, 393 (2001), where a special referee was appointed to "take evidence and issue a report…."

At present the never-concluded class action is assigned to no circuit court judge, the most recently assigned judge having retired in 2019. Once the court resolves the conflicting court orders and apparent fraud on the court underlying the declaratory relief aspects of the complaint, it may be that the case can be otherwise remanded or assigned to a circuit judge to address the additional issues in the other causes of action, particularly those appropriate for the requested jury trial, and to order new counsel for the identified classes who will protect the interests of the class rather than the interests of class counsel.

Why should the Court be concerned with a case filed in 2005? Because it is a class action with ongoing impact on sexual abuse victims and the public, because orders of the Supreme Court have been ignored by both the parties in the class action and a shopped-for circuit judge, and because fraudulent conduct is involved. Not only do circuit court orders as to the class action now conflict over fundamental questions that affect the plaintiffs in the attached complaint; the same questions affect a substantial number of members of the public.

The Court may desire, if the matters set out in this pleading are of any concern, to request that among other things a special referee gather information as to why the parties in the class

action (and the circuit court judge who had assigned the matter to herself) simply ignored the Supreme Court's March 2009 order that directed that the underlying class action be concluded by September 2009. And why those same individuals ignored the Court's directive to seek any extension from the Supreme Court ("No extension shall be granted absent prior permission by this Court," the order states.) And why those same individuals continue to ignore the Court's directive and to ignore a 2016 *pro se* filing of one of the class representatives requesting a post-award fairness hearing.

Without involvement by this court, the class action apparently never will be concluded, and sexual abuse victims will continue to be affected.

The class action is alleged to have been collusive, a contention increasingly supported by the evidence disclosed by the passage of time. Complications continue to expand from the manipulations and lack of independent judicial oversight plainly evident in the record of the underlying class action. Important aspects of the class action have received no meaningful judicial review, including actions which recently disclosed an apparent fraud upon the court by class counsel.

In 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, one of the early cases which arose from the problems of the underlying class action. There are now a number of such cases pending. In that decision the Supreme Court held, in relation to the underlying class action:

> Should appellants establish on remand that they were denied due process owing to lack of notice or because of inadequate representation in the class action proceedings, and that the statute of limitations was tolled, they may proceed to further prosecution of their claims.

Doe v. Bishop, 754 S.E.2d 494, 501 (S.C. 2014). The appellants in *Doe v. Bishop* were absent members of each of the two classes defined in the underlying class action. Claims that have arisen in the interim continue in a presently pending second appeal of *Doe v. Bishop*, appeal 2017-

001996, now making its second trip to the appellate courts. Even though the first of those *Doe v. Bishop* cases began more than ten years ago, not only has there been no trial of the issues decided in *Doe v. Bishop*, there has not yet been even full discovery permitted as to class counsel's manipulation of notice to the class and inadequate representation, the issues that were explicitly permitted by the Supreme Court in its 2014 decision. As a result, certain factual issues in the present Petition remain to be clarified.

Pertinent to this Petition, until the now conflicting court orders as to the class can be resolved, and until full discovery is permitted in *Doe v. Bishop* and in this action, there are at least two possible reasons why the Supreme Court's March 2009 order as to the class action may have been ignored by the defendants in this action and ignored by the circuit court judge who had assigned the class action to herself. A special referee might find others.

First, the Court's 2009 order may have been ignored to avoid there being any final order which could enable appellate review of what are, frankly, grotesque but undisputable collusive procedural and substantive manipulations in the class action record which bear on this Petition, including:

(a) collusive conduct to judge- and venue-shop after the class settlement was reached;

(b) class counsel on behalf of themselves or their clients paying their "adversary," $100,000 — from class counsel's trust account — to help fund superior settlement terms (compared to the class recovery) for persons who objected to the class settlement. That $100,000 payment was not included or reflected in any accounting of the class action; nor was it disclosed in any way to class members. Whether it was disclosed to the class representatives, if the class

representatives made the payment, remains unknown until discovery can be had;

(c) a contingent fee payment of $145,000 was made to class counsel, and never disclosed to the court, for work done on individual class representatives' cases, compensating class counsel for the time on those cases which class counsel then submitted as support for a $2.5 million fee request in the class action. The submission was fraudulent. The class action complaint was resolved seven months after it was filed, with no argued or decided motions, and not a single deposition having been taken.

(d) class members were never informed:

1. that the settlements terms for persons who objected to the class action, which class counsel's trust account payment to the Diocese helped fund, were better than the terms for any class member;
2. that class counsel had life-long ties with, and held positions within, his supposed "adversary" organization, the Diocese of Charleston;
3. that class counsel had negotiated simultaneously a fixed fee for himself and a variable recovery for the class, with the compensation for class members subordinate to class counsel's fixed fee. Under the terms of the class settlement, class members' recovery would be *pro rata* reduced, if necessary, to accommodate class counsels' fee, disclosing that the fee was the primary purpose for the class action, with compensation to class members the means to the top priority, class counsels' fee. Because those terms were not disclosed to the class, no

member of the class ever had any opportunity to object or challenge class counsel's fee or that fee having the highest priority in the class settlement.

(e) class counsel submitted patently false and fraudulent billing records in support of his fee application, which elicited neither reaction nor comment from either his supposed adversary or from the shopped-for judge, either initially or even after the objectors and others later brought the fraudulent entries specifically to the attention of the shopped-for judge;

(f) as noted above, class counsel was paid a contingent fee for almost all of the time submitted as justification for a fee award in the class action, a payment never disclosed to the court;

(g) class counsel was awarded a $2.5 million fixed fee for a class settlement reached seven months after the class action was filed, before a single motion had been argued or decided in the case, before a single deposition had been taken in the case, before any class member had been even identified, let alone made a claim or been compensated, so before the value of claims were assessed (individually or collectively). That fee was paid prior to any notice to the class and prior to the claims period, making it impossible to evaluate the results for the class in assessing the fee, and impossible for any class members to object; and

(h) The claims of class representatives were resolved before the class was approved. None of the representatives had any stake in the class settlement.

Avoiding appellate review of just those example aspects (there are more) may be one reason why the parties ignored the South Carolina Supreme Court's 2009 directive in 2009, and why they continue to ignore it.

A second reason the Supreme Court's March 2009 order may have been ignored is because a substantial fraud was, or is, being, perpetrated on the court, in the form of:

(a) class counsel making claims for, and distributing class funds to, persons class counsel now claims were never in either of the two classes,

(b) class counsel charging substantial fees (of over $900,000) that were:

    a. not authorized by any order,

    b. charged without disclosing, to either class members or to those persons class counsel knew were not (they now claim) in the class, that class counsel had already been paid a $2.5 million fee. A substantial part of that unauthorized fee was charged to, and paid by, persons class counsel now claims were not in either of the defined classes, which if true would mean those "clients" were persons class counsel did not represent, and which class counsel was not eligible to represent, and

(c) If, contrary to what class counsel now claims, the settlement classes included persons who resided out of state, and those persons rightfully received class funds, then the fraud being perpetrated by class counsel is current, with class counsel maintaining in *Doe v. Bishop*, a position contrary to what they maintained in the class action, and were paid for maintaining in the class action. Class counsel now claims they owed no duty to absent members of

> the class who resided out of state because those persons were not in the class, so class counsel necessarily could not, and did not, represent those absent members of the class. Class counsel have made this new claim to avoid liability to those absent members for (what they now admit was *deliberately*) depriving those persons of Due Process in the class action by giving them no notice of the class action.

As noted above, fifteen years after it was filed, and eleven years after the South Carolina Supreme Court ordered it to be concluded, the underlying class action has never been concluded. Nor does it appear that the class action is presently assigned to any circuit court judge. The last judge assigned retired in mid-2019 and the docket reflects no new order that assigned the case.

There has been no post-award fairness hearing to review the propriety of, among other things, (a) the class action compensation record, (b) payments to persons now contended by class counsel to have never been in either class, (c) fees charged by and paid to class counsel in light of actual payments made to class members, (d) class counsel charging the class for work done on other cases for which class counsel had already been paid a contingent fee, and (e) the extent of payments made to (and fees charged to) those persons whom class counsel now claims were not entitled to any payment because they were not members of either settlement class.

Given the conflicts class counsel now themselves advance, before any fairness hearing occurs the court should appoint new class counsel to represent the interests of the class, since present class counsel has active conflicts with the interests of the classes they defined and purported to represent.

If, as class counsel presently maintains, the settlement classes included only persons who resided in South Carolina, then the actual recovery by class members was necessarily much lower

than was represented, or accounted for, as class counsel now claims substantial funds were distributed to persons not within either settlement class. It is a fraud on the court in multiple ways. No accounting of the class action has accounted for the funds by state of residence; or the $100,000 payment from class counsel's trust account (on behalf of class counsel or their clients), to their supposed adversary the Diocese, to help fund better settlement terms for each person who objected; and no accounting has accurately included the contingent fee payment that had been made to class counsel, before class approval, for work on individual cases for class representatives. Class counsel fraudulently claimed that work for the class representatives' cases was uncompensated work done on the class action. In each of those aspects the "adversary," the Diocese, was complicit, knowledgeable about, and actively engaged.

The class settlement agreement was supposedly intended for victims of sexual abuse by priests and other Diocesan employees. It was agreed to in June 2006. Two settlement classes were identified, only one of which had been alleged in any pleading. For four months after the class action settlement the parties did nothing to submit their agreement for court approval in Charleston County, where the class complaint has been filed and settled.

Instead, between June and October of 2006, the parties to that class settlement collaborated in shopping for a circuit court judge they desired to oversee the class settlement. A desired judge was identified. To fulfill the desire required a change of venue for the class action then pending in, and settled in, Charleston County. The parties apparently agreed that they did not desire class settlement oversight to be done by any circuit court judge then assigned in Charleston County, where the pending case had been filed and had been settled. They desired a particular circuit court judge from another county and another circuit.

It is not certain to what extent that shopped-for circuit court judge was aware of, or a participant in, class counsel's fraud on the court through the class settlement, or of the extensive manipulations undertaken after the class settlement was reached to change the venue of the class settlement for review by the shopped-for judge. The record reflects that all counsel met with the shopped-for circuit court judge and that the shopped-for judge was told the class case was settled. The record reflects that no motion was made to approve the class settlement in the Ninth Circuit, where the only filed class case was pending when the class settlement was reached. Instead, after the settlement two new class complaints were filed in the desired circuit, the First Circuit, and then *the identical original class action complaint from the Ninth Circuit was re-filed in the First Circuit* as a "new" case. Thus, a pending class action filed and settled in Charleston County became a Dorchester County case. More on "cloning" the existing class action is set forth in the attached complaint.

The shopped-for judge then consolidated the three cases and assigned them to herself, using the S.C. Supreme Court's complex case order. The parties in the class action and the shopped-for judge ignored that at that time (October 17, 2006), the Supreme Court's complex case order applied to only cases that could not be settled. The cases consolidated were all part of the class settlement.

When objectors later began to uncover and then lay out in the record various problems with the class settlement, in increasing detail as time went on and information became available, and the record before the shopped-for judge began to include affidavits alleging violations of procedural rules meant to protect class members, ethical improprieties, misrepresentations of fact to the court, and other misconduct, the shopped-for judge expended little or no effort to make inquiry into those various problems. Instead, the record reflects that at one point the shopped-for

judge attempted to evade receiving one of the objectors' pleadings that set forth issues with the class settlement and, at another point, the shopped-for judge retained an expert to investigate the objectors' counsel who had provided the information.[1]

Without any final order in the class action that started in 2005 and was settled in 2006, no appellate review has occurred or can occur. To date, the 2014 decision in *Doe v. Bishop* is as close to a post-award fairness hearing as the class action has come, and from even that narrow and oblique appellate review the Court properly identified issues for further proceedings. A proper post-award fairness hearing is likely to identify many more issues for proper inquiry, as the complaint sets out.

The presumption that the shopped-for judge was not fully aware of the fraud, both the fraud on the court and the fraud on the class members, and the presumption that the shopped-for judge was not aware of the collusive nature of the class action, are each increasingly difficult to maintain as the evidence has developed over time.

If the Supreme Court finds these matters of no concern for how a class action can be collusive and how class procedures can be manipulated, it should deny this Petition. If, however, the Supreme Court shares any concern about these matters it may desire that after the Court resolves the conflicting circuit court orders it may choose to have a special referee gather information on whether the shopped-for trial court judge was a participant with class counsel and his collaborating adversary, or if the shopped-for judge was merely duped by the parties who colluded in the class action.

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[1] Counsel who represented objectors at that time is the undersigned counsel who now represents the plaintiffs in this Petition and the accompanying Complaint. Nothing came of the court's investigation, as counsel had done nothing wrong in representing his clients and expressing objections to the proposed class settlement which the court's order for preliminary approval had invited.

Record on Appeal - 1238

In 2009 this Court declined to assert original jurisdiction over another Petition for Original Jurisdiction and proposed complaint that attempted to alert the Court to problems with the underlying class action. In declining that petition, the Court's order presumed (incorrectly, as time has shown), that it was "filings such as the one at hand" (referring to the Petition the Court declined to accept), that had delayed "finally resolving the underlying matters" (referring to the underlying class action). Order of March 19, 2009 in a matter styled *Doe v. Richter*. That order bears no case number.

Time has shown that the Court was entirely incorrect in presuming why "the underlying matters" were not finally resolved, as it was the parties to the underlying collusive class settlement and the shopped-for circuit judge who simply ignored the Court's 2009 directive. The parties have continued to this day to refuse to conclude the class action. Apparently all were in agreement that if no final order was ever entered that no appellate review could occur.[2]

Time has also disclosed even more problems associated with the underlying class action than those than were apparent in 2009, including circuit court orders which now conflict as to fundamental matters involving the class action. Those conflicting circuit court orders are among the reasons this petition is submitted to the Court's original jurisdiction, as one circuit court judge cannot overrule another. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986).

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[2] The shopped-for judge recused herself in January 2013, without explanation. Another judge was assigned in 2013 but no motion to conclude the class action was filed. After health problems arose as to that second judge, a third judge was assigned in 2015. He retired in 2019. In June 2016, ten years after the class settlement was reached, the docket in case 2006-CP-18-1310 reflects that a motion for a post-award fairness hearing was filed *pro se* by one of the class representatives. No responsive pleadings have been made to that *pro se* motion and no hearing has ever been held on that motion. As with this Court's 2009 order, that 2016 motion has simply been ignored.

The Court should accept this Petition and grapple with the enduring issues of collusion, fraud, professional misconduct, and potential judicial misconduct raised by the attached complaint about the underlying class action; declare the rights of John Doe 305 and the McDonald plaintiffs; appoint a competent lawyer to replace class counsel due to their conflicts with the classes, and cause to be imposed, for the first time, independent judicial review upon the collusive class action.

The plaintiffs in the attached complaint set out in detail many of the various known problems associated with the collusive class action settlement, which problems remain unresolved and which continue to affect substantial numbers of persons, known and unknown among the general public. As noted above, those problems include:

(a) circuit court orders which now conflict on significant matters related to the class definition, such as who is and is not in the settlement classes, which no circuit court can properly resolve since one circuit judge may not overrule another;

(b) Substantial frauds upon the court in the underlying class action. One circuit judge found (with class counsel's urging) that roughly a quarter of those participating in the class settlement were residents of a state other than South Carolina. Another circuit judge found (with class counsel's urging) that residents of states other than South Carolina were not in either settlement class. Of course, if out of state residents were not within the settlement classes, then such persons were ineligible to receive any of the class funds distributed to them, were unable to make a *bona fide* claim to any class funds, could not have been represented by class counsel, and could not properly have been charged a fee by class counsel. That is one potential fraud.

(c) As part of potential fraud one, class counsel submitted a substantial number of fraudulent claims on behalf of persons they now contend were not eligible for class funds, and

(d) class counsel purported to represent persons they did not represent in that class counsel now contends a substantial number of class claimants were not in either settlement class, and

(e) class counsel charged fees of persons they did not represent.

(f) A second fraud is that class counsel charged what appears to be in excess of $900,000 in fees not authorized by any order, over and above the $2.5 million fee awarded by the court. The awarded fee was based on class counsel's misrepresentations of fact and fraudulent billing records, most of which time, even if it hadn't been fraudulently inflated, was based overwhelmingly on time for which class counsel had already been paid a contingency fee not disclosed to the shopped-for judge. A third fraud is that the payment of that contingent fee for work done for class representatives was not disclosed to the court, by either class counsel who received the payment or the Diocese which made the payment, yet the time was represented to have been uncompensated time for work on the class action. The class settlement was reached seven months after filing, with no motions decided and not a single deposition having been taken.

(g) the parties and the shopped-for judge ignored both the Supreme Court's March 2009 directives to conclude the class action by September 2009 and to seek from the Court permission to extend that time beyond September 2009;

(h) the parties continue to ignore the Court's directive to conclude the class action, which remains open;

(i) no post-award fairness hearing has ever evaluated the actual distributions made to class members, or the actual fees charged by class counsel, or the fees charged in relation to the work performed on a settlement reached seven months after the class case began, or the misrepresentations of fact made by class counsel in pursuit of their fee, or the fantastical time records of class counsel, or none of the parties in the class disclosing that class counsel had been paid a contingency fee for individual cases which was later claimed to have been work done on the class action and which work constituted the vast majority of time in the billing records;

(j) no post-award fairness hearing has ever evaluated the actual distributions made to the substantial number of persons that class counsel now claim they knew when class claims were submitted were neither their clients nor in either settlement class; all such claims, and the fees charged by class counsel on such claims each being a fraud upon the court and comprising substantial sums paid to recipients that class counsel had no authority to represent;

(k) no evaluation has ever been made of class counsel retaining fees from their fraudulent conduct in the class action by class counsel's present fraud on the court contending, despite their conduct of the class action claims process, that no person who resides out of state is in either settlement class;

(l) Extensive procedural irregularities and manipulations in the conduct of the class action case, including but not limited to:

1. Class counsel having made no disclosure to the class about:

    i. Class counsel's lifelong ties to the Diocese of Charleston and the positions of authority he held with the Diocese;

ii. Class counsel having paid the Diocese of Charleston $100,000 from class counsel's trust account as a contribution by himself or by his clients to fund superior settlement terms (compared to any class member) for those who objected to the class settlement;

iii. That class representatives were compensated on terms different than were class members; were paid before class approval so had no stake in the class settlement; received known sums with no required arbitration process; were not required to surrender appeal rights to receive a settlement; and that a portion of their settlement compensation was paid to class counsel by a separate check as a contingency fee;

iv. That class counsel charged additional fees (apparently in excess of $900,000) not authorized by any order without disclosing to the persons charged that the court had already awarded class counsel, and they had already been paid, a $2.5 million fee that included their work in the claims process;

v. That class counsel's fee was for class litigation that began in December 2005 and ended in a mediated settlement in June 2006 without a single motion argued or decided or a single deposition having been taken;

vi. That class counsel had been paid a contingency fee for individual cases which were cases later represented to be in the class action, work for which was included in the time records of the class action;

vii. That class counsel submitted claims for, and charged a fee to, persons they now contend were not within any settlement class which if true were fraudulent claims.

2. Class counsel's fee in its entirety should be disclosed and reviewed in any proper post-award fairness hearing given that:
    i. a substantial portion of the fee was for claims class counsel now contends were paid to persons not within either settlement class;
    ii. class counsel submitted patently false and fraudulent time records;
    iii. class counsel failed to distinguish between time spent on class matters and time spent on what he now contends were fraudulent claims on behalf of persons not within either settlement class;
    iv. class counsel was paid (before class approval) a contingency fee to resolve individual cases later claimed to be included in the class action;
    v. class counsel's fee was based on substantially fraudulent time records that included time for which class counsel had already been paid a contingency fee, and
    vi. Class counsel now claims that a quarter of all claims submitted were claims made by persons not in either class;
3. Overt venue- and judge-shopping after the class settlement so as to avoid independent judicial oversight requirements of SCRCP 23 by moving the case, after the class settlement, to a different circuit to receive more pliable

oversight from a particular circuit judge with substantial personal ties to class counsel;

4. Class counsel negotiated a fixed fee for himself simultaneously with a variable recovery for the class, with the class members' recovery subordinated to class counsel's fixed fee;
5. Class counsel submitted roughly one-quarter of all claims on behalf of persons not claimed by class counsel to be in neither settlement class. If true, those claims, charges, and fees paid were fraudulent.

Because circuit court orders now conflict concerning essential matters in the class action, including the class definition, and because a fraud was perpetrated on the court by class counsel, and/or is now being perpetrated on the court by class counsel, it does not appear that this matter can be determined in a lower court in the first instance, one of the criteria in SCACR 245(a) for the Court to assert its original jurisdiction. One circuit court judge would have to overrule another, no matter how the presently conflicting orders are construed. In addition, the public interest is inherently involved in this matter because the underlying class action necessarily involves the public. Persons such as plaintiff John Doe 305, and what appear to be substantial numbers of other presently unknown absent class members, have rights affected by the fraudulent and collusive nature of the class action and its substantive and procedural irregularities, factors which invoke other criteria of SCACR 245(a) to support original jurisdiction. Persons such as the McDonald plaintiffs were invited to participate in the class settlement even though they reside out of state, and class counsel was aware they lived out of state.

If class counsel's present position is correct — that neither of the McDonalds was a member of the class — then a fraud was perpetrated on the court (or is being perpetrated now)

by class counsel and the McDonalds are unwitting participants in class counsel's fraud on the class action court. They should be held harmless for that fraud, the fees they paid should be disgorged, and they should be awarded damages. If the McDonalds were properly in the class, as we maintain, then the fee they and every other such person paid without proper disclosure and without proper court authorization should be disgorged by class counsel.

If the Supreme Court declines to accept this petition for original jurisdiction as it did the petition submitted in 2008, the various collusive and fraudulent actions committed in the conduct of the underlying class action are likely to continue to evade meaningful review. Ignoring orders of the Supreme Court will be added to the available manipulation tactics for any future class action. That and the other substantive and procedural manipulations will become routine methods for evading independent judicial review of class action settlements under SCRCP 23; and those manipulations of the judicial system will be rightfully seen by the bench, bar and the public as acceptable. For example, no disciplinary body has shown any concern about much of the conduct in this record, although no such body has considered all of it. If this Court does not act, this course of conduct will be how things will be done. The how-to article for the South Carolina bar magazine practically writes itself.

This petition assumes the Court takes seriously the professional obligations of bench and bar, both as to the standard of care for protecting the rights of absent class members and as to professional responsibility. E.g., *In re Sloan*, Op. No. 27936 (S.C. January 22, 2020) (three-year suspension for fraudulent billing), or *In re Moody*, Op. No. 27961 (S.C. April 8, 2020) (restitution ordered for clients overcharged).

Perhaps the rules vary depending on who the lawyers are, or who the clients are, or whether a circuit judge has participated in questionable conduct. Absent class members are ready

victims when parties collude in a class settlement and set about to pick their judge so as to avoid independent judicial oversight and appellate review.

Conclusion

To Plato's *Republic* is attributed the observation that the worst form of injustice is pretended justice. The legal principles that apply to lawyers and judges should not vary according to who is involved or based on who they know. The Court should exercise its discretion to accept this petition for review and its accompanying complaint; appoint a special referee; appoint new class counsel due to class counsel's conflicts with the classes; and after rulings to clarify the conflicting circuit court orders and the manipulations of the class action proceedings, assign the never-ending class action to a circuit judge for the first proper and independent judicial review the class settlement has ever received, after due notice to all objectors to the original class action settlement, and a final accounting can be done that includes the $100,000 payment, a post-award fairness hearing can be conducted, and the never-ending class case can be concluded.

Yes, all of this is complex. But it is also important.

As to the declaratory relief sought in the complaint, the Court should itself determine, or task the special referee to make recommendations for the court to determine, the rights and obligations of the parties as to whether John Doe 305 and the McDonalds are (as was maintained by class counsel in 2007), or are not (as maintained by class counsel since 2017), within the definition of one of the settlement classes given their respective states of residence. That determination will establish the applicable legal standards for the claims brought by each. Once the conflicting circuit court orders are reconciled by this Court, this particular case can then be remanded for further proceedings for discovery and trial under a special referee or other circuit court judge.

As to the never-ending class action, as noted above the Court should appoint new counsel to represent the class, and task the special referee for recommendations for concluding it after an appropriate post-award fairness hearing that for the first time independently and fully examines the issues in the class action and the conduct of class counsel and their "adversary."

Respectfully submitted,

s/ Gregg Meyers

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State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020-00-1415

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Complaint

Summary of the Action

1. This action for declaratory relief, legal malpractice, breach of fiduciary duty and indemnification involves a collusive class action in which class counsel placed their own interests ahead of that of the class. Those manipulations have affected and continue to affect the rights and interests of sexual abuse victims perpetrated by priests and other employees of the Diocese of Charleston, as well as family members of those victims. Class counsel engaged in professional malpractice by placing their own interests above those of the class members they purported to represent, and engaging in a substantial fraud upon the court.

Parties and Jurisdiction

2. John Doe 305, Julie McDonald, and Richard McDonald are each a citizen and resident of a state other than South Carolina.

3. The Bishop of Charleston, a Corporation Sole is the entity known colloquially as the Diocese of Charleston. The Corporation Sole is an entity organized under the law of South Carolina, created by statute in 1880. The Corporation Sole holds property and does business in South Carolina. Its boundaries include the entire state of South Carolina. Its principal place of business is in Charleston County. It is referred to in this complaint as "the Diocese."

4. The Diocese does business throughout South Carolina, owns property throughout South Carolina, and operates throughout South Carolina. Decisions to assign Eugene Condon to Stella Maris, from which assignment he sexually abused John Doe 305, and decisions about how Eugene Condon should be supervised, were decisions of the Diocese made in Charleston County. The acts associated with the abuse of the plaintiff John Doe 305 and the negligent supervision of Eugene Condon took place in Charleston County. Decisions to participate with class counsel in a class settlement for abuse survivors were made in Charleston County but required approval of the Holy See, in Rome Italy.

5. Robert Gugliemone is the present Bishop of Charleston, and as such conducts business in Charleston County. He is sued in his official capacity as a party necessary for complete relief, given that as Bishop he holds all executive, judicial, and legislative authority within the Diocese of Charleston. Within the Diocese he has the power and authority to command any person within the Diocese of Charleston to ignore the order of any court directed at the Diocese of Charleston, as has occurred in counsel's experience with a different bishop in a different diocese. Only by including Bishop Guglielmone individually as a defendant along with

the Corporation Sole can the Bishop's power and authority be regulated by the jurisdiction and contempt powers of the court.

6. During the course of the proceedings at issue, actions taken on behalf of the Diocese were authorized by predecessors to Bishop Guglielmone, including Rev. Monsignor Martin Laughlin and Bishop Robert J. Baker, who served as Bishop of Charleston from 1999 until August 2007. Bishop Guglielmone is the successor to those individuals.

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

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

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

10. At all times pertinent to this complaint, defendants Richter and Haller were agents for each other and for Richter and Haller, LLC.

11. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as "class counsel" unless otherwise particularly specified.

12. This Court has the capacity to assert its original jurisdiction over the parties and the subject of this action and should exercise its discretion to do so. As set forth in the accompanying Petition for Original Jurisdiction, circuit court orders now conflict on fundamental matters affecting the class action.

Original Jurisdiction

13. This case concerns new issues from among the issues which continue to arise from a collusive class action brought by class counsel in December 2005 and settled in June 2006, seven months after filing.

14. Between filing of the class action and settlement of the class action not a single motion was heard or decided. Nor was a single deposition taken.

15. Although settled quickly, and without adversarial proceedings, that class action has never been concluded. A March 2009 directive from the South Carolina Supreme Court that the class action case be concluded in six months was simply ignored by the defendants in this action, apparently to avoid appellate scrutiny of the manipulations in the record of the class action.

16. Class counsel made no specific claim to having had any prior class action experience, and that inexperience showed in obvious ways during the course of the class action. But class counsel possessed a commodity valuable to the Diocese for a partner with which to collude in a class action: class counsels' willingness to place ahead of the interests of the class members they purported to, and did, represent both their own financial interests and the interests of the Diocese. Defendant Richter was, as he put it, a "life-long" active member of the Diocese" and has by his own account functioned "in many capacities" including positions categorized as "Extraordinary Minister" during the class action, and had "friendships with many priests and bishops of the diocese," none of which was disclosed in any notice sent to the class. But more fundamental and egregious problems than that exist.

17. Plaintiff lawyers other than class counsel were involved in certain of the cases included in the class action settlement. No claims in this action are made against the conduct of any of those lawyers, only against these class counsel defendants.

18. A petition accompanying this complaint sets forth reasons why the South Carolina Supreme Court should assert its original jurisdiction. The reasons stated in that petition are incorporated into this pleading. Those reasons include:

a. circuit court orders now conflict about fundamental aspects of the class action, and "[o]ne Circuit Court Judge does not have the authority to set aside the order of another." *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). Among other things, circuit court orders now conflict on the class definition, affecting the rights of these plaintiffs.

b. The defendants simply ignored at the time, and continue to ignore, a March 2009 order from the South Carolina Supreme Court that the class action be concluded within six months. Apparently that order was ignored to avoid creating a final order that might enable appellate review.

c. Although in 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, 754 SE2d 494 (S.C. 2014), which held that absent members of the class should be permitted to show why class counsels' representation was inadequate, full discovery as to class counsels' conduct in the class action, including the class notice program and the statute of limitations, has still not been permitted. In the trial court a stay was imposed on that discovery so as to prevent inquiry into class counsels' conduct.

d. As of 2017, a new concept was proposed and adopted by a circuit court for the class action, conflicting with existing orders and despite the holding in *Doe v. Bishop*: that each class was limited to only South Carolina residents. The concept was adopted to defend against any breach of fiduciary duty to absent members of the class for whom proposed notice had been abandoned by class counsel at the request of their "adversary," as class counsel themselves have claimed. That 2017 order has been appealed, and that appeal remains pending as case 2017-001996. If that ruling is upheld, then class counsel and the Diocese perpetrated a significant fraud on the court in the class action settlement, submitting and paying class funds to persons known to be not in either class; charging a fee of persons not in any class and not class counsels' clients. On the other hand, if that ruling is overturned, then a present fraud is being perpetrated on the court by class counsel seeking to evade responsibility by advancing a theory known to conflict with class counsels' own conduct and with existing court orders as to the class.

19. This complaint seeks declaratory relief as to the rights of the parties, as well as indemnification, disgorgement, and damages.

Plaintiff John Doe 305

20. Plaintiff John Doe 305 was born prior to August 30, 1980, one of the criteria for inclusion in what was called the "primary class" in the class settlement.

21. As a minor child John Doe 305 was sexually abused by Eugene Condon, an agent or employee of the Diocese of Charleston, another criterion for inclusion in the "primary class."

He has had no prior claim as to that abuse resolved, the third, and last, criterion for inclusion in the "primary class," which had no geographic limit in its definition.

22. Unless the "primary class" is interpreted to be restricted to only residents of South Carolina, John Doe 305 is a member of the "primary class." If the primary class is interpreted to be restricted to only residents of South Carolina, then a substantial fraud was perpetrated on the court that begins with (but does not end with) class funds distributed to persons not in the class.

23. Condon was a priest assigned by the Diocese of Charleston to a position of authority over children without adequate supervision, despite his known sexual interest in children and his history of abusing children. John Doe 305 was abused by Condon in 1974 and 1975, when Condon was assigned at Stella Maris, the Catholic Church on Sullivan's Island, S.C., located in Charleston County, operated by the Diocese of Charleston. That assignment of Condon to Stella Maris is corroborated by the Catholic Directory published by the Diocese for each of 1974 and 1975.

24. Because he resides in a state other than South Carolina, where notice of the class action was not even attempted, until 2019 John Doe 305 was unaware that a class action settlement had been reached in 2006 and preliminarily approved by a South Carolina circuit court in 2007 to benefit a class of sexual abuse victims which included him. Neither approved class was defined with any geographic limit and on its face the definition included John Doe 305.

25. In 2006 the class counsel defendants agreed that the class included out of state absent members and, consistent with that agreement, proposed in a motion filed October 6, 2006 that nationwide notice would be given to absent class members through publication in *USA Today*.

26. In January 2007 another motion for class approval was submitted by class counsel. The class definitions were not changed, but the notice program for the class action was changed by agreement among the defendants. Nationwide notice for the class settlement was eliminated and changed to be notice only within and immediately around South Carolina.

27. No rationale for the 2007 change to the notice program was stated on the record at that time or inquired into by the court. Absent class members who resided out of state, including John Doe 305, were abandoned by class counsel through that change.

28. When the first out of state class members made claims against class counsel, class counsel and the Diocese both contended that the claims by those absent class members were barred by *res judicata*.

29. In 2011, a circuit judge concluded that the notice program for the class action was not sufficient to satisfy due process, and absent class members had not received due process and their claims were not barred by *res judicata*.

30. Not later than 2013 class counsel began acknowledging that the notice program of the class action did not provide Due Process for absent class members who resided out of state. In a hearing held April 12, 2013 at page 32 of the hearing transcript, class counsel agreed on the record that people outside the "publication area" of the ten South Carolina and one Georgia newspapers in which notice ran, "never had their due process rights to come in and be heard."

31. In a 2014 hearing, class counsel represented to the court that the class notice program had been changed to delete nationwide notice to accommodate the Bishop of Charleston, who (class counsel claimed) objected to the cost of nationwide notice. That representation was made to the court as reflected at page 42 of that hearing transcript.

32. That 2014 explanation by class counsel reflected both one aspect of the parties' collusion in the class action as well as class counsels' breach of duty to absent members of the classes they chose to define. Class counsel claimed they acted against their absent class members' interests so as to accommodate the supposed interest of class counsels' "adversary," an "adversary" who was defendant class counsel Richter's religious leader and the Bishop to whom defendant Richter had personal fealty, facts never disclosed in any notice given to the class.

33. In addition to admitting a breach of duty to the absent members of the class who resided out of state, class counsels' explanation was, and is, nonsensical. Under subpart "u" of paragraph 3 in the class settlement agreement, which appears on page 11 of that agreement, "All costs associated with the management of the class shall be paid from the settlement fund." In other words, to give nationwide notice the Diocese would have expended no additional funds. According to class counsels' own explanation, their conduct fell below the standard of care in breaching an obligation to the absent members of the class (a) at the request of their "adversary," and (b) for a rationale class counsel failed to recognize was nonsensical under the terms of the agreement. Class counsel breached their obligation to their absent class members.

34. In January 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, overturning an order dismissing claims by absent class members against class counsel.

35. After *Doe v. Bishop*, class counsel changed their explanation for deleting nationwide notice, claiming in 2018 it was done purposely, so as to *intentionally* deprive Due Process from those absent class members who resided out of state. At page 34 of a brief submitted to the Court of Appeals, class counsel contended that not having nationwide notice was a benefit as nationwide notice would have been "ill-fated" and "would inevitably have missed large numbers of victims while potentially barring them from bringing their own actions against the

Diocese." Class counsel contends that "the best practicable" notice was not required, so was intentionally withheld.

36. If class counsel had any prior class experience, this admitted breach of duty would be astonishing. Given their inexperience, it merely reflects their professional negligence. It implicitly admits (a) that the class definition included out of state residents, (b) that the "best practicable notice" which Due Process requires of any class action was deliberately not chosen for the classes they had defined, and (c) that although the circuit court judge the defendants had shopped-for was presented by the parties with an agreement that provided less than "the best practicable" notice, that judge made no inquiry into the notice program or the rationale for the change in the notice program originally submitted.

37. Class counsel changed the notice as part of their general approach to the class action, which was to place their own interests ahead of those of the class they voluntarily assumed the duty to undertake to protect. The class settlement set as its first priority class counsels' court-awarded fee. Having "too many" in the class posed a problem for class counsel. Reducing the scope of notice avoided having "too many" class members, as explained in more detail below.

38. To promote their own financial interests ahead of that of their clients, class counsel chose to compel those absent class members to undergo litigation to, on one hand, exempt themselves as best they could from any preclusive effect of the class action and, on the other, try to avoid the defenses which had been waived in the class action. Class counsel has admitted that absent class members such as John Doe 305 were deliberately deprived of benefits the class action might have provided, such as defenses the Diocese agreed to waive in the class action, which included charitable immunity and the statute of limitations. Outside of the class action, those

defenses have not been waived by the Diocese, and those defenses are often fatal to any individual class member's claim.

39. In 2017 a circuit court issued an order which concluded (at page 18 of that order) that the settlement classes extended to only residents of South Carolina. That order conflicted with past orders, including one from the same circuit judge, and is now on appeal.

40. The 2017 order, if upheld, raises entirely new problems with the class action, including a substantial fraud on the court by class counsel, apparently with the full participation of the Diocese, and potentially with the knowledge and awareness of the shopped-for judge. If that order is upheld then class counsel knowingly submitted fraudulent claims for persons not in either class, distributed class funds to persons not eligible to receive class funds, for persons which class counsel was not eligible to represent and whom class counsel did not represent. And to whom class counsel charged a fee they were neither authorized to charge nor eligible to charge.

41. Changing the 2007 notice program deliberately made notice less than "the best practicable" that Due Process required and eliminated any chance of John Doe 305 getting notice of the class action. Class counsels' conduct fell below the applicable standard of care. On its face the class was defined without geographic limit. If no duty to absent class members such as John Doe 305 was imposed by law on class counsel when the class action was alleged in the complaint, or when the class settlement was reached, then class counsel voluntarily assumed that duty to John Doe 305 in both (a) seeking approval of a class that on its face included John Doe 305 and (b) by representing on the record of the class action and in writings that class counsel represented all absent members of the settlement class that had no geographic limit.

42. In addition to changing the class notice program, the record reflects that these defendants misrepresented to the shopped-for judge that any absent class member who got no

notice and who later presented a claim would be provided the same relief as a class member. Had that assurance been truthful, it would reasonably have decreased the court's concerns about the dramatically reduced notice program. But no written order reflected that assurance of relief for absent class members who got no notice, an omission by class counsel which fell below the standard of care for protecting the interests of absent class members and which further demonstrated both the collusive nature of the class action settlement and how class counsel placed their own financial interests above those of the absent members of the class they voluntarily undertook to represent.

43. Deliberately depriving out of state absent class members such as John Doe 305 of any opportunity to participate in the class action is also conduct which falls below the standard of care.

44. The class action complaint was filed in 2005. There still has been no final order entered in that class action, an omission apparently designed to evade appellate review of the substantial irregularities and collusion in the class action, and an omission in direct contravention of the South Carolina Supreme Court's March 2009 order that the class action be concluded in six months unless that time was extended by the Supreme Court.

45. Alternatively, if the 2017 order is overturned, class counsel will merely have attempted a current fraud on the court, to retain all the financial benefits of the class action yet evade responsibility to absent class members who reside out of state and who received no notice, such as John Doe 305 by falsely claiming that John Doe 305 is not an absent member of that class.

46. The 2017 order as to class membership contradicts other circuit court orders as to the class action, including a 2013 order that found that roughly a quarter of the persons who had received class funds were out of state residents.

47. If the classes include no out of state residents, then class counsel, aided and abetted by the Diocese, perpetrated a substantial fraud on the court in the class settlement. Among other problems, class counsel made fraudulent claims for persons not members of either settlement class, distributed substantial class funds to persons ineligible to receive class funds; class counsel purported to represent persons not in either class; class counsel charged substantial fees of persons not their clients.

48. The Diocese defendants benefitted from participating in that fraud upon the court, and tried to use it to preclude claims by *res judicata* for any out of state class member who received no notice.

49. Circuit court orders now conflict on whether the class as defined does or does not include persons such as John Doe 305, a conflict which cannot be resolved by another circuit court. E.g., *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another.").

50. A 2013 order from Hon. Edgar W. Dickson acknowledged that a quarter of the class participants resided out of state and refused to limit either class to only SC residents. That order conflicts with a 2017 order of Hon. J.C. Nicholson, now retired, which determined that the class action did not include persons who resided out of South Carolina. Judge Nicholson's 2017 order also conflicted with orders approving the class settlement in 2007 and other orders, including one of Judge Nicholson's own orders about the lack of Due Process afforded absent class members who resided out of state.

51. This Court should assert its original jurisdiction to resolve the contradictory circuit court orders, interject the first genuine judicial oversight into the conduct of class counsel and how they placed their own interests ahead of and at the expense of the clients they purported to represent, and review the other misconduct of class counsel; declare the rights of John Doe 305 as to whether he is, or is not, an absent member of that 2007 class action as that class was defined and approved. John Doe 305 may have rights if indeed he was and is within one of the settlement classes.

52. Any fair reading of the class definition as approved in 2007 would include John Doe 305 within one of the approved classes, yet he received no notice because, as class counsel has explained, class counsel accommodated their "adversary's" request to reduce the scope of notice. Also to accommodate their adversary, class counsel chose to deliberately deprive the absent class members of Due Process and to further deprive them of the benefits of the defenses that were waived in the class action. Depriving absent class members of the defenses the Diocese waived in the class action provided a direct benefit to the Diocese at the expense of absent members of the class such as John Doe 305.

53. The class action filed in 2005 has never been concluded. No post-award fairness hearing has been held.

54. One of the class representatives has publicly objected to class counsels' representation and filed in 2016 a request for a post-award fairness hearing. Like the Supreme Court's 2009 order, that request has been ignored. If that request was ruled on, of course, it might result in an order which could be reviewed on appeal and the parties to the class action do not desire any final ruling which could be reviewed on appeal.

55. A final fairness hearing should be conducted. Such a hearing should review the entire conduct of the case, the funds actually distributed, the collusive nature of the class action, and class counsels' conduct, including, but not limited to:

a. class counsel paying their opponent from their firm's trust account $100,000 to facilitate the class settlement by funding a settlement of terms superior to the class relief for those objectors who opted out of the class action;

b. why that $100,000 payment is not reflected in any accounting;

c. class counsel having negotiated a fixed fee for themselves while simultaneously negotiating a variable recovery for the class, counsel's fee to take priority over the class recovery;

d. class counsel moving for the fee to be approved and paid within ten days of preliminary class approval, before any class member had notice or the opportunity to file a claim, or before class members even knew about or could object to any aspect of the fee petition,

e. whether class counsels' approved $2.5 million fee was reasonable given the fraudulent factual misrepresentations made in the fee request, the blatantly fraudulent time records submitted (more on that below), class counsel having been already paid (and none of the parties disclosing to the court) a contingency fee for the individual cases of the class representatives that preceded the class approval, the time for which formed the overwhelming bulk of the time submitted as if it was work done for the class action; and the class settlement having been reached seven months after the class complaint was

filed and before a single motion in the class case or any of the associated cases was argued or decided, and before a single witness had been deposed;

f. whether any independent judicial review occurred in the class action, given the defendants' collaborative judge-shopping, the manipulations of SCRCP 23 after the class settlement was reached so as to avoid review by judges then assigned to Charleston County; hand-picking instead a particular judge in Dorchester County with extensive personal ties to class counsel who the record shows manipulated the class settlement to assign it to herself after it had been settled through means of the complex case designation when that order applied to cases that could not be settled; the shopped-for judge accepting "new" class action complaints after the class settlement had been reached, including a word-for-word duplicate of the class action filing for John Doe 53 (so it was pending in two counties simultaneously); the shopped-for judge applying a pliable standard of review that penalized objectors for raising substantive and ethical concerns after orders invited them to do so; why the shopped-for judge and the parties ignored the order of the S.C. Supreme Court; and why the parties and the shopped-for judge undertook no post-award fairness hearing unless it was to avoid any order that could be reviewed on appeal;

g. the patently false rationale stated by class counsel to support the collaborative judge- and venue-shopping engaged in by the parties (supposedly seeking a less crowded docket) after having chosen to file the class action in Charleston County;

h. whether the blatantly fraudulent time records used by class counsel was proper support for the class action fee fraudulently claimed; a fraud far in excess of the false billing records on which this Court imposed a three year suspension of counsel in *In re Sloan*, Op. No. 27936 (S.C. January 22, 2020); unless, of course, a different standard applies to some lawyers as opposed to others;

i. whether it was proper for class counsel to submit as work done on the class action time records for work done on individual cases, for which work class counsel had already been paid a contingency fee by the Diocese, but which payment no party disclosed;

j. whether class counsel breached a duty to the class by (class counsel claimed) generating billing records not based on time but based on a computer program that did not record time but proposed a machine-generated "estimate" to bill for a given activity. For example, when class counsel duplicated the John Doe 53 class complaint for re-filing (as part of the judge-shopping scheme), class counsel made two changes to page 1 of that complaint for which a billing record for 30 hours was created. Yet the only work done was the word "Charleston" was changed to "Dorchester" and the Charleston County case number was deleted so as to provide a blank space to receive the Dorchester County case number, 2006-CP-18-1636. No other change was made for those 30 hours of worked claimed;

k. whether the substantial fees charged to and collected by class counsel from class members were proper when they were not authorized by any order, were charged without proper disclosures to the individuals charged, and were

charged to individuals that class counsel now claims were not in either of the settlement classes, so were not represented by class counsel and any representation directly conflicted with class counsels' obligations to class members;

l. whether the class should have been informed that more favorable settlement terms were given to objectors who opted-out of the class action and were partially funded by class counsel (or their clients) by a $100,000 payment from class counsels' trust account.

56. On March 19, 2009 the South Carolina Supreme Court ordered that the class action be concluded "within six months of the date of this order. No extension shall be granted absent prior permission by this Court."

57. No extension of that deadline was ever requested or granted. The defendants simply ignored the S.C. Supreme Court's order, as did the shopped-for judge who had assigned the class action to herself. This was presumably done to avoid any final order.

58. Among other things, a final order would permit appellate review of the grotesque collusive conduct of the class action, the issues affecting the fee and the conduct of class counsel. Without a final order, there has been and can be no appellate review. At no time has the class action received independent judicial oversight.

59. The defendants appear to have adopted a strategy of obtaining no final order so as to simply exhaust sexual abuse victims disadvantaged by their improper conduct, so persons such as John Doe 305 never get a fair hearing and compensation for his sexual abuse and his deliberate exclusion from the benefits of the class action, causing absent class members such as John Doe

305 to either give up all efforts to do so or the case takes so long to resolve the class action exceeds the lifespan of class members, all the while avoiding appellate review.

60. Despite the 2014 holding in *Doe v. Bishop*, which affirmed that class counsels' conduct could entitle absent class members to relief, delay, changed factual positions, and now conflicting rulings by the trial court has worked perfectly to insulate class counsel from deposition and liability. The lower courts have been highly protective of class counsel but not protective of the rights of absent members of the classes.

Plaintiffs Julie and Richard McDonald

61. Julie McDonald is a resident of Alabama. She has never resided in South Carolina.

62. Richard McDonald is a resident of Massachusetts. Since before 2005 he has resided outside of South Carolina.

63. Ms. McDonald is married to a man who was sexually abused as a child by an agent or employee of the Diocese of Charleston. As a result, she appeared eligible to be included in what was called the "consortium class" portion of the class settlement, even though class counsel now claims she was not a member of that class.

64. Mr. McDonald was a guardian of one or more persons sexually abused as a child by an agent or employee of the Diocese of Charleston. On the face of the class definition he appeared eligible to be included in what was called the "consortium class" portion of the class settlement. He is a relative of Julie McDonald.

65. In 2007 and 2008, Ms. McDonald and her husband were residents of Alabama.

66. In 2007 Julie McDonald was invited by class counsel to participate in the class action settlement despite each defendant knowing she was not a resident of South Carolina and class counsel now claiming that she was not member of the consortium class.

67. In 2008, as a known resident of Massachusetts, Mr. McDonald was invited by class counsel to participate in the class action settlement.

68. Each of Mr. and Ms. McDonald participated in that settlement, and in 2008 received a distribution from the class fund. Class counsel also charged each of them a fee not authorized by any order and without proper disclosures. Before each was charged that fee, neither of them was told that class counsel had already been awarded a $2.5 million fee, or that class counsel had been paid a contingency fee for individual cases of the class representatives, the time for which was then submitted as if it was a proper part of the class action fee application; the contingency fee payment made by the Diocese for the time spent on individual cases was not disclosed, to the court or to either of the McDonalds. Nor were the McDonalds advised of class counsels' conflicts regarding lifelong relationship with the Diocese and class counsels' functioning, during the class action proceedings, as an official of the Diocese; nor was it disclosed to either of them that as an out of state resident neither was a member of the class whose funds were being distributed to them.

69. The 2007 class settlement agreement was restricted to only "individuals who fall in either class defined" in the class settlement agreement. Those definitions were, without regard to any geographic boundary, defined at page 2 of the class settlement agreement (footnote omitted) as:

> All individuals born on or before August 30, 1980, who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
>
> The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the 'Consortium Class')

70. After having successfully contended in the circuit court that out of state residents were included within each settlement class, class counsel now contend that out of state residents such as the McDonalds are not members of either settlement class.

71. As noted above, according to one of the contradictory circuit court orders affecting the collusive class action, roughly a quarter of those participating in the class action were, like the McDonalds, residents of a state other than South Carolina. According to another of the contradictory circuit court orders, the class included only residents of South Carolina, so excluded each of the McDonalds. No circuit court order can resolve that conflict between the circuit court orders.

72. If the present position — that the class includes no out of state residents — is affirmed, then in 2007 and 2008 class counsel committed a substantial fraud on the court and defrauded many people by purporting to represent out of state residents such as the McDonalds (and others), charging a fee to each of them (and others), and distributing class funds away from the class to each of them (and others) when class counsel were not entitled to represent either of them, or charge either of them, or distribute class funds to either of them.

73. If overturned, and the McDonalds were each a member of the class, then class counsel presently seeks to perpetrate a fraud on the court to escape their own liability to absent members of the class and to retain benefits charged the McDonalds (and others) without an order authorizing them to do so.

74. The longer this unending collusive class action goes on without any court reaching the issues which arise from the collusion and class counsel placing their own interest ahead of that of the class, the more contradictory orders there are likely to be. Class counsel have offered contradictory and nonsensical reasons for their conduct to try to avoid responsibility for conduct

which fell below the standard of care as to the absent class members to whom they had a duty, either imposed as a matter of law, or assumed, or both.

Notice to the McDonalds that they were inadvertently part of a fraud on the court.

75. In 2019 each of the McDonald plaintiffs learned for the first time that a circuit judge has ruled that the class action in which each of them participated in 2008 was supposedly limited to residents of South Carolina. Class counsel knew that each of the McDonalds resided in a state other than South Carolina, class counsel having corresponded with each of them in their respective home states of Massachusetts and Alabama. As noted above, the 2017 ruling conflicts with earlier circuit court rulings, including one from the same circuit judge, and with other circuit court orders, including one that acknowledged that roughly a quarter of all the class claimants resided out of state at the time they participated in the 2007 class settlement.

76. If the classes were limited to South Carolina residents at the time of their claim, then each out of state class claimant, such as each of the McDonalds, was an unwitting participant in class counsels' scheme, in which the Diocese defendants joined, to perpetrate a fraud on the court, the class, and on the McDonalds.

77. Out of state participants such as the McDonalds were told by class counsel, with the approval of the Diocese, that each of the McDonalds was eligible to make a claim in the class action. Each made such a claim. But the claims submitted for each of the McDonalds were falsely submitted, a falsity known only to the defendants, not to the McDonalds.

78. The settlement class which the McDonalds were told by class counsel they were within was, on its face, defined with no geographic limit. It was reasonable for the McDonalds, and any other out of state claimants, to rely upon the representation that each of them was eligible to make a claim and to receive class funds.

79. Providing class funds to persons known to not be eligible to claim class funds constituted (a) a breach by class counsel of a duty to the court and the class members to disburse funds to only persons within the class, as required by the class settlement and the order approving it; (b) a fraud upon the court and public; and (c) professional misconduct in purporting to represent persons, such as the McDonalds, that class counsel was not eligible to represent or eligible to charge for representing. It was conduct that in multiple ways fell below the standard of care applicable to class counsel.

80. The class participation by the McDonalds and the other out of state residents was both a fraud on the court and a breach of fiduciary duty by class counsel, acquiesced in and assisted by the Diocese defendants, and given the court's imprimatur by the shopped-for circuit judge.

81. The McDonalds unknowingly participated in that fraud only because class counsel perpetrated that fraud and counseled each of them (and many others) so as to induce each of them (and many others) to unwittingly participate in that fraud on the court.

82. Class counsel were motivated to commit that extensive fraud on the court so as to charge and collect a 20% fee from each out of state resident. That fee was not authorized by any court order. That fee was in addition to the $2.5 million fee which had been authorized by the court. Class counsel had not disclosed to the court in seeking that $2.5 million fee that class counsel had already received from the Diocese a contingent fee payment for class counsels' work on the class representatives' individual cases. Nor had class counsel disclosed that the class settlement was reached seven months after the class complaint was filed, without a single motion having been argued or decided, and without a single deposition having been taken. Class counsel

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disclosed only fraudulent billing records and that class counsels' fee took a higher priority than recovery to the class, none of which was examined by any independent court oversight.

83. No order authorized an additional 20% fee for class counsel. The McDonalds were not told that class counsel had already been paid a fee of $2.5 million, or that to support that $2.5 million fee class counsel had claimed time on individual cases of the class representatives for which class counsel had already been paid a contingent fee.

84. The fee charged class members and non-class members without court authorization and without proper disclosure is, upon information and belief, in excess of $900,000. Nor had class counsel disclosed either that a contingent fee of $145,000 had been paid by the Diocese to class counsel on the individual cases brought for the class representatives or that class counsel had already been paid for the time and billing records submitted to support the fee award in the class action.

85. Accounting records of the class action reflect a $2.5 million fee was paid to class counsel on September 4, 2007. No accounting record shows the separate contingent fee payment of $145,000 made to class counsel by the Diocese on November 20, 2006. In the accounting, that payment is concealed as payments made by the Diocese to the individual clients.

86. Additional fees charged in 2008 to persons known by class counsel to not have been in either settlement class is not yet known, other than such claims constitute roughly a quarter of the 129 claims recorded having been made in the class action and that the additional fee charged was 20%. Those sums can be calculated through discovery once those claimants who resided out of state are identified.

Fixed fee for class counsel, subordinate and variable recovery for the class

87. Class counsel negotiated for themselves a fixed fee, simultaneously negotiating for the classes they claimed to represent a variable recovery that would be reduced *pro rata* if claims against the class fund were insufficient to pay the fee and all claims. That conduct by class counsel explicitly placed their fee interest ahead of all class member interests. In addition, that fee was to be paid within ten days after preliminary class settlement approval, before any notice was given to class members about the class action, or about the fee petition. That timing deprived class members of due process in that it eliminated any opportunity for any class member to object.

88. Neither the court nor the Diocese "adversary" objected to class counsel making his fee the first priority of the class action, and no independent judicial review was or has been made of the factors pertinent to the fee actually paid in relation to the actual class recovery, to say nothing of the substantial fraud now disclosed to have been perpetuated on the court by payments to persons not in either class.

Fraudulent claims by class counsel against the class fund and fraudulent charges by class counsel to "clients"

89. The class fund should be indemnified by class counsel for any payments made to the McDonalds and every other out of state resident now claimed not to have been in either class but who received a distribution from the class fund.

90. Any disgorgement should not be made by the "clients" class counsel were not authorized to represent, failed to properly represent, for whom they were not authorized to make any claim, and whom class counsel duped. In short, those persons were unwittingly deceived by fraudulent conduct of class counsel and were improperly charged.

91. The fee paid to class counsel by each of the McDonalds (and every other out of state resident not eligible for either settlement class) was an improper fee. Those fees should be disgorged by class counsel back to each out of state person who was duped and used by class counsel as part of their fraud on the court.

92. Alternatively, if the defendants now admit or the Supreme Court rules that the McDonalds, and every other out of state resident were in fact members of the class, and distribution to each of them from the class fund was proper, then class counsel should disgorge to each such client the 20% fee which no order authorized, and before which no disclosure was made of either the $2.5 million fee they had already been paid, the contingent fee they had already been paid, or of the conflicts of interest class counsel had as to the Diocese.

93. It is now known that the $2.5 million fee was paid to class counsel from the class fund on or about September 4, 2007. Notice in the class action began on or about September 10, 2007. No absent class member was given an opportunity to object to class counsels' fee.

94. The $2.5 million fee itself, as well as the undisclosed additional fees charged, was unreasonable in that, for example:

a. The total fee charged by class counsel is unknown.

b. The entire fee charged has never received independent judicial review.

c. The $2.5 million fee was reviewed by only the shopped-for judge, not by any independent court.

d. The total fee charged has never been compared to the actual recovery for the class.

e. On November 20, 2006, the Diocese wrote a check for $145,000 to class counsel as a contingency fee payment for individual cases. That payment was not disclosed in the 2007 fee application.

f. The billing records for those individual cases were then falsely submitted as part of the fee application as uncompensated time expended on the class action. The 2006 contingency fee payment was not disclosed by either class counsel or the Diocese to the court or to absent class members.

g. The billing records in the class action fee application were inflated by patently fraudulent means (including many, many days with time in excess of 24 hours).

h. The billing record was generated, according to class counsel, not based on actual time spent but by a computer program that inserted a time based on the activity descriptor, examples of which are wildly disconnected from actual time spent. One example of this is the 30 hours claimed to duplicate the John Doe 53 class complaint so it could be re-filed in Dorchester County as part of the venue- and judge-shopping plan. That filing duplicated, word for word, the existing class action case pending in Charleston County. The entire "work" required to replicate that case filing was to make two changes on page one of that complaint. (a) The county designation was changed from "Charleston" to "Dorchester," and (b) the Charleston case number was replaced by a blank space to accommodate a Dorchester County case number. Those changes did not require 30 hours as class counsel "conservatively" claimed. Class counsel cannot identify the name of this supposed billing program that performed this

billing record projection or produce any manuals supposedly associated with the software.

i. In addition to having been paid (twice) for the time spent on the individual cases for the class representatives, the $2.5 million fee specifically included, as the court ordered, "additional time expended, and to be expended . . . in carrying out the terms of the settlement," Order of July 30, 2007 at 14. Yet class counsel charged additional fee for work already compensated by the fee awarded.

j. In the seven months of "litigation" between the December 2005 filing of the class complaint and the 2006 mediated class settlement, not a single motion was argued or decided, and not a single witness was deposed.

k. Time billed on "February 30th" of multiple years, either a reflection that the computer-generated time was entirely divorced from actual work done or a reflection that time was manually entered, contrary to class counsels' claim, and

l. Identical multiple time entries on, for example, the 30th of each month for "bookkeeping" (2 hours each month), "legal research" (three entries each month, each of 5 hours each month), and "oversight and review" (10 hours each month).

95. The arbitrations to value Primary Class member claims as required in the settlement agreement took place in February 2008. Primary class members had to relinquish all appeal rights to participate in arbitrations.

96. Consortium class members received a fixed amount minus the fee charged by class counsel. As set out above, that fee was improper. Many consortium class members, none of whom was sexually abused, received a compensation greater than at least one primary class member.

97. The McDonald plaintiffs each received their distributions in 2008, with no disclosures (as set out above) of the $2.5 million fee already paid, of class counsels' conflicts of interest, or of the contingent fee already paid.

98. If the McDonalds were not properly in the consortium class because of their state of residence, then at minimum they (and each out of state resident who received a distribution) should be indemnified by each defendant who participated in the scheme to cause them to submit a fraudulent claim against the class funds.

99. By contrast, if the McDonalds were properly in the consortium class despite their state of residence, then at minimum they and each person charged that 20% fee by class counsel should be reimbursed for that fee charged, with interest.

100. As to any fraudulent claim made against the class fund by a person who resided out of state at the time of the claim, the defendants should share that responsibility to indemnify to the extent each defendant was aware, as class counsel was aware, and now contend, that out of state residents such as the McDonalds were not members of either settlement class.

The Supreme Court Should Assert Original Jurisdiction

101. The South Carolina Supreme Court has discretion to assert its original jurisdiction pursuant to Article V, § 5, of the South Carolina Constitution. This matter concerns the public interest. Also, circuit court orders now conflict over a fundamental aspect of the class action. No circuit court judge has the authority to reconcile the conflicting orders to resolve the issues of this action.

102. The 2007 class settlement was collusive. Among other acts of collusion were:

a. The class settlement concept was proposed in an October 2005 meeting between class counsel Richter and his Bishop.

b. The class complaint was filed two months later, in Charleston County on December 2, 2005, alleging one class with John Doe 53 alleged as the class representative.

c. No motion was made at any time in the Charleston County case to certify the one class alleged.

d. Between that December 2005 filing and the June 2006 mediated class settlement, not a single motion was argued or decided. Each time motions were scheduled the parties requested a continuance.

e. According to class counsels' time records, not a single deposition was taken in the class case.

f. A class settlement was reached in June 2006. At that time, two individual cases and one class action case were the only pending cases, each in Charleston County.

g. After the June 2006 mediated class settlement was reached in the Charleston County class action, the Charleston County circuit court was not informed that a proposed class settlement had been reached, as SCRCP 23 requires.

h. After the class settlement was reached, no motion was made in Charleston County to certify the class or to approve the class settlement, as SCRCP 23 requires. Doing so might have caused independent judicial review, and the parties desired to avoid independent judicial review.

i. After the June 2006 proposed class settlement was reached, the defendants in this action apparently decided they did not want any judge then assigned to Charleston County to review the propriety of the class action or to review the proposed class settlement.

j. Instead, the defendants desired to choose the judge for those purposes. The judge the defendants desired was chosen for her long social and professional connection to class counsel. As she was not then assigned to Charleston but was assigned to another circuit, the parties agreed to judge-shop, which required them to change venue for review of the class action settlement.

k. By August 12, 2006, the defendants had apparently discussed, and class counsel eventually submitted billing records that reflected they had prepared, a "consent order changing venue," as the means to move the proposed class settlement away from Charleston County judges to the shopped-for judge in Dorchester County. That approach, which also did not comply with SCRCP 23, was abandoned. Instead, they accomplished their judge-shopping by other techniques, techniques which will be widely available to bench and bar if not addressed by this Court and rejected, including the following sequence of judge-shopping events:

    1. In June 2006, the class settlement was agreed to in mediation.
    2. In June and July 2006 no motion was filed to approve the proposed class settlement as required by SCRCP 23.
    3. On August 15, 2006, solely to judge-shop, class counsel filed two class complaints in Dorchester County, case numbers 06-CP-18-

1310 (on behalf of Jane Doe 1) and 06-CP-18-1311 (on behalf of for Jane Doe 67). The claims for each class representative, and each class, were included in the proposed class settlement.

4. Those class cases were filed in Dorchester County because the shopped-for judge was then assigned to the First Judicial Circuit.
5. On August 21, 2006, if not before, class counsel communicated with the shopped-for judge. The content of the communication is not yet known.
6. On August 29, 2006 the Diocese defendants accepted service of the already settled and newly filed case 06-CP-18-1310.
7. On September 11, 2006 and again on September 20, 2006, class counsel requested of the shopped-for judge a status conference in the already settled, newly filed Dorchester county class cases.
8. On September 26, 2006, a telephone conference was held with the shopped-for judge, class counsel, and counsel for the Diocese.
9. On September 29, 2006, another status conference was held by telephone with the shopped-for judge and the defendants.
10. On October 6, 2006 not later than 11:00 a.m. the parties to the class action met in St. George with the shopped-for judge.
11. On October 6, 2006 at 11:59 a.m., class counsel re-filed in Dorchester County (as case 06-CP-18-1636) the class action case on behalf of John Doe 53, repeating the class action complaint that was already filed in Charleston County, was still pending in

Charleston County, and which was already settled in Charleston County (as case 05-CP-10-4913) through the proposed class settlement.

12. ##The class complaint on behalf of John Doe 53 filed in Dorchester County is identical in substance to the class complaint filed on his behalf in Charleston County. They differ only in two respects on page 1: county name and case number.

13. As a result of its re-filing, the class complaint on behalf of John Doe 53 was then filed simultaneously in two different counties. As noted above, class counsels' billing records claimed it required 30 hours to make those two changes to page 1 of that complaint.

14. The purpose of that Dorchester County duplicative filing was to evade review of the class settlement by any judge then assigned to Charleston County and to arrange review by the shopped-for judge in Dorchester County.

15. On October 6, 2006 at 12:03 p.m. class counsel filed in Dorchester County a motion to "certify classes and for preliminary approval of class settlement." The motion was made in each of the three cases already settled before any of the cases was filed in Dorchester County. No comparable motion was filed in Charleston County, where the John Doe 53 class case had been filed, remained pending, and had been settled.

16. The Diocese defendants accepted service of the Dorchester County version of the John Doe 53 duplicate class complaint. No motion was made pursuant to SCRCP 12(b)(8) that there was a prior pending action. No effort was made to have the class settlement reviewed in Charleston County, where it was pending and had been settled.

17. On October 9, 2006 the shopped-for judge consolidated the Dorchester County class action cases and specified the collective caption to use for the class action cases. Part of that collective caption included the duplicated-in-Dorchester John Doe 53 complaint.

18. On October 10, 2006 the shopped-for judge invoked the July 26, 2006 order of the Supreme Court to designate the consolidated class actions as complex. At that time, among other things, complex case designation applied to cases that counsel represented they had been unable to settle. There was no provision for cases that had been settled.

19. The shopped-for judge then assigned to herself the complex case.

20. It is not known if the shopped-for judge was informed that the class cases had been settled four months before; that the parties had ignored SCRCP 23 in Charleston County; that the parties had decided to collaborate in judge-shopping; that the parties had chosen her as the judge to shop for; or that the parties had

duplicated an existing and settled class action solely to judge-shop for her. The Court should order any special referee to investigate if the circuit court judge participated in the judge-shopping.

21. Even after successfully shopping for the circuit judge they desired, three cases still remained pending in Charleston County: two individual cases and the duplicated-in-Dorchester John Doe 53 class action case. To eliminate the risk of independent judicial oversight of the class settlement happening in Charleston County, the parties cooperated to complete their judge-shopping by getting the pending Charleston cases dismissed in the Ninth Circuit.
22. On October 17, 2006 class counsel wrote to the administrative judge in Charleston County to request that administrative judge dismiss without prejudice the three cases then pending. Each of the cases was included in the class settlement. One of those cases was the duplicated-in-Dorchester class action case for John Doe 53.
23. Despite the requirement of SCRCP 23, class counsels' letter to the administrative judge for the Ninth Circuit did not inform the court that each case they sought to have dismissed without prejudice had been resolved in Charleston County by a proposed class settlement.
24. The Diocese was provided a copy of the letter by which the request was made, made no objection, and cooperated with this step of the judge-shopping plan.

103. On November 20, 2006, counsel for the Diocese sent to class counsel two checks from the Diocese of Charleston Finance Office. Check 42983 was payable to Richter & Haller LLC Client Trust Account in the amount of $345,000. Check 42982 was payable to Richter & Haller, LLC for $145,000. Check 42983 funded a distribution to the four individual clients whose cases were to be resolved whether or not the class action settlement was approved. Check 42982 represented a contingent fee payment to class counsel for those individual cases. A copy of the checks are Attachment A to this complaint. The fee covered the work for the individual cases and the John Doe 53 class complaint, but was not disclosed to the court by either the Diocese or class counsel. Both the payment and the concealment are other acts of collusion in the class action.

104. Class counsel then submitted billing records from those individual cases for the class representatives as part of his fee application in the class action, without objection from the Diocese and without either class counsel or the Diocese disclosing the contingent payment made for all of the time submitted falsely as class action work. Since the class case was settled seven months after it was filed, with no motion argued or decided and no witness deposed, to try to justify a $2.5 million fee, class counsel relied heavily on the time claimed to have been spent on those three other individual cases, without disclosing the time had already been paid for through a contingency fee.

105. Correspondence reflects that should the class action fee be approved class counsel claimed he would provide the Diocese a "credit" for that contingent fee payment. After the class action fee was approved, neither the contingent fee payment nor the "credit" appears anywhere in the accounting of the class action disbursements. The accounting reflects payments which total $460,000 to those four clients even though the two checks sent to class counsel total $490,000.

106. The circumstances of the contingent fee not disclosed to the court was another aspect of collusion in the class action.

107. The billing records submitted by class counsel were plainly fraudulent. The Diocese neither disclosed that the billing records consisted primarily of time for individual cases for which a contingency fee had been paid, nor objected in any way to the records. The shopped-for judge gave no scrutiny to the records, even after their fraudulent nature were brought to her attention by various objectors.

108. In August 2007, objectors were preparing to appeal overruled objections to the class settlement, including the lack of nationwide notice.

109. To avoid appellate review of the class action, a settlement was reached with those objectors, the terms of which were superior to the recovery for class members.

110. To fund that settlement with objectors, "Mr. Richter and/or his clients" agreed in August 2007 to pay $100,000 to the Diocese to facilitate the payment to objectors, as the letter at Attachment B reflects.

111. That $100,000 payment by class counsel to the Diocese was made April 28, 2008 from class counsels' trust account, as the check at Attachment C reflects. That payment was omitted from any record of the disbursements associated with the class settlement, although the shopped-for judge was informed about the $100,000 contribution by class counsel. The letter agreeing to it, Attachment C to this complaint, was incorporated into her order filed August 31, 2007. No inquiry was made by the shopped-for judge of why class counsel "and/or his clients," or which of those clients, was paying the Diocese defendants to facilitate the class settlement for those who had objected. No judicial review has been made about the payment having come from class counsels' trust account. No judicial review has been made about the class not being told

that objectors got settlement terms better than class counsel had obtained for class members. No judicial review has been made about that information not being disclosed to the class, or even to any individual clients of class counsel.

112. No disclosure was made to the class about, among other things:

a. that the class action settlement was collusive,

b. that a $100,000 payment was made from class counsel or his clients to facilitate the class action,

c. the superior terms of settlement for those who opted out of the class (compared to the terms for the class), of which class counsel knew or should have known due to his involvement in negotiations,

d. class counsels' life-long ties to the Diocese, including personal friendships with priests and bishops (any of whom might have been identified by a class member as a perpetrator of sexual abuse) and other officials, and his own official functioning for the Diocese prior to and during the class proceedings,

e. class counsels' extensive ties to the shopped-for judge, disclosed to the Diocese but not to the class; the Diocese waived that conflict consistent with the collusive nature of the class action; class members were not informed;

f. the court's award of a fee of $2.5 million, to be paid within ten days and without notice to the class;

g. class counsel being paid a contingent fee for the individual cases of class representatives, then submitting the billing records in those cases as part of the class fee request, without disclosing that the contingency fee had paid for that time;

h. class counsel charging and taking additional fees which no order authorized, and/or

i. class counsel charging a fee for persons known to class counsel (they now contend) to not have been in either class.

113. As noted above, no final order has ever been entered in the class action, despite the 2009 directive of the South Carolina Supreme Court, presumably because any final order could be appealed and the parties desired to avoid the possibility of appeal. The Court should order any special referee to investigate the reason the shopped-for circuit court judge issued no final order in the class action from 2008 to her *sua sponte* recusal in January 2013.

Fiduciary obligations of class counsel

114. The Plaintiff John Doe 305 fits within a class definition used in the class settlement for which the defendants sought and received court approval in 2007.

115. In the 2007 class settlement, class counsel actively represented the McDonald plaintiffs, and induced the McDonald plaintiffs to participate in a fraud upon the court by submitting claims which class counsel now contend the McDonald plaintiffs were not entitled to make as persons not within the definition of either settlement class.

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

funds and purported to represent them even while class counsel knew they were each an out of state resident. The settlement classes as class counsel chose to define them were without geographic limit, but class counsel now contends that out of state residents were not in either class.

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

118. As to the McDonalds, this action has been brought within three years of the McDonalds learning that class counsel took the position, and a circuit court order found, that the class action in which they as out of state residents participated was for only South Carolina residents. Without knowing of that limitations, the McDonalds were induced by all defendants to participate in the fraud on the court perpetrated by the defendants.

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

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

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

121. As stated in *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (emphases added, internal citations omitted):

> a Plaintiff who sues on behalf of a class ***and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them*** of proposed compromises of the group action. * * * If the class representative ***or class counsel breaches the fiduciary duties*** he assumes and receives and retains benefits flowing from the breach, ***he holds what he receives upon a constructive trust*** for the class. * * * This is true although the benefit received by the class representative is not at the expense of the class. Under no circumstances will the fiduciary be permitted to profit from a breach of his duty as fiduciary.

122. Under *Premium Investment*, by operation of law any benefits from the class action are held by class counsel in trust for the class, including its absent members. Those benefits held in trust should be used to benefit the Plaintiff Doe 305, and to reimburse the unwitting claimants, including the McDonalds, who were induced by class counsel to make fraudulent claims on the class fund, or (if their claims were proper) for class counsel to reimburse the McDonalds for the unauthorized fee they were each charged by and paid to class counsel.

123. At present, the South Carolina Court of Appeals has before it the trial court order which did not recognize any duties imposed by law by the *Premium Investment* decision.

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

125. To gain court approval of the class settlement, the defendants made overtly false representations of fact to the shopped-for circuit judge. Among those false representations was that there was an "understanding" among all defendants in this action "as to what would happen" to any person within the class definition who "shows up" (as put by the Diocese defendants) outside of the class claim procedure. That "understanding" communicated to the shopped-for judge was never placed in any written order. Nor is there any way to enforce the "understanding"

through separate legal action. It was falsely represented to the shopped-for judge that if "someone pops back up who should have gotten notice who didn't get notice," the Diocese represented, without objection by class counsel:

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

126. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. The representation, if true, is contained in no written orders of the court, so is unenforceable. In failing to secure such a written order, class counsel acted in the interests of the Diocese defendants and themselves, rather than acting in the interests of absent class members they represented such as John Doe 305.

127. In that same transcript, the Diocese defendants represented to the shopped-for judge, falsely, that there were supposedly only five sexual abuse victims they had not located. That representation was false and was known to have been false when made. It was acquiesced in by class counsel even though class counsel knew the representation was false.

128. Class counsel were aware, and had alleged, that the number of sexual abuse victims far exceeded the victims already known to it from the files of the Diocese, as many victims had not previously identified themselves. Class counsel was aware the Diocese had a history of concealing sexual abuse yet relied on the Diocese to search their own files for abuse victims. Class counsel were also aware that some abuse victims repressed memories of their childhood sexual abuse (or were incapacitated as a matter of law) and could reasonably be expected not to recall childhood abuse for various lengths of time.

129. In short, the "Primary class" was known by class counsel to be under-inclusive, and the defendants deliberately misrepresented to the shopped-for judge that absent class members later disclosed would receive relief, when in fact those absent members would get no relief. The defendants have opposed relief for absent class members who got no notice and at present continue to oppose relief for absent class members who got no notice.

130. Class counsel, on pages 16 - 17 of that same transcript, summarized to the court, that "what the Diocese has come to is that if anybody is missed . . . the diocese waives all the same defenses that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards." Those terms were supposedly submitted by letter by the Diocese, but were secured by no written order, so the relief claimed by class counsel is unenforceable by John Doe 305.

131. When the shopped-for judge confirmed the representation by repeating back to counsel, on page 25 of that same transcript, "what they [the Diocese] say is if you come forward in the future we will treat you just the same as we have treated these individuals and the relief is available for you," the defendants permitted the misrepresentation to stand yet submitted no written order to secure that relief for persons such as John Doe 305.

132. The defendants intended on July 13, 2007, to create the false impression with the shopped-for judge that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend the same relief to that victim. In making the false representation that they made no effort to embody in any court order, class counsel were operating in the interest of themselves and in the interest of the Diocese defendants, rather than in the interest of the absent members of the class such as John Doe 305, to whom class

counsel owed, or had assumed, a fiduciary duty. Class counsel intended that the shopped-for judge would rely on the statement, and the shopped-for judge did rely on the statement. However, when the shopped-for judge did not embody the "understanding" in any written order, none of the defendants requested that the shopped-for judge do so.

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

134. Page 4 of the July 30, 2007 order certifying the class states, "Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members." In 2007 the defendants were aware that the written orders failed to secure the full relief for absent class members that had been made in those "representations and stipulations of the Diocese."

135. The result of class counsels' failure was to exclude John Doe 305 from any recovery for his sexual abuse. Rather than protect the absent class members to whom they had assumed, and the law imposed, fiduciary duties, class counsel protected the interest of the Diocese defendants and class counsels' own interest in their fee. For the Diocese the benefit of the class action was its potential preclusive effect. As explicitly stated in the class settlement agreement, and as noted above, class counsels' fee was the highest priority of the class action settlement. The fee was fixed, and compelled a *pro rata* reduction of recovery to class members if "too many" abuse victims made claims. Failing to secure relief for absent class members who got no notice served the purpose of avoiding having to implement the fee provision that compelled a *pro rata* reduction.

136. According to class counsel, the compensation to abuse victims appears to be the lowest class recovery for victims of any case brought in the nation against the Catholic Church. Also, the arbitrations were also arranged so as to work within the known limit of funds after class counsel was paid, rather than fully compensate abuse victims. The settlement provided a lesser recovery for a victim of sexual abuse than for a parent or spouse who had never been sexually abused.

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

a. Shopping for a judge and doing so by a duplicative court filing and other illicit means, as set forth above,
b. Making no objection to the complex case designation, even though the July 26, 2006 order applied to cases that could not be settled and a class settlement had already been reached,
c. Misrepresenting that absent class members who got no notice would receive the same compensation as class members,
d. Taking no position on whether the class should be certified,
e. Acquiescing in class counsel failing to disclose to the class his life-long ties to and positions with the Diocese,
f. Making no disclosure to the class of the superior settlement terms (compared to those for the class) for the individuals who were the class representatives, and whose settlement terms would apply whether or not the class was approved,

g. Making no disclosure to the court of the 2006 contingent fee payment to class counsel for individual cases, or that the billing records relied on for the class action fee application was almost entirely for time for which a contingency fee had already compensated class counsel,

h. Making no objection that the class representatives referred to in the class settlement agreement had already been paid and whose claims were settled in 2006 whether or not the class was later certified; so the "class representatives" had no stake in the class settlement, and were not representative of the primary class,

i. Making no motion to disclose to the class the superior settlement terms reached with the individuals who objected to the class settlement, or that those superior terms were funded in part by class counsel or class members,

j. Making no objection to class counsel negotiating simultaneously a fixed fee for himself and a variable recovery for the class, with the compensation for class members being subordinated to that fee,

k. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range, omitting that a contingent fee had already been paid for the time spent on individual cases which formed the vast percentage of time claimed in the fee application; and making no disclosure that the class settlement was reached seven months after filing, without a single motion having been argued or decided, or a single witness having been deposed,

l. agreeing to make no objection to the fee being awarded before any member

of the class member was even identified, had even submitted a claim, had been compensated, or was given any opportunity to object,

m. Making no objection to class counsels' blatantly fraudulent billing records,

n. Making no objection to class counsel collecting more fee from class members than any order approved, and failing to disclose to the court the fee class counsel intended to, and did, take,

o. Cooperating to induce the McDonalds, as out of state residents, to submit what class counsel now claims were fraudulent claims,

p. Making no objection to class counsel charging each of the McDonalds a fee, despite knowing that each of them was an out of state resident,

q. Agreeing to ignore the South Carolina Supreme Court's March 2009 directive that the class action should be concluded in six months or an extension of time sought from that court,

r. agreeing to seek no post-award fairness hearing under SCRCP 23 where the actual conduct of the class action, substantively and procedurally, would be assessed, even after a motion for a post-award fairness hearing was requested in 2016 by one of the class representatives who alleged class counsels' representation of him had terminated as he had been "abandoned" by class counsel.

138. The defendants caused John Doe 305 special harm in the form of precluding him from making any claim against the Diocese for his sexual abuse, specifically denying him all chance to enjoy the benefits of a waived defense of statute of limitations and a waived defense of charitable immunity. The professional representation of the plaintiff by class counsel was

inadequate and failed to meet the standard of care applicable to South Carolina attorneys.

139. The defendants caused the McDonald plaintiffs special harm in the form of inducing each of them to make a claim against the class funds the defendants now claim was fraudulent due to their out of state residence, and class counsel caused them special harm by charging a 20% fee for a claim the defendants knew to be fraudulent due to each of the McDonalds' state of residence, and exposing them to disgorgement claims.

140. Alternatively, if the McDonalds' claims against the class fund were proper, class counsel caused each of the McDonalds special harm in charging each of them a 20% fee not authorized by any order, and without disclosing to each of them either the contingency fee already received or the $2.5 million fee class counsel already received or class counsels' conflicts.

141. The professional representation of each of the plaintiffs by class counsel was inadequate and failed to meet the standard of care applicable to South Carolina attorneys.

142. But for class counsel having breached the fiduciary duties owed to John Doe 305, a breach aided and abetted by the Diocese defendants, the plaintiff would have been able to obtain relief for his childhood sexual abuse by Eugene Condon.

143. But for class counsel having breached the fiduciary duties owed to the McDonald plaintiffs, a breach aided and abetted by the Diocese defendants, the McDonald plaintiffs would not have submitted fraudulent claims in the 2007 class action, or, if their claims were legitimate, they would not have paid an improper fee had proper disclosures been made to each of them.

144. The Diocese defendants aided and abetted class counsels' breaches of fiduciary duty.

145. No post-award fairness hearing has ever been held in the class action. No judicial review has ever independently examined, for example, the unauthorized fee taken by class counsel, the collusive conduct of the class action, including the judge-shopping and other manipulations of the class action, or that the Supreme Court's 2009 order was ignored. The shopped-for judge made no review of the payment by class counsel to the Diocese to facilitate the class action by funding better settlement terms for those who opted out as compared to class members, no review of the class settlement having occurred seven months after the class complaint was filed without a single motion argue or a single witness deposed. No review was made of the blatantly fraudulent billing records. No review was made of the time claimed for cases in which class counsel had already received a contingent fee payment.

146. The class action remains ongoing and appears at present to be assigned to no circuit judge.

147. Until 2019 John Doe 305 had no information about the class action or that the defendants had cooperated to make false promises to the class action court that an absent class member such as himself would be provided relief when that statement about relief was not secured in any order for was unenforceable; or that the plaintiff's interest had been compromised by the defendants' conduct.

148. Until 2019 the McDonald plaintiffs had no information that class counsel had begun contending that as residents outside the "area of publication," the McDonalds were not eligible members of the class that appeared on its face to include them. Nor did the McDonalds until 2019 have any information that class counsel had induced them to submit claims that class counsel now claim the McDonalds were not entitled to submit, or, whether or not the McDonalds were in a class, that class counsel had improperly charged them a fee and without

proper disclosures.

For a First Cause of Action:
Declaratory Relief

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

150. The plaintiffs are entitled to declaratory relief from the South Carolina Supreme pursuant to SCACR 245(a) and S.C. Code § 15-53-10 et seq., which authorizes relief based on a declaratory judgment, that:

a. The class definitions approved from the 2007 class action apply without geographic limit;

b. Each plaintiff was within one of the settlement classes without regard to being a resident of a state other than South Carolina; alternatively, if the plaintiffs were each not in a class due to state of residence, then the plaintiffs are entitled to a declaratory judgment that class counsel submitted knowingly fraudulent claims for persons not within the class, and that class counsel, not the out of state claimants, should reimburse the class fund for the full amount of any such funds distributed improperly due to the breach of duty associated with class counsels' conduct;

c. The defendants improperly manipulated class action procedure by, among other things, colluding so as to:

1. After reaching a class settlement:

a. Making no motion in the existing class action for class certification and settlement approval,

b. engaging in judge-shopping as set out in detail above;

c. duplicating in a different county and different judicial

circuit the existing (and settled) class action complaint for John Doe 53 so the same class complaint was pending for the same client in two counties;

d. failing to disclose to the court in Charleston County that the pending class action the parties wanted dismissed without prejudice was a class action in which a class settlement had been reached.

2. Class counsel paid $100,000 from their trust account to the Diocese to fund better settlement terms for objectors and to induce the Diocese to complete the class action without disclosing that payment to the clients or to the class and not including that payment in any accounting of the class funds;

3. Class counsel submitted patently fraudulent billing and expense records to support the claim for fees and costs, including charges for events which never took place, charges well in excess of 24 hours in a day, and repeated charges and claims of costs without support.

4. Class counsel received, but no parties disclosed, a contingent fee payment for individual cases of the class representatives, the time for which formed the largest part of the fee application in the class action.

5. Failing to disclose to the class:

a. that class counsel had life-long ties to the defendants in the

class action, including serving as an official of the Diocese during the pendency of the class action;

b. That class counsel paid $100,000 from their trust account to induce the Diocese defendants to complete the class action, on better terms for objectors, as noted above;

c. That class representatives were compensated in 2006 on terms different than was the class, receiving known sums with no arbitration process and without having to surrender appeal rights before receiving their settlement, and were paid well before any class was certified;

d. That persons who objected to the class were compensated on better terms than any class member, receiving known sums, greater sums, with no arbitration process, without having to surrender appeal rights to receive their settlement, and without the limitations from the class "matrix" that minimized their sexual abuse. That better result for objectors was funded in part by class counsel or his clients, from class counsels' trust account, with no disclosure to the class, no disclosure to the clients, and no accounting of the payment;

e. That class counsel was not authorized by any order to charge the additional fees charged to class members.

6. Ignoring the S.C. Supreme Court's March 2009 order directing that

the class action be concluded within six months or that any extension should be sought from the Supreme Court;

7. Awarding attorney's fees to class counsel before any notice had been given to the class, before any class member was identified, before any class member had made a claim or any relief had been granted to the class, before disclosing that class counsels' time in individual cases had already been compensated with a contingency fee, and before any class member had received any compensation. No class member had an opportunity to object to the fee request.
8. Conducting no post-award review of, among other things, class compensation, fees charged by class counsel, the propriety of fees paid, the manipulations of the class action procedure, the judge-shopping, and the contingent fee paid in individual cases which formed the large part of the time records submitted in the class action fee application.

151. Class counsel breached duties owed to each plaintiff, and the court should declare whether each plaintiff is, or is not, within the pertinent class definition.

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

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

153. Pursuant to S.C. Code § 15-36-100(b), Attachment D to this complaint, and incorporated herein pursuant to SCRCP 10(c), is an affidavit of Michael Virzi specifying

certain various negligent acts or omissions of class counsel, and the factual basis of the negligent acts or omissions of class counsel.

154. In December 2005 class counsel filed a class action complaint in Charleston County alleging one class.

155. In June 2006 a class settlement was reached. In that settlement two classes were agreed upon.

156. In the seven months between that filing and the June 2006 class settlement, no motion was argued, no motion was decided, and no deposition was taken in that class case.

157. In October 2006, class counsel filed with the court for the first time proposed class definitions for the two settlement classes. On its face, the definition of the "primary class" included John Doe 305 and the definition of the "consortium class" included each of the McDonalds. Neither settlement class was defined with a geographic limit.

158. If it was not imposed by law upon pleading the class action, or by settling the class action, as the plaintiffs contend it was, and which S.C. appellate cases have held it was, class counsel assumed a fiduciary duty to the plaintiffs in the conduct of the class action. As to John Doe 305 class counsel acknowledged on the record that they represented absent members of the class. As to the McDonalds, class counsel purported to represent them, communicated with them, advised them, were engaged by them, took action on their behalf, appeared on their behalf, made a claim on behalf of each, and charged each of them a fee for doing so, even though class counsel now contends that each of the McDonalds were not within a settlement class.

159. On the record before the shopped-for judge, class counsel maintained, and the Diocese defendants agreed, that relief would be provided for absent members of the class who

got no notice of the class settlement and who later came forward. No distinction was made between victims by state of residence.

160. As to John Doe 305, class counsel were professionally negligent in failing to secure that relief in a written order, and the Diocese defendants aided and abetted that breach of fiduciary duty. That breach of fiduciary duty damaged John Doe 305 by depriving him of the benefits of the class action after the notice program of the class action was changed to eliminate any opportunity he would receive notice of the class action even though he was within its definition.

161. As to each of the McDonald plaintiffs, class counsel were professionally negligent, and committed a fraud on the court, in submitting a claim for each of them as if they were clients, and as if they were members of the consortium class. Class counsel now claims that based on their respective out of state residence as outside the "area of publication," neither of the McDonalds was in the settlement class and both were ineligible for class funds. Unknown to the McDonalds, fraudulent claims were submitted on their behalf by class counsel, an action aided and abetted by the Diocese defendants. Class counsel was motivated by their desire to charge as much fee as possible despite there being no order authorizing it, despite the McDonalds not being their clients, and despite the claim for each of the McDonalds, and every other out of state resident, being a fraud upon the court.

162. If the McDonalds, and every other out of state claimant, must disgorge their recovery then they should be indemnified by class counsel, who induced them to make a fraudulent claim. In any event, even if their claims were proper, the fee charged them should be refunded to them by class counsel, with interest.

163. Alternatively, if by class counsel having submitted claims for many out of state residents they are judicially estopped from asserting that out of state residents are not in either settlement class, or if the Court determines that the classes as proposed and as approved included the McDonald plaintiffs because the class definition included no limit based on state of residence, class counsel were professionally negligent in charging each of the McDonalds a fee which no order authorized, for work already compensated by the court's order as to their $2.5 million fee. Class counsel was also negligent in failing to disclose to either of the McDonalds before charging them a fee that class counsel had already been paid a $2.5 million fee plus a contingency fee of $145,000, which included compensation for submitting claims for class members, and in failing to disclose to the McDonald plaintiffs that neither of the McDonalds was a class member, neither was eligible to receive for class funds, and neither was class counsels' client.

164. The defendants collaborating to make fraudulent claims on the class funds and in doing so also breached their collective obligation to the court and class counsels' obligation to the rightful class members.

165. On January 19, 2007, a proposed class definition that on its face included each of the plaintiffs was preliminarily approved without objection from the Diocese defendants.

166. Class counsel engaged in negligent acts and omissions in breaching assumed or imposed fiduciary duties owed to each of the plaintiffs, as set forth in this complaint and the affidavit of Michael Virzi, Attachment D to this complaint.

167. In the written orders of the class action no provision was made to secure relief for absent class members who received no notice, as was represented by all defendants in this action to the shopped-for judge had been secured by agreement. Nor do any of the written

orders distinguish between class members based on their state of residence, and a substantial number of out of state residents in fact participated in the class settlement and received a distribution of class funds.

168. Class counsel abandoned the interests of John Doe 305 and acted in a professionally negligent manner both by changing the notice program to preclude him from getting notice and by failing to protect his interest in the written orders. Doing so breached fiduciary duties to John Doe 305, which was aided and abetted by the Diocese defendants, and caused him damage.

169. The interests of John Doe 305 were abandoned by class counsel so that "too many" class members would not make claims and jeopardize either (a) class counsels' fixed fee that the court had approved, or (b) the undisclosed, "extra" fees class counsel had decided to charge despite having no order which approved such fees.

170. At different times, class counsel has claimed different reasons for altering the notice program for the class action. In chronological order, those explanations for the change have been (a) to accommodate a request of the Diocese due to cost, (b) to purposely deprive absent class members who resided out of state from receiving Due Process, and (c) because persons otherwise eligible for either the primary class or the consortium class who resided out of "the area of publication" were not in either settlement class.

171. The class settlement arbitration process was designed and used to protect class counsels' fee by allocating class member recoveries only after the fee had been paid and all claims had been submitted. No award was made until all awards were known and could be adjusted to use the funds available after the fee was deducted. Nationwide notice risked eliciting too many claimants from out of state residents for that safeguard to protect the fee in

any post-award fairness hearing. Not holding a post-award fairness hearing was another way to protect class counsels' fee and to prevent it from being reviewed by any independent court.

172. Class counsel solicited the McDonald plaintiffs to each submit a claim which class counsel now contends was a fraudulent claim against the class funds. Class counsel were aware that each of the McDondalds resided out of state. Neither of the McDonalds was aware that the claims class counsel solicited them to submit was a fraudulent claim.

173. Alternatively, if the court finds that class counsel are now judicially estopped from changing the class definitions, or if not estopped are simply incorrect and the class definitions apply as they are written and as they were approved, without regard to geographic limit, then class counsel fraudulently induced each of the McDonald plaintiffs to pay an unreasonable and unauthorized fee in the amount of 20% of each of their respective claims. The fee paid was improper because class counsel was not authorized by any order to charge that fee. Separately, the fee is improper because class counsel did not disclose to either of the McDonalds:

a. that the court had already approved, and class counsel had already been paid, a $2.5 million fee,
b. that the order awarding the $2.5 million fee included a scope of work that included submitting their claims and those of other class members,
c. that the $2.5 million already-paid fee was based on blatantly fraudulent billing records that falsely inflated class counsels' time,
d. that the class settlement and $2.5 million fee had been obtained without a single motion having been argued or decided, or a single witness having been deposed,

e. that after the class settlement was reached, class counsel and the Diocese defendants had colluded through various improper manipulations to judge-shop for a pliable oversight of the class action in a different county and judicial circuit,

f. that no court order authorized class counsel to charge any additional fee, and

g. that in November 2006 class counsel was paid a contingent fee of $145,000 for their work on individual claims of class representatives, then the time on those cases was fraudulently submitted for the class action fee as if that fee had not been paid. That time constituted the large majority of the time claimed to support the class action fee, and the contingency fee payment was not disclosed to the court or to the McDonalds.

174. Class counsel defrauded the McDonald plaintiffs, and every other class claimant that was charged a fee not authorized by any order, and class counsel breached fiduciary duties to each of the McDonalds. It appears that not less than $900,000 was improperly charged claimants by class counsel which no order authorized, including the McDonald plaintiffs. Sums improperly charged those persons who resided out of state have yet to be discovered and calculated.

175. The acts and omissions of class counsel were aided and abetted by the Diocese through its cooperation and collaboration.

176. The defendants damaged the McDonald plaintiffs by their conduct.

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

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

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

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

180. Through their counsel, the Diocese defendants joined with class counsel in making false representations on the record to the shopped-for judge, supposedly protecting the interest of absent class members such as John Doe 305 that he would be afforded relief once he learned of the class action. Each defendant then failed to secure those representations in any written order. That omission made unenforceable the representations on the record to the shopped-for judge, as if those representations had never been made.

181. If, as class counsel first maintained in 2017, that the classes were restricted to only South Carolina residents, then the Diocese aided and abetted the fraudulent claims submitted by each of the McDonald plaintiffs without the McDonalds being aware that their claims were fraudulent. The defendants were required by the class settlement agreement to permit claims only from persons within the class definitions, an obligation imposed on class counsel independent of the settlement agreement. The Diocese accommodated class counsels' desire for as much fee as possible as the price for obtaining what class counsel represented to be the lowest payment to abuse victims by any Diocese in the United States, and which the Diocese could attempt to use as a procedural bar to any and all other sexual abuse claims, other than their on the record commitment to provide relief to absent class members.

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

183. The plaintiffs have each been damaged by the Diocese defendants aiding and abetting class counsels' breaches, and each plaintiff is entitled to actual and punitive damages as a result. John Doe 305 was unable to have accessed any of the benefits of the class action, such as they were, including the defenses waived only in the class action. The McDonalds now realize they were duped by class counsel and used by the defendants to make false claims against the class fund for which an unauthorized fee was charged. Alternatively, if the McDonalds' claims were properly submitted, the fee charged them was charged to them without adequate disclosures and was improper. The McDonalds should recover actual and punitive damages. To the extent the McDonalds must disgorge any of their fraudulent class payment, they should be indemnified by the defendants for any disgorgement of those funds, as set forth below.

For a Fourth Cause of Action:
Equitable Indemnification or Sanction
Against all defendants as to the McDonalds

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

185. A right of indemnity, or sanction, exists when parties are related in such a way as to require that either in law or in equity there is an obligation on one party to indemnify the other. One such example is where persons such as each of the McDonalds is exposed to liability by the wrongful act of another in which he does not join. The McDonalds were unaware that the Diocese had collaborated with class counsel to submit fraudulent claims for each of them, knowing the McDonalds resided out of state when the defendants now maintain that out of state residents were

not in either settlement class.

186. Class counsel purported to represent the McDonalds, knowing the McDonalds each resided out of state, which the defendants now claim meant the McDonalds were not in either settlement class and were not even eligible to be clients of class counsel. Class counsel used the McDonalds at the expense of their class member clients to enrich themselves. The Diocese collaborated with class counsel to accept the McDonald claims as *bona fide* despite knowing the McDonalds were not, the defendants claim, in either settlement class.

187. The McDonalds are now aware that class counsel apparently used them to submit fraudulent claims. As they were induced by the defendants to participate in the class settlement, any disgorgement the McDonalds would otherwise be required to make as a result of those fraudulent claims should be paid by the defendants, not by the McDonalds, with the McDonalds indemnified along with interest, reasonable attorney's fees and costs incurred in this action.

188. The fee and costs charged the McDonalds by class counsel were improper whether or not their claim was fraudulent. Class counsel should be required to disgorge that fee back to the McDonalds, with interest, and class counsel should be ordered to account for the fee charged each out of state claimant and disgorge that fee back to each such claimant and to disgorge back to the class fund each improper claim.

189. Both the attorney's fees and costs charged the McDonalds and the fees and costs incurred in this action are each a natural and necessary consequence of the defendants' actions. A special relationship exists between the McDonalds and each defendant sufficient to impose a sanction, and an obligation to indemnify each of them, for damages, as well as reasonable attorney's fees and costs. Class counsel purported to represent the McDonalds, a purported but fraudulent contractual relationship. The Diocese collaborated with class counsel under the class

settlement agreement in submitting the McDonalds' fraudulent claims, contending now that each defendant knew the McDonalds' claims were fraudulent and would improperly deplete class funds. The McDonalds were each induced by the defendants' fraud to submit claims.

190. Each defendant damaged the McDonalds by breaching their obligation to the court as well as to the McDonalds in inducing them to submit a fraudulent claim to class funds as if it was a valid claim. The McDonalds each had no reason to believe that their claim was not valid. Through no fault of their own the McDonalds have incurred costs and fees for which they should be equitably indemnified.

191. Alternatively, if the claims submitted by the McDonalds were each a proper claim because they are in fact within a settlement class, then their claim for indemnification, attorneys fees and costs is properly against class counsel who charged them a fee without an order authorizing that fee and, even if there had been a proper order, without disclosing the sums class counsel had already been paid which included payment for submitting class claims and a contingent fee paid class counsel for work on individual cases for class representatives then also claimed as part of the class action fee request.

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

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

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

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

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

196. John Doe 305 is an absent member of the class and is an intended third-party beneficiary of the agreement placed on the record by class counsel and counsel for the Diocese.

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

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

Demand for Jury Trial

199. Plaintiffs demand a trial by jury for the claims other than the claims for declaratory relief, that jury trial request being subject to the petition request that original jurisdiction be asserted in the South Carolina Supreme Court and that the Supreme Court resolve by declaratory relief the conflicting circuit court orders on matters as to the class action and otherwise declare the rights and obligations of the parties.

Relief Sought

The plaintiffs seek the following relief:

200. For the Supreme Court to accept this case in its original jurisdiction;

201. For the Supreme Court to resolve by declaratory relief the conflicting circuit court orders as to the geographic scope of the settlement classes;

202. For the Supreme Court to appoint a Special Referee to make recommendations to the court as required by the allegations of this complaint;

203. For there to be such findings of fact and conclusions of law as are warranted by a full and fair hearing of all matters contained herein, through means of a Special Referee and/or a jury trial for fact finding if considered necessary for the Court to assert its original jurisdiction. The Special referee should examine the issues presented in this case and the propriety of the past conduct of the defendants to make recommendations to the Court to resolve the conflicting circuit court orders as to the class, among others, and to organize the class action for its first independent judicial review.

204. As to prospective declaratory and injunctive relief the Court should

a. Issue a rule to show cause for each defendant to account for why each of them ignored the Supreme Court's 2009 directive and no extension was requested of the Court, an inquiry that should include a sworn statement from the shopped-for judge as to why she cooperated with the judge-shopping, and why she ignored the Supreme Court's 2009 order to conclude the class action;

b. issue a rule to show cause why class counsel should not be removed from any responsibility for the class action as, under Rule 1.7 of the Rules of Professional Responsibility, class counsel has, among other things, present conflicts with various class members as well as conflicting duties to those clients and their own interests;

c. issue an order appointing as class counsel an attorney with class action experience and who is completely independent of present class counsel and the shopped-for judge.

205. As an administrative matter, the Court should issue an order assigning a circuit court judge to be responsible the class action once this action and the present appeal is resolved, with notice of the appointment given to all counsel and to counsel for any objectors to the class action.

206. To impose a trust on all fees and costs paid to class counsel to date;

207. To order an accounting of all fees and costs paid to class counsel, to include those fees and costs paid to class counsel which have not been previously disclosed;

208. To direct that at an appropriate time after new class counsel is appointed that a post-award fairness hearing be held to consider the matters raised in this petition and complaint, including the fees charged to and paid to class counsel, and any issues raised by the class representative's 2016 motion for a post-award fairness shearing which to date has been ignored;

209. For the court to declare the rights and obligations of the plaintiffs as to the class settlement, and the obligations owed to the plaintiffs by the defendants;

210. As to John Doe 305, to declare if he is, or is not, within one of the settlement classes approved in 2007 and is, or is not, an intended third party beneficiary of the agreement placed on the record in 2007;

211. As to the McDonalds, to declare if they were, or were not, properly included in one of the settlement classes approved in 2007;

212. For an order for class counsel to disgorge, with interest, all of the $2.5 million fee received; the additional 20% fee taken without any authorizing order, all fees predicated on time spent on the individual cases for class representatives which class counsel had already received a contingent fee, and all fees charged persons not in either settlement class (to be placed into an escrow fund free of the control of the defendants or anyone else affiliated with

the defendants), until an independent analysis may be done and a more appropriate fee, if any, awarded after damages against class counsel are assessed and disbursed to the appropriate plaintiff and the class fund;

213. Disgorged funds should be returned to serve as a fund to compensate absent class members known to date who were given no notice of the 2007 class settlement but who are include din the agreement placed on the record to provide relief to absent members of the class who got no notice;

214. A full accounting should be ordered as to all the class funds, to include at minimum the $100,000 payment made from class counsels' trust account for "Mr. Richter and/or his clients" to help fund superior settlement terms for those who opted out of the class action and the undisclosed November 2006 contingent fee payment made for individual cases claimed to be class representatives;

215. Actual and punitive damages in an amount to be determined by the finder of fact against the various defendants;

216. Costs and disbursements of this action;

217. Reasonable attorney fees; and for

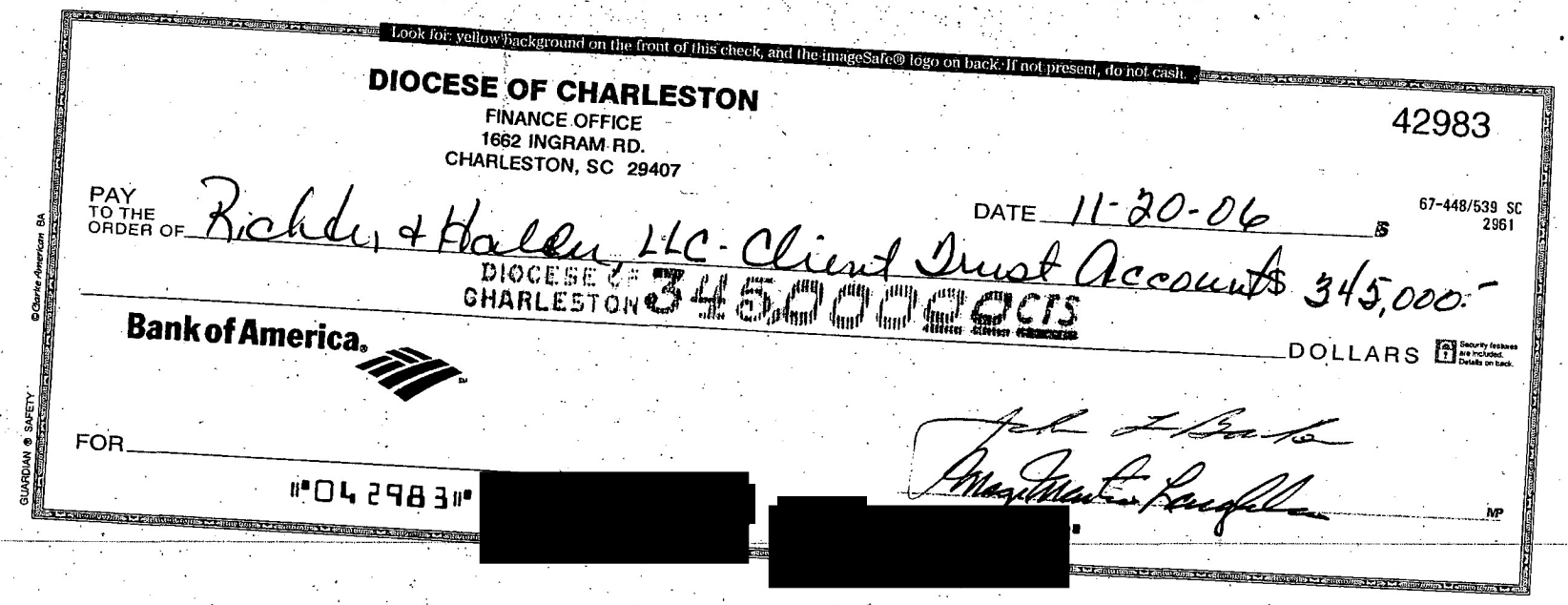
218. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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

Attorney for the Plaintiffs

Record on Appeal - 1315



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67-448/539 SC
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DIOCESE OF CHARLESTON 345,000 00 CTS

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FOR

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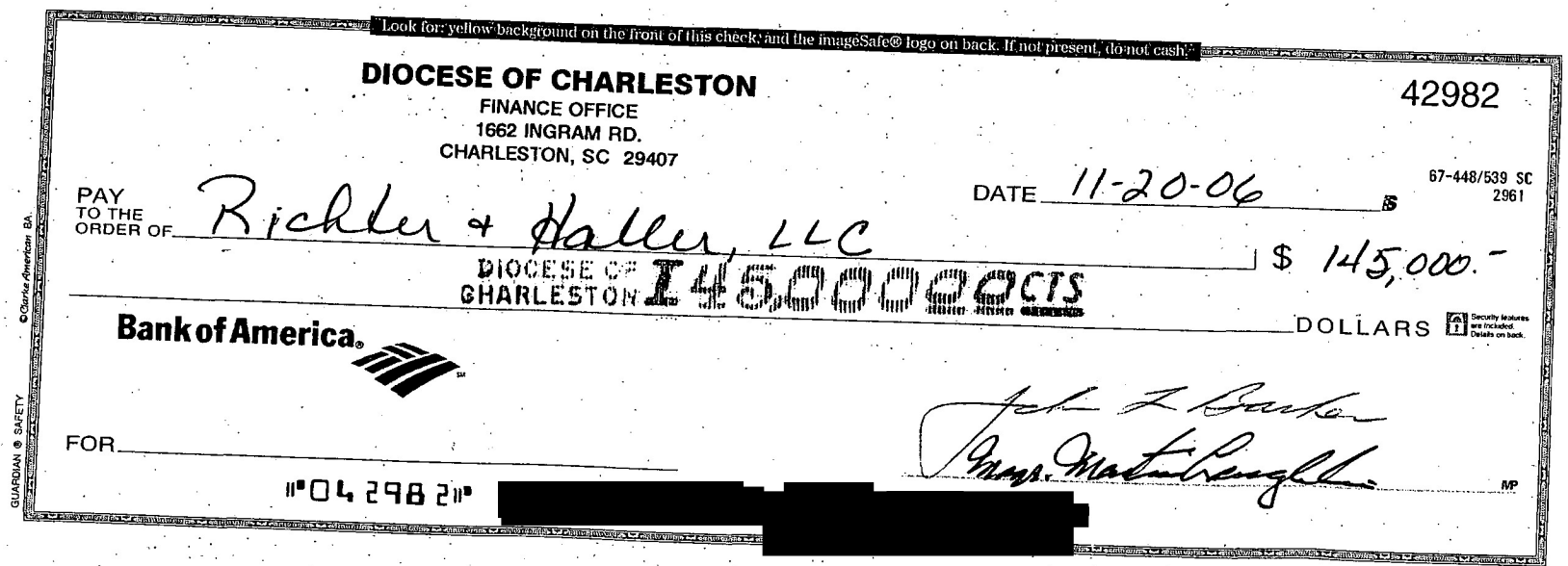

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67-448/539 SC
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PAY TO THE ORDER OF Richter & Haller, LLC DATE 11-20-06 $ 145,000.-

DIOCESE OF CHARLESTON 145,000 00 CTS

Bank of America

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⑈042982⑈ [redacted]

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Attachment A

Record on Appeal - 1316

R000506

A. PETER SHAHID, JR.
SHAHID LAW OFFICE, LLC

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CHARLESTON, SOUTH CAROLINA 29402

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August 30, 2007

VIA FACSIMILE TO: (843) 881-1400 / (843) 723-2852
AND REGULAR UNITED STATES MAIL

Lawrence E. Richter, Jr., Attorney at Law
Richter Law Firm, LLC
622 Johnnie Dodds Boulevard
P.O. Box 1089
Mount Pleasant, SC 29465

Gregg Meyers
Attorney at Law
P.O. Box 1297
39 Broad Street, Suite 300
Charleston, SC 29401

Re: John Doe #53, John Doe #66, John Doe 66A, John Doe #67, Jane Doe #1, Jane Doe #2, and Rachel Roe, individually and as representative of a class of people similarly situated v. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
Case No. 2006-CP-18-1310
Case No. 2006-CP-18-1311
Case No. 2006-CP-18-1636

Dear Larry and Gregg:

This is to confirm that the Diocese will offer $1.375 million to settle claims of the eleven individuals represented by Gregg Meyers. Those individuals, who have been identified in previous correspondence, are John Doe C, John Doe D, Jane Doe G, John Doe H, Jane Doe I, John Doe J, John Doe K and the mother of John Doe J, John Doe L, John Doe M, Jane Doe M. The payments are for personal injuries as defined in the IRS Code and are independent of the Class claims process. These claimants will opt-out of the class claims process and will execute releases. These claimants retain the right to meet with the presiding Bishop or the Apostolic Administrator, as they so desire.

This offer is made on the condition that all of the objections, including any all appeal

rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice.. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement and July 30, 2007 Order. Any other claimant represented by Mr. Meyers and not referenced above, will present their claim through the class claim process.

This offer is also contingent on the receipt by the Diocese of $100,000 from Mr. Richter and/or his clients.

All parties and objectors agree to withdraw all pending motions filed, with prejudice, including Class Counsel/Plaintiffs Motion for Sanctions, and will dismiss the Rule to Show Cause; the Objectors Motion to Alter or Amend; the Defendants' Motion to Alter or Amend, Motion to Stay Execution, Motion to Deposit Funds with the Court, and Motion to Dismiss/Vacate the Rule to Show Cause. This offer if and when accepted as acknowledged by Counsel's signatures below, is intended to pave the way for final approval of the class action settlement and to eliminate any and all objections or appeals.

The $1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the $12 million pool of funds, the Diocese is still obligated to pay the $1.375 million as stated above. Payment is expected sometime after January 1, 2008.

Sincerely,

A. Peter Shahid, Jr.

I agree to the above terms.

Lawrence E. Richter, Jr.
Class Counsel

I agree to the above terms.

Gregg Meyers

RICHTER & HALLER, LLC
TRUST ACCOUNT
P.O. DRAWER 1089
MOUNT PLEASANT, SC 29465

FIRST CITIZENS BANK AND TRUST COMPANY
MOUNT PLEASANT, SC 29464

67-148/532

2087
NUMBER

PAY ****** ONE HUNDRED THOUSAND & 0/100 DOLLARS**

TO THE ORDER OF

DATE 04/28/08

AMOUNT $ **100000.00

A. PETER SHAHID, JR., ESQUIRE
SHAHID LAW OFFICE, LLC
89 BROAD STREET
CHARLESTON, SC 29401

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RICHTER & HALLER, LLC - TRUST ACCOUNT
MOUNT PLEASANT, SC 29465

NUMBER 2087

Vendor ID:

Name: A. PETER SHAHID, JR., ESQUIRE
Check Date: 04/28/08
Check Amount: 100,000.00

MEMO:
RE: DIOCESE OF CHARLESTON CASE
03CIV037

RICHTER & HALLER, LLC - TRUST ACCOUNT
MOUNT PLEASANT, SC 29465

2087

Vendor ID:

Name: A. PETER SHAHID, JR., ESQUIRE
Check Date: 04/28/08
Check Amount: 100,000.00

MEMO:
RE: DIOCESE OF CHARLESTON CASE
03CIV037

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ATTACHMENT C

State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020_____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Affidavit of Michael J. Virzi

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

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

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

   A. I am a lawyer licensed to practice law in South Carolina, and my practice for the past seventeen years has focused exclusively on matters of legal malpractice, ethics, and lawyer discipline;

   B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, I served a three-year term as Chair of the former from 2007 to 2010 and a two-year term as chair of the latter

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

C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;

D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught Fundamentals of Law Practice and Professionalism; I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice, ethics, and lawyer discipline; I am an instructor for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;

E. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and

F. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this matter.

3. My opinion is based on review of the following documents:

A. Petition for Original Jurisdiction in the above-captioned case;

B. Complaint in the above-captioned case;

C. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

D. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

E. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;

F. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;

G. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636 (collectively hereinafter "the Consolidated Class Actions");

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H. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

I. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

J. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;

K. November 7, 2006, letter from A. Peter Shahid, Jr., to Lawrence E. Richter, Jr., regarding the Consolidated Class Actions;

L. November 10, 2006, letter from Lawrence E. Richter, Jr., to Albert P. Shahid, Jr., regarding the Consolidated Class Actions;

M. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in the Consolidated Class Actions;

N. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in the Consolidated Class Actions;

O. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in the Consolidated Class Actions with exhibits, including:

i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;

ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;

iii. Affidavit of Angela Pittard, with attached timesheets;

iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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P. July 12, 2007, letter from Lawrence E. Richter, Jr., to The Honorable Diane S. Goodstein regarding the Consolidated Class Actions;

Q. Transcript of July 13, 2007, hearing before The Honorable Diane S. Goodstein;

R. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in the Consolidated Class Actions;

S. Order Approving Settlement, dated and filed July 30, 2007, in the Consolidated Class Actions;

T. Order of the Court, dated and filed August 31, 2007, in the Consolidated Class Actions;

U. February 19, 2008, letter from Lawrence E. Richter, Jr., to Richard McDonald regarding "John Doe 538 vs. The Diocese of Charleston, et al." and enclosing a Settlement Statement;

V. Order of the Supreme Court of South Carolina, dated March 19, 2009, in John Doe v. Lawrence E. Richter, Jr., et al.;

W. Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, dated June 17, 2011, and filed June 27, 2011, in John Doe 2 and Jane Doe 4 vs. The Bishop of Charleston, et al., Case No. 10-CP-10-5520;

X. Notice of Motion and Motion to Enforce Settlement, dated April 16, 2012, in the Consolidated Class Actions;

Y. Transcript of Record before The Honorable Edgar W. Dickson, dated April 12, 2013, in the Consolidated Class Actions;

Z. Order on Motion to Enforce Settlement, dated November 21, 2013, and filed on December 17, 2013, in the Consolidated Class Actions;

AA. Transcript of Motions Hearing before The Honorable J.C. Nicholson, Jr., dated April 10, 2014, in Father Doe 194 vs. Bishop of Charleston, et al.;

BB. Motion for Post-Award Fairness Hearing by Allen Sires, dated and filed on May 11, 2016, in 2006-CP-18-1310 and 2006-CP-18-1311;

CC. Affidavit of Lawrence E. Richter, Jr., dated March 31, 2015, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176;

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

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

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

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

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

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

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

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

ATTACHMENT D p. 7 Record on Appeal - 1326

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

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

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

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

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

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

Further affiant sayeth naught.

Michael J. Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me
This 4th day of September, 2020

Natasha Brenchor
Notary Public

My Commission Expires : 10/18/2026

ATTACHMENT D p. 9

Record on Appeal - 1328

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

v.

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

Appellate Case No. 2017-001996

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

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

AFFIRMED

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

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

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

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

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

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

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

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

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

AFFIRMED.

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

The Supreme Court of South Carolina

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

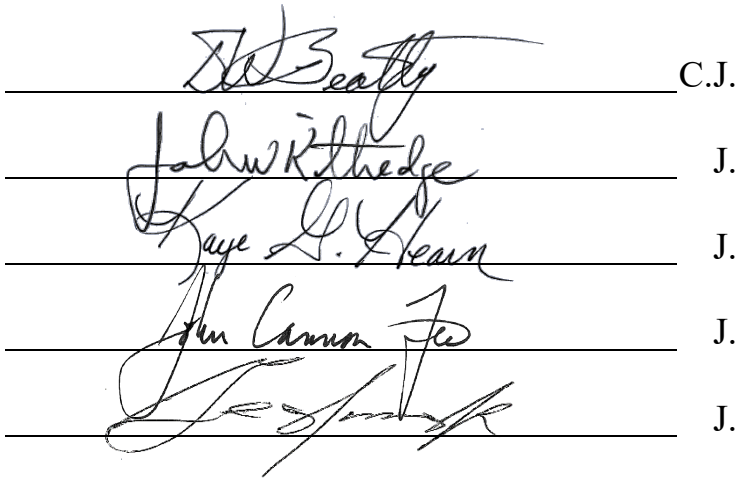
v.

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

Appellate Case No. 2020-001415

ORDER

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



C.J.

J.

J.

J.

J.

Columbia, South Carolina
April 19, 2021

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

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

The Supreme Court of South Carolina

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

v.

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

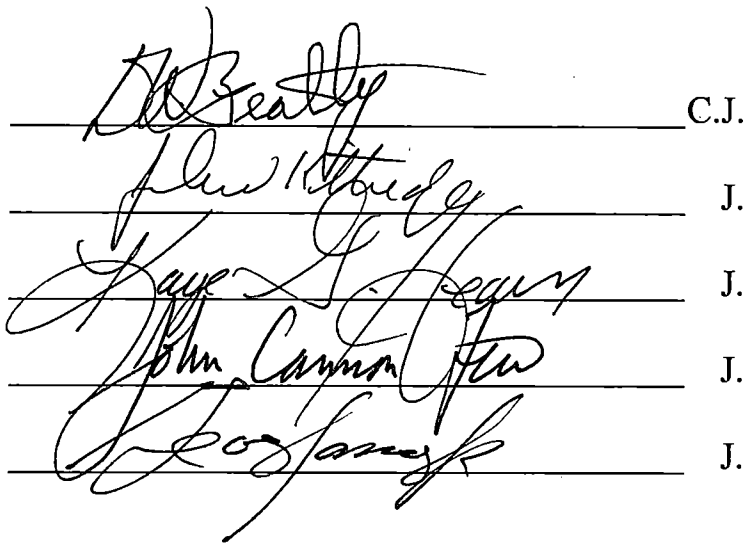
Appellate Case No. 2020-001415

ORDER

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

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

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



C.J.

J.

J.

J.

J.

Columbia, South Carolina
June 15, 2021

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

The Supreme Court of South Carolina

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

v.

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

Appellate Case No. 2021-000668

ORDER

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

_____ C.J.

_____ J.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina
August 6, 2021

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

The South Carolina Court of Appeals

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

v.

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

Appellate Case No. 2017-001996

ORDER

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

FOR THE COURT

FILED
Oct 25 2021

Columbia, South Carolina

cc:
Gregg E. Meyers, Esquire
Richard S. Dukes, Jr., Esquire
Benjamin C. Bruner, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
Chelsea Jaqueline Clark, Esquire
Julie J. Armstrong

The Supreme Court of South Carolina

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

v.

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

Appellate Case No. 2021-001525

ORDER

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

_____ C.J.
FOR THE COURT

Columbia, South Carolina
January 11, 2022

cc:
Richard S. Dukes, Jr., Esquire
Gregg E. Meyers, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
Benjamin C. Bruner, Esquire
Chelsea Jaqueline Clark, Esquire

ELECTRONICALLY FILED - 2022 Aug 30 5:45 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

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

Complaint

Summary of the Action

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

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

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

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

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b. the extent to which class action settlements are permitted to be collusive,

c. the extent to which colluding parties to a class action are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,

d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,

e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his colluding "adversary" at the expense of the class members class counsel purports to represent,

f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,

g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,

h. the extent to which class counsel may charge class members an unauthorized fee, and

i. the extent to which applicable legal standards may vary according to the persons involved.

4. The case arises from a collusive class action in which the class counsel defendants:

a. colluded with their "adversary" to reach a class settlement;

b. colluded with their "adversary" to judge-shop so as to move oversight and approval of that class settlement away from judges not desired to a particular judge in another circuit that was desired;

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c. placed their own financial interests, and the interests of their "adversary," ahead of the interests of the class they purported to represent;

d. submitted (without objection) patently false information to the circuit court;

e. withheld from the circuit court (with cooperation of the "adversary") information that a contingency fee payment had been made that applied to nearly all of the time in records class counsel submitted in support of a fee request for work done on the class action;

f. charged individual class members a fee no order authorized them to charge; and

g. failed to make proper disclosures to class members about class counsel's conflicts and the fees already paid to class counsel before charging class members that unauthorized fee.

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

Parties and Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nature of Wrongdoing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. that the class action was collusive,

b. that no order authorized the fee class counsel charged for individual claimant recoveries,

c. that class counsel had already been awarded a $2.5 million fee,

d. that class counsel had been paid by the Diocese, but had not disclosed to the court, a contingency fee for individual cases of the class representatives. That was payment for nearly all of the time submitted in support of the court awarded fee,

e. of class counsels' conflicts regarding the lifelong relationship with the Diocese and class counsels' functioning, even during the class action proceedings, as an official of the Diocese,

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f. of class counsel's friendships with Diocese personnel, potentially including persons who engaged in sexual abuse,

g. that class counsel appeared at and participated in settlement discussions for persons who were not members of the class,

h. that persons who opted out of the class had received more favorable settlement terms than did class members,

i. that class counsel or his clients had contributed $100,000.00 to funding the more favorable settlement terms for those who had opted out, or

j. that with cooperation of the Diocese, class counsel had submitted blatantly false time and expense records to the court, which intentionally overstated time claims.

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

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

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

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

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

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

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

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

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

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

McDonalds, by actually representing them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Shopping for a judge and doing so by collaborating to file, and accept service of, a duplicate class action complaint for John Doe 53 and other illicit means of evading SCRCP 23;

b. Making no objection to the complex case designation, even though the Supreme Court's July 26, 2006 complex case order applied to cases that could not be settled and the class settlement had already been reached;

c. Misrepresenting to the court that absent class members who got no notice would receive the same compensation as class members;

d. Taking no position on whether the class should be certified;

e. Acquiescing in class counsel failing to disclose to the class his life-long ties to and functions on behalf of the Diocese;

f. Making no disclosure to the class of the superior settlement terms (compared to those for the class) for the individuals who were the class representatives,

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and whose settlement terms would apply (a) whether or not the class was approved, and (b) for fixed sums not dependent on an arbitration process;

g. Making no disclosure to the court of the November 20, 2006 contingent fee payment to class counsel for individual cases of class representatives, or that the billing records relied on for the class action fee application was almost entirely (from 2003 through November 20, 2006) for time for which that contingency fee had already compensated class counsel;

h. Making no objection that the class representatives referred to in the 2006 version of the class settlement agreement had already been paid and whose claims were already settled in 2006 whether or not the class was later certified;

i. Making no objection that the claims of class representatives referred to in the 2007 version of the class settlement agreement had already been paid and their claims released whether or not the class was later certified, meaning the "class representatives" had no stake in the class settlement, and were not representative of either class;

j. Not disclosing to the class the superior settlement terms reached with the individuals who objected to the class settlement;

k. Not disclosing to the class that those superior settlement terms for objectors were funded in part by class counsel or class members paying $100,000 from class counsel's trust account;

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l. Not objecting when class counsel negotiated simultaneously a fixed fee for themselves and a variable recovery for the class, with the compensation for class members being subordinated to that fee;

m. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range, saying nothing about the blatantly fraudulent time records of class counsel, not disclosing that a contingent fee had already been paid for the time spent on individual cases which formed the vast percentage of time claimed in the fee application (time from 2003 to November 20, 2006), and not disclosing that the class settlement was reached seven months after filing without a single motion having been argued or decided, or a single witness having been deposed;

n. agreeing that no accounting records of the class fund should include the contingency fee payment to class counsel;

o. agreeing to the fee being awarded before any member of the class member was even identified, had even submitted a claim, or had been compensated;

p. Agreeing to ignore the South Carolina Supreme Court's March 2009 directive that the class action should be concluded in six months unless an extension was sought from that court;

q. agreeing to seek no post-award fairness hearing under SCRCP 23 where the *actual* conduct of the class action, substantively and procedurally, and the *actual* recovery for the class members would be assessed;

r. ignoring a 2016 motion by one of the class representatives for a post-award fairness hearing; that motion alleged that class counsel had "abandoned" the

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class representative and the representation had terminated, and

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

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

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

For a First Cause of Action:
Declaratory Relief

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

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

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

b. the extent to which class action settlements are permitted to be collusive,

c. the extent to which colluding parties are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,

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d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,

e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his "adversary" the Diocese at the expense of the class members class counsel purports to represent,

f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,

g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,

h. the extent to which class counsel may charge an unauthorized fee to class members, and

i. the extent to which applicable legal standards vary according to the persons involved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Demand for Jury Trial

143. Plaintiffs demand a trial by jury.

Relief Sought

The plaintiffs seek the following relief:

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

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

b. Is it proper for the judge-shopping tactics to include (a) filing new class

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

c. Is it proper for class counsel to refuse to notify class members of their substantial conflicts of interest?

d. Is it proper for class counsel to enter an agreement to settle a class action which simultaneously, and explicitly, creates a fixed fee for class counsel, elevates that fee for class counsel above the interests of class members and makes class recovery subordinate *pro rata* to counsel's fixed fee?

e. Does it breach class counsel's fiduciary duty to absent class members to accommodate an objection by his "adversary" to eliminate notice for all class members who reside out of state without providing relief to out of state class members?

f. Is it proper for class counsel to have received a payment to resolve the claims of class representatives, and payment for a fee for that work, without any parties disclosing that fee payment to class members or to the court?

g. Must a reviewing court examine time records submitted by class counsel in support of a fee award and reject, or at least inquire about, blatantly fraudulent submissions?

h. Is it proper for class counsel and the Diocese fail to disclose that nearly all of the time submitted by class counsel in support of a fee award (all time between 2003 and November 20, 2006) had been paid for by a prior payment of $145,000?

i. Does class counsel breach their fiduciary duty to class members by charging a fee not authorized by any court order?

j. To what extent does class counsel breach their fiduciary duty to class members by failing to disclose each of (a) substantial conflicts of interest with the Diocese and the shopped-for judge, (b) collusion in the class action, (c) the judge-shopping, (d) that no order authorized the fee charged the class member, (e) that a $145,000 fee payment had already been made to class counsel, (f) that a $2.5 million fee payment had already been made to class counsel, (g) that objectors to the class settlement got better settlement terms than class members, (h) that class counsel participated in discussions to obtain better settlement terms for objectors, and (i) that class counsel paid $100,000 from his trust account to partially fund better settlement terms for objectors?

k. Does class counsel breach their fiduciary duty to absent class members when they fail to secure in a written order the relief and waived defenses stated on

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

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

145. Actual and punitive damages as provided by law,

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

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

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

149. Reasonable attorney fees; and for

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

Respectfully submitted,

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Attorney for the Plaintiffs

August 29, 2022

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State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020_____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Affidavit of Michael J. Virzi

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

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

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

   A. I am a lawyer licensed to practice law in South Carolina, and my practice for the past seventeen years has focused exclusively on matters of legal malpractice, ethics, and lawyer discipline;

   B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, I served a three-year term as Chair of the former from 2007 to 2010 and a two-year term as chair of the latter

MJV

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

C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;

D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught Fundamentals of Law Practice and Professionalism; I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice, ethics, and lawyer discipline; I am an instructor for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;

E. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and

F. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this matter.

3. My opinion is based on review of the following documents:

A. Petition for Original Jurisdiction in the above-captioned case;

B. Complaint in the above-captioned case;

C. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

D. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

E. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;

F. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;

G. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636 (collectively hereinafter "the Consolidated Class Actions");

MIV

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H. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

I. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

J. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;

K. November 7, 2006, letter from A. Peter Shahid, Jr., to Lawrence E. Richter, Jr., regarding the Consolidated Class Actions;

L. November 10, 2006, letter from Lawrence E. Richter, Jr., to Albert P. Shahid, Jr., regarding the Consolidated Class Actions;

M. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in the Consolidated Class Actions;

N. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in the Consolidated Class Actions;

O. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in the Consolidated Class Actions with exhibits, including:

i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;

ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;

iii. Affidavit of Angela Pittard, with attached timesheets;

iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

MEV

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P. July 12, 2007, letter from Lawrence E. Richter, Jr., to The Honorable Diane S. Goodstein regarding the Consolidated Class Actions;

Q. Transcript of July 13, 2007, hearing before The Honorable Diane S. Goodstein;

R. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in the Consolidated Class Actions;

S. Order Approving Settlement, dated and filed July 30, 2007, in the Consolidated Class Actions;

T. Order of the Court, dated and filed August 31, 2007, in the Consolidated Class Actions;

U. February 19, 2008, letter from Lawrence E. Richter, Jr., to Richard McDonald regarding "John Doe 538 vs. The Diocese of Charleston, et al." and enclosing a Settlement Statement;

V. Order of the Supreme Court of South Carolina, dated March 19, 2009, in John Doe v. Lawrence E. Richter, Jr., et al.;

W. Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, dated June 17, 2011, and filed June 27, 2011, in John Doe 2 and Jane Doe 4 vs. The Bishop of Charleston, et al., Case No. 10-CP-10-5520;

X. Notice of Motion and Motion to Enforce Settlement, dated April 16, 2012, in the Consolidated Class Actions;

Y. Transcript of Record before The Honorable Edgar W. Dickson, dated April 12, 2013, in the Consolidated Class Actions;

Z. Order on Motion to Enforce Settlement, dated November 21, 2013, and filed on December 17, 2013, in the Consolidated Class Actions;

AA. Transcript of Motions Hearing before The Honorable J.C. Nicholson, Jr., dated April 10, 2014, in Father Doe 194 vs. Bishop of Charleston, et al.;

BB. Motion for Post-Award Fairness Hearing by Allen Sires, dated and filed on May 11, 2016, in 2006-CP-18-1310 and 2006-CP-18-1311;

CC. Affidavit of Lawrence E. Richter, Jr., dated March 31, 2015, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176;

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

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

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

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

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

MJV

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

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

MSV

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

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

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

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

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

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

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

Further affiant sayeth naught.

Michael J. Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me
This 6th day of September, 2022

Natasha Brenchor
Notary Public

My Commission Expires : 10/18/2026

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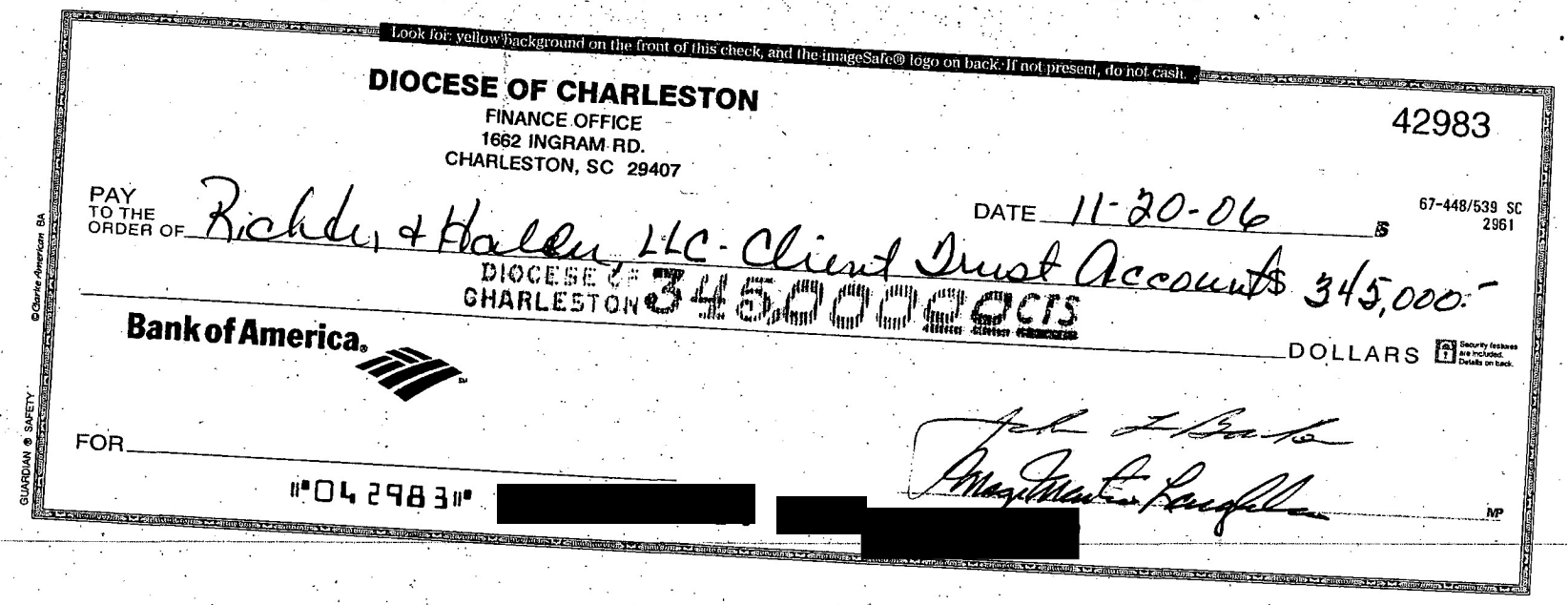

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FINANCE OFFICE
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CHARLESTON, SC 29407

42983

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller LLC - Client Trust Account DATE 11-20-06 $ 345,000.-

DIOCESE OF CHARLESTON 345,000 00 CTS

Bank of America

DOLLARS

Security features are included. Details on back.

FOR

⑈042983⑈ [redacted]

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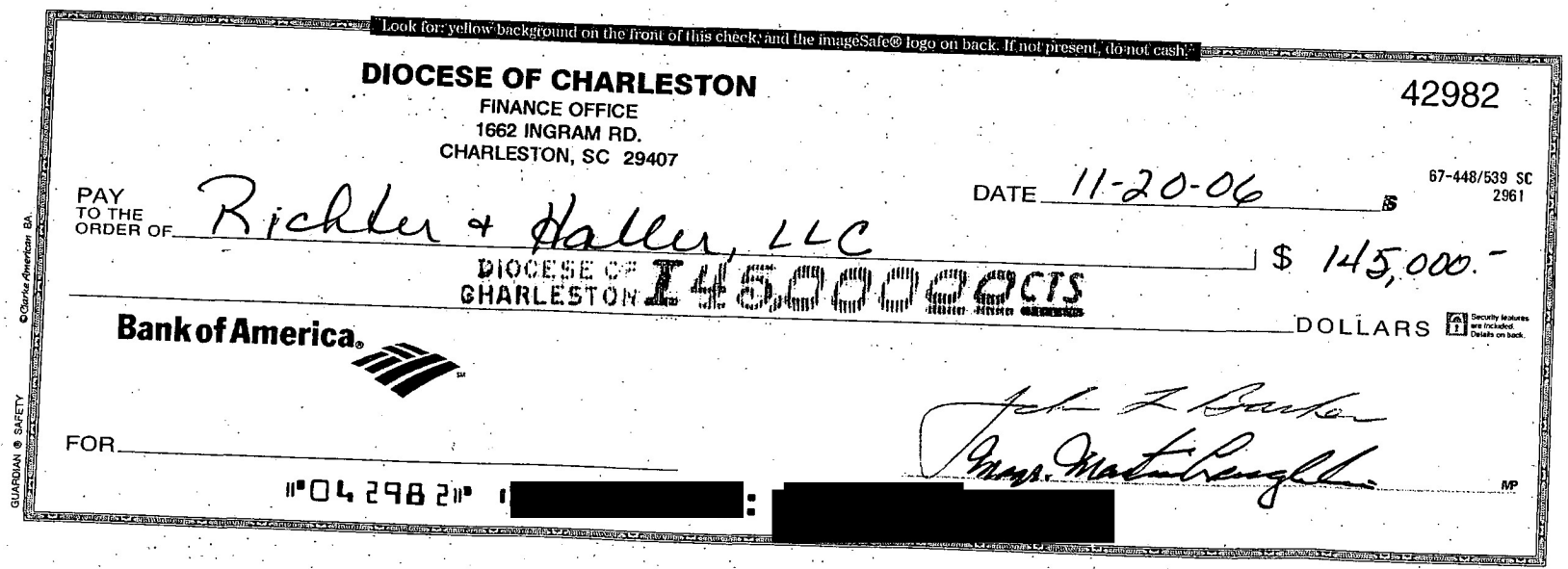

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42982

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller, LLC DATE 11-20-06 $ 145,000.-

DIOCESE OF CHARLESTON 145,000 00 CTS

Bank of America

DOLLARS

Security features are included. Details on back.

FOR

⑈042982⑈ [redacted]

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Attachment B

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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

JOHN DOE 305, JULIE McDONALD, and RICHARD McDONALD

Plaintiffs,

vs.

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

Defendants.

DEFENDANTS' NOTICE OF REMOVAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

s/Richard S. Dukes, Jr.
Richard S. Dukes, Jr., Federal ID No.: 7340
40 Calhoun Street, Suite 200 (29401)
P.O. Box 22129
Charleston, South Carolina 29413
Telephone: (843) 576-2810
Facsimile: (843) 577-1646
Email: rdukes@turnerpadet.com

Carmelo B. Sammataro, Fed. ID # 9174
Turner Padget Graham & Laney, P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
SSammataro@TurnerPadget.com

September 1, 2022

ATTORNEYS FOR DEFENDANTS
BISHOP OF CHARLESTON, A CORPORATION SOLE

EXHIBIT A

ELECTRONICALLY FILED - 2022 Aug 30 5:45 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

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

Summons

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

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

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

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

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

Respectfully submitted,

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

Attorney for the Plaintiff

ELECTRONICALLY FILED - 2022 Aug 30 5:45 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

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

Complaint

Summary of the Action

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

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

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

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

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b. the extent to which class action settlements are permitted to be collusive,

c. the extent to which colluding parties to a class action are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,

d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,

e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his colluding "adversary" at the expense of the class members class counsel purports to represent,

f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,

g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,

h. the extent to which class counsel may charge class members an unauthorized fee, and

i. the extent to which applicable legal standards may vary according to the persons involved.

4. The case arises from a collusive class action in which the class counsel defendants:

a. colluded with their "adversary" to reach a class settlement;

b. colluded with their "adversary" to judge-shop so as to move oversight and approval of that class settlement away from judges not desired to a particular judge in another circuit that was desired;

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c. placed their own financial interests, and the interests of their "adversary," ahead of the interests of the class they purported to represent;

d. submitted (without objection) patently false information to the circuit court;

e. withheld from the circuit court (with cooperation of the "adversary") information that a contingency fee payment had been made that applied to nearly all of the time in records class counsel submitted in support of a fee request for work done on the class action;

f. charged individual class members a fee no order authorized them to charge; and

g. failed to make proper disclosures to class members about class counsel's conflicts and the fees already paid to class counsel before charging class members that unauthorized fee.

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

Parties and Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nature of Wrongdoing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. that the class action was collusive,

b. that no order authorized the fee class counsel charged for individual claimant recoveries,

c. that class counsel had already been awarded a $2.5 million fee,

d. that class counsel had been paid by the Diocese, but had not disclosed to the court, a contingency fee for individual cases of the class representatives. That was payment for nearly all of the time submitted in support of the court awarded fee,

e. of class counsels' conflicts regarding the lifelong relationship with the Diocese and class counsels' functioning, even during the class action proceedings, as an official of the Diocese,

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f. of class counsel's friendships with Diocese personnel, potentially including persons who engaged in sexual abuse,

g. that class counsel appeared at and participated in settlement discussions for persons who were not members of the class,

h. that persons who opted out of the class had received more favorable settlement terms than did class members,

i. that class counsel or his clients had contributed $100,000.00 to funding the more favorable settlement terms for those who had opted out, or

j. that with cooperation of the Diocese, class counsel had submitted blatantly false time and expense records to the court, which intentionally overstated time claims.

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

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

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

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

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

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

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

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

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

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

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McDonalds, by actually representing them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Shopping for a judge and doing so by collaborating to file, and accept service of, a duplicate class action complaint for John Doe 53 and other illicit means of evading SCRCP 23;

b. Making no objection to the complex case designation, even though the Supreme Court's July 26, 2006 complex case order applied to cases that could not be settled and the class settlement had already been reached;

c. Misrepresenting to the court that absent class members who got no notice would receive the same compensation as class members;

d. Taking no position on whether the class should be certified;

e. Acquiescing in class counsel failing to disclose to the class his life-long ties to and functions on behalf of the Diocese;

f. Making no disclosure to the class of the superior settlement terms (compared to those for the class) for the individuals who were the class representatives,

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and whose settlement terms would apply (a) whether or not the class was approved, and (b) for fixed sums not dependent on an arbitration process;

g. Making no disclosure to the court of the November 20, 2006 contingent fee payment to class counsel for individual cases of class representatives, or that the billing records relied on for the class action fee application was almost entirely (from 2003 through November 20, 2006) for time for which that contingency fee had already compensated class counsel;

h. Making no objection that the class representatives referred to in the 2006 version of the class settlement agreement had already been paid and whose claims were already settled in 2006 whether or not the class was later certified;

i. Making no objection that the claims of class representatives referred to in the 2007 version of the class settlement agreement had already been paid and their claims released whether or not the class was later certified, meaning the "class representatives" had no stake in the class settlement, and were not representative of either class;

j. Not disclosing to the class the superior settlement terms reached with the individuals who objected to the class settlement;

k. Not disclosing to the class that those superior settlement terms for objectors were funded in part by class counsel or class members paying $100,000 from class counsel's trust account;

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l. Not objecting when class counsel negotiated simultaneously a fixed fee for themselves and a variable recovery for the class, with the compensation for class members being subordinated to that fee;

m. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range, saying nothing about the blatantly fraudulent time records of class counsel, not disclosing that a contingent fee had already been paid for the time spent on individual cases which formed the vast percentage of time claimed in the fee application (time from 2003 to November 20, 2006), and not disclosing that the class settlement was reached seven months after filing without a single motion having been argued or decided, or a single witness having been deposed;

n. agreeing that no accounting records of the class fund should include the contingency fee payment to class counsel;

o. agreeing to the fee being awarded before any member of the class member was even identified, had even submitted a claim, or had been compensated;

p. Agreeing to ignore the South Carolina Supreme Court's March 2009 directive that the class action should be concluded in six months unless an extension was sought from that court;

q. agreeing to seek no post-award fairness hearing under SCRCP 23 where the *actual* conduct of the class action, substantively and procedurally, and the *actual* recovery for the class members would be assessed;

r. ignoring a 2016 motion by one of the class representatives for a post-award fairness hearing; that motion alleged that class counsel had "abandoned" the

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class representative and the representation had terminated, and

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

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

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

For a First Cause of Action:
Declaratory Relief

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

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

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

b. the extent to which class action settlements are permitted to be collusive,

c. the extent to which colluding parties are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,

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d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,

e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his "adversary" the Diocese at the expense of the class members class counsel purports to represent,

f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,

g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,

h. the extent to which class counsel may charge an unauthorized fee to class members, and

i. the extent to which applicable legal standards vary according to the persons involved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Demand for Jury Trial

143. Plaintiffs demand a trial by jury.

Relief Sought

The plaintiffs seek the following relief:

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

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

b. Is it proper for the judge-shopping tactics to include (a) filing new class

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

c. Is it proper for class counsel to refuse to notify class members of their substantial conflicts of interest?

d. Is it proper for class counsel to enter an agreement to settle a class action which simultaneously, and explicitly, creates a fixed fee for class counsel, elevates that fee for class counsel above the interests of class members and makes class recovery subordinate *pro rata* to counsel's fixed fee?

e. Does it breach class counsel's fiduciary duty to absent class members to accommodate an objection by his "adversary" to eliminate notice for all class members who reside out of state without providing relief to out of state class members?

f. Is it proper for class counsel to have received a payment to resolve the claims of class representatives, and payment for a fee for that work, without any parties disclosing that fee payment to class members or to the court?

g. Must a reviewing court examine time records submitted by class counsel in support of a fee award and reject, or at least inquire about, blatantly fraudulent submissions?

h. Is it proper for class counsel and the Diocese fail to disclose that nearly all of the time submitted by class counsel in support of a fee award (all time between 2003 and November 20, 2006) had been paid for by a prior payment of $145,000?

i. Does class counsel breach their fiduciary duty to class members by charging a fee not authorized by any court order?

j. To what extent does class counsel breach their fiduciary duty to class members by failing to disclose each of (a) substantial conflicts of interest with the Diocese and the shopped-for judge, (b) collusion in the class action, (c) the judge-shopping, (d) that no order authorized the fee charged the class member, (e) that a $145,000 fee payment had already been made to class counsel, (f) that a $2.5 million fee payment had already been made to class counsel, (g) that objectors to the class settlement got better settlement terms than class members, (h) that class counsel participated in discussions to obtain better settlement terms for objectors, and (i) that class counsel paid $100,000 from his trust account to partially fund better settlement terms for objectors?

k. Does class counsel breach their fiduciary duty to absent class members when they fail to secure in a written order the relief and waived defenses stated on

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

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

145. Actual and punitive damages as provided by law,

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

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

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

149. Reasonable attorney fees; and for

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

Respectfully submitted,

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

Attorney for the Plaintiffs

August 29, 2022

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State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020_____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Affidavit of Michael J. Virzi

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

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

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

   A. I am a lawyer licensed to practice law in South Carolina, and my practice for the past seventeen years has focused exclusively on matters of legal malpractice, ethics, and lawyer discipline;

   B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, I served a three-year term as Chair of the former from 2007 to 2010 and a two-year term as chair of the latter

MJV

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

C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;

D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught Fundamentals of Law Practice and Professionalism; I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice, ethics, and lawyer discipline; I am an instructor for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;

E. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and

F. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this matter.

3. My opinion is based on review of the following documents:

A. Petition for Original Jurisdiction in the above-captioned case;

B. Complaint in the above-captioned case;

C. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

D. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

E. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;

F. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;

G. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636 (collectively hereinafter "the Consolidated Class Actions");

MIV

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H. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

I. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

J. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;

K. November 7, 2006, letter from A. Peter Shahid, Jr., to Lawrence E. Richter, Jr., regarding the Consolidated Class Actions;

L. November 10, 2006, letter from Lawrence E. Richter, Jr., to Albert P. Shahid, Jr., regarding the Consolidated Class Actions;

M. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in the Consolidated Class Actions;

N. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in the Consolidated Class Actions;

O. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in the Consolidated Class Actions with exhibits, including:

i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;

ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;

iii. Affidavit of Angela Pittard, with attached timesheets;

iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

MEV

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P. July 12, 2007, letter from Lawrence E. Richter, Jr., to The Honorable Diane S. Goodstein regarding the Consolidated Class Actions;

Q. Transcript of July 13, 2007, hearing before The Honorable Diane S. Goodstein;

R. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in the Consolidated Class Actions;

S. Order Approving Settlement, dated and filed July 30, 2007, in the Consolidated Class Actions;

T. Order of the Court, dated and filed August 31, 2007, in the Consolidated Class Actions;

U. February 19, 2008, letter from Lawrence E. Richter, Jr., to Richard McDonald regarding "John Doe 538 vs. The Diocese of Charleston, et al." and enclosing a Settlement Statement;

V. Order of the Supreme Court of South Carolina, dated March 19, 2009, in John Doe v. Lawrence E. Richter, Jr., et al.;

W. Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, dated June 17, 2011, and filed June 27, 2011, in John Doe 2 and Jane Doe 4 vs. The Bishop of Charleston, et al., Case No. 10-CP-10-5520;

X. Notice of Motion and Motion to Enforce Settlement, dated April 16, 2012, in the Consolidated Class Actions;

Y. Transcript of Record before The Honorable Edgar W. Dickson, dated April 12, 2013, in the Consolidated Class Actions;

Z. Order on Motion to Enforce Settlement, dated November 21, 2013, and filed on December 17, 2013, in the Consolidated Class Actions;

AA. Transcript of Motions Hearing before The Honorable J.C. Nicholson, Jr., dated April 10, 2014, in Father Doe 194 vs. Bishop of Charleston, et al.;

BB. Motion for Post-Award Fairness Hearing by Allen Sires, dated and filed on May 11, 2016, in 2006-CP-18-1310 and 2006-CP-18-1311;

CC. Affidavit of Lawrence E. Richter, Jr., dated March 31, 2015, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176;

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

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

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

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

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

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

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

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Record on Appeal - 1433

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

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

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

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

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

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

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

Further affiant sayeth naught.

Michael J. Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me
This 6th day of September, 2022

Natasha Brenchor
Notary Public

My Commission Expires : 10/18/2026

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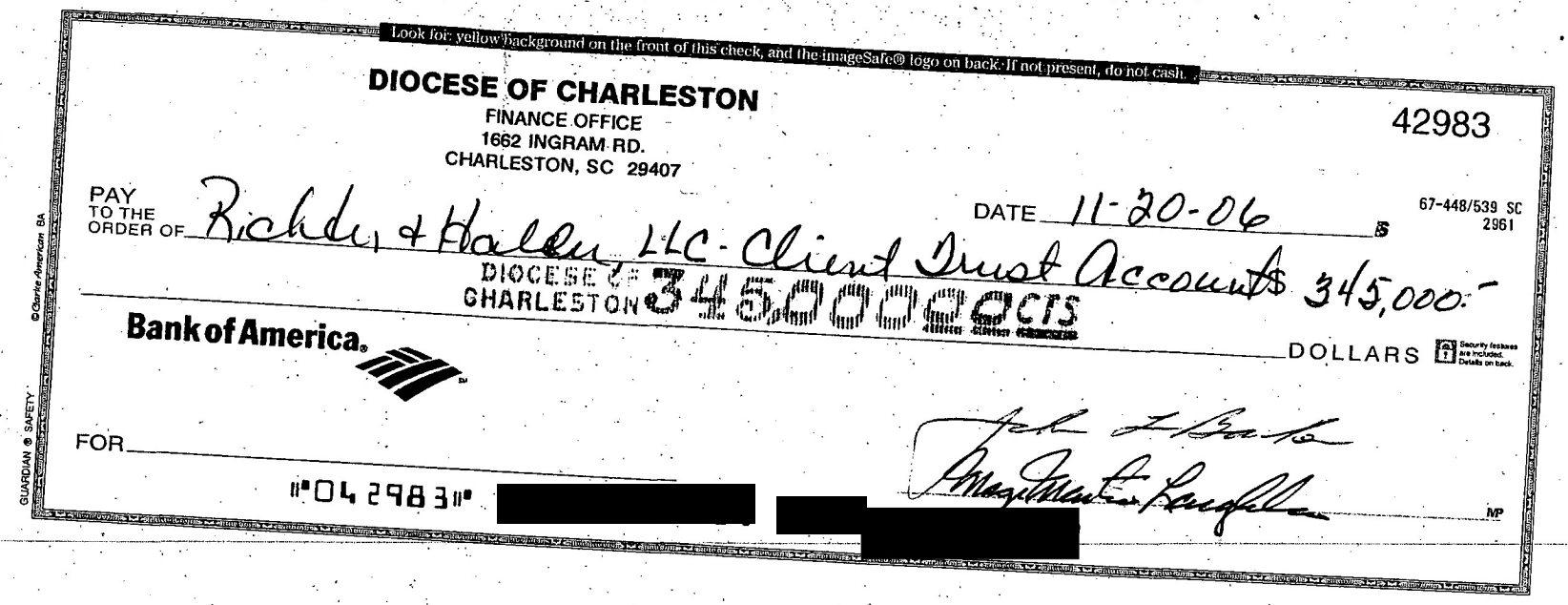

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CHARLESTON, SC 29407

42983

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller LLC - Client Trust Account

DATE 11-20-06

$ 345,000.-

DIOCESE OF CHARLESTON 345,000 00 CTS

DOLLARS

Bank of America

Security features are included. Details on back.

FOR

⑈042983⑈ [redacted]

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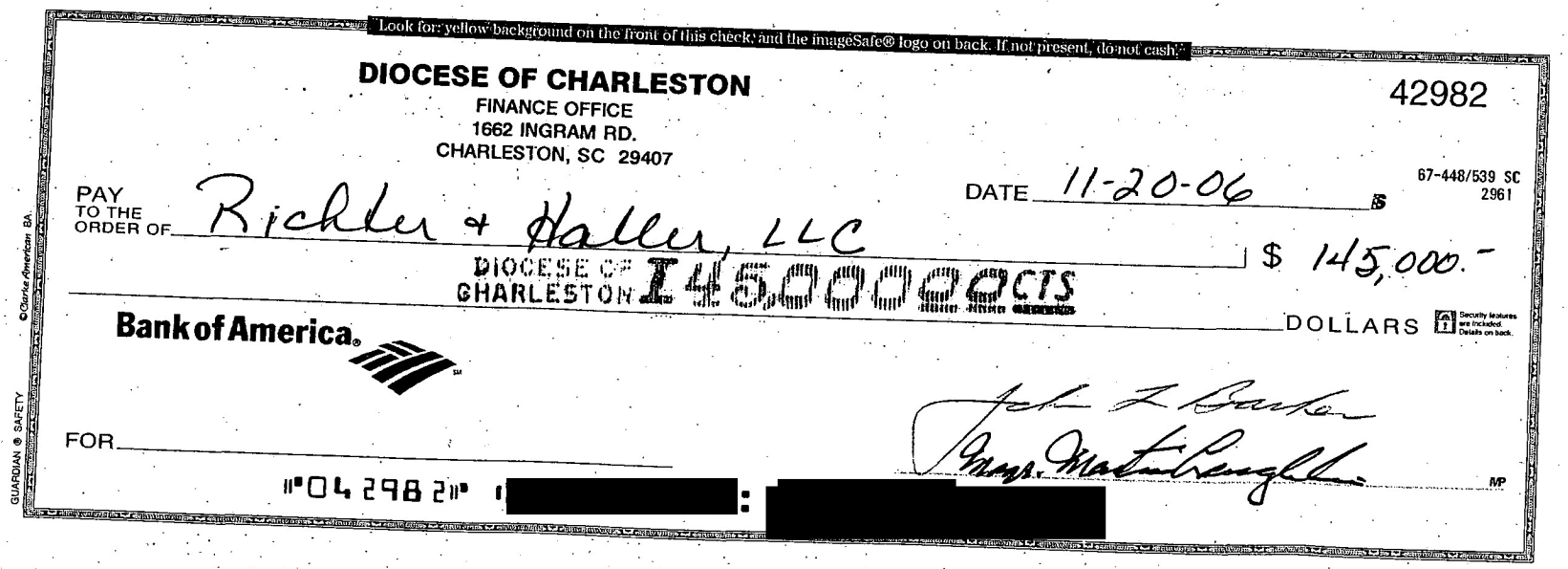

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1662 INGRAM RD.
CHARLESTON, SC 29407

42982

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller, LLC

DATE 11-20-06

$ 145,000.-

DIOCESE OF CHARLESTON 145,000 00 CTS

DOLLARS

Bank of America

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FOR

⑈042982⑈ [redacted]

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EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NUMBER: _____

JOHN DOE 305, JULIE McDONALD, and RICHARD McDONALD

Plaintiffs,

vs.

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

Defendants.

DECLARATION OF RICHARD DUKES

I, Richard S. Dukes, declare as follows:

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

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

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

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

s/Richard S. Dukes, Jr.

The State of South Carolina
In The Court of Appeals

Appeal from Dorchester County
Hon. Heath P. Taylor, Circuit Court Judge

Appellate Case 2023-000720

Case Nos. 2006-CP-18-01310
2006-CP-18-01311
2006-CP-18-01636

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

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

v.

The Bishop of Charleston a Corporation sole, and the Bishop of
The Diocese of Charleston, in his official capacity, Respondents,

And

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

Certificate of Counsel

I certify that the four volume Record on Appeal contains all material proposed to be included by any of the parties and not any other matter, excepting those items proposed to be included but

ordered by the court to be excluded.

Respectfully submitted,

s/ Gregg Meyers

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