

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No: 2011-CP-40-1998
Court of Appeals No.: 2012-212744

Gilbert S. Bagnell and Bagnell and Eason, LLC.....Appellants,

v.

Jones G. Herring.....Respondent.

RECORD ON APPEAL

Richard R. Gleissner, Esquire
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201

Douglas N. Truslow, Esquire
Truslow and Truslow
P.O. Box 1465
Columbia, SC 29202

RECEIVED

NOV 29 2013

SC Court of Appeals

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

JONES G. HERRING,)

Docket No.: 2011-CP-40-1998

Plaintiff,)

Vs.)

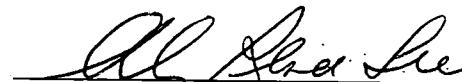
ORDER OF DEFAULTGILBERT S. BAGNELL and
BAGNELL AND EASON, LLC,)

Defendants.)

RICHLAND COUNTY
FILED
2011 JUN 14 PM 3:52
JEANETTE W. McBRIDE
C.C.P. & G.S.

It appears from the Certified Mail (Restricted Delivery) receipts that the Summons and Complaint in this action were served on Defendants on April 1, 2011 and March 30, 2011, respectively. It also appears from the Affidavit of Plaintiff's attorney that no Answer to the Complaint has been received by the Plaintiff's attorney as required by the Summons in this action, and that Defendants have not otherwise appeared. Furthermore, it appears that Defendants are not entitled to relief under the Soldiers and Sailors' Relief Act and that Plaintiff's damages are unliquidated.

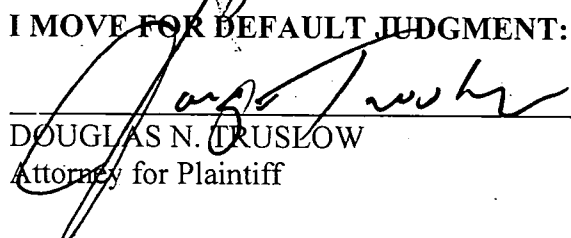
NOW, ON MOTION of Plaintiff's attorney, it is Ordered and Adjudged that Defendants are in default and that Plaintiff is awarded judgment against Defendants for damages to be determined at a hearing held in accordance with applicable law. Finally, the Clerk of Court is directed to schedule a hearing during the next available non-jury term at which the extent of Plaintiff's damages shall be determined.


ALLISON RENEE LEE
CHIEF ADMINISTRATIVE JUDGE
FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

June 8, 2011.

I MOVE FOR DEFAULT JUDGMENT:


DOUGLAS N. TRUSLOW
Attorney for Plaintiff

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4001998

Jones G Herring

Gilbert S Bagnell

PLAINTIFF(S)

Bagnell and Eason LLC

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
<u>Jones G. Herring</u>	<u>Gilbert S Bagnell and Bagnell and Eason LLC</u>	\$ <u>504,306.77</u>
		\$
		\$

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

Circuit Court Judge AB

Judge Code 2161

Date 11-22-11

For Clerk of Court Office Use Only

This judgment was entered on the 1 day of Dec, 20 11 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truslow

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court Jeanette W McBride

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2011CP4001998****Jones G Herring****Gilbert S Bagnell**

PLAINTIFF(S)

Bagnell and Eason LLC

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant**DISPOSITION TYPE (CHECK ONE)**

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

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

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

ORDER INFORMATIONThis order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 29th day of November, 2011 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truslow

Richard R. Gleissner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride *JW*

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and
BAGNELL AND EASON, LLC,)

Defendants)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

ORDER

RICHLAND COUNTY
FILED
2011 NOV 29 AM 11:33
JEANETTE W. BRIDGEMAN
C.C.P. & G.S.

PRESIDING JUDGE:

DeAndrea Benjamin

DATE OF HEARING:

October 31, 2011

PLAINTIFF'S COUNSEL:

Douglas N. Truslow, Esquire

DEFENDANTS' COUNSEL:

Richard Gleissner, Esquire

THIS MATTER CAME BEFORE THE COURT for a damages hearing. From the Clerk of Court's files, it appears 1) Defendants are in default for the failure to respond to Plaintiff's Complaint, although they were duly and properly served and 2) Defendants received proper notices for the within damages hearing, but they have failed to appear.^{1, 2}

At the call of the case the Court accepted testimony and evidence relative to actual damages suffered by Plaintiff that were caused by Defendants, as well as testimony and evidence relative to punitive damages.

Based on the testimony, evidence, the Clerk of Court's file and matters of record, the Court makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

¹ At the call of the case, Mr. Gleissner indicated that he had been requested by Defendant Bagnell (within hours before the time set for the hearing) to appear on Defendants' behalf. No excuse for Defendants' failure to appear was submitted, no request for a continuance was made and Defendants' counsel indicated that he was ready to proceed. Furthermore, Defendants did not contest that they were in default and that the only issue to be addressed was an award of actual and punitive damages. Plaintiff was unaware of the circumstances surrounding Mr. Gleissner's involvement until that time and had expected an abbreviated hearing to address damages.

² Mr. Gleissner appears to have performed capably for Defendants, under challenging circumstances.

- 1) This Court has both subject matter and personal jurisdiction, and venue is proper in Richland County.
- 2) Defendants are in default as to liability. Thus, Defendants have been found to have been and are liable to Plaintiff for, *inter alia*, gross negligence, fraud and misrepresentation. The essential issue before the Court relates to an assessment of actual and punitive damages.
- 3) Plaintiff's claim for damages is set forth in detail in his testimony, as supplemented by his affidavit with attachments that are of record.³
- 4) To induce Plaintiff to utilize his services in a case against a consumer credit lender (in which Plaintiff alleged that he had damages exceeding \$100,000.00), Defendant Bagnell ("Bagnell") represented to Plaintiff that he had considerable experience handling cases of the type Plaintiff possessed. He (Bagnell) then represented that he had recently handled a case with similar attributes and had obtained a very financially rewarding settlement. Bagnell invited Plaintiff to verify the terms of the case settlement "on line" (which Plaintiff apparently did). Bagnell also advised Plaintiff that he (Bagnell) would be pursuing a class action lawsuit on Plaintiff's behalf, as he had substantial experience with same. In addition, Bagnell represented to Plaintiff that he (Bagnell) was going to, with their prior/existing approval, associate a separate, well respected law firm (McGowan, Hood & Felder, LLC – hereinafter, "McGowan Hood") to assist him with the case. Further, Bagnell told Plaintiff that he would be working diligently on the case, that it would take considerable time and would be figuratively akin to an iceberg or duck paddling on a pond – with much going on that could not readily be seen on the surface. Bagnell represented to Plaintiff that he could expect to receive treble damages, interest and legal fees, plus other unspecified damages as lead Plaintiff of the Class Action lawsuit that he would be filing on Plaintiff's behalf. In reliance on Bagnell's representations, Plaintiff expended considerable time working on the case.

³ At the conclusion of the presentation of testimony, and given Mr. Gleissner's late appearance, Plaintiff was requested and allowed, without objection, to submit an affidavit (by November 18, 2011) detailing his damages, rather than reconvening a hearing to accept further testimony from Plaintiff relative to damages. Plaintiff's affidavit has been duly and timely submitted and is of record. Though not requested, Bagnell has nonetheless presented an affidavit, computer disc and memorandum (out of time), which have been given appropriate consideration.

- 5) In conjunction with Defendants' representation of Plaintiff, Bagnell requested that Plaintiff turn over to him all his documentation proving his loss of \$100,000.00; that he (Bagnell) would make copies and return the originals to Plaintiff. Plaintiff turned over to Bagnell all his records in reliance on Defendants' representations, but Defendants have never returned to Plaintiff all of his records as of November 18, 2011.
- 6) The parties entered into a written fee agreement on May 17, 2006. The fee agreement indicated that McGowan Hood was associated on Plaintiff's case in conjunction with Defendants herein. Bagnell advised Plaintiff, however, that he (Bagnell) was to be Plaintiff's sole contact and not to bother McGowan Hood.
- 7) Thereafter, Bagnell told Plaintiff that, as a result of having received a fee that exceeded ten million dollars (\$10,000,000.00) on another, similar type of case, he (Bagnell) was going on a much deserved vacation(s) to Europe but that he would start work on the case upon his return in the next month or so and for Plaintiff to just be patient – that he (Bagnell) would notify Plaintiff when anything of substance occurred or needed to be done by him (Plaintiff).
- 8) When a considerable period of time went by without Plaintiff hearing from Defendants, he contacted Bagnell and was assured by Bagnell that he had filed a class action lawsuit on Plaintiff's behalf, that work was progressing slowly but positively and that Plaintiff could expect to obtain a satisfactory verdict or settlement. Bagnell reiterated that Plaintiff should be patient and he, Bagnell, would be in touch with Plaintiff as necessary.
- 9) Plaintiff had little, if any, experience in such matters, and followed his attorney's advice.
- 10) As further time went on, Plaintiff attempted to meet with Bagnell in order to be updated, but Bagnell invented excuse after excuse for not meeting.
- 11) As a consequence of Bagnell not meeting with him, Plaintiff enlisted the assistance of an attorney acquaintance in an attempt to get an update from Defendants. However, Defendants still would not provide any update, nor would they return to Plaintiff any of his documentation necessary to prove a case against the lender.

- 12) When all efforts to obtain from Defendants copies of his files detailing his case and damages against the consumer credit lender were unsuccessful, Plaintiff contacted McGowan Hood because they were ostensibly associated on the case with Defendants. At that time, Plaintiff discovered (was told by McGowan Hood representatives) that, although McGowan Hood had previously been associated with Defendants on a prior, successful Class Action case, they had specifically (in writing) declined to be associated with him further, on this case in particular.⁴
- 13) At that point, Plaintiff enlisted the services of an attorney to assist in obtaining his file from Defendants so that he could pursue his case with other counsel. He then found out that no lawsuit had ever been filed by Defendants; he was more concerned that his statute of limitations was about to expire and he could not otherwise pursue a case without his files. Plaintiff thereafter wrote many Certified Mail letters to Defendants in attempts to get his files, which letters were essentially ignored.
- 14) When Defendants were unwilling to communicate, much less cooperate or return his records that would be needed to pursue a case against the consumer credit lender who had harmed him, Plaintiff sought the assistance of the South Carolina Bar Association. Defendants and Bagnell in particular still would not cooperate or return Plaintiff's files and the statute of limitations passed on Plaintiff's claims against the lender. Plaintiff filed with the South Carolina Bar a formal complaint against Bagnell. Subsequently, Bagnell was suspended from the practice of law for matters unrelated to Plaintiff. Bagnell was thereafter disbarred from the practice of law relating specifically to this matter and because he refused to cooperate with the South Carolina Bar's investigation (see *In re: Bagnell*, Opinion dated July 18, 2011, Opinion 27008).
- 15) Plaintiff has presented a clear case, without contradiction, reflecting that he would have obtained a verdict in excess of one hundred thousand dollars (\$100,000.00) plus other damages, interest and legal fees against the lender referenced herein, but for Defendants' misconduct and gross negligence in, *inter alia*, failing to file a lawsuit within the statute of limitations and failing to provide Plaintiff with his files so that he

⁴ Plaintiff is and was completely unaware of the circumstances that led to McGowan Hood declining to be involved in subsequent litigation with Defendants.

could initiate a lawsuit. Plaintiff has presented detailed information reflecting that he sustained an additional loss of at least \$154,306.77 that has been caused by Defendants' misconduct. Therefore, I find and conclude that Plaintiff has sustained actual damages of \$254,306.77, and he is to be awarded that sum against Defendants, jointly and severally.

- 16) Plaintiff has established by clear and convincing evidence that Defendants have committed not only legal malpractice but also fraud and misrepresentation as well. Simply stated, Defendants' acts have been both gross and egregious. Accordingly, punitive damages are appropriate against Defendants jointly and severally. In that regard, evidence has been presented reflecting that Defendants and Bagnell in particular had been very financially successful legal practitioners. As well, the evidence established that Bagnell had, in 2005 or 2006, reported to Plaintiff that he (Bagnell) and his law firm had realized a fee in excess of thirty million dollars (\$30,000,000.00) in another case. Upon receiving that fee, Defendants essentially abandoned Plaintiff, keeping Plaintiff's records and refusing to return them to Plaintiff under circumstances that reflect they (and Bagnell in particular) were acting intentionally and with gross and deliberate indifference to Plaintiff's interests. In conjunction with his suspension from the practice of law, Bagnell then left the State of South Carolina to live in New York. Accordingly, I find and conclude that punitive damages are appropriate and that the sum of two hundred and fifty thousand dollars (\$250,000.00) is both reasonable and appropriate under the circumstances.⁵ From the evidence, it appears that Defendants are jointly and severally capable of paying that sum of punitive damages and that it is reasonable and is not designed to bankrupt Defendants. Hopefully, the award of punitive damages will act as a deterrent from and against misconduct by others who may be inclined to engage in similar misconduct as Defendants have engaged in in this instance.

⁵ Defendants have neither appeared (except through counsel at the last possible moment), nor have they promptly addressed the issues and the Court's intent is to award punitive damages commensurate with Defendants' wrongdoing, their (assumed) ability to pay, the deterrence value of imposing such damages against one inappropriately engaging in the legal profession, with consideration of punitive damages awarded in other cases in this jurisdiction, the serious, repeated and gross misconduct of Defendants and the relationship between actual damages and punitive damages, among other factors that have been considered and evaluated.

NOW, THEREFORE, Judgment is granted in favor of Plaintiff and against Defendants jointly and severally as follows: two hundred and fifty four thousand, three hundred and six dollars and seventy seven cents (\$254,306.77) actual damages and two hundred and fifty thousand dollars (\$250,000.00) in punitive damages.

AND IT IS SO ORDERED.



DeAndrea Gist Benjamin
Presiding Judge
Fifth Judicial Circuit

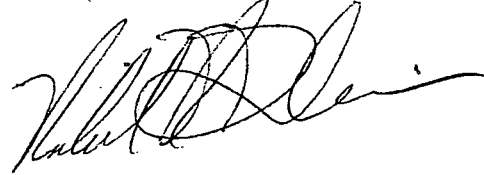
Columbia, South Carolina

11-23, 2011

Richard R. Gleissner
3610 Landmark Drive Suite G
Columbia, SC 29204

RECEIVED

12/5/11

A handwritten signature in black ink, appearing to read "Richard R. Gleissner", written in a cursive style.

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP401998

Jones G. Herring

Gilbert S. Bagnell and Bagnell and Eason, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. suit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Defendant's Motion to Reconsider is denied.

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge

Judge Code 2161

Date 07/10/2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 18 day of July, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

COUNTY OF Richland

Jones G. Herring

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

-CP-

vs.

Gilbert S. Bagnell and Bagnell and Eason,
LLC

Defendant(s)

(Please Print)

Submitted By: Douglas N. Truslow

Address: P.O. Box 1465, Columbia, SC 29202

SC Bar #: 5642

Telephone #: 803-256-6276

Fax #: 803-256-7659

Other:

E-mail:

douglastruslow@truslow1

aw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings and other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☒ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | ☐ Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date:

March 23, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anders, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

Vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.:

SUMMONS

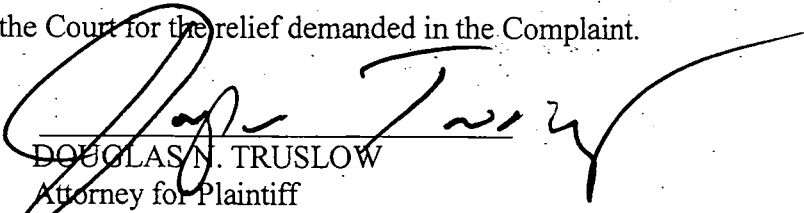
JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 MAR 24 PM 12:24

RICHLAND COUNTY
FILED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber, at his office at 914 Richland Street, Suite B102, Columbia, South Carolina, 29201 (mailing address: P.O. Box 1465, Columbia, SC 29202) within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.


DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P. O. Box 1465
Columbia, SC 29202
(803)256-6276

Columbia, South Carolina

Mar 23, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
JONES G. HERRING,)
)
Plaintiff,)
)
Vs.)
)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No.:

COMPLAINT
(Jury Trial)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 MAR 24 PM 12:24

FILED

RICHLAND COUNTY

Plaintiff herein, complaining of Defendants, would respectfully show unto this Court:

1. Plaintiff is a citizen and resident of Richland County, South Carolina.
2. Defendant Gilbert S. Bagnell (hereinafter "Bagnell") was at all pertinent times a citizen and resident of Richland County, South Carolina and practiced law with Bagnell and Eason, LLC.
3. Defendant Bagnell and Eason, LLC is and/or was a limited liability corporation organized and existing pursuant to the laws of South Carolina and did business at all pertinent times herein, in Richland County.
4. This Court has jurisdiction over the parties and subject matter herein.

FOR A FIRST CAUSE OF ACTION

(Negligence)

5. Each and every allegation herein is repeated as if verbatim.
6. On or about May 17, 2006 Plaintiff entered into a contract of employment with Defendants as his attorney to represent him in a legal matter. The legal matter related to the issuance of incorrect 1099-C taxes, misrepresenting credit history and failure to refund over payments on Plaintiff's accounts. Plaintiff was repeatedly told by Defendant Bagnell, which is attributable to the other Defendant, that he had an excellent case and that the damage to Plaintiff was in excess of \$90,000.00. Defendant Bagnell repeatedly

assured Plaintiff that Defendants would be able to recover in excess of \$100,000.00 for Plaintiff's damages, plus legal fees and that he had recently obtained a verdict and/or settlement in excess of \$30,000,000.00 on a similar case. He assured Plaintiff that he had a meritorious case and would be successful and that Defendants would promptly and professionally handle his case.

7. Plaintiff alleges that he did in fact have a meritorious case and that he would have been successful in the matter had it been timely pursued.
8. Defendants, through Defendant Bagnell, repeatedly assured him that he had an ongoing case that was being actively pursued. However, Defendants allowed the relevant statute of limitations to expire, which was first discovered by Plaintiff within the last three (3) years.
9. Plaintiff alleges that Defendants were negligent and grossly negligent in allowing the relevant statute of limitations to expire and that he has damages in excess of \$90,000.00 as a proximate result, which loss is attributable to Defendants and for which he seeks actual and punitive damages.

FOR A SECOND CAUSE OF ACTION

(Fraud)

10. Each and every allegation herein is repeated as if verbatim.
11. Defendants, through Defendant Bagnell, repeatedly represented to Plaintiff that they had associated a separate, well respected law firm to pursue the case and that the case was actively being pursued; Defendants knew or should have known at the time that the representations being made were false or made with reckless regard to the truth or falsity; that Defendants intended Plaintiff to act and/or rely upon same; Plaintiff was ignorant of the falsity of Defendants' representations; Plaintiff relied upon the false representations of Defendants; Plaintiff had a right to rely and did rely, the representations were material and Plaintiff was damaged as a proximate result for which he seeks actual and punitive damages.

FOR A THIRD CAUSE OF ACTION

(Constructive Fraud)

12. Each and every allegation herein is repeated as if verbatim.
13. The acts of Defendants were fraudulent because they were done so as to deceive and/or mislead Plaintiff either and/or both public and private confidences and injured Plaintiff, as well as damaging public interests and confidences in the legal system.

FOR A FOURTH CAUSE OF ACTION

(Fiduciary Duty)

14. Each and every allegation herein is repeated as if verbatim.
15. A confidential, fiduciary relationship existed between Plaintiff and Defendants by virtue of the employment of Defendants as Plaintiff's attorney.
16. Defendants breached their fiduciary duties to Plaintiff, so as to damage him.

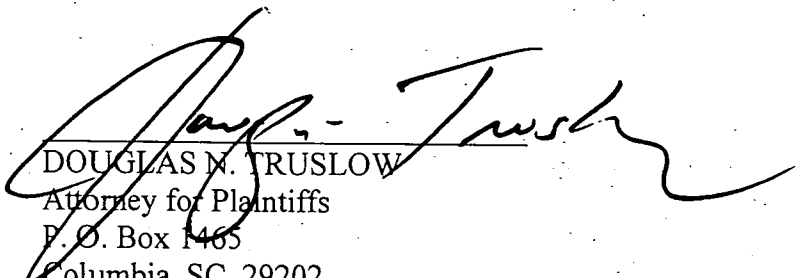
FOR A FIFTH CAUSE OF ACTION

(Misrepresentation)

17. Each and every allegation herein is repeated as if verbatim.
18. Defendants made false representations to Plaintiff; Defendants have a pecuniary interest in making false representations that the case was in fact being pursued; Defendants owed a duty of care to provide truthful information; Defendants breached that duty; Plaintiff relied on the false representation by not, *inter alia*, seeking other counsel before the statute of limitations on his claims expired; Plaintiff's reliance was justified and Plaintiff was damaged as a direct and proximate result in that the time to pursue his meritorious claim has expired.

WHEREFORE, having fully set forth his Complaint herein, Plaintiff prays for judgment against Defendants in an amount in excess of jurisdictional limits of the Court and punitive damages, for the costs of this action, and for such other and further relief as this Court may find proper.

(signature on following page)


DOUGLAS M. TRUSLOW
Attorney for Plaintiffs
P. O. Box 1465
Columbia, SC 29202
(803)256-6276

Columbia, South Carolina
March 23, 2010

Richland County Common Pleas

Clerk : Jeanette W. McBride
 Richland County Judicial Center
 Columbia, SC 29201
 (803) 576-1999

DUPLICATE

Received From: Truslow, Douglas N.
 Post Office Box 1465
 Columbia, SC 29202

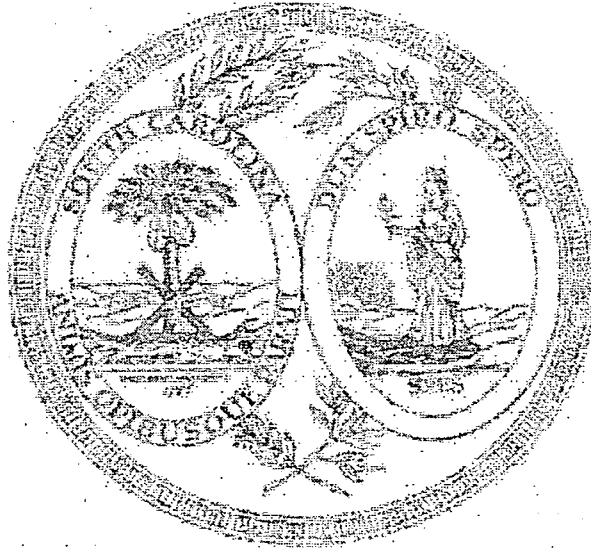
Date : 3/24/2011
 RECEIPT #: 120451
 Clerk: COCMETTS

Paying for: Herring, Jones G

Transaction Type: Payment
 Payment Type: Check \$150.00
 Total Paid \$150.00

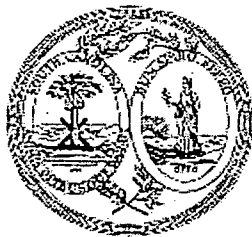
Reference #: 11102
 Comment:

Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2011CP4001998	Jones G Herring vs Gilbert S Bagnell	\$150.00	\$150.00	\$0.00	210



Total Cases:	1	\$150.00	\$150.00	\$0.00
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October 13, 2011



Motion "MMFDAM - Damages" for Case: 2011CP4001998 - Jones G Herring vs Gilbert S Bagnell , defendant, et al has been added to the following Motions Roster:

MOTION ROSTER OCTOBER 31, 2011 COURTROOM 2-E

This hearing of this motion has been scheduled for Monday, October 31, 2011 at 3:30 pm.

The above referenced case is scheduled for a Motion Hearing before Judge DeAndrea G. Benjamin in Courtroom 2-E. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs/memorandums and proposed orders the Wednesday before the week of the hearing.

Mail Notice To:

Douglas N. Truslow
Post Office Box 1465
Columbia, SC 29202

Court Info:

Richland County Common Pleas
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201-9201

Judge Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

Vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

**AFFIDAVIT OF JONES HERRING
REGARDING DAMAGES**

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 NOV 17 PM 3:52

RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, JONES G. HERRING, who being duly sworn, deposes and says (in his words):

I do not know if the Court needs anything else relative to damages since Defendants are in default, but with the caveat that Defendants and Mr. Bagnell in particular have wrongly retained my file (thus substantially impairing and preventing me from more precisely documenting losses) the following sets forth my damages – greater than \$100,000, plus at least another \$28,000.

BACKGROUND

I am an accountant and at all pertinent times was (and am) a long term employee of the State of South Carolina (Budget and Control Board). My wife was and is also a long term employee of the State (Department of Social Services).

Beginning in the 1980s, as my career progressed, I began to work with and socialize with people who were much more affluent, especially when the legislature was in session. As well, I wanted the best for my family (wife and son). The net result was that I (not my wife) was spending far beyond our means. By the mid 1990s, our consumer debt (with Citibank affiliate CitiFinancial) was alarmingly high. I was figuratively “robbing Peter to pay Paul”. My

spending got so bad that the stress was just too much for my wife and she brought an action for divorce. Meanwhile, the debts continued to accrue. By 1998, our consumer debt had grown to approximately \$80,000 and, as I recall, the interest rate was approximately 24% (or higher – at one point, I believe it was 32%), plus there were additions for insurance, late fees, penalties, etc. As a result of all of this, our house had to be sold and in the divorce, I assumed the \$80,000 debt, a significant portion of which was with CitiFinancial.

It soon became apparent that I could not pay the debt and it had in fact grown to \$100,000 – at a 24% interest rate on an \$80,000 loan, interest alone would be \$19,200.

In approximately late 1998 or early 1999, I sought help from United Way Consumer Credit Counseling because it was clear I was unofficially bankrupt/insolvent. Reason told me to file for bankruptcy, but I didn't want to do it if there was a viable alternative. The United Way was able to help me (and help CitiFinancial) in lieu of bankruptcy. We reached a formal, written agreement with CitiFinancial that, in exchange for reducing the interest rate and giving me time to pay, I would pay the entire debt and not file for bankruptcy. I want to stress that there was no loan forgiveness; I paid the entire debt then owing. Also, CitiFinancial specifically agreed that once I paid the debt as agreed, there would be no bad mark on my credit.

Through a lot of sacrifice and in reliance on our agreement, I paid the entire debt to CitiFinancial by 2005. I would like to stress at this point that it would have been much easier and financially beneficial to have filed for Bankruptcy and would have been \$100,000.00 ahead. I felt relieved at the time, but then two things happened – 1) CitiFinancial would not remove the bad mark on my credit and 2) I received a 1099(c) from CitiFinancial for “loan forgiveness”. I dealt with the local CitiFinancial branch and they agreed with me (that there was no loan forgiveness and that CitiFinancial was wrong). I would also like to note that I had kept a log of activities of various actions and documentations. The local branch of CitiFinancial agreed with me and wrote letters to the main company. Having not received satisfaction, I then went to the State Consumer Affairs Agency. They tried to reason with CitiFinancial, without success. They (SCCPA) gave me all their records and told me I should sue. They also gave me some documents relative to consumer protection and unfair trade practices.

I then consulted with attorney Ken Allen and he referred me to Gil Bagnell in that he was reportedly very successful in these type cases.

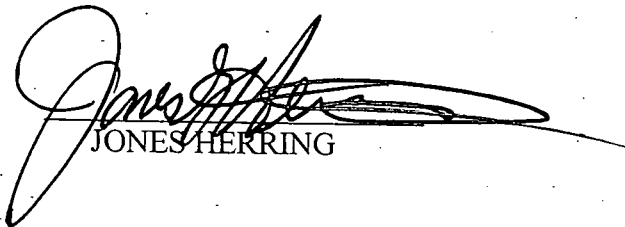
I met with Mr. Bagnell, starting in approximately February 2006. He told me he would look into the matter and "investigate". We then entered into an attorney client relationship and he told me he needed my entire original file to copy. He did not want copies; he insisted on receiving my entire file and said he would give me the copies (which he did not). My file showed that my case was worth at least \$100,000, plus other damages – Mr. Bagnell said that while he could not guarantee it, he believed that I would be entitled to treble damages and legal fees in addition to the \$100,000 and that he had proof of CitiFinancial's gross misbehavior relative to predatory lending and that he was pursuing a "class action" lawsuit on my behalf.

I had to deal with the CitiFinancial 1099(c) falsely reporting income (debt forgiveness) that they would not fully correct. In fact, Mr. Bagnell said that, along with CitiFinancial keeping dual books, listing me as a bad credit risk, continuing to dun me and engaging in other unfair trade practices, that fact would help to prove my case.

Finally, while it does not relate to actual damages (but does relate to punitive damages), Mr. Bagnell and his Defendant law firm continued to represent that they practiced law. For example, in calling the number for Bagnell and Eason on February 12, 2010, the phone was still being answered by the receptionist in the law firm's name and when I asked for Mr. Bagnell's whereabouts, I was told he was "out of town" at the moment. This was well after Mr. Bagnell's suspension in 2009. Also, he emailed me on January 18, 2011 and was still at that time representing himself to be a part of Bagnell and Eason Law Firm. I am also aware that Mr. Bagnell sold his house at Lake Murray in 2009 – which had no mortgage and he netted approximately ¾ of a million dollars on the sale.

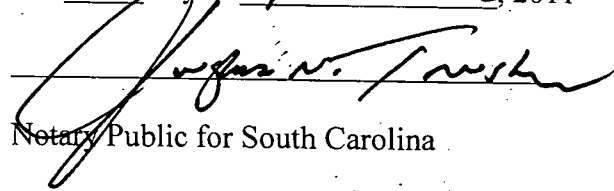
I hope this is what is needed and I want to reiterate that it is precisely because of Mr. Bagnell's withholding of my file that I cannot be more specific relative to damages. I have at a minimum \$100,000 in actual damages. I am also submitting a timeline and an Excel spreadsheet further defining my damages (there is at least another \$28,000 in damages over and above what I have set out herein) which is attached hereto.

(SIGNATURE ON FOLLOWING PAGE.)


JONES HERRING

SWORN TO AND SUBSCRIBED BEFORE ME

this 15th day of November 2011


Notary Public for South Carolina

My Commission Expires: Oct 23, 2012

HERRING DAMAGES/TIMELINE¹

1998	• By this time, I had accrued more than \$80,000 in consumer debt. In my divorce, I accepted responsibility for it.² • Interest rate was at least 24%. • $24\% \times \\$80,000.00 = \\$19,200.00$ per year in interest alone, aside from penalties, late fees, etc. • My gross income at the time was approximately \$50,000.00/per year and from it I had to pay child support, taxes and living expenses. • I was unable to pay the debt as it grew and grew with additional interest, late fees, increased interest rates, penalties and other "add ons" such as insurance, etc. which I was required to pay. I was insolvent – assets of about \$5,000 and debts that were mounting and well above \$80,000.
-1998/1999	• The debt had grown to \$100,000 or more. I wanted to pay this debt and not file for bankruptcy if possible. • I went to the United Way Credit Counseling program. They were able to negotiate the future interest rate downward. In essence, in exchange for renegotiating my debt terms, I agreed that I would pay what was owed and <u>not</u> file for bankruptcy. Note: <u>none of the debt was forgiven.</u>
2000-2005	• With much sacrifice, I was able to pay off the debt completely by 2005.³ • Had I known that CitiFinancial was not going to honor its agreement as compared to the sacrifices I was making in good faith, I would have simply filed for bankruptcy from the inception and started over free of the \$100,000 debt. In essence, I would have had \$100,000 more in after tax income (that I paid) had I simply filed for bankruptcy. This establishes my damages at \$100,000 (plus there are other damages that exceed \$28,000).
2005/2006	• Once I paid off the debt, I started getting dunning letters from credit collection agencies on CitiFinancial's behalf, although I had paid my debt in full. Also, I received a 1099(c) from CitiFinancial for over \$7,000 of "debt forgiveness" that I had <u>not</u> received the benefit of – none of the debt was forgiven. • I contact the local branch of CitiFinancial, with whom I had dealt before. They completely agreed with me and wrote several letters to CitiFinancial's home office confirming my position, CitiFinancial and its debt collectors continued to write and call both at work, at home and to my wife. Note: I had kept an activity log of significant dates, names, etc. from the inception (in 1998), as well as all the pertinent back up documentation.

¹ Defendants have all my records so this is as close as I can be.

² The debts were my responsibility and not resulting from any fault on the part of my wife.

³ Sacrifices included living in a place so cheap I was embarrassed to let my son see it; I got a second job; I lived on the bare necessities.

	• I lost my son's college grants and loan capability as a result of the debt still being carried, reported and "excess income" being reported. • I gathered all of my documentation and went to the State of South Carolina Consumer Protection Agency to seek relief. They called, wrote to CitiFinancial and kept a log of their activities that they provided to me; they told me they could not get CitiFinancial to act properly; they told me my damages exceeded \$100,000 and that I should consider suing CitiFinancial, hire an attorney and to give him all of the documentation. • I was told by Consumer Protection (I think it was them) that Defendant Bagnell was considered to be very capable in this field and that I should hire an attorney.⁴ They also provided a document reflecting (and informing me) that I may be entitled to treble damages and fees. An attorney acquaintance (Ken Allen) also recommended Gil Bagnell as an attorney experienced in the area of the law involved. • I was unable to get credit cards with less than a 24% interest rate because CitiFinancial was reporting that I had not paid my debt. Again, I stress that I would have been better off to have filed for bankruptcy had I known that CitiFinancial was not going to honor its obligation to me because with a bankruptcy my credit would have been cleared by this time and I would not have had to pay the \$100,000 that I did in fact pay. • The local CitiFinancial branch provided me with letters reflecting my debt was cleared and that none of my debt had been forgiven, but the national company continued nonetheless. I could not get this problem solved on my own, and I needed an attorney. • I received information (verbally), confirmed and reiterated by Defendants, that CitiFinancial was engaging in predatory lending practices and "cooking the books" -- that it has one set of books showing the true facts and another (for investors and regulators) making it appear they were more profitable. They were using tactics to try to dupe consumers such as me that had also resulted in me overpaying CitiFinancial by \$1,200.
2006	• Since I was unable to work it out on my own and since the State Consumer Protection Agency was likewise unsuccessful, I made an appointment to see Defendant Bagnell. This was in late January or early February, 2006. He said he would investigate the issues. He did so and then told me that CitiFinancial was in fact duping consumers, engaging in other illegal, predatory lending practices and "cooking the books". We formalized our fee agreement on May 17, 2006. In conjunction, Defendants wanted all my records and evidence. I gave Defendants <u>all</u> my records and evidence, including my log of activities that chronologically detailed events, names of persons involved, documents, damages, etc. These were the critical documents and evidence proving that a) I had paid all my debt and b) it established my damages (exceeding \$100,000 by that point in time). Bagnell said he would return copies of everything to me at some point in the future, but he never has. Bagnell and I met a few times and he

⁴ Steve Hamm, but he was extremely ill at the time.

	appeared to be working on my case – at least he said he was.
2007	• As the year progressed, I started becoming concerned about what was being done on my case. Bagnell told me he had filed a lawsuit and was working on the case, but I wasn't getting progress reports or copies of anything. I stress, he had all my documents. • I attempt to buy our family home place. I was compelled to get a loan (at a very high rate) that I would not have had to get, but for CitiFinancial's misconduct. Also, CitiFinancial was still reporting me as a bad debt, which meant my other consumer credit was at a very high rate (24% vs. 10.99%), and I was still being dunned by CitiFinancial for payments that were not owed (I am still being dunned by creditors to this day).
2008-2010	• I made numerous attempts to get my records from Defendants (calls, going to their office, letters via Certified Mail, attorneys, South Carolina Bar, etc.). All efforts were to no avail. • I attempted to get United Way Records and Consumer Protection Records but their retention periods had expired (there is a three year retention period statute). By that point, the local branch of CitiFinancial had closed and no one in their home office could or would help (or would admit to even knowing anything about it). I was at the mercy of Defendants. • I had discussed my concerns with Bagnell (I believe it was in 2007). He told me that I could get other counsel, but that I would have to pay him fees for all the work he had done (which I couldn't afford). I agreed to let him continue, but I wanted a copy of my records. He said he would give them to me, but never would, despite certified letters, calls, etc. • I finally decided that, given that Bagnell wasn't communicating, my only option was to get another attorney. I then contacted McGowan Hood Law Firm and was shocked to find out that, despite the written fee agreement, they were never involved and in fact had written to Bagnell in early 2006 specifically declining to be involved with him. I then made other efforts to salvage my case, but could not do so because Defendants had my entire file and no lawyer would bring a suit without any records. • I also found out that Bagnell had not brought any suit, that my statute of limitations had passed and he had been suspended from the practice of law in 2009 (unrelated to me). I later found out that he had left the State of South Carolina and had taken my files. • My opinion is that my property retained by Defendants (and Defendant Bagnell in particular) was worth, at a minimum, over \$100,000 because a) that is my opinion, b) that was Consumer Affairs opinion (and that I was entitled to treble damages and fees) and c) that is what Defendant Bagnell also told me (that my case was "worth \$100,000, plus treble damages and legal fees").

RECAP Damages

- Paid \$100,000 debt at great sacrifice rather than file bankruptcy **\$100,000.00⁵**
- Son's college.
- Other credit card debt at 24%.
- Car financing
- Taxes
- Emotional aspect.
- I incurred over \$28,000 in damages, plus the \$100,000 I paid - that I would not have ever paid, had CitiFinancial honored its commitment to me – had I known that CitiFinancial was not going to honor its commitment, I would have filed for bankruptcy in 1998 and have had the \$100,000 of consumer debt erased and I would have been able to have my credit restored by 2005.
- I believe I have other damage caused by Defendants and am preparing a separate spread sheet in Excel.

⁵ This sum is exclusive of treble damages, fees and punitive damages.

ITEM DESCRIPTION	Yearly Salary	Work Hours per Year	Hourly Rate	Hours	ITEM TOTAL	
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ESTIMATED MONETARY DAMAGES INCURRED DUE TO CITIFINANCIAL ACTIONS

Loss Wages	\$64,597.00	1,950	\$33.13	150.00	\$4,969.50 (75 hours/year for 2 years)	
100% - Citi Knox Abbott Dr.					\$3,619.17	
Loss of Educational Tax Credit					\$800.00	
2005 Tax Refund Loss					\$1,805.00	Refund not realized due to 1099-C
Loan Overpayment - Citi Charlotte *					\$1,200.00	Overpayment on Account Citi Charlotte
Interest					\$210.00	8.75% per year for two years-simple
Telephone Expense					\$600.00	Long Distance Charges (est.)
Certified Mail Expense					\$78.75	15 Letters * \$5.25/letter
Credit Card Additional Interest					\$3,500.00	24% rate vs. 11.99% over 6 years(est.)

(* Citi Charlotte reported a charge-off to Credit Rating Agencies in an amount of \$2,403.77 instead of being paid in full).

HOME PURCHASE:

Loan Origination Fee	\$332.50	
Tax Service Fee	\$65.00	
Application Fee	\$49.00	
Underwriting Fee	\$395.00	
Closing Fee	\$110.00	
Attorney Fee	\$750.00	
Document Preparation	\$125.00	
Mortgage Insurance	\$11,469.60	\$31.86/month for 30 years
Excess Mortgage Interest	\$5,516.49	

TOTAL EXPENSES: \$35,595.01 The total loss, converted to present value exceeds \$28,000

ADDITIONAL MONETARY DAMAGES INCURRED DUE TO GILBERT BAGNELL'S INACTION

Loss Wages	\$64,597.00	1,950	\$33.13	65.00	\$2,153.45 (65 hours over 6 years)	
Mortgage Interest Expense					\$39,481.12	Loan Interest rate @ 6.125%
						1 \$1,200.00 8.75% \$105.00

Interest on Loan Overpayment
Certified Mail Expense

TOTAL EXPENSES:

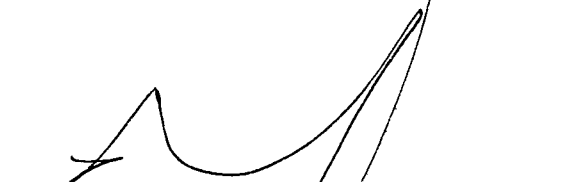
\$625.27	8.75%/year compounded for 5 years	2	\$1,305.00	8.75%	\$114.19
\$42.00	8 Letters * \$5.25/letter	3	\$1,419.19	8.75%	\$124.18
		4	\$1,543.37	8.75%	\$135.04
		5	\$1,678.41	8.75%	\$146.86
					\$625.27

AFFIDAVIT OF GILBERT BAGNELL

The undersigned, being duly sworn, deposes as follows:

1. My name is Gilbert Bagnell, I am over the age of 18, and I have personal knowledge of the facts set forth below.
2. Attached hereto is Exhibit A, which is a true copy of an electronic file provided to me by Jones Herring.
3. Mr. Herring informed me that he had scanned the documents relating to his dispute and that this file contained all the relevant documents.
4. This file is identical to the file I used for exploring the viability of his case, and, generally, provided to other law firms in an effort to get them to accept a class action case.
5. Mr. Herring provided me this electronic file in disc form when he first discussed the matter with me. Since he gave me a disc of the file, I assumed that the disc would have been burned from an electronic source, such as a computer memory, such that Mr. Herring would have always have had a copy of the electronic scan of his file.
6. In any case, in January of 2011, when my files were delivered to me out of storage (where I had not been able to access them), I promptly forwarded the electronic records to Mr. Herring, and he acknowledged receipt of those records.
7. Thus, Mr. Herring has been in possession of the electronic scan of his file from at least January of 2011, and likely had those files at all times since they were initially created.
8. By way of explanation, I did not forward Mr. Herring his original paper files, which seemed identical to the electronic files, because I was unable to locate them. I had closed my office in Columbia (retaining an answering service) and had third parties move my files. At the same time, my wife suffered a serious injury and was unable to walk for an extended period, having multiple surgeries. As a result, I had third parties pack my files in anticipation of a move. I was unable to find Mr. Herring's paper file, and because the storage company went out of business, resulting in my goods being sent to a remote warehouse and reshuffled, where it was impossible to access the goods or search for files. When the files finally were finally delivered to me, I found Mr. Herring's electronic file and promptly forwarded it to him, but his paper file was not among my other legal files. I will forward his paper files after I find them.

FURTHER SAITH AFFIANT NOT.



Gilbert Bagnell

11.18.11 Jessica Casey

JESSICA CASEY
No. 01CA6159707
Notary Public, State of New York
Qualified in Columbia County
My Commission Expires 01/22/2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
JONES G. HERRING,)
)
Plaintiff,)
)
Vs.)
)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Docket No.: 2011-CP-40-1998

**DEFENDANT'S MEMORANDUM
REGARDING DAMAGES**

RICHLAND COUNTY
FILED
2011 NOV 21 AM 9:17
JEANNETTE W. MCERIDE
C.C.P. & C.S.

On behalf of Gilbert S. Bagnell and Bagnell and Eason, LLC (collectively "Bagnell"), the undersigned files this memorandum in response to the supplemental material filed by the Plaintiff in support of his alleged damages in the above-referenced matter.

FACTS

In this case it is admitted that Bagnell failed to pursue an action for Herring, and the question is what damages may have flowed from this failure.

Herring had a heavy debt load, and rather than filing for bankruptcy chose to use a credit counseling company to resolve the matter. Admirably, he paid off the principal of his debts, through compromises of the other terms of his obligations. As most people would, Herring justifiably felt good that he had honored his obligations by paying off what was owed. Unfortunately, as a result of the compromise of the terms of the obligations, he received a 1099-C that indicated forgiveness of debt, which is a taxable event. Quite simply, the lender treated the write-off of interest owed on the original obligations as a matter that needed to be reported to the IRS.

Angry at this outcome, where the lender treated the debt as partially forgiven when he felt he had paid it in full by paying all of the principal (but not all the interest), Herring contacted Bagnell seeking to bring a class action suit against the lender. As Herring's worksheets show, the tax impact

on him, albeit a significant amount of money, was in the range of \$2,000, an amount that would not have been worth pursuing in a civil action, since the attorney's fees and costs of the action would have exceeded any recovery. Thus, Herring's strategy was not so much to recover the money he had lost, but to punish the lenders for misreporting his compromise as a taxable event. As documented in the complaint, Herring's testimony, and the disciplinary action he filed against Bagnell, Bagnell tried to find a larger firm that would take the case and advance the costs to pursue a class action, but was unable to do so.

An additional problem with the forgiveness of debt issue is whether the 1099-C was, in fact, properly issued (discussed below).

Herring's claim is for damages because Bagnell caused him to miss the statute of limitations in pursuing the above action.

When Herring's hopes to pursue a class action did not work out, Bagnell discussed with him the possibility of pursuing an action for inaccurate credit reporting. As Herring indicates, it appeared that Citi maintained two accounting systems – one for their dealing with borrowers, where he would have been shown as having paid off or compromised his debt, and another summing up their assets, where his debt would be listed under its original, full amount, reflecting an unpaid balance. The result was that rather than reporting that he had compromised the debt and that they had written off some of the interest originally owed, Citi reported that there was an unpaid balance.

By reporting the compromised amount as an unpaid balance, rather than as an amount that was owed but then was written off, Citi may have damaged Herring's credit, giving rise to damages based on the impact on him this reporting may have had.

Herring testified that his credit has not been cleared up, and that the misreporting he complains about continues to this day. Thus, it would be possible for him to pursue the action right now. No statute of limitations has run and thus, no future or prospective damages to his credit should be allowed

against Bagnell.

Herring testified at length as to his inability to do anything due to the loss of his files. He has chosen to supplement his testimony with an affidavit. Rather than demand the opportunity to cross examine him, Bagnell proposes introducing by way of affidavit a copy of the electronic file that he forwarded to Herring as soon as he was able to retrieve it, in January of this year. This is the same electronic file that Herring made light of during his testimony before the court.

Herring chose not to use documents from the electronic file in his possession to mitigate or minimize his damages. Instead, he seeks to recover a windfall against Bagnell. Interestingly, rather than using the documents in the file to bring an action under the Fair Debt Reporting Act – an action that would still be viable, since the reporting continues – Herring instead brought this action against Bagnell, apparently believing that an action against Bagnell had more value than an action on the underlying case on which this malpractice case is based.

DISCUSSION

1. Herring has failed to show any damages for missing the statute of limitations, since he failed to show any actual damages from pursuing an action that would not have been successful.

While Herring insists that he paid his debts “in full”, in fact what he did was pay off the original principal amount in full, and compromise the amount of interest owed and accruing. Pursuant to Tax Code 108 and Tax Reg § 1.1001-1(a), as well as ample case law, when a person compromises a debt by obtaining a modification of the interest owed, that is a taxable event. Thus, Citi acted properly in issuing a 1099-C reflecting that write down. Even though Bagnell might initially have mistakenly believed there was a valid cause of action and sought to find a firm to take on a class action raising the issue as to the effect of this reporting on all those who received 1099-Cs from Citi, it turns out that the tax laws indicate that Herring actually did owe taxes. Thus, even though the statute of limitations may have passed for raising the issue, there was no loss to Herring because he has failed to provide any

evidence or legal authority showing that he would have been successful had the matter been timely pursued. His failure to produce expert testimony in support of his case (as required under SC law, further undercuts his claim for damages, since he needs testimony not just that there was negligence, but also that the negligence proximately caused an actual loss. He has failed to show an actual loss on this issue.

2. Herring has failed to show an actual, quantifiable loss for failure to pursue an action under the Fair Credit Reporting Act.

Herring has speculated that, based on general remarks by Bagnell as to what an action under the Act might be worth, his action would have a definite value. This speculation by Herring falls short of the requirement for proof of actual damages.

Assuming for the moment that Herring would be able to successfully pursue an action for improper credit reporting under the circumstances, it is clear that this is an action that he could take even now. He has had his file in his hands (in electronic form) at least since January 2011, and likely had retained a copy of the electronic file from the start. Based on those documents and his current credit reports, he could take the steps necessary to mount such an action: he could demand the reporting entity correct its reporting, he could apply for credit, and he could show that denial of credit was based on the misreported facts (as opposed to his general credit problems that also show up on his credit report). Then he could hire an attorney, possibly pay the necessary costs associated with an action, and, ultimately, under his view, prevail. If Herring took those steps, he might then be able to demonstrate that he could have obtained more had he sued earlier, or possibly claim interest for the delay in bringing the case caused by Bagnell's failure to pursue the case earlier.

In short, if Herring had a viable credit reporting case, it is one that he still has and can still pursue, so his loss would be from the failure to pursue it earlier, not the entire loss of the action.

The only logical conclusion is that Herring chose not to pursue the credit reporting action because he was advised that the case either had no value or that its value was less than the cost of

pursuing it.

In any case, Herring has had in his possession ample documents from his electronic file that are sufficient to start an action, and that would have been a basis for an expert witness to opine as to the amount of Herring's damages. His decision not to introduce those documents and not to have an expert witness testify as to the actual amount of his damages shows that his claims for damages are based on mere speculation. Similarly, his decision to pursue Bagnell for malpractice rather than to pursue Citi for the actual, ongoing false credit reporting shows that he has been unable to find anyone who believes he has a viable claim against Citi. He is pursuing Bagnell because the true, underlying claim has no value.

It should be noted that, even if Herring's electronic file may be missing some documents from his paper file (though it may be complete), he failed to introduce any expert evidence speaking to the deficiencies of the electronic file – rather he chose not to minimize its existence and the contents he had in hand.

Lastly, Herring has supplied the court with an alleged itemization of damages. The total itemization is for \$35,595.01. The itemization includes (1) lost wages which are completely irrelevant to any malpractice engaged in by Bagnell, (2) an estimate of long distance charges which have no connection to Bagnell's action, (3) speculative future interest charges for credit cards and for a thirty (30) year mortgage when he could correct these problems by addressing the incorrect reporting today and eliminate any impact on future interest charges, and (4) closing costs for refinancing his home that again have nothing to do with the malpractice of Bagnell. Even if Herring was harmed by Bagnell's malpractice, that harm is de minimus and not even close to the \$35,595.01 claimed in the itemization.

CONCLUSION

The circumstances here are difficult. Herring tried to do the right thing by paying off his creditors rather than filing for bankruptcy, and as a result got hit with tax obligations he had not

anticipated. Then he found that his credit remained clouded. He was justifiably angered and disappointed, and tried to seek relief by consulting Bagnell. Bagnell sought to find another firm to take Herring's case, but failed to do so, and then for reasons that remain unclear was unable to return Herring's files until January of 2011. Angered, Herring filed a grievance against Bagnell, and also brought this action. Unfortunately, even though Bagnell's handling of the matter violated ethical rules, the fact is that Herring must demonstrate actual damages, and he has failed to make such a showing. His taxes, it turns out, were properly reported, so he was not damaged by the passing of the statute of limitations on that potential action. His credit is still clouded, so that action remains viable, and his only loss would be the difference between the recovery he could still receive on such an action right now, versus the time value of the money had he brought the action earlier.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Richard R. Gleissner', written over a horizontal line.

Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 787-0505
Facsimile (803) 712-4283

November 18, 2011

AFFIDAVIT OF GILBERT BAGNELL

The undersigned, being duly sworn, deposes as follows:

1. My name is Gilbert Bagnell, I am over the age of 18, and I have personal knowledge of the facts set forth below.
2. Attached hereto is Exhibit A, which is a true copy of an electronic file provided to me by Jones Herring.
3. Mr. Herring informed me that he had scanned the documents relating to his dispute and that this file contained all the relevant documents.
4. This file is identical to the file I used for exploring the viability of his case, and, generally, provided to other law firms in an effort to get them to accept a class action case.
5. Mr. Herring provided me this electronic file in disc form when he first discussed the matter with me. Since he gave me a disc of the file, I assumed that the disc would have been burned from an electronic source, such as a computer memory, such that Mr. Herring would have always have had a copy of the electronic scan of his file.
6. In any case, in January of 2011, when my files were delivered to me out of storage (where I had not been able to access them), I promptly forwarded the electronic records to Mr. Herring, and he acknowledged receipt of those records.
7. Thus, Mr. Herring has been in possession of the electronic scan of his file from at least January of 2011, and likely had those files at all times since they were initially created.
8. By way of explanation, I did not forward Mr. Herring his original paper files, which seemed identical to the electronic files, because I was unable to locate them. I had closed my office in Columbia (retaining an answering service) and had third parties move my files. At the same time, my wife suffered a serious injury and was unable to walk for an extended period, having multiple surgeries. As a result, I had third parties pack my files in anticipation of a move. I was unable to find Mr. Herring's paper file, and because the storage company went out of business, resulting in my goods being sent to a remote warehouse and reshuffled, where it was impossible to access the goods or search for files. When the files finally were finally delivered to me, I found Mr. Herring's electronic file and promptly forwarded it to him, but his paper file was not among my other legal files. I will forward his paper files after I find them.

FURTHER SAITH AFFIANT NOT.

Gilbert Bagnell

11/18/11 Jessica Casey

JESSICA CASEY
No. 01CA6159707
Notary Public, State of New York
Qualified in Columbia County
My Commission Expires 01/22/2015

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

JONES G. HERRING,)

Docket No.: 2011-CP-40-1998

Plaintiff,)

Vs.)

**DEFENDANT'S MEMORANDUM
REGARDING DAMAGES**

GILBERT S. BAGNELL and
BAGNELL AND EASON, LLC,)

Defendants.)

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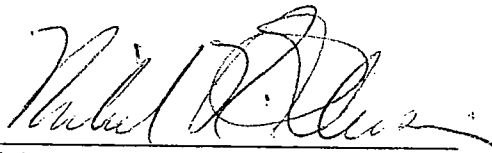
Lastly, Herring has supplied the court with an alleged itemization of damages. The total itemization is for \$35,595.01. The itemization includes (1) lost wages which are completely irrelevant to any malpractice engaged in by Bagnell, (2) an estimate of long distance charges which have no connection to Bagnell's action, (3) speculative future interest charges for credit cards and for a thirty (30) year mortgage when he could correct these problems by addressing the incorrect reporting today and eliminate any impact on future interest charges, and (4) closing costs for refinancing his home that again have nothing to do with the malpractice of Bagnell. Even if Herring was harmed by Bagnell's malpractice, that harm is de minimus and not even close to the \$35,595.01 claimed in the itemization.

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Respectfully submitted,

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Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 787-0505
Facsimile (803) 712-4283

November 18, 2011

IN THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Jones G. Herring,

) Civil Action No.: 2011-CP-40-1998
)

Plaintiff,

)

vs.

)

Gilbert S. Bagnell and Bagnell and Eason,
LLC,

)

)

Defendants.

)

)

CERTIFICATE OF SERVICE

JEANETTE A. MCBRIDE
Clerk, Court of Common Pleas
Richland County, S.C.

2011 NOV 21 AM 9:17

RICHLAND COUNTY
FILED

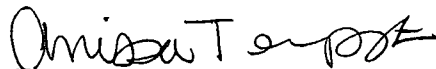
I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the Defendants, Gilber S. Bagnell and Bagnell and Eason, LLC, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents served

Defendants' Memorandum Regarding Damages

Counsel served

Douglas N. Truslow, Esquire
Truslow and Truslow
P.O. Box 1465
Columbia, SC 29202



Anissa Terpstra, Paralegal

November 18, 2011

AFFIDAVIT OF GILBERT BAGNELL

The undersigned, being duly sworn, deposes as follows:

1. My name is Gilbert Bagnell, I am over the age of 18, and I have personal knowledge of the facts set forth below.
2. Attached hereto is Exhibit A, which is a true copy of an electronic file provided to me by Jones Herring.
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FURTHER SAITH AFFIANT NOT.

Gilbert Bagnell

11-18-11 Jessica Casey

JESSICA CASEY
No. 01CA6159707
Notary Public, State of New York
Qualified in Columbia County
My Commission Expires 01/22/2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JONES G. HERRING,

☐ Plaintiff

v.

Gilbert S. Bagnell And Bagnell And Eason, Llc

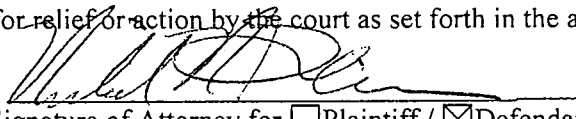
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-40-1998

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: _____, Bar No. Address: phone: 803-603-2228 fax: 803-787-0505 e-mail: _____ other: _____		Defendant's Attorney: Richard R. Gleissner, Bar No. 15139 Address: 3610 Landmark Drive, Suite G Columbia, South Carolina 29204 phone: 803-787-0505 fax: 803-712-4283 e-mail: rick@gleissnerlaw.com other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Reconsider Order Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant December 15, 2011 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____ Date Filed: _____			

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
JONES G. HERRING,	)	Docket No.: 2011-CP-40-1998
	)	
Plaintiff,	)	
	)	
Vs.	)	DEFENDANT'S MOTION TO
	)	RECONSIDER
GILBERT S. BAGNELL and	)	
BAGNELL AND EASON, LLC,	)	
	)	
Defendants.	)	

2011 DEC 19 AM 10:09
 JEFFREY W. HERRING
 C.C.P. & G.S.

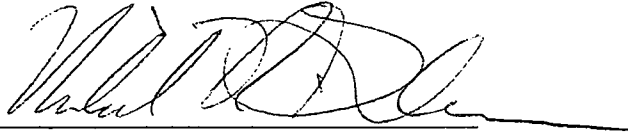
On behalf of Gilbert S. Bagnell and Bagnell and Eason, LLC (collectively "Bagnell"), the undersigned files this Motion to Reconsider based on the following grounds:

1. While the order recites facts taken as admitted due to default, it fails to indicate how the testimony set forth at the damages hearing, together with the matters brought forth on cross examination, and the additional matters set forth in affidavits following the hearing, support the award in the amount stated.
2. Specifically, the order fails to address whether the Plaintiff's proposed class action, relating to the alleged misreporting of forgiveness of debt, could have succeeded if it had been pursued, and if so, what recovery the Plaintiff could have expected beyond credit for taxes he had paid.
3. Additionally, the order fails to address whether the Plaintiff lost the opportunity to pursue an action for misreporting of debt, a matter which he testified is ongoing and which he could pursue now.
4. The order also fails to take into account the fact that, while a central part of the Plaintiff's complaint is that he was unable to obtain his files, he in fact did obtain a computer scan of the bulk of his files, and rather than pursuing his lender at that time, instead chose to pursue the Defendants. Nor does the order take into account the fact that the Plaintiff elected not to utilize his own files to support his claims for damages.
5. The order also fails to reconcile the different claims for damages set forth at the damages hearing and subsequently in the Plaintiff's affidavit – specifically, the itemization of damages set forth in Plaintiff's affidavit in the amount of \$35,595.01, including claims that appear to be irrelevant, including claims for telephone calls, refinance of Plaintiff's house, and speculative future interest charges.
6. In general, other than indicating generally in a footnote that the Court took into account the Defendant's memorandum, affidavit, and the copy of Herring's file attached to the affidavit, the

order fails to address specifically any of the matters raised in those items.

WHEREFORE, the Defendants prays that the court reconsider its Order, set aside the Order and find in favor of the Defendants that the Plaintiff suffered no damage as a result of the Defendants' alleged actions and the Plaintiff should receive no monetary judgment against the Defendants.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard R. Gleissner', written over a horizontal line.

Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 787-0505
Facsimile (803) 712-4283

December 15, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
JONES G. HERRING,)
)
Plaintiff,)
)
Vs.)
)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

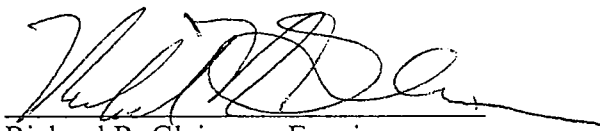
Certificate of Service

JEANE T. H. HUBBARD
C.C.P. & G.S.
2011 DEC 19 AM 10:09

I, the undersigned employee of the Gleissner Law Firm, LLC, hereby certify that I have served the Amended Answer and Amended Third Party Complaint on the Plaintiff and Third Party Defendant in the above captioned matter by placing a copy in the first class mail with sufficient postage prepaid addressed to:

Douglas N. Truslow, Esquire
Truslow and Truslow
P.O. Box 1465
Columbia, SC 29202

Respectfully submitted,



Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 787-0505
Facsimile (803) 712-4283

December 15, 2011

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
JONES G. HERRING,)
)
Plaintiff,)
)
vs.)
)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
)
Defendants)
)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Docket No.: 2011-CP-40-1998

AFFIDAVIT

FILED
RICHLAND COUNTY
2013 JAN 17 AM 9:05
JANETTE W. MCBRIDE
CLERK C.C.P. & C.S.

PERSONALLY APPEARED BEFORE ME, JONES G. HERRING, who being duly sworn, deposes and says:

Defendants defaulted as to liability in this lawsuit. They never sought to reopen the case, nor did they seek any other relief. They simply continued to ignore their legal responsibilities and obligations. Thereafter, a damages hearing date was set for **October 31, 2011**. Defendants were given due notice. They continued to do nothing. However, on the date of the damages hearing, at the last possible moment, Defendants made an appearance through counsel. Neither Defendant otherwise appeared. Upon announcing his presence on behalf of Defendants, their counsel stated that he had not even had time to contact my attorney or notify the Court. Instead, he said that he had come to the Courthouse upon receiving a telephone call from Defendant Bagnell ("Bagnell") requesting his help. Defendants' counsel said he was appearing on a limited basis for the damages hearing. He said he was simply trying to do a favor for Bagnell, with whom he had once practiced law. The hearing then took place.

The Court issued a final Order granting me a damages judgment on **November 23, 2011**. The Order was duly filed and mailed to respective counsel by the Clerk of Court on **November 29, 2011**. The respective attorneys were well aware of the Court's Order, having vetted it and having already received a Form 4 Order prior to its issuance.

Defendants admit that they had received the Order by **December 5, 2011**. Defendant's counsel's law office is in Forest Acres, approximately three miles from the Richland County Courthouse.

Bagnell served a *pro se* "motion for reconsideration". It is postmarked Saturday, **December 17, 2011**. Defendants subsequently filed another motion for reconsideration on **December 19, 2011**. The body of the second motion is essentially the same as the first one. That would seemingly corroborate that it was prepared subsequent to the first one.

Defendants did not file or serve a notice of appeal within thirty days of their receipt of the Order. Instead, Defendants waited until **August 15, 2012** to file a notice of appeal. They only did so after getting an email from my attorney inquiring about the possibility of a settlement and the consequences of the Court's Order. Upon receiving Defendants' notice of appeal, through my attorney, I filed a motion in the South Carolina Court of Appeals to remand the case for a determination as to whether Defendants' appeal was timely. My motion was granted.

As I understand it, the threshold decision for the Court at this juncture is to make a factual determination of whether Defendants' motion for reconsideration was in proper form/timely. If it was not, then the notice of appeal was untimely and the case will be ended -- with the Court's November 23, 2011 Order being conclusively final.

If Defendants' motion for reconsideration were determined to be in proper form and timely, then the appeal would continue, with the only remaining issue being for the Court to determine whether Defendants should be required to post an appeal bond.

As it relates to a determination of whether Defendants' motion was timely, it is my understanding that they had ten days from receipt of the Court's Order in which to serve a motion for reconsideration. And, if they did not timely do so, then they still had thirty days time in which to appeal.

Unquestionably, Defendants did not file a notice of appeal within thirty days of receipt of the Court's Order granting me judgment, and it likewise appears that Defendants did not timely file a motion for reconsideration.

My attorney had received the Court's Order on or about December 1 or December 2, 2011. I know this because I was promptly notified and given a copy.

On or about **December 15, 2011**, my attorney received a letter from Defendants' counsel informing him that he had my file associated with Defendants' previous representation of me.

The letter is dated **December 14, 2011**. I was promptly informed of its receipt and given a copy. In the letter, Defendants' counsel inquired as to whether we wanted my "original paper file" that he had in his possession (see Exhibit 1). There was absolutely no mention in the letter or even a hint that any motion for reconsideration was being considered or would be forthcoming. In fact, given the letter's timing and content, as well as the surrounding circumstances and statements previously made by Defendants counsel, it seemed clear that no motion, argument or further litigation was anticipated, especially by Defendants' counsel. I was shocked to learn that Defendants' counsel admitted that he had the file. I stress this for three primary reasons: (1) I had originally engaged Defendants to represent me for purposes of a lawsuit and had given them all my detailed damages documentation, at their request. They were to provide me with copies in return, but did not do so. I tried and tried to get in touch with them, to no avail. I even sent certified letters requesting the contents of my file. Defendants would not respond and I ultimately had to seek the assistance of the S.C. Bar. They were no more successful than I. Bagnell ignored them too. The net result was that my statute of limitations on the lawsuit in which Defendants were supposed to be representing me expired, and I still did not have all my important records – even at the time of the damages hearing. Bagnell was disbarred from the practice of law as a result of his misconduct. This lawsuit ensued. Bagnell/Defendants repeatedly claimed during this lawsuit to have misplaced my file, that it could not be located and that it was consequently unavailable for me to have for purposes of establishing my damages; it is obvious that Defendants had it all along. (2) Defendants argued to the Court at the time of the damages hearing, and even continued to do so through the time of their motion(s), that I did not have sufficient legal documentation of my damages. At the same time, they were withholding the evidence. In that regard, it is significant that in an email to Defendants' counsel dated **November 18, 2011**, my attorney confirmed a statement to the effect that Defendants' counsel did not have my file. If that is correct, then it is even more obvious that Defendants had it all along and were apparently waiting for the Court to issue its Order before returning it. (3) Even though **December 15, 2011** was the "drop dead" date for Defendants to serve upon my attorney a SCRCP 59(e) motion, nothing whatsoever was mentioned in the **December 14, 2011** letter about even the remote possibility of filing such a motion.

his presumptive attorney - whom he complained had neglected to communicate with him at critical times. Bagnell's complaint in that regard is now known to have been false e.g. see email of Defendants' counsel dated December 6, 2011, but it is what Bagnell claimed at the time. This too reflects adversely on the veracity of Bagnell's assertions. Bagnell has essentially asserted that the attorney was obligated to represent Defendants without payment for his services, without Bagnell communicating with him in response to his December 6, 2011 email and without a contract of employment describing the scope of the engagement. And, if Bagnell had in fact communicated with Defendants' counsel, that would reflect even more adversely on Defendants because the evidence is abundantly clear that Defendants' counsel opted not to file Bagnell's *pro se* motion. Defendants' counsel's reasons for not doing so would appear quite clear – that, in conjunction with the postmarked letter he would have received, it would prove beyond a doubt that Defendants were untimely. Finally, Defendants' own claims undermine any claim that the second, subsequent motion was timely. Simply put, the circumstances reflect that Defendants are not credible as to any material fact. Defendants have not played by the rules. Bagnell in particular has not played by the rules in the past in this very matter (resulting in his permanent disbarment from the practice of law), and he has continued with the same deceptive pattern of misconduct in this instance. Defendants are entitled to no special treatment simply because they may have practiced law.

Subsequent to receipt of Bagnell's motion, my counsel received from Defendants' counsel a motion for reconsideration in which the same arguments previously submitted by Bagnell were reiterated. That motion was also provided to me upon its receipt. It appeared even further out of time than Bagnell's. I am aware that my counsel then communicated with Defendants' counsel by telephone and email to inquire about the unusual circumstances and question of timeliness, to no avail (see Exhibit 5). From the lack of responsiveness, it appeared to me that Bagnell was overtly attempting to take advantage of his attorney, and figuratively trying to "throw him under the bus" while both ignoring him and not paying him for legal services provided. To me, Bagnell's conduct doesn't even pass the "smell test".

The Clerk of Court's file reflects that the second motion for reconsideration was filed on **December 19, 2011**. Given the filing date, the subsequent date of receipt, the content and all the other circumstances, it appears more out of time than the first one. No accompanying letter of transmittal is contained in the Clerk of Court's records. The motion does not refer to any rule. No

copy of the motion was submitted to the judge – as I understand the Court rules would require. The “Certificate of Service” references pleadings not even remotely related to any issue in this case. No such pleadings set forth in the Certificate of Service were ever served, faxed, e-mailed, hand delivered or mailed in any event. Finally, even if there had been a letter of transmittal to the Clerk of Court, no copy it was even attempted by Defendants to be submitted to me/my attorney. In essence, the second motion is even more of a mess than Bagnell’s out-of-time motion.

I have read Defendants’ recent letter (see Exhibit 8) to the Court relative to timeliness. The circumstances argued are quite odd in that:

1. Defendants claim that they attempted to file the second motion for reconsideration by hand delivery to the Clerk of Court on the drop dead date. They admit that they could not do so because they failed to travel to the Courthouse during normal working hours and that the Courthouse was locked. They claim the doors were locked at 5:05 p.m. I have been in the vicinity of the Courthouse front doors on a number of occasions and I have seen people streaming out at the end of day after 5:00 p.m. My point is that they could have gone in the Courthouse if they really needed to do so. I do not believe the front doors would be “locked” at 5:05 p.m. The fact that they followed a backwards process on the last possible date at the last possible minute, with no copy being served upon my counsel at the same time or prior thereto, is problematic for them, to say the least. This is so because, *inter alia*, the date of service upon my attorney is what was of critical importance. And, it is also noteworthy that my attorney’s office is in close proximity to the Courthouse (just a few blocks walking distance and less than a minute or so away by car). Seemingly, if there was to be hand delivery for filing of Defendants’ motion, service of same would have been effectuated first or, finding the Courthouse locked, they would have taken the pleading to my attorney’s office. They did not do so. Why that was not done has not been explained.
2. Defendants allege that upon discovering that the Courthouse was locked on the drop dead date, and failing to simply then deliver the motion to my attorney’s office (he has a mail slot on his office door for after-hours mail), they then inexplicably went to a much more out of the way location and attempted to serve the motion by placing it in a remote mail collection receptacle - that conspicuously stated on its exterior face that no

mail would be collected on that date after 3:45 p.m. (see Exhibit 6). It is also noteworthy in that regard that the receptacle stated clearly that Defendants still had until 8:00 p.m. that same day (to deliver the motion for mailing for it to be deemed effective) to the Post Office center at 2001 Dixiana Street, which is a short distance away, just off I-77. Instead, Defendants have asserted that they followed a much more convoluted process that would most assuredly cause more confusion and delay. The reason Defendants opted to pursue such a course of action is a mystery.

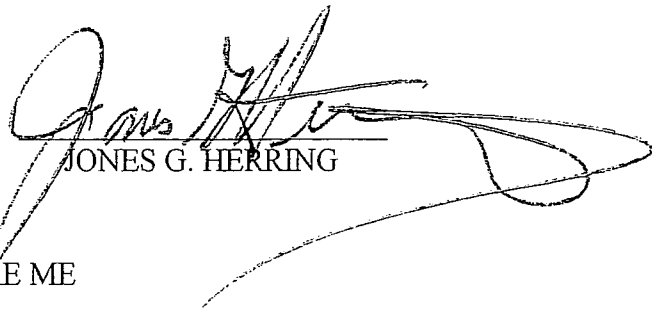
3. Knowing the circumstances, and having been alerted on December 21, 2011 that the motion(s) were at substantial risk of being deemed untimely, Defendants still had until January 5, 2012 to appeal. They inexplicably did not do so. Their failure to act promptly and prudently at that juncture is further evidence supporting the conclusion that the appeal herein is untimely.

For the Court's convenience, I am attaching a timeline of events (see attachment 7).

As an alternative to a finding that Defendants are untimely in their appeal, this whole unseemly issue could be put to bed if Defendants would simply agree to post a bond in the amount of the Judgment. If they were willing to do so, I would abandon my motion and they would be free to continue with whatever appeal Defendants feel is appropriate. If they are unwilling to do so, that fact would be yet another indication that they are not sincere and are only pursuing an unjustifiable course of action to further delay the case's resolution, to my distinct prejudice. In that event, I would ask the Court to find that Defendants' motion for reconsideration (and hence their appeal) is untimely – because it appears to me to in fact be untimely.

Bagnell is apparently now living in New York and he has demonstrated that, aside from his continuing questionable conduct, he has been extraordinarily uncooperative and difficult to even locate. An asset check has been made difficult by the fact that Bagnell has apparently placed assets in the names of others or in corporate names. I am concerned that he is trying to dispose of/hide his assets. An appeal bond will insure that all parties will be adequately protected. The status of the corporate Defendant is unknown, but presumably, it is no longer operating, given Bagnell's disbarment. If Defendants have nothing to hide and are genuine, they

will post a bond, and it will not be necessary for this Court to find and conclude that they are untimely.



JONES G. HERRING

SWORN TO AND SUBSCRIBED BEFORE ME

this 14 day of November, 2012

Aranda Douglas Hickey

Notary Public for South Carolina

My Commission Expires: November 22, 2020

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants)
_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 2

12/20/11

Gilbert S. Bagnell
PO Box 85
Catskill, NY 12414

The Honorable Jeanette McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202

Re.: Herring v. Bagnell, 2011-CP-40-1998

Dear Ms. McBride:

Attached please find a copy of Defendant's Motion to Reconsider in the above case, along with a \$25 motion fee. I am filing this pro se due to my inability to confer with Rick Gleissner today. Please file the motion and forward a copy to Judge Benjamin. I am also providing Plaintiff's attorney with a copy of this motion by copy of this letter.


Gilbert S. Bagnell

cc: Douglas Trusdale, Esq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	DOCKET # 2011-CP-40-1998
HERRING	)	
	)	
V.	)	
	)	
BAGNELL, ET AL.	)	

MOTION TO RECONSIDER

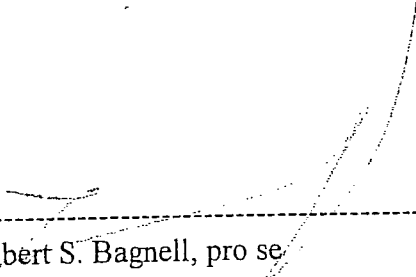
Defendants hereby move pursuant to Rule 59, SCRCP for reconsideration of the Court's order filed November 29, 2011 (a copy of which was received on December 5, 2011) in the above matter based on the following grounds:

1. While the order recites facts taken as admitted due to default, it fails to indicate how the testimony set forth at the damages hearing, together with the matters brought forth on cross examination, and the additional matters set forth in affidavits following the hearing, support the award in the amount stated.
2. Specifically, the order fails to address whether the Plaintiff's proposed class action, relating to the alleged misreporting of forgiveness of debt, could have succeeded if it had been pursued, and if so, what recovery the Plaintiff could have expected beyond credit for taxes he had paid.
3. Additionally, the order fails to address whether the Plaintiff lost the opportunity to pursue an action for misreporting of debt, a matter which he testified is ongoing and which he could pursue now.
4. The order also fails to take into account the fact that, while a central part of the Plaintiff's complaint is that he was unable to obtain his files, he in fact did obtain a computer scan of the bulk of his files, and rather than pursuing his lender at that time, instead chose to pursue the

Defendants. Nor does the order take into account the fact that the Plaintiff elected not to utilize his own files to support his claims for damages.

5. The order also fails to reconcile the different claims for damages set forth at the damages hearing and subsequently in the Plaintiff's affidavit – specifically, the itemization of damages set forth in Plaintiff's affidavit in the amount of \$35,595.01, including claims that appear to be irrelevant, including claims for telephone calls, refinance of Plaintiff's house, and speculative future interest charges.
6. In general, other than indicating generally in a footnote that the Court took into account the Defendant's memorandum, affidavit, and the copy of Herring's file attached to the affidavit, the order fails to address specifically any of the matters raised in those items.

For the reasons set forth above Defendants ask the Court to reconsider its order filed November 25 in the above matter.



Gilbert S. Bagnell, pro se
PO Box 85
Catskill, NY 12414

December 15, 2011

*I certify I served this by placing a copy in the
US Mail, to the above address, on Dec. 15, 2011.*

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)

BAGNELL AND EASON, LLC,)

Defendants)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 3

Bagall
PO Box 85
Catskill NY 12414

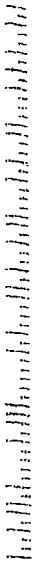
Douglas Trustabel Esq
PO Box 1465
Columbia, SC 29202



POSTAGE WILL BE PAID BY ADDRESSEE

NO POSTAGE NEEDED IF MAILED IN THE UNITED STATES

29202146555



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)

BAGNELL AND EASON, LLC,)

Defendants)

_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 4

Rick Gleissner

From: Rick Gleissner <rick@gleissnerlaw.com>
Sent: Tuesday, December 06, 2011 10:38 AM
To: Gil Bagnell (gilbagnell@bagnellandeamson.com)
Subject: FW: Order and Judgment
Attachments: doc00495120111206102722.pdf

Gil,

I received the attached yesterday. My reading of the rules is that you have 10 days to move to reconsider and 30 days to appeal. The other side has asked if you wanted to make a counteroffer on their settlement demand.

Gil, I do not think that I am going to be able to invest much more time and money in your case. I still haven't been paid for the first hearing. Please let me know what you would like to do.

Thanks

Rick

Richard R. Gleissner
Gleissner Law Firm, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 787-0505 – Telephone
(803) 712-4283 – Facsimile
(803) 603-2228 – Cell Phone

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From: Rick Gleissner [mailto:rick@gleissnerlaw.com]
Sent: Wednesday, December 21, 2011 2:50 PM
To: 'Douglas N. Truslow'
Subject: RE: Herring v. Bagnell, Bagnell and Eason

Doug,

I understand why you believe the motion to reconsider is not appropriate or well founded. Why do you believe that the motion is not "timely"? I was under the impression that we had agreed that it was timely made.

Thanks
Rick

From: Douglas N. Truslow [mailto:douglastruslow@truslowlaw.com]
Sent: Wednesday, December 21, 2011 1:05 PM
To: 'Rick Gleissner'
Subject: Herring v. Bagnell, Bagnell and Eason

Rick:

To follow up on our recent t/c (subsequent to December 15), and with all due respect, I wanted to repeat that Plaintiff does not believe Defendants' Motion(s) are appropriate, timely or well founded in any event. I have explained why, so I will not repeat myself, except to say again that there are of course viable alternatives that perhaps should be considered. If your clients believe that their Motion is justified and are willing to explain why, I would be interested in hearing from you (not that I am expecting or demanding that you do so).

Sincerely,

Douglas N. Truslow

Truslow & Truslow
ph (803) 256-6276
fax (803) 256-7659

Mailing Address:
P.O. Box 1465
Columbia, SC 29202

Physical Address:
914 Richland St., Suite B-102
Columbia, SC 29201

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3:45 PM			2001 DIXIANA RD/PROCESS CTR
			Monday-Friday 8:00 PM
			Saturday 8:00 PM
			Sunday
			Holiday
Location of Express Mail Drop:	For local information call:	Location ID No.:	Date label printed:
2001 DIXIANA RD/PROCESS CTR	2920400021	2920400021	04/12/11

Tampering with this box, lock, or contents is punishable by fine or imprisonment.

SEE US AT THE POST OFFICE

Last Collection in this area is at:

2001 DIXIANA RD/PROCESS CTR

Monday-Friday	8:00 PM
Saturday	8:00 PM
Sunday	
Holiday	

ation call: 292777

Location ID No.: 2920400021

Date label printed: 04/12/11

The Supreme Court of South Carolina

In the Matter of Gilbert S. Bagnell, Respondent.

ORDER

The Office of Disciplinary Counsel (ODC) has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(c), RLDE, Rule 413, SCACR. After thorough review of the petition, the Court determines that respondent's interim suspension is warranted. Accordingly, respondent's license to practice law in this state is hereby suspended until further order of the Court.

IT IS SO ORDERED.

s/Jean H. Toal
FOR THE COURT

Columbia, South Carolina
October 9, 2009

Gilbert S. Bagnell
1201 Main Street, Suite 1980
Columbia, SC 29201

RECEIVED
JUN 09 2011
S.C. SUPREME COURT

Ericka M. Williams, Esq.
And
The Supreme Court of South Carolina

VIA EMAIL ONLY

Dear Ms. Williams and the Court:

I address this to Ms. Williams and ask that she pass it on to the Court.

It appears that a notice in connection with this matter was sent to my former home address. I have looked at the return from that mailing and can say with certainty that I did not sign for it; in fact, I had long since moved from that address and neither I nor anyone associated with me would have been there to sign on my behalf.

I write to indicate that, notwithstanding the fact that I did not receive the above notice and did not know of the particular proceeding to which it related, that is immaterial because even if I had known about the matter I would not have attended.

In short, when this disciplinary matter arose, I had already retired and was in the process of moving. Because I did not intend to practice law in the future, I asked whether I could simply resign from the bar, and disciplinary counsel advised me that because of the pending proceeding I could not – that this matter must run its course. Although there was some truth to the complaint against me, there was also a good deal of overstatement, and rather than engage counsel to dispute the details of a matter where I voluntarily desired an outcome largely identical to that which would result if I took no action at all, I elected to simply allow the matter to run its course and to have my bar membership terminated without opposition. I was unwilling, however, to affirmatively agree to a statement which was inaccurate in its details.

I therefore waive any objections I may have to deficiencies of notice or service, and ask either that I be permitted at this point to resign or that the Court take such other action as it sees fit. I do not admit the facts alleged against me, but I do not intend to appear to make a contrary showing.

Please address any future correspondence to the address shown above.

Sincerely,

/s/

Gilbert S. Bagnell

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Gilbert S. Bagnell, Respondent.

Opinion No. 27008
Heard June 9, 2011 - Filed July 18, 2011

DISBARRED

Lesley M. Coggiola, Disciplinary Counsel, and
Ericka M. Williams, Assistant Disciplinary
Counsel, both of Columbia, for Office of
Disciplinary Counsel.

Gilbert S. Bagnell, *pro se*, of Columbia.

PER CURIAM: In this attorney discipline matter, Respondent Gilbert S. Bagnell has been accused of misconduct, including failure to work on a client's case, failure to communicate with a client, failure to properly terminate representation by protecting a client's interests, and failure to cooperate with the Office of Disciplinary Counsel (ODC). We concur in the Panel's recommendation, and therefore, disbar Respondent.

I.

Respondent Gilbert S. Bagnell was admitted to the Bar in 1991. In 2006, Client hired Respondent to work on a matter against a financial institution over a disputed debt.^[1] At the time, Respondent told Client that he had hired an additional firm to assist Respondent in the matter.^[2] Shortly thereafter, Respondent became very difficult to contact. Client called Respondent multiple times, sent multiple certified letters, used intermediaries to attempt to contact Respondent, and tracked Respondent down to speak to him personally. Whenever Client was able to get in touch with Respondent, Respondent was always dismissive. Respondent failed to do any work on the case or file an action. Respondent further failed to return Client's files, as requested.

Client filed a complaint with ODC in 2009. ODC informed Respondent of the allegations of misconduct and the initiation of a full investigation by way of multiple letters. Respondent failed to respond to these allegations or to a subpoena for documents. In early 2010, ODC filed formal charges—again, Respondent failed to acknowledge or answer. As a result, an order of default was issued. In July 2010, ODC notified Respondent of a hearing on the formal charges.^[3]

The matter came before a hearing panel of the Commission on Lawyer Conduct (Panel) in August 2010, and Respondent did not appear. At the hearing, Client testified that he

suffered about \$28,800 in damages as a result of Respondent's actions. He testified that he believed the statute of limitations had run on his cause of action.

The Panel found Respondent violated the following Rules of Professional Conduct under Rule 407, SCACR: Rule 1.2 (scope of representation); Rule 1.3 (diligence); Rule 1.4 (communication); Rule 1.16 (declining or terminating representation); Rule 8.1(b) (cooperating with disciplinary authority); Rule 8.4(a) (misconduct); Rule 8.4(e) (conduct prejudicial to the administration of justice). The Panel also found Respondent committed misconduct under the Rules for Lawyer Disciplinary Enforcement under Rule 413, SCACR: Rule 7(a)(1) (violated Rules of Professional Conduct); Rule 7(a)(3) (willfully failed to comply with subpoena issued under Rules of Professional Conduct and failed to respond to a lawful demand from disciplinary authority); Rule 7(a)(5) (engaged in conduct tending to pollute the administration of justice, tending to bring the courts and the legal profession into disrepute, and demonstrating unfitness to practice law). The Panel ultimately recommended Respondent be disbarred and ordered to pay the cost of the disciplinary proceeding.

II.

This Court "may accept, reject, or modify in whole or in part the findings, conclusions and recommendations of the Commission." Rule 27(e)(2), RLDE, Rule 413, SCACR.

An attorney's failure to answer formal charges is an admission of the factual allegations set forth in those charges. Rule 24(a), RLDE, Rule 413, SCACR. Similarly, an attorney's failure to appear before the Panel when ordered to do so is an admission of the factual allegations that were the subject of the hearing. Rule 24(b), RLDE, Rule 413, SCACR.

III.

We find Respondent has committed misconduct in the respects identified by the Panel. Thus, we find Respondent violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.2 (scope of representation); Rule 1.3 (diligence); Rule 1.4 (communication); Rule 1.16 (declining or terminating representation); Rule 8.1(b) (cooperating with disciplinary authority); Rule 8.4(a) (misconduct); Rule 8.4(e) (conduct prejudicial to the administration of justice). We further find Respondent violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (violated Rules of Professional Conduct); Rule 7(a)(3) (willfully failed to comply with subpoena issued under Rules of Professional Conduct and failed to respond to a lawful demand from disciplinary authority); Rule 7(a)(5) (engaged in conduct tending to pollute the administration of justice, tending to bring the courts and the legal profession into disrepute, and demonstrating unfitness to practice law).

We find disbarment is warranted in Respondent's case. As the Court has stated on numerous occasions, an attorney who "fail[s] to answer charges or appear to defend or explain alleged misconduct indicates an obvious disinterest in the practice of law." In re Hall, 333 S.C. 247, 251, 509 S.E.2d 266, 268 (1998). Attorneys who engage in such conduct face severe sanctions "because a central purpose of the disciplinary process is to protect the public from unscrupulous and indifferent lawyers." Id.; see In re Murph, 350 S.C. 1, 4-5, 564 S.E.2d 673, 675 (2002) (an attorney's bad acts, combined with his failure to respond, warranted disbarment); see also In re Sifly, 279 S.C. 113, 115, 302 S.E.2d 858, 859 (1983) (disbarring an attorney who failed to timely file an appeal on behalf of a client, failed to adequately represent a client in a trust fund matter resulting in significant monetary

losses by the client, drew checks on his personal account that were not sufficiently funded, had a civil default judgment entered against him, and failed to cooperate with disciplinary authorities or appear to contest the charges against him).

Respondent abandoned the practice of law, prejudicing Client and the administration of justice. Respondent is clearly not fit to practice law. We disbar Respondent. Within fifteen days of the date of this opinion, Respondent shall surrender his certificate of admission to practice law and shall file an affidavit with the Clerk of Court showing he has complied with Rule 30, RLDE, Rule 413, SCACR. Further, Respondent is ordered to pay the costs of the Panel proceedings within 60 days, in the amount of \$910.55.

DISBARRED.

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

[1] Client hired Respondent to pursue a suit against the financial institution for allegedly wrongly damaging Client's credit rating, which led to substantial economic loss.

[2] In fact, the law firm contacted by Respondent had declined to assist in the matter. Respondent never notified Client of that fact.

[3] Respondent abandoned the practice of law and ignored all ODC inquiries. It appears that Respondent moved and informed neither ODC nor the South Carolina Bar of a new mailing address. As a result, it may be that Respondent did not receive actual notice of the panel hearing. ODC sent notice to Respondent's last known address. Respondent was well aware of the grievance proceedings and so acknowledged in a letter he provided the Court shortly before oral argument. In the letter, Respondent consented to the sanction of disbarment and waived any objections to service. Although notified of oral argument, Respondent failed to appear.

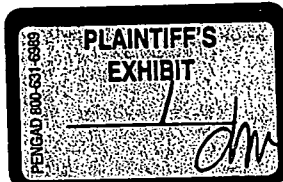
October 13, 2006

M. Douglas Mann, Esq.
Mann Bracken, LLC
One Paces Ferry Road, SE, Suite 1400
Atlanta, GA 30339

VIA US MAIL, CERTIFIED MAIL, AND FACSIMILE ONLY:

678-801-2355
704-837-0569

Re: *Jones George Herring*
Your File # 61432730



Dear Mr. Mann:

What a strange letter your firm generates!

Please note that we represent Jones George Herring, filed in your system under number 61432730. All future correspondence concerning this matter should be addressed to us at the Columbia address shown above. Fax to 803-748-1333 is fine and we do not need a separate copy by mail.

Your letter is strange because nobody signed it. Most folks who send letters are not ashamed to put their names at the bottom, but I guess Mann Bracken is in a business where its employees don't admit to authorship. Or are you trying to evade the requirements of 15 USC § 1692e?

Another strange feature is that your letter states "Payments and communications should be made only through this office" – and then lists four regional offices. Is that merely sloppy draftsmanship, or is it an attempt to create a "gotcha" where a reply goes to the "wrong" office?

Your letter refers to a purported debt in the amount of \$2,403.77, from our client, Jones Herring, to Citifinancial.

Please note that there is no such debt. Mr. Herring has fully satisfied all of his past obligations to Citifinancial and its affiliates, subsidiaries, and predecessor companies, and, in fact, I believe an accounting will show that they overcharged him, resulting in an overpayment.

Our investigations suggest that Citifinancial maintains a double set of books. In his dealings with Citifinancial, our client negotiated an amendment to the loan agreement reducing somewhat the high rate of interest, thereby enabling him to pay the loan off over time. Despite this, Citifinancial appears to have recorded the same loan relationship on a second set of books showing a higher interest rate, with the result that even though Mr. Herring has discharged his obligations completely, Citifinancial has continued to dun him. I am not sure whether Citifinancial has done this a) in order to inflate its loan receivable assets and defraud the investing public, b) out of sheer incompetence and gross negligence, c) to enable it to extract payments from many customers despite the fact that they have already paid in full.

By the way, we have investigated these facts quite carefully – how much investigation did your collection mill take before sending out this false dunning letter?

M. Douglas Mann, Esq.
October 13, 2006
Page 2

The bottom line is this:

1. We do dispute the debt;
2. All future correspondence should be sent to us;
3. We ask that you forward a complete accounting together with appropriate underlying documentation in support of the claims you assert;

Mr. Herring continues to consider his legal options.

We look forward to hearing back from you. With best regards, I am

Sincerely yours,

Gilbert Scott Bagnell

GSB/ys

cc: Jones Herring

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 13, 2009

Gilbert S Bagnell, Esq.
Attorney at Law
1201 Main Street
Suite 1980
Columbia, South Carolina 29211

Dear Mr. Bagnell:

I have not had a response to my letter to you on September 15, 2008 concerning the status of my case. After speaking with you in the building lobby and asking you about the status of my case, I followed your instructions to ask another lawyer you were working with for him to remind you of the concern I have over the time limit of my case and the status of my case.

Since that time, I have had no communications with either you or your office concerning my case and your efforts to pursue a cause of action and relief for my case.

Therefore, I must insist that I receive in writing from you in ten (10) days from receipt of this letter, the status of my case and the timeline you intend to pursue in court to secure an outcome for my complaint.

Sincerely yours,

Jones G. Herring



April 2, 2009

Mr. Gilbert S. Bagnell, Attorney
Bagnell & Eason, LLC
Attorneys At Law
1201 Main Street Suite 1980
Columbia, South Carolina 29201

Dear Mr. Bagnell:

Since you would not call me or set up an appointment to meet, I enlisted the help of Mr. Doug Truslow who in turn contacted Mr. Jones Andrews (because his firm was associated with my case by way of our signed contract) in order to contact you on my behalf.

Mr. Andrews indicated to Mr. Truslow that he had contacted your office and you would call me immediately that day. Three days have since passed with no contact from you. You have my address and telephone number, but again the address is 3220 Cherry Hill Drive Columbia, South Carolina 29206 and my telephone number is (803) 397-7518. Needless to say, your behavior is perplexing.

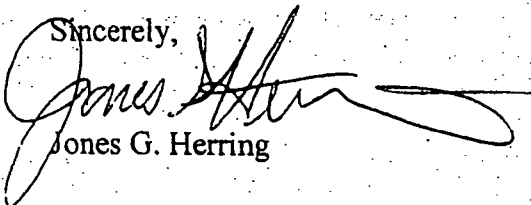
You told me I had an excellent case; you told me you have filed a complaint and you were actively working on the case. However, notwithstanding, you have ceased all communications. You will not return phone calls, you want allow me to have a meeting with you and you will not respond to certified mail. Most grievous, you have assured me I have a great case and that Jones Andrews law firm was actively associated with you on my behalf. I have now been informed that Mr. Andrew's firm declined to be involved and they know of no active lawsuit.

Needless to say, I am very, very disappointed. You have never told me that this was a non-meritorious case or that you were not actively pursuing it. To the contrary, you always assured me that you were working on the case.

Finally, I only sought assistance from Mr. Truslow in an attempt to get you to communicate with you. He has not and is not representing me in the case you have undertaken, I have also been informed that Mr. Andrew's firm specifically declined to be involved, which makes me even more upset; given your claim they were actively involved.

Under the circumstance, I feel that I have no choice but to take this to the next level.

Sincerely,



Jones G. Herring

cc: Douglas Truslow
Jones Andrews

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STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	COURT OF COMMON PLEAS
		2011-CP-40-01998
Jones G. Herring,	)	
Plaintiff,	)	
vs.	)	TRANSCRIPT OF RECORD
Gilbert S. Bagnell and	)	
Bagnell & Eason, LLC.,	)	
Defendant.	)	
		October 31, 2011
		Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

DOUGLAS N. TRUSLOW, ESQ.
Attorney for the Plaintiff

RICHARD R. GLEISSNER, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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PLAINTIFF EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Letter	15	15
2	Letters	19	19

1 OCTOBER 31, 2011

2 THE COURT: This is Jones Herring versus
3 Gilbert Bagnell, is that correct?

4 MR. TRUSLOW: Yes, Your Honor. By way of
5 background, my client had initiated a lawsuit
6 against Mr. Bagnell and against his law firm. They
7 have gone into default. I didn't know there was
8 even an attorney involved until a few minutes ago.
9 But we are prepared to go forward on the damages
10 aspect of this case.

11 THE COURT: All right.

12 MR. GLEISSNER: Your Honor, I'm Rick
13 Gleissner. I am appearing here for Mr. Bagnell and
14 Bagnell & Eason, the two Defendants. And just for
15 the record, I got the call at 2:00 o'clock this
16 afternoon. So I'm here.

17 THE COURT: And what did you say your name
18 was?

19 MR. GLEISSNER: Rick, R-I-C-K, Gleissner,
20 G-L-E-I-S-S-N-E-R.

21 THE COURT: All right. And this is a damages
22 hearing. All right.

23 MR. TRUSLOW: And, Your Honor, I hope I wasn't
24 impolite to Mr. Gleissner. I understand the
25 circumstances and, like he said, he just got a call

1 at 2:30 for a 3:30 matter.

2 THE COURT: Okay. All right. Y'all are ready
3 to proceed?

4 MR. TRUSLOW: We are ready to proceed.

5 THE COURT: Okay. Yes, sir.

6 MR. TRUSLOW: Your Honor, I call Mr. Herring.

7 THE BAILIFF: Place your left hand on the
8 Bible, and raise your right hand, please.

9 (Witness complies.)

10 THE CLERK: Do you solemnly swear or affirm
11 the testimony you are about to give in this case
12 will be the truth, the whole truth, and nothing but
13 the truth, so help you God?

14 THE WITNESS: Yes, ma'am.

15 THE CLERK: Thank you. Have a seat in the
16 witness stand, please.

17 (Witness complies.)

18 THE COURT: And, Mr. Truslow, the order of
19 default was entered on -- has there been -- the
20 order of default has been entered already?

21 MR. TRUSLOW: Yes, Your Honor. The order of
22 default was on 6/14/11. We have notified the
23 Defendants of this hearing, as is obvious by Mr.
24 Gleissner's appearance. Those have been filled.
25 It looks like it was filed on 10/27.

1 THE COURT: Okay. Here it is. Judge Lee. I
2 was looking for it. All right.

3 MR. TRUSLOW: And, Your Honor, what I have
4 done is passed up some -- the background, which is
5 what my client intends to testify about. And I
6 provided -- I showed Mr. Gleissner those documents
7 and several other items.

8 THE COURT: All right. Yes, sir.

9 MR. TRUSLOW: We are ready to proceed.

10 THE COURT: Yes, sir.

11 JONES HERRING,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. TRUSLOW:

15 Q Your name is Jones Herring?

16 A Correct.

17 Q You are the Plaintiff in this case?

18 A Correct.

19 Q And you have already gotten a default judgment
20 against the Defendants in this case, is that
21 correct?

22 A Yes, sir, that's correct.

23 Q And you are here today, you are seeking an award of
24 whatever damages and punitive damages that the
25 Court finds to be appropriate?

1 A That is correct.

2 Q By way of background, were you originally injured
3 as a result of a lending institution, their unfair
4 credit and debt collection practices?

5 A Yes, sir.

6 MR. GLEISSNER: Your Honor -- nevermind.

7 MR. TRUSLOW: I am going to lead. If I
8 don't -- unless there is an objection. If there
9 is, I can go the other way. I am just trying to
10 speed it up. I can get every bit of this into
11 evidence, I'm sure.

12 MR. GLEISSNER: Well --

13 MR. TRUSLOW: I understand the position he is
14 in, so if he needs to object I don't mind.

15 MR. GLEISSNER: I don't mind a little leading,
16 you know, to get the preliminaries over with, but
17 once we get into the substantive stuff like
18 damages, then I object to it.

19 MR. TRUSLOW: And it may make it easier. Just
20 in my mind's eye I start preparing a draft of
21 documents. I've got one for your law clerk also,
22 if this will assist you in understanding what we
23 are doing.

24 THE COURT: You may continue.

25 MR. TRUSLOW: I'm down under Paragraph Number

1 2.

2 Q But as a result of some actions by a lending
3 institution, did you seek legal assistance from the
4 Defendants Bagnell and Bagnell & Eason Law Firm?

5 A Yes, I did.

6 Q Did you have actual damages at that point that
7 exceeded \$28,000 exclusive of your future damages
8 for your credit being harmed and any unliquidated
9 damages for the attempts to collect funds that were
10 not due?

11 MR. GLEISSNER: Your Honor, I would have to
12 object. That one was -- well, it was compounded,
13 it was leading.

14 MR. TRUSLOW: I'll restate it. That's all
15 right.

16 THE COURT: Yes, please rephrase.

17 BY MR. TRUSLOW:

18 Q Did you seek the assistance of the Defendants as it
19 related to a lawsuit?

20 A Yes, I did.

21 Q And did you provide to Mr. Bagnell your
22 documentation?

23 A Yes, I did.

24 Q And did you have actual documented records showing
25 \$28,000 or more of damage?

1 A Yes, I did.

2 Q Did you provide that to Mr. Bagnell?

3 A Yes, I did.

4 Q And did you have future -- or documents showing
5 future damages that you sustained that you also
6 provided to Mr. Bagnell?

7 A Yes. We discussed it.

8 Q And in the course of this, I am going to call part
9 of it a debt collection, did you receive phone
10 calls at your home, at your work?

11 A Yes.

12 Q Were they upsetting to your family?

13 A Yes, very much so.

14 Q I believe Ms. Herring is here?

15 A Yes.

16 Q Now, did you attempt before you went to see Mr.
17 Bagnell, did you attempt to work out your problems
18 with the lender?

19 A Yes.

20 Q And did that appear to be a positive thing? Was it
21 going well for you to start with?

22 A They looked for documentation. I got it submitted
23 and I didn't hear any more from them.

24 Q Did the Citibank -- this was Citibank?

25 A City Financial.

1 Q City Financial, I'm sorry. City Financial, did
2 they then leave the Columbia area so you had no one
3 else to deal with?

4 A That's correct.

5 Q And is that when you established an attorney-client
6 relationship with the Defendants?

7 A Yes.

8 Q Okay. In order to induce you to use his legal
9 services, did Mr. Bagnell make any representations
10 to you?

11 A Yes.

12 Q Did he indicate to you whether he had recently
13 settled a case for \$120 million?

14 MR. GLEISSNER: Your Honor, we are starting to
15 get into some substance, if he can avoid the
16 leading questions.

17 MR. TRUSLOW: I couldn't hear what he said.

18 MR. GLEISSNER: I objected on the grounds of
19 leading.

20 MR. TRUSLOW: I don't think that was leading,
21 but I can rephrase it if necessary.

22 THE COURT: All right.

23 BY MR. TRUSLOW:

24 Q What did Mr. Bagnell indicate to you about having
25 obtained a \$120 million verdict in a class action

1 case?

2 A He told me that it was processed and they had
3 collected and so did the other lawyers.

4 Q Okay. Did he invite you to verify those facts
5 online?

6 A Yes.

7 Q Did you do that?

8 A Yes.

9 Q And did this involve some Thaxton litigation?
10 T-H-A-X-T-O-N litigation?

11 A Yes. Yes.

12 Q Did he, Mr. Bagnell, advise you that he would be
13 pursuing a class action on your behalf?

14 A Yes, he did.

15 Q Okay. What did he say about his experience? Did
16 he say he was experienced or not experienced?

17 A He had done these before and he's been successful.

18 Q In addition, did he indicate to you that he was
19 working with another law firm?

20 A He did.

21 Q And was that law firm McGowan & Hood?

22 A Yes.

23 Q Did he indicate that he already had approval of
24 them to represent you? They -- the two of them
25 were going to be representing you?

- 1 A It was in the contract that I signed.
- 2 Q And that was on the contract?
- 3 A Yes, it was.
- 4 Q The contract was dated May 17th, 1996?
- 5 A 2006.
- 6 Q I'm sorry, 2006. I misstated it. My fault.
- 7 A Yes.
- 8 Q And did the contract have McGowan & Hood's name on
- 9 the contract as well as Mr. Bagnell and his law
- 10 firm?
- 11 A That is correct.
- 12 Q Did you subsequently find out that McGowan &
- 13 Bagnell -- excuse me, McGowan & Hood had never
- 14 agreed to be associated on the case?
- 15 A I found out later that they did not agree and did
- 16 so in writing.
- 17 Q Did you find out they in fact had written --
- 18 A Yes.
- 19 Q -- a letter to Mr. Bagnell to that effect?
- 20 A I did.
- 21 Q Did you know it at the time?
- 22 A Not at the time I signed the contract, no.
- 23 Q Did you rely on Mr. Bagnell's representation that
- 24 they were associated with him?
- 25 A Yes.

1 Q And you live in the Columbia area, do you not?

2 A Yes, I do.

3 Q You work for the State of South Carolina?

4 A Yes, I do.

5 Q You are familiar with McGowan & Hood as having a
6 good reputation -- excellent reputation?

7 A I do now, yes.

8 Q All right. Did you believe Mr. Bagnell when he
9 represented to you that he had their approval and
10 they were working on the case?

11 A Yes.

12 Q What did he tell you -- he, Mr. Bagnell -- tell you
13 about who you should deal with? Were you -- could
14 you call McGowan & Hood?

15 A In the contract it was to him, Mr. Bagnell.

16 Q All right. Did he indicate to you whether he would
17 diligently be working on the case?

18 A Yes.

19 Q Did he use -- did he say that he'd be figuratively
20 like an iceberg or a duck paddling on a pond?

21 A Well, he said I wouldn't see much, but he would be
22 working hard at it. It would take time.

23 Q To try to move things along, you had an opportunity
24 to go over this proposed order?

25 A Yes, I have.

1 Q And have you gone over each sentence with me?

2 A Yes.

3 Q And are the matters that you have set forth herein,
4 is that going to be your testimony?

5 A Yes, it is.

6 Q Moving forward, when?

7 MR. GLEISSNER: I'm sorry, Your Honor, I
8 haven't seen the proposed order.

9 THE COURT: Do you have an extra copy?

10 MR. TRUSLOW: And, again, I'm sorry, I just
11 didn't know there was somebody here. You can
12 follow with it and I'll make you another copy if
13 needed.

14 BY MR. TRUSLOW:

15 Q In conjunction --

16 MR. TRUSLOW: And, Your Honor, if we need
17 time, we can -- I see the law clerk. I know they
18 are invaluable.

19 THE COURT: He's fine.

20 MR. TRUSLOW: And maybe I should have gotten
21 another copy as well.

22 BY MR. TRUSLOW:

23 Q As it relates to your case, did Mr. Bagnell request
24 that you provide him with all of your original
25 documents?

1 A All the original documents, yeah, I gave them to
2 him in his law office.

3 Q And when he looked at those, is that when he
4 indicated what your damages were?

5 A Yes. We went through it.

6 Q Did he indicate that your damages were in excess
7 of a hundred thousand dollars?

8 A Total would be.

9 Q And that was without even considering any treble
10 damages or punitives or fees?

11 A That's correct. Fees were on their own.

12 Q After you entered into the fee agreement with the
13 Defendants on May 17th, 2006, did Mr. Bagnell
14 indicate to you that he had also received a fee in
15 excess of \$10 million on another similar case,
16 similar to yours?

17 A Yes. Yes.

18 Q Did he say -- is your answer yes?

19 A Yes.

20 Q In conjunction, did he indicate that he was with
21 those fees going to Europe for a vacation?

22 A He went to Europe on a vacation and others
23 afterwards.

24 Q Did he say he would start on your case when he came
25 back?

1 A Yes.

2 Q Did he say whether he would notify you when
3 anything of substance occurred or needed to be done
4 on your case?

5 A On several occasions.

6 Q Did some time go by and you didn't hear anything?

7 A That is correct.

8 Q And sometime about October, October 13th, 2006, did
9 you receive a letter written by Mr. Bagnell that he
10 was representing you?

11 A Yes.

12 Q And --

13 A Well, let me make sure I am saying the right thing.

14 Q Is this the letter?

15 A I wasn't -- I received --

16 Q Did you get that from him?

17 A Yes.

18 Q All right.

19 MR. TRUSLOW: We are going to offer this into
20 evidence, Your Honor.

21 THE COURT: Any objection?

22 MR. GLEISSNER: I have seen a copy. And no
23 objection, Your Honor.

24 (WHEREUPON, Plaintiff's Exhibit No. 1
25 was marked for identification and

1 received into evidence.)

2 Q Did you believe that Mr. Eason -- or Mr. Bagnell
3 was working on your case?

4 A Yes.

5 Q Okay. After that, did you get any other letters?
6 And I might -- we might let the Court take a --

7 MR. TRUSLOW: Your Honor, I was really
8 interested in about the first three paragraphs and
9 to show that there was representation.

10 BY MR. TRUSLOW:

11 Q Okay. Did you get any other communications from
12 him?

13 A No.

14 Q Did you become concerned about your case?

15 A Yes.

16 Q Did you attempt to get in touch with Mr. Bagnell?

17 A On many, many occasions.

18 Q Did you assist or obtain assistance from Attorney
19 Ken Allen in trying to set up a meeting?

20 A Yes.

21 Q And was that successful?

22 A No.

23 Q Did you consider that odd?

24 A They were next-door to each other. Yes, I did.

25 Q And did the Defendants give you any update on what

1 was going on in your case?

2 A When I would find him, he would say he was still
3 working on it.

4 Q All right.

5 A That was his words.

6 Q Were you able to get a copy of any of your file?

7 A No.

8 Q As a result, did you contact the McGowan-Hood Law
9 Firm because of your contract that said that they
10 were working on your case?

11 A That's correct, I did.

12 Q Did you find out at that time that McGowan-Hood had
13 specifically told Mr. Bagnell that they would not
14 be involved in a case with him?

15 A That is true.

16 Q And your case in particular?

17 A My case particular.

18 Q Do you know why McGowan & Hood --

19 A I was never told the exact reason.

20 Q -- would not get involved?

21 A And I never got a copy of the letter.

22 Q Now, at that point in time when you found out --
23 when Mr. -- or the Defendants wouldn't communicate
24 with you and you found out that McGowan & Hood was
25 not involved, did you seek assistance in getting

1 your file back?

2 A I went to -- got a lawyer to get him to call to see
3 if he could get the money -- get the file back to
4 me.

5 Q Were you concerned at that point in time about the
6 statute of limitations running out?

7 A Very much so.

8 Q Did you have any way to prove any case or have any
9 details without your files?

10 A None whatsoever. All the documentation was there.

11 Q Had the Defendants promised that they would return
12 your file to you?

13 A Once they were scanned on CD's he would return my
14 original files back to me. That was the original
15 agreement.

16 Q All right. Did you ever get it back?

17 A Never.

18 Q Did you write certified -- many certified letters
19 to the Defendants trying to get your file back?

20 A I have a folder full of certified letters
21 requesting it.

22 Q Are these two letters, one is dated February 13th
23 and one is dated April 2nd, 2009, are these just
24 samples of two of the letters that you wrote --

25 A Yes.

1 Q -- to the Defendants?

2 A Yes. Yes.

3 MR. TRUSLOW: We offer these into evidence
4 collectively just as Exhibit 2.

5 THE COURT: Any objection?

6 MR. GLEISSNER: No objection, Your Honor.

7 (WHEREUPON, Plaintiff's Exhibit No. 2
8 was marked for identification and
9 received into evidence.)

10 BY MR. TRUSLOW:

11 Q And are those just samples of letters that you were
12 writing asking for your file?

13 A Yes. That's correct.

14 Q Without your file, without your documents, is there
15 any way you could file a lawsuit? Did you even
16 know the names -- specific name of who you would
17 sue or what your losses are and when they were
18 occurred?

19 A All copies of canceled checks, documentation of
20 phone calls, everything is in that file.

21 Q So did you get your file back from the Defendants
22 at that point in time?

23 A No.

24 Q And were you concerned that your statute of
25 limitations was possibly going to run?

1 A Yes, sir.

2 Q And did you communicate that to the Defendants?

3 A On several occasions.

4 Q Did you get your file then?

5 A No, sir.

6 Q Did you seek assistance from South Carolina Bar to
7 just get your file?

8 A Correct. I did.

9 Q Was the bar able to get anything?

10 A No, they were not.

11 Q As a result did you file a complaint against the
12 Defendant Bagnell?

13 A I filed a claim with the grievance -- Supreme Court
14 Grievance Committee hoping to get them back.

15 MR. TRUSLOW: And, Your Honor, I would ask you
16 to take judicial notice of the record before you,
17 which is the opinion July 18th, 2011.

18 THE COURT: Yes, that has been passed up to
19 me, and I will take judicial notice of Mr.
20 Bagnell's disbarment. And it looks like in
21 relation to this action.

22 MR. TRUSLOW: That is what I was going to ask.

23 BY MR. TRUSLOW:

24 Q Does it relate -- is what you are telling us today
25 basically the same thing you said throughout?

1 A It is.

2 Q Was the bar able to get --

3 A We never, ever received any documentation.

4 Q Would he cooperate in any fashion?

5 A To my knowledge, he did not.

6 Q Now, you have already mentioned that the Defendants
7 told you that your case, exclusive of treble
8 damages, had value of at least a hundred thousand
9 dollars?

10 A Yes.

11 Q And that is exclusive of attorney's fees and
12 interest?

13 A That's correct.

14 Q Did he indicate to you that he wanted -- he, Mr.
15 Bagnell -- wanted you to be the lead Plaintiff in a
16 class action that he was filing?

17 A Originally, yes.

18 Q And he did tell you that he had investigated the
19 matter and that he filed a lawsuit?

20 A To my knowledge, yes, that's correct.

21 Q At this point in time, had you found out after your
22 statutes of limitations had passed that there was
23 no lawsuit that had ever been filed, in addition to
24 McGowan & Hood never being involved?

25 A No lawsuit was ever filed. I was never told it was

1 never filed. And Hood & McGowan did not want to
2 participate in it.

3 Q Now, talking about the Defendants, and Mr. Bagnell
4 in particular, has he now left the State of South
5 Carolina?

6 A Yes.

7 Q After telling you that he had gotten a \$30 million
8 fee and a \$10 million fee on some related cases --

9 A My understanding.

10 Q -- that you had checked out at least one of them
11 and found it to be correct?

12 A That's my understanding, yes.

13 Q He then was suspended from the practice of law?

14 A That is correct.

15 Q And that was unrelated to you?

16 A I understood -- later on I understood he had
17 already been suspended.

18 Q Okay. But that was -- his initial suspension was
19 unrelated to you?

20 A Correct, yes.

21 Q And then you -- when you -- after he was suspended,
22 he had his \$30 million, his \$10 million, and then
23 in October of 2009 did he leave the State of South
24 Carolina?

25 A Yes.

1 Q And go to New York?

2 A Yes.

3 Q And you have seen online --

4 A Yes.

5 Q -- on the computer --

6 A Yes, I have.

7 Q -- you have seen where he is now in the Catskills
8 of New York?

9 A That is correct.

10 Q Have you seen the home?

11 A Yes, on Google Search.

12 Q Can you try to describe it as -- how it is
13 furnished?

14 A It is a tutorial mansion -- a tudor mansion.
15 That's what it looks like to me.

16 Q In the Catskills?

17 A That is where the site said it was. That's all I
18 can say.

19 Q Has Mr. Bagnell ever given you any of your file
20 even now?

21 A He tried to e-mail me something and it was
22 unlegible and wasn't nearly -- I mean, it wasn't
23 even what I was needing.

24 Q Did he say he had all of your file in a warehouse
25 somewhere?

1 A He said that it was in a warehouse between here and
2 New York, the moving truck broke down and it was
3 stored in a warehouse and it would come to him
4 shortly.

5 Q How many times did he promise he would deliver your
6 file and then just not deliver?

7 A I don't know the numbers of letters I wrote him and
8 his partner, but at least five to ten.

9 Q Did you communicate how important it was that you
10 get your file?

11 A Yes.

12 Q And --

13 A Did it in a telephone conversation.

14 Q Was he deliberately indifferent?

15 A I'll get it to you in three days.

16 Q Sir?

17 A I will get it to you in three days.

18 Q Did he deliver?

19 A Never.

20 Q Okay. Not just within three days, but ever?

21 A To this date.

22 Q Now, are you asking for punitive damages --

23 A Yes, I am.

24 Q -- in this case? And the evidence that you have
25 regarding the \$30 million and the \$10 million in

1 fees that Mr. Bagnell earned were from him as well
2 as you were able to check out the Thaxton
3 settlement, class action settlement?

4 A Yeah, online.

5 Q So when he got his \$30 million, he left you high
6 and dry?

7 A That's the way I view it.

8 Q And are you asking for punitive damages as the
9 Court finds appropriate in this case?

10 A I certainly am.

11 Q Do you think five times your, I'm going to call
12 them your actual damages, is appropriate in this
13 case?

14 A I certainly do.

15 Q If the Court gives you more you'd be pleased?

16 A I'd be happy.

17 Q You would not want it to be in double digits?

18 A No.

19 Q Is that correct?

20 A Correct.

21 Q All right. So you contend that you have \$300,000
22 in actual damages and you are asking for punitive
23 damages of five times that?

24 A That is correct.

25 Q And that would be exclusive of legal fees that you

1 have incurred --

2 A That is correct.

3 Q -- costs, that would be just five times the --

4 A That is basically what his contract --

5 Q -- actual damages?

6 A His contract read to do the same thing.

7 Q One other thing I see here. You mentioned that Mr.
8 Bagnell had -- was living in the Catskills?

9 A Correct.

10 Q In checking with me with my help, did you find that
11 with the Secretary of State he had in fact
12 incorporated a business known as the Catskill House
13 on October 29th, 2009?

14 A Yes.

15 Q And he is the registered agent?

16 A Correct.

17 Q So if we consider everything that you've got and
18 the punitive damages -- are you asking for punitive
19 damages commensurate with the wrongdoing that has
20 been done?

21 A I believe so, yes.

22 Q Does the -- from what the Defendant has represented
23 regarding fees that he has gotten in a class action
24 lawsuit, are you asking the Court to consider that?

25 A Yes.

1 Q And that was known nationally, you could go online
2 and see where the Thaxton lawsuit was mentioned?

3 A That is correct.

4 Q A number of places?

5 A And other lawyers discussing it as well.

6 Q I'm -- all of us here are proud of being lawyers.
7 Do you think that the legal profession is a high
8 calling?

9 A Yes, I do. I grew up around lawyers.

10 Q Do you feel that lawyers who act inappropriately
11 should be deterred --

12 MR. GLEISSNER: I'm sorry, Your Honor. I have
13 got to object. This is opinion testimony and he is
14 asking a lay person --

15 MR. TRUSLOW: I can rephrase it.

16 THE COURT: Yes, sir.

17 Q In this case, are you asking that the Court impose
18 some deterrent so those who don't play by the rules
19 will be deterred?

20 A Yes, sir.

21 Q Do you consider that this is -- the actions by Mr.
22 Bagnell, the Defendants, has it been repeated?

23 A I'm sorry?

24 Q Was there more than one bad act? You mentioned
25 representing that he was going to take on the case.

1 A To me?

2 Q Yes.

3 A Multiple bad acts.

4 MR. TRUSLOW: I think that is all I have.

5 Thank you, Your Honor.

6 THE COURT: All right, please answer any
7 questions that Mr. Gleissman has.

8 MR. GLEISSNER: Thank you, Your Honor. I came
9 here for a damages hearing. I thought I was going
10 to hear some testimony about damages.

11 CROSS-EXAMINATION

12 BY MR. GLEISSNER:

13 Q Did you pay Mr. Bagnell anything?

14 A No, I did not.

15 Q You didn't pay him a retainer?

16 A No, sir, as part of the contract.

17 Q You didn't pay him a filing fee?

18 A No, sir.

19 Q You are not out of pocket any money with Mr.
20 Bagnell?

21 A To Mr. Bagnell?

22 Q Right.

23 A No, I'm not out to him individually, no.

24 Q Okay. All right. So strike that -- those damages.

25 Okay. I heard you say \$28,000 in damages.

1 Then I heard you say a hundred thousand dollars in
2 damages. Then I heard you say \$300,000 in damages.

3 And I was trying real hard to follow. Okay,
4 how were you damaged?

5 A How was I damaged?

6 Q Yes. What are your damages?

7 A Damages was the loss of income, the taxes I had to
8 pay, the credit rating that I had gotten.

9 Q So one is taxes that you had to pay?

10 A Yes.

11 Q Is that correct?

12 MR. TRUSLOW: I don't believe --

13 MR. GLEISSNER: I'm just trying to understand
14 his answer.

15 THE COURT: Hold on. Let him make his
16 objection.

17 MR. TRUSLOW: I know it wasn't willful, but he
18 didn't get to finish answering. He asked him how
19 he was damaged and he started to explain. He asked
20 another question. I would ask the witness to be
21 allowed to fully answer.

22 THE COURT: All right. Give him an
23 opportunity to answer.

24 MR. GLEISSNER: I'm sorry, Your Honor. Okay.

25 BY MR. GLEISSNER:

1 Q How were you damaged?

2 A Because of his inaction, which I didn't get my
3 credit rating back into play when I bought my home.
4 Based on the -- at that time, there was free
5 closing costs, and whatnot. Because of the credit
6 damages I had to pay closing costs, I had to pay
7 mortgage insurance costs, I also had to pay -- by
8 having to accept and file a cancellation to see,
9 which started this whole process over \$7,000, I had
10 to put that as an income. That charge raised my
11 income tax levels. Also, by putting me as single
12 at that point in time I lost tax credits of my
13 son's education. I overpaid one of the accounts by
14 \$1,200. He had all the copies of the cancelled
15 checks proving -- and my worksheets proving that I
16 was overpaid. I did not get that money back.

17 THE COURT: You said \$1,200?

18 THE WITNESS: Yes, \$1,200.

19 THE COURT: Twelve hundred.

20 A There was -- I'm trying -- all this is documented
21 inside those files, and I'm trying to reach out of
22 my head to it. Offers to reduce interest rates
23 was -- on my credit cards was denied because of the
24 cancellation of C, unpaid debts, which that is the
25 gist -- you know, the reason I was going in this

1 lawsuit to begin with. That cost me money,
2 out-of-pocket money, real money, money I needed
3 badly.

4 That is about it. But the documentation for
5 all these things that he agreed to -- he, being Mr.
6 Bagnell -- is in that file which I never got back.

7 Q So let's start. I got three things. I got taxes
8 paid, credit ratings, and overpaid. Those are the
9 three things that I got out of your statement.

10 A Yes. And the cost of closing costs on the house I
11 bought.

12 Q Okay. That was --

13 A That is part of the credit rating.

14 Q Okay. That is part of the credit rating.

15 A That was because of that, yes.

16 Q Let's start out by the taxes paid.

17 A Okay.

18 Q Now, you had to pay taxes because Mr. Bagnell
19 failed to file a lawsuit?

20 A Yes. I was not able to get those -- get a, what do
21 you call it, an amended 1099-C, which would have
22 pulled out the about \$7,300 off my taxes. If he
23 had filed that lawsuit, I would have got an
24 amended -- that amended 1099-C. I could have done
25 an amended return, gotten that money back. I also

1 would have gotten another \$800 or a \$1,000
2 education credit for my son in college. So right
3 there is \$2,500.

4 If he would have given me my files or
5 proceeded with the case, I would have gotten my
6 \$1,200 plus interest on the other 1099-C.

7 If he had proceeded -- you know, and got it
8 amended -- if he had proceeded with the case, I
9 would have gotten my credit rating cleared up
10 because that is what is bad on it. And I would
11 have gotten the mortgage at a lower interest rate,
12 would not have had to pay closing costs. You know,
13 we have all been through that. You know what I'm
14 talking about.

15 I had to pay mortgage insurance that I'm still
16 paying on. And when you start adding up all these
17 numbers, yes, sir, it does come up to more than the
18 28 that is referred to.

19 Q Well, I'm still working on the first one, because I
20 don't understand -- I mean, I do understand what a
21 1099-C is. I mean, that is -- a bank issues a
22 1099-C when there is a forgiveness of debt. That
23 is basically what -- is that what happened to you,
24 is that somebody --

25 A No, it is not what happened to me. They did an

1 error. They gave me one.

2 Q Right.

3 A But when you -- it is not forgiveness of debt at
4 all. You have to take that 1099-C and put that on
5 your income taxes as income.

6 Q Okay. And why did they issue a 1099-C?

7 A Why?

8 Q Yes, why?

9 A When I divorced -- she and I divorced, by the
10 way -- I went and had -- I had \$80,000 worth of
11 debts. So I went to Consumer Credit Counseling.
12 They negotiated a lower interest rate to pay them
13 back, which I did. Again, all this was in the
14 file, which I don't have.

15 At the end of the day, when I paid off
16 everything that I owed them, all the principal,
17 they still contended that I had \$7,243 worth of
18 unpaid interest. In other words, they could not
19 close their books. So to close their books, they
20 gave me a 1099-C. I had documentation in that file
21 from the branch manager of City Financial out here
22 on Knox Abbott, which is no longer there, saying
23 that they included that original interest in their
24 income, and when I paid off that note, based on the
25 revised contract with the Consumer Credit

1 Counseling, that was the only way to get it cleared
2 off their books, so I got the 1099-C, which then I
3 had to report to the IRS as income, which I never
4 had -- you know, that was interest that I didn't
5 owe, to begin with. And then I had to report it
6 on my income tax.

7 By putting it on my income tax and being
8 single at that point in time, it threw me in a
9 higher tax bracket, a lot higher tax bracket, trust
10 me, and it stopped me from getting my tax credits,
11 education tax credits as well, which was real money
12 which I needed at the point in time.

13 Also, the other 1099-C, which is on the credit
14 reference, is from another City Financial account,
15 which I paid off, again through Consumer Credit
16 Finance -- consumer -- over here at the -- I
17 forgot, consumer -- you know, the United Way
18 people. I work through them. They gave me
19 canceled checks proving that I overpaid them --
20 that account by close to \$1,200, which is in my
21 file.

22 If Mr. Bagnell would have proceeded with this
23 case, that would have been cleared up. That 1099-C
24 would have been taken off my record because I'm
25 still shown and still being called because of that

1 unpayment -- nonpayment of debt. I'm still getting
2 phone calls. The last one was from Washington
3 State, of all places, some credit agency, or
4 collection agency. So I have multiple losses of
5 money.

6 Q Okay. So we have two situations in which you were
7 issued a 1099-C?

8 A Correct.

9 Q Okay. And both of them related to a renegotiation
10 of your debt by Consumer Credit Finance, is that
11 right?

12 A I might be saying that the wrong name, but that
13 is -- it is United Way, a branch of United Way.

14 Q Okay. Some debt service renegotiated the interest
15 rates?

16 A Correct.

17 Q Now, you are an accountant, right?

18 A Correct.

19 Q So you prepare taxes for other people, right?

20 A Not as an accountant, no.

21 Q Oh, okay. So you have never prepared any taxes?

22 A Oh, yes, I have. Yes. Yes. Oh, I'm sorry.

23 Q Oh, okay. So you have --

24 A Not in my role as an accountant. I work for state
25 government.

1 Q Oh, okay. All right. But you have prepared taxes
2 for other people?

3 A Yes.

4 Q Okay. Now, in your particular instance, they
5 didn't forgive any of the principal of the
6 obligation, is that right?

7 A No. No, I paid all the principal back.

8 Q Paid all the principal. But, in fact, the interest
9 was reduced on each of the loans, isn't that right?

10 A That's correct.

11 Q Okay.

12 A The interest rate was reduced.

13 Q The interest rate was reduced. Okay.

14 A And the monthly payments were extended.

15 Q Now, as it relates to 1099-C, there is some
16 exception to having to report that as income on the
17 income tax returns, right?

18 A Not at that point in time, not 2005.

19 Q Okay. Well, now, if you file bankruptcy you don't
20 have to report --

21 A I wasn't brought up that way. I paid all my debts.
22 I paid every debt I owed. I could have filed
23 bankruptcy. I wouldn't have paid \$80,000 back at
24 all, I would have had in my pocket. But I paid
25 every penny of it back.

1 Q Well, I'm asking you about reporting a 1099-C on
2 your tax return.

3 A Yes.

4 Q Okay. Are there exceptions to having to report a
5 1099-C on your tax return?

6 A I didn't know it at that time.

7 Q So you didn't know that there were?

8 A That's right.

9 Q Okay.

10 A And if there is, I didn't know it at that time.

11 Q Okay. All right. Well, did you consult with a tax
12 person as it relates to these 1099-C's?

13 A No, I did not.

14 Q So you don't know whether or not you qualify for
15 any exceptions under Section 108?

16 A I did not at that time. No, I did not at that
17 time.

18 Q The people, the creditors reduced their interest
19 rate by more than 25 basis points. Isn't that what
20 they did?

21 A What do you mean basis points?

22 Q Oh, I'm sorry, a quarter of a percent of interest?
23 What they did?

24 A They reduced it more, yes.

25 Q And do you know whether or not under Regulation

1 1.1001-3(e) whether or not interest is considered a
2 significant modification subject to taxation?

3 MR. TRUSLOW: Objection to the relevance, Your
4 Honor. This doesn't have anything -- the case is
5 that he went to a lawyer, had a loss. The lawyer
6 said he was bringing the lawsuit for his losses,
7 and then didn't bring the lawsuit.

8 THE COURT: Can I see y'all for a second?

9 (WHEREUPON, a bench conference was
10 held.)

11 THE COURT: Can we take about a five minute
12 break?

13 (WHEREUPON, a break was taken.)

14 BY MR. GLEISSNER:

15 Q We were talking about the 1099-C that had been
16 issued to you, and I had asked you if you were
17 aware of Code Section or Tax Regulation
18 1.1001-3(e)?

19 A No, sir, I'm not.

20 Q You're not familiar with that. Do you know whether
21 or not the tax code requires a financial
22 institution to report forgiveness of debt income
23 when the interest rate is reduced by more than a
24 quarter of a percent interest?

25 A Say that again for me? I didn't quite understand.

1 Q Are you familiar with the tax code requiring a
2 creditor to report a forgiveness of debt income
3 when they are -- when they reduce their interest
4 rate by more than a quarter of a percent?

5 A No, I haven't heard that.

6 Q You are unfamiliar with that.

7 MR. GLEISSNER: Your Honor, I would ask the
8 Court to take judicial notice of Tax Code 108 and
9 Tax Regulation 1.1001-1, Subparagraph (a).

10 THE COURT: One more time. Tax code what?

11 MR. GLEISSNER: Tax Code Section 108. And I
12 have a copy of that for Your Honor.

13 MR. TRUSLOW: And we are going to object now
14 that the Defendant is in default. What they can do
15 is cross-examine. They can't put up evidence at
16 this point in time.

17 THE COURT: You cannot, sir.

18 MR. GLEISSNER: Well, I'm not entering
19 evidence, Your Honor. I'm asking the Court to take
20 judicial notice of the law.

21 MR. TRUSLOW: Okay.

22 MR. GLEISSNER: And the law usually isn't
23 considered evidence, but maybe I'm wrong. I have
24 been known to be wrong, Judge. So if you don't
25 want to take judicial notice of those sections of

1 the code, I was just asking you.

2 THE COURT: I can read them, but I would
3 probably need somebody here that is an accountant
4 or someone to -- I'm not sure where you are going
5 with it. And I'm not an accountant. And in
6 reading them -- I'm not sure he is testifying here
7 today in his capacity as an accountant, I think he
8 is testifying here as to his loss.

9 THE WITNESS: Yes.

10 MR. TRUSLOW: Your Honor, as I understand it,
11 the proffer has been made, you are sitting as a
12 judge alone. And I have objected. Your Honor is
13 indicating that you are going to accept it for
14 whatever value it may have, subject to it being
15 tied in. And if you don't find it persuasive you
16 may not give it any weight at all. Is that the way
17 I understand? That way the record is protected.

18 THE COURT: Yes. I'll take a look at it.
19 I'll try to interpret it. I can't assure you
20 that -- but, I mean, there is no one here other
21 than myself and my law clerk, and I don't know if
22 he -- Judge Manning's law clerk is a CPA, but my
23 law clerk is not.

24 MR. GLEISSNER: I understand, Your Honor.

25 THE COURT: And what is the tax code again?

1 MR. GLEISSNER: It is Tax Code Section 108.
2 And, Your Honor, I would be happy to hand up that
3 tax code to you.

4 THE COURT: All right. I'll take a look.

5 MR. GLEISSNER: I also referenced Tax
6 Regulation Section 1.1001-1(a), Your Honor, on the
7 proposition that there is a quarter percent
8 interest reduction, that that is a significant
9 modification subject to a 1099-B.

10 THE COURT: Like I say, you totally lost me.
11 Section 108. Which section are you looking at?

12 MR. GLEISSNER: Section 108 deals
13 with --Section 108 of Title 26, Subchapter 8,
14 Section 108 of the United States Code of Law.

15 THE COURT: All right. But there is (a),
16 (b)...

17 MR. GLEISSNER: Your Honor, it deals with
18 exclusions from forgiveness of debt income, which
19 is 1099-C.

20 THE COURT: Okay.

21 MR. GLEISSNER: Judge, specifically like, for
22 instance, (a)(3) deals with exclusion if the person
23 is insolvent.

24 THE COURT: All right. And he --

25 MR. GLEISSNER: And he said he didn't know --

1 THE COURT: He testified that he is not
2 familiar with this?

3 MR. GLEISSNER: That is what he said.

4 THE COURT: All right. Okay.

5 MR. TRUSLOW: And Your Honor has my objection
6 and you are accepting this for -- I'm not sure
7 whether it is being offered as evidence. If it is
8 offered as evidence we object --

9 THE COURT: He is saying take judicial notice
10 of the tax code, that he has asked him about it,
11 and he has basically said he doesn't know about
12 this part of the tax code.

13 You may continue.

14 MR. GLEISSNER: Thank you.

15 BY MR. GLEISSNER:

16 Q All right. So now as I understand your testimony,
17 your testimony is that you hired Mr. Bagnell to
18 bring a lawsuit against City Financial?

19 A That is original, yes.

20 Q And you brought -- you wanted Mr. Bagnell to bring
21 that lawsuit against City Financial because they
22 issued a 1099-C -- well, issued two 1099-C's to
23 you?

24 A Correct.

25 Q Okay. All right. And you gave Mr. Bagnell all of

1 the documents relating to the 1099-C that they
2 issued to you?

3 A To the two accounts that relate to the 1099-C.

4 Q Okay. So you gave all that information to him?

5 A Yes.

6 Q All right. And one of those 1099-C's was for
7 \$7,243?

8 A Best of my memory, yes, sir.

9 Q And one of them was for \$1,200?

10 A No, sir. That \$1,200 one -- let's say the \$7,200
11 is number one and the other one, the \$1,200 is
12 number two, okay?

13 Q Okay.

14 A Account number two, after I received the 1099-C for
15 that account saying I had a balance due, you know,
16 I went and had Consumer Credit Counseling to give
17 me copies of all the checks paid, because I believe
18 I paid that account in full, which I -- when I
19 received all the canceled checks and added them up
20 to determine that I had paid that account in full,
21 not only had I paid it in full, I overpaid it by
22 \$1,200. That is the \$1,200 I'm talking about.

23 Q Oh, so it is not a 1099-C for \$1,200 --

24 A It is an overpayment of \$1,200, which they would
25 not give back to me.

1 Q Okay. And --

2 A Subsequently I did receive a 1099-C, which a
3 nonpayment of debt, then they posted it against my
4 credit report that I, you know, defaulted on
5 payment of a debt, when in actuality I had overpaid
6 them by \$1,200.

7 And all those canceled checks that prove that
8 is in the files that Mr. Bagnell has that he has
9 not returned to me.

10 Q They are also in the files of Consumer Credit
11 Finance?

12 A Somewhere. They had -- remember, the banks had
13 quit -- now quit doing checks. I mean, they
14 destroyed their records. This is what, five years,
15 over five years since I requested copies of those
16 checks.

17 Q So --

18 A So they have been shredded.

19 Q So you were going to have Mr. Bagnell bring a
20 lawsuit against City Financial because, one, they
21 issued a 1099-C --

22 A Seven thousand --

23 Q -- for seven thousand --

24 A 243.

25 Q -- some dollars. And you overpaid them \$1,200?

1 A Then subsequently got reported on my credit for
2 nonpayment of debt. Defaulted on payment of a
3 debt, when in actuality I overpaid them \$1,200.

4 Q But if in fact it was appropriate for them to issue
5 the 1099-C for \$7,243 --

6 A No, it was not. I had in the files signed by the
7 manager of City Financial on Knox Abbott Drive that
8 my account was paid in full. I had a balance of
9 zero. I had letters in that file attesting to
10 that. I had the handwritten receipt showing a zero
11 balance. They gave me my copies of the note -- I
12 say the note. It had on it stamped paid in full.
13 All of this I gave to Mr. Bagnell. I still got a
14 1099-C from them, from City Financial, for \$7,243.
15 I might be off a few bucks, but it is \$7,200 plus.

16 Q Now, did Mr. Bagnell tell you about the possibility
17 of filing an IRS Form 4598 to contest the 1099-C?

18 A No, he did not.

19 Q He didn't. Do you know about filing an IRS Form
20 4598 that contests a 1099-C?

21 A I do now.

22 Q You do now?

23 A Not then.

24 Q Not then.

25 A Not --

1 Q When did you -- when did the 1099-C get issued?

2 A 2005.

3 Q And when did you find out about the Form 4598?

4 A 2008.

5 Q And did you amend your 2005 tax returns in 2008
6 when you found out about the Form 4598?

7 A No, three years of being able to amend. I found
8 out after the fact, so I was not able to amend.

9 Q Okay. The 2005 tax return would have gotten filed
10 in 2006, right?

11 A April 15th. By April 15th, 2006.

12 Q And you found out about the Form 4598 in 2008?

13 A Yes. The end of 2008, yes.

14 Q And that is within three years of your filing --

15 A Well, that is true. I did not -- I did not file
16 the amended return. But I thought the filing date
17 had passed, so I did not file the amended return.

18 No one told me I should. I thought -- I just
19 learned about it. I'm just learning. I went and
20 learned a whole bunch after all this.

21 Q Okay. All right. So now let's go to the credit.

22 When did you turn this material over to Mr.

23 Bagnell?

24 A It was prior to May 17, 2006, because that is when
25 we signed the contract. He had it for a month, six

1 weeks prior to signing the contract.

2 Q So Mr. Bagnell had everything May of 2006?

3 A That's correct.

4 Q Okay. Now, when did you get -- when did you
5 refinance your house?

6 A I did not refinance the house. I bought -- my
7 father passed away. The estate -- I bought --
8 tried to buy my father's house where I grew up.
9 And that was probably -- I don't remember. I'm
10 going to say two years later.

11 Q 2008?

12 A I'm not going to attest to that because I just --
13 it was after that is all I can tell you.

14 Q It was after May 17th, 2006?

15 A Yes. I don't remember the exact date. I
16 remember --

17 Q So Mr. Bagnell wouldn't have the documents relating
18 to the impact -- the impact resulting from the
19 credit report, right?

20 A Oh, for that transaction?

21 Q Right.

22 A Yes, he did.

23 Q Okay. So --

24 A That is in the file. In other words, he and I sat
25 down and we listed out what it cost me because of

1 the second City Financial claim on my credit
2 report, which caused me to not take advantage of
3 all the special deals going on at that time. Yes,
4 he was very much aware of it. He sat there with me
5 and helped calculate the amount in his office. And
6 all that is in those files. All those notes are in
7 those files.

8 Q Okay. And when did you report Mr. Bagnell to the
9 South Carolina Bar?

10 A I don't have the date. It was right before I filed
11 the complaint against him with the grievance
12 committee. Whatever that date is, it is two or
13 three months prior to that.

14 Q Do you know a year or?

15 A I don't have that right in front of me, no, sir.
16 It don't have -- it is in the file. I just don't
17 have that date. I'm not going to say a date and
18 be -- say I'm wrong. But it is all in the record
19 somewhere.

20 Q Did you -- okay. So was Mr. Bagnell, was he
21 charged with suing the credit reporting agencies?

22 A Did I ask him to?

23 Q Or was he just going to sue City Financial?

24 A City Financial.

25 Q Just City Financial?

1 A And that would have cleared up the record on the
2 credit reports.

3 Q If he was successful?

4 A If he was successful. And he would have been.

5 Q But you never asked Mr. Bagnell to actually contact
6 the credit reporting agencies, is that right?

7 A I never specifically said, please go sue them, no,
8 I did not.

9 Q Did you ever contact the credit reporting
10 agencies?

11 A I contacted them by telephone on several occasions.
12 They just would not get City Financial to take it
13 off -- get City Financial to take it off. You
14 know, that was their response.

15 Q And when did you contact them?

16 A Right when I first got hold of him. That is why I
17 kept going to City Financial trying to get them to
18 amend -- give me something in writing to get it
19 off. That led to the lawsuit.

20 Q Okay. So this is in 2007 that you were contacting
21 them?

22 A Prior to that.

23 Q Okay. So even in 2006?

24 A Yes. Prior to that. It is all documented in the
25 file. They have a phone log in that file.

1 Q Is your current report incorrect today? Are they
2 still incorrect?

3 A That City Financial one, number two is still on my
4 report as far as I know.

5 Q Okay. After Mr. Bagnell refused to assist you, did
6 you hire somebody else to bring --

7 A No, I did not, because I had signed a contract with
8 Mr. Bagnell and that is who I was working with. He
9 never released me from that contract.

10 Q So you believe that your signing on a contract with
11 one lawyer prevents you from engaging another
12 lawyer?

13 A Experience that I have seen and been a -- and
14 witnessed, when signed with one lawyer who did not
15 do anything, they went to another lawyer, but that
16 person had to pay both lawyers. That happened to
17 my sister-in-law.

18 Q And have you ever brought an action under the Fair
19 Credit Reporting Act?

20 A No, sir. This is the first lawsuit I ever engaged
21 in.

22 Q Do you have any proof that you were denied credit
23 because of the alleged actions of City Financial?

24 A Not denied credit. I had to -- I was denied the
25 special deals with the special packages going on

1 and had to pay higher interest rates, specifically
2 in buying my dad's house.

3 Q You don't have any documentation for that?

4 A In that file.

5 Q Okay. But that happened after May 17th, 2006?

6 A Yes. When I bought my father's house, yes.

7 Q But I thought all the documents that Mr. Bagnell
8 had were before May 17th, 2006.

9 A I kept adding to them. I kept bringing them to
10 him.

11 Q And you didn't keep copies of anything?

12 A Not of that, no.

13 Q And you don't have an expert to support this
14 action, right?

15 A An individual?

16 Q An expert witness to support the allegations?

17 A No, sir. I don't have -- you have to define expert
18 for me. What do you mean?

19 Q Somebody to testify as it relates to the
20 malpractice that occurred in this action, somebody
21 to say that Mr. Bagnell's actions fell below the
22 standard of care, somebody to say that maybe that
23 this is the proximate cause of the injuries,
24 something like that?

25 MR. TRUSLOW: Excuse me, if I can, Your Honor.

1 That would be irrelevant. Liability has already
2 been determined.

3 THE COURT: Yes, sir, he's correct. The
4 objection is sustained.

5 MR. GLEISSNER: Your Honor, if I could just
6 briefly be heard. I agreed that liability has been
7 established, but proximate cause of damages I think
8 I can get into that at a damages hearing.

9 THE COURT: What do you want to ask him?

10 MR. GLEISSNER: I just wanted to know if he
11 had an expert.

12 THE COURT: An expert, but you have got to
13 rephrase your question. An expert to do what?

14 MR. GLEISSNER: An expert to testify on
15 proximate cause of your damages.

16 THE COURT: All right. I'll allow it.

17 A All I know, my damages with the money I paid out of
18 my pocket was derived from what we have just been
19 discussing. Was somebody there with me at the
20 time? The names of the people I talked to are in
21 that file.

22 Q Okay. So do we have a monetary amount of
23 additional closing costs that you were required to
24 pay?

25 A Total estimation. I'm not going to say it is

1 exact, but it is in the file. It was close to --
2 for the whole 30 years, the interest, the higher
3 interest rate, the mortgage insurance premium, the
4 closing costs, the other sundry things going along
5 with that, close to \$28, \$30 thousand on that one
6 item.

7 And, again, that is listed out in the file
8 that Mr. Bagnell has. We did that in his office.

9 THE COURT: The cause of action that Mr.
10 Bagnell was supposed to bring in the City
11 Financial, do you know whether or not that cause of
12 action would entitle you to recover treble damages?

13 A Yes.

14 Q Do you know whether or not a court would have
15 awarded treble damages?

16 A Yes, sir. The statute, I understand from -- again,
17 it is in that file -- Consumer Finance, state
18 agency, one of the consumer analysts, I think that
19 is their titles, so stated in a letter to me.

20 Q Okay. So no judge said anything?

21 A No. No, sir, but they -- no, sir. That was --
22 that was supposedly the law.

23 MR. GLEISSNER: Your Honor, I don't have
24 anything further.

25 MR. TRUSLOW: I am mindful of the time. If

1 Your Honor has some questions or if you want me to
2 go over --

3 THE COURT: What I'd like, if you can get me
4 something outlining -- I have got the \$28 to \$30
5 thousand for the closing account, then there was --
6 I think he testified earlier that there was an
7 \$80,000 -- or if you can get me something showing
8 me exactly how he is coming up with that number. I
9 think we said \$80,000 earlier plus \$28 or \$30
10 thousand if I'm remembering it correctly?

11 MR. TRUSLOW: I think we can -- I think I can
12 help you now, and if we need to do something else
13 we will.

14 THE COURT: Okay. Because this was slotted
15 for 15 minutes and we have been going for about an
16 hour, over an hour.

17 MR. TRUSLOW: I'm so sorry. I thought we were
18 going to just breeze right through. I have a
19 couple of things, if I can now, Your Honor.

20 THE COURT: Okay. I am probably going to
21 leave in about five minutes. Go.

22 MR. TRUSLOW: All right, I'll go fast. That
23 will be easier.

24 REDIRECT EXAMINATION

25 BY MR. TRUSLOW:

1 Q As relates to treble damages, before you ever went
2 to Mr. Bagnell, did you go to the State Consumer
3 Credit Agency to try to get some help?

4 A State Consumer Credit -- Consumer Finance Agency.

5 Q And did they provide you with --

6 A Consumer Affairs Agency, excuse me.

7 Q And did they provide you with -- did they review
8 everything and attempt to deal with City Financial?

9 A They certainly did.

10 Q And then did they give you a letter telling you
11 that they thought you were entitled to punitive --
12 to treble damages and to give that to your lawyer?

13 A They recommended I hire a lawyer to go after the
14 City Financial.

15 Q As it relates to the tax code, did this -- this
16 occurred before December 31st, 2008, is that
17 correct?

18 A Yes.

19 Q Just for the record. All right. Now, regarding an
20 expert, since Mr. Bagnell has all of your records,
21 how could you get an expert?

22 A I didn't need an expert. I had all the
23 documentation there.

24 Q All right. And he had it, and he won't return it?

25 A He's got it.

1 Q Now, the question was asked to you about why didn't
2 you just terminate your contract in say 2008 or
3 whenever Mr. Bagnell wasn't -- when you didn't feel
4 comfortable. Did your fee agreement provide that
5 if you terminated the agreement before it was
6 concluded that you had to pay an attorney's fee to
7 Mr. Bagnell?

8 A Correct.

9 Q All right. For your damages, you said you had I
10 think -- we had \$80 and then we had \$100 thousand.

11 A Clear the record up. At the time I divorced I owed
12 \$80,000. He asked me about going into, you know,
13 bankruptcy. I refused to go into bankruptcy. I
14 paid back the whole \$80,000 that I owed at that
15 point in time. That is why this is so important to
16 me. I did everything I was supposed to do. I
17 could have gone in bankruptcy and I wouldn't have
18 this problem right now and I would be \$80,000 more
19 in my pocket. I chose to pay back my bills.

20 Q Now, at the time were -- on your credit cards
21 did -- were you paying 24 percent?

22 A Yes, sir.

23 Q And you wanted to get some -- you wanted to get
24 below 24 percent?

25 A I had an offer to get it to 11.99. Bank of

1 America, they did the credit report or, you know,
2 ran the credit report. The number two City
3 Financial failure to pay debt was on my credit
4 report and I was denied.

5 Q So one last thing. You have already been to the
6 State of South Carolina and they provided you with
7 a letter and recommended you get an attorney and
8 that you were entitled to treble damages based on
9 their investigation?

10 A That is correct.

11 Q Then you went to Mr. Bagnell, provided him with all
12 your documentation, and he confirmed the same
13 thing?

14 A That's correct.

15 Q But you had a hundred thousand dollars of damages,
16 and that included the extra interest rate you had
17 to pay at 24 percent on credit cards, your son for
18 his college, because they put you in a higher tax
19 bracket?

20 A Right.

21 THE COURT: How many is that?

22 THE WITNESS: I think it was tax credit at
23 that time I think was a thousand dollars.

24 THE COURT: Per year?

25 THE WITNESS: Per year.

1 THE COURT: How many years?

2 THE WITNESS: That -- well, what I did the
3 next year, mama took it. I paid it, but I got her
4 to claim it so she could get it with my taxes. It
5 put me in such a higher tax bracket.

6 THE COURT: You can continue.

7 BY MR. TRUSLOW:

8 Q And you had to pay a higher interest rate on
9 mortgages and closing costs?

10 A That's correct.

11 Q And taxes?

12 A Tax.

13 Q And all -- you provided all this to Mr. Bagnell?

14 A Yes.

15 Q And he confirmed that you had at least a hundred
16 thousand in actual losses?

17 A When I bought the house I took that document
18 saying, Gil, it cost me this much because this
19 inaction. And he agreed. And he went down the
20 list.

21 Q And one last thing, and then I think I'm done.
22 After he told you that he -- looked at all the
23 documentation and verified that you had, including
24 the future losses that you had there, a hundred
25 thousand dollars, did he keep your records? And is

1 that the reason you can't get an expert because you
2 don't have the record even now?

3 A I don't have any records, any documentation that I
4 gave him.

5 Q All right.

6 MR. TRUSLOW: I think that is all. Thank you.
7 And thank you for giving me five minutes.

8 THE COURT: I am going to put this under
9 advisement. And I asked earlier if you have
10 anything to supplement the file. I'll leave the
11 record open so if you all need to supplement the
12 file with -- I'll give you two weeks to do that,
13 anything to supplement the file regarding the
14 damages or if your client turns over the file or --
15 but I'll keep the record open and take it under
16 advisement.

17 I guess, Mr. Truslow, what I'm looking for is
18 something that breaks down as to -- I mean, he has
19 kind of thrown around a lot of numbers today and he
20 said there are some credit cards that were
21 24 percent that he couldn't get reduced to 11
22 percent, but I don't know how -- I know he said
23 Bank of America, but it appears there may be more
24 than one credit card?

25 THE WITNESS: That's -- yes.

1 MR. TRUSLOW: Your Honor, can I ask -- I'm
2 looking -- one last question, if I could, if I can
3 ask it.

4 BY MR. TRUSLOW:

5 Q A question was asked to you about when you learned
6 that perhaps you could refile on your tax return
7 and you mentioned a date of 2008. Do you recall
8 that?

9 A Yes. Yes.

10 Q Didn't you get a letter from Mr. Eason on March the
11 12th, 2010 indicating that you should go back and
12 file after your statute had already run?

13 A That's right.

14 Q And by then was it too late?

15 A Too late. And that was an interesting letter from
16 Mr. Eason too, by the way.

17 Q All right. So he wasn't able to get the records
18 for you either?

19 A No, sir.

20 Q And he confirmed that in a letter?

21 A He promised me that he would get them, that he
22 contacted Mr. Bagnell and they would be
23 forthcoming.

24 Q And he never was successful either in getting the
25 records from Mr. Bagnell?

1 A No.

2 Q All right. Thank you.

3 THE COURT: Yes, if you can get me something
4 just outlining --

5 MR. TRUSLOW: Damages.

6 THE COURT: -- the damages. Because I know it
7 was scheduled for 15 minutes and y'all are trying
8 to get a lot in in a little bit of time.

9 MR. TRUSLOW: I understand.

10 THE COURT: And if I can just get something as
11 to like the tax credit for the son. And he said
12 \$7,200 on the 1099-C and \$1,200 on another 1099-C.
13 If you can just get me something in the next --

14 MR. TRUSLOW: Now that we have got Rick
15 involved, maybe we can reason together and get
16 something down. I doubt it, but we'll try.

17 THE COURT: Okay. All right.

18 MR. TRUSLOW: Thank you.

19 MR. GLEISSNER: By November 14th, Your Honor?

20 THE COURT: Sir?

21 MR. GLEISSNER: You said two weeks. Is that
22 November 14th?

23 THE COURT: Yes. If you get it to me by the
24 18th.

25 MR. GLEISSNER: Oh, the 18th. Even better.

1 THE COURT: Yes, the 18th is fine, because I
2 probably won't be able to look at it until we have
3 the chambers week the next week. So as long as I
4 have it before that week.

5 Sir, you may step down. I'm sorry. Thank
6 you.

7 THE WITNESS: Thank you, ma'am.

8 (Witness steps down.)

9 (WHEREUPON, the proceedings were concluded.)

10
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25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 31st day of OCTOBER, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 9, 2012

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No: 2011-CP-40-1998

RECEIVED

AUG 16 2012

SC Court of Appeals

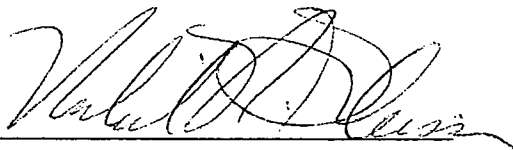
Gilbert S. Bagnell and Bagnell and Eason, LLC Appellants.

v.

Jones G. Herring Respondent.

NOTICE OF APPEAL

Defendants/Appellant files this Notice of Appeal in regard to the attached Orders Defendants received or about December 5, 2011 and July 23, 2012. The attached Orders appear to be finalized versions of the rulings of Judge DeAndrea G. Benjamin in regard to Plaintiff's Motion for Default Judgment and Defendants' Motion to Reconsider.



Richard R. Gleissner, Esquire
Gleissner Law Firm, LLC
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 787-0505
Attorneys for Appellants

Columbia, South Carolina
August 15, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No: 2011-CP-40-1998

Gilbert S. Bagnell and Bagnell and Eason, LLC Appellants,

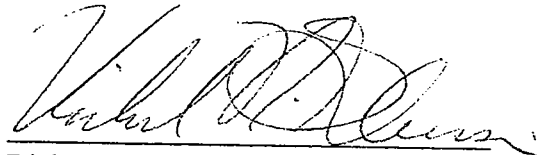
v.

Jones G. Herring Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on August 15, 2012, addressed to its attorney of record as follows:

Douglas N. Truslow, Esquire
Truslow and Truslow
P.O. Box 1465
Columbia, SC 29202



Richard R. Gleissner
Gleissner Law Firm, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 787-0505
Attorneys for the Appellants

Dated: August 15, 2012

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4001998

Jones G Herring

Gilbert S Bagnell

PLAINTIFF(S)

Bagnell and Eason LLC

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 29th day of November, 2011 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truslow

Richard R. Gleissner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

ORDER

RICHLAND COURT
FILED
2011 NOV 29 AM 11:33
JEANETTE H. BRIDE
C.C.P. & G.S.

PRESIDING JUDGE:

DeAndrea Benjamin

DATE OF HEARING:

October 31, 2011

PLAINTIFF'S COUNSEL:

Douglas N. Truslow, Esquire

DEFENDANTS' COUNSEL:

Richard Gleissner, Esquire

THIS MATTER CAME BEFORE THE COURT for a damages hearing. From the Clerk of Court's files, it appears 1) Defendants are in default for the failure to respond to Plaintiff's Complaint, although they were duly and properly served and 2) Defendants received proper notices for the within damages hearing, but they have failed to appear.^{1, 2}

At the call of the case the Court accepted testimony and evidence relative to actual damages suffered by Plaintiff that were caused by Defendants, as well as testimony and evidence relative to punitive damages.

Based on the testimony, evidence, the Clerk of Court's file and matters of record, the Court makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

¹ At the call of the case, Mr. Gleissner indicated that he had been requested by Defendant Bagnell (within hours before the time set for the hearing) to appear on Defendants' behalf. No excuse for Defendants' failure to appear was submitted, no request for a continuance was made and Defendants' counsel indicated that he was ready to proceed. Furthermore, Defendants did not contest that they were in default and that the only issue to be addressed was an award of actual and punitive damages. Plaintiff was unaware of the circumstances surrounding Mr. Gleissner's involvement until that time and had expected an abbreviated hearing to address damages.

² Mr. Gleissner appears to have performed capably for Defendants, under challenging circumstances.

- 1) This Court has both subject matter and personal jurisdiction, and venue is proper in Richland County.
- 2) Defendants are in default as to liability. Thus, Defendants have been found to have been and are liable to Plaintiff for, *inter alia*, gross negligence, fraud and misrepresentation. The essential issue before the Court relates to an assessment of actual and punitive damages.
- 3) Plaintiff's claim for damages is set forth in detail in his testimony, as supplemented by his affidavit with attachments that are of record.³
- 4) To induce Plaintiff to utilize his services in a case against a consumer credit lender (in which Plaintiff alleged that he had damages exceeding \$100,000.00), Defendant Bagnell ("Bagnell") represented to Plaintiff that he had considerable experience handling cases of the type Plaintiff possessed. He (Bagnell) then represented that he had recently handled a case with similar attributes and had obtained a very financially rewarding settlement. Bagnell invited Plaintiff to verify the terms of the case settlement "on line" (which Plaintiff apparently did). Bagnell also advised Plaintiff that he (Bagnell) would be pursuing a class action lawsuit on Plaintiff's behalf, as he had substantial experience with same. In addition, Bagnell represented to Plaintiff that he (Bagnell) was going to, with their prior/existing approval, associate a separate, well respected law firm (McGowan, Hood & Felder, LLC – hereinafter, "McGowan Hood") to assist him with the case. Further, Bagnell told Plaintiff that he would be working diligently on the case, that it would take considerable time and would be figuratively akin to an iceberg or duck paddling on a pond – with much going on that could not readily be seen on the surface. Bagnell represented to Plaintiff that he could expect to receive treble damages, interest and legal fees, plus other unspecified damages as lead Plaintiff of the Class Action lawsuit that he would be filing on Plaintiff's behalf. In reliance on Bagnell's representations, Plaintiff expended considerable time working on the case.

³ At the conclusion of the presentation of testimony, and given Mr. Gleissner's late appearance, Plaintiff was requested and allowed, without objection, to submit an affidavit (by November 18, 2011) detailing his damages, rather than reconvening a hearing to accept further testimony from Plaintiff relative to damages. Plaintiff's affidavit has been duly and timely submitted and is of record. Though not requested, Bagnell has nonetheless presented an affidavit, computer disc and memorandum (out of time), which have been given appropriate consideration.

- 5) In conjunction with Defendants' representation of Plaintiff, Bagnell requested that Plaintiff turn over to him all his documentation proving his loss of \$100,000.00; that he (Bagnell) would make copies and return the originals to Plaintiff. Plaintiff turned over to Bagnell all his records in reliance on Defendants' representations, but Defendants have never returned to Plaintiff all of his records as of November 18, 2011.
- 6) The parties entered into a written fee agreement on May 17, 2006. The fee agreement indicated that McGowan Hood was associated on Plaintiff's case in conjunction with Defendants herein. Bagnell advised Plaintiff, however, that he (Bagnell) was to be Plaintiff's sole contact and not to bother McGowan Hood.
- 7) Thereafter, Bagnell told Plaintiff that, as a result of having received a fee that exceeded ten million dollars (\$10,000,000.00) on another, similar type of case, he (Bagnell) was going on a much deserved vacation(s) to Europe but that he would start work on the case upon his return in the next month or so and for Plaintiff to just be patient – that he (Bagnell) would notify Plaintiff when anything of substance occurred or needed to be done by him (Plaintiff).
- 8) When a considerable period of time went by without Plaintiff hearing from Defendants, he contacted Bagnell and was assured by Bagnell that he had filed a class action lawsuit on Plaintiff's behalf, that work was progressing slowly but positively and that Plaintiff could expect to obtain a satisfactory verdict or settlement. Bagnell reiterated that Plaintiff should be patient and he, Bagnell, would be in touch with Plaintiff as necessary.
- 9) Plaintiff had little, if any, experience in such matters, and followed his attorney's advice.
- 10) As further time went on, Plaintiff attempted to meet with Bagnell in order to be updated, but Bagnell invented excuse after excuse for not meeting.
- 11) As a consequence of Bagnell not meeting with him, Plaintiff enlisted the assistance of an attorney acquaintance in an attempt to get an update from Defendants. However, Defendants still would not provide any update, nor would they return to Plaintiff any of his documentation necessary to prove a case against the lender.

- 12) When all efforts to obtain from Defendants copies of his files detailing his case and damages against the consumer credit lender were unsuccessful, Plaintiff contacted McGowan Hood because they were ostensibly associated on the case with Defendants. At that time, Plaintiff discovered (was told by McGowan Hood representatives) that, although McGowan Hood had previously been associated with Defendants on a prior, successful Class Action case, they had specifically (in writing) declined to be associated with him further, on this case in particular.⁴
- 13) At that point, Plaintiff enlisted the services of an attorney to assist in obtaining his file from Defendants so that he could pursue his case with other counsel. He then found out that no lawsuit had ever been filed by Defendants; he was more concerned that his statute of limitations was about to expire and he could not otherwise pursue a case without his files. Plaintiff thereafter wrote many Certified Mail letters to Defendants in attempts to get his files, which letters were essentially ignored.
- 14) When Defendants were unwilling to communicate, much less cooperate or return his records that would be needed to pursue a case against the consumer credit lender who had harmed him, Plaintiff sought the assistance of the South Carolina Bar Association. Defendants and Bagnell in particular still would not cooperate or return Plaintiff's files and the statute of limitations passed on Plaintiff's claims against the lender. Plaintiff filed with the South Carolina Bar a formal complaint against Bagnell. Subsequently, Bagnell was suspended from the practice of law for matters unrelated to Plaintiff. Bagnell was thereafter disbarred from the practice of law relating specifically to this matter and because he refused to cooperate with the South Carolina Bar's investigation (see *In re: Bagnell*, Opinion dated July 18, 2011, Opinion 27008).
- 15) Plaintiff has presented a clear case, without contradiction, reflecting that he would have obtained a verdict in excess of one hundred thousand dollars (\$100,000.00) plus other damages, interest and legal fees against the lender referenced herein, but for Defendants' misconduct and gross negligence in, *inter alia*, failing to file a lawsuit within the statute of limitations and failing to provide Plaintiff with his files so that he

⁴ Plaintiff is and was completely unaware of the circumstances that led to McGowan Hood declining to be involved in subsequent litigation with Defendants.

could initiate a lawsuit. Plaintiff has presented detailed information reflecting that he sustained an additional loss of at least \$154,306.77 that has been caused by Defendants' misconduct. Therefore, I find and conclude that Plaintiff has sustained actual damages of \$254,306.77, and he is to be awarded that sum against Defendants, jointly and severally.

- 16) Plaintiff has established by clear and convincing evidence that Defendants have committed not only legal malpractice but also fraud and misrepresentation as well. Simply stated, Defendants' acts have been both gross and egregious. Accordingly, punitive damages are appropriate against Defendants jointly and severally. In that regard, evidence has been presented reflecting that Defendants and Bagnell in particular had been very financially successful legal practitioners. As well, the evidence established that Bagnell had, in 2005 or 2006, reported to Plaintiff that he (Bagnell) and his law firm had realized a fee in excess of thirty million dollars (\$30,000,000.00) in another case. Upon receiving that fee, Defendants essentially abandoned Plaintiff, keeping Plaintiff's records and refusing to return them to Plaintiff under circumstances that reflect they (and Bagnell in particular) were acting intentionally and with gross and deliberate indifference to Plaintiff's interests. In conjunction with his suspension from the practice of law, Bagnell then left the State of South Carolina to live in New York. Accordingly, I find and conclude that punitive damages are appropriate and that the sum of two hundred and fifty thousand dollars (\$250,000.00) is both reasonable and appropriate under the circumstances.⁵ From the evidence, it appears that Defendants are jointly and severally capable of paying that sum of punitive damages and that it is reasonable and is not designed to bankrupt Defendants. Hopefully, the award of punitive damages will act as a deterrent from and against misconduct by others who may be inclined to engage in similar misconduct as Defendants have engaged in in this instance.

⁵ Defendants have neither appeared (except through counsel at the last possible moment), nor have they promptly addressed the issues and the Court's intent is to award punitive damages commensurate with Defendants' wrongdoing, their (assumed) ability to pay, the deterrence value of imposing such damages against one inappropriately engaging in the legal profession, with consideration of punitive damages awarded in other cases in this jurisdiction, the serious, repeated and gross misconduct of Defendants and the relationship between actual damages and punitive damages, among other factors that have been considered and evaluated.

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP401998

Jones G. Herring

Gilbert S. Bagnell and Bagnell and Eason, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. suit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award. Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Defendant's Motion to Reconsider is denied.

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge

Judge Code 2161

Date 07/10/2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 18 day of July, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeanette W. McBride

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No: 2011-CP-40-1998
Court Of Appeals Number: 2012-212744

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SC Court of Appeals

Jones G. Herring,..... Respondent,

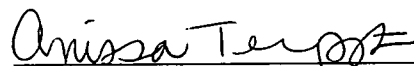
v.

Gilbert S. Bagnell and Bagnell and Eason, LLC,.....Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 6, 2013, addressed to its attorney of record as follows:

Douglas N. Truslow, Esquire
P.O. Box 1465
Columbia, SC 29202



Anissa Terpstra, Paralegal to
Richard R. Gleissner
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for the Appellants

Dated: November 6, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No: 2011-CP-40-1998
Court of Appeals No.: 2012-212744

Gilbert S. Bagnell and Bagnell and Eason, LLC.....Appellants,

v.

Jones G. Herring.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Richard R. Gleissner, Esquire
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for Appellants

October 15, 2013

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NOV 25 2013

SC Court of Appeals