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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Edgar W. Dickson, Circuit Court Judge

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

Appellate Case No. 2023-001779

Unpublished Opinion
No. 2025-UP-272 (S.C. Ct. App. filed July 30, 2025)

Andrew Pampu; Amanda Pampu; and John Pampu, ... Petitioners-Respondents,

vs.

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

PETITIONERS-RESPONDENTS' APPENDIX (Vol. 1 of 3)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

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

Appellate Case No. 2023-001779

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

vs.

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

RECORD ON APPEAL VOLUME 1 OF 2

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STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

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

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

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

Defendants.

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

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

AND IT IS SO ORDERED.

October ____, 2023

Orangeburg, South Carolina

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



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al
Case Number: 2021CP1001343
Type: Order/Other

IT IS SO ORDERED.

Edgar W. Dickson

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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1001343

John Doe et al
PLAINTIFF(S)

Clawson Fargnoli Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

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

Case Number: 2021CP1001343

Type: Order/Electronic Form 4

So Ordered

s/ Edgar W. Dickson #2153

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

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

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

Defendants.

Case No. 2021-CP-10-01343

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

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

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

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

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

FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

PROCEDURAL BACKGROUND

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

STANDARD OF REVIEW

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

DISCUSSION

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

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

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

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

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

B. Plaintiffs Amanda Pampu and John Pampu lack standing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Plaintiffs' claims are averse to public policy.

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

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

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

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

CONCLUSION

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

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

AND IT IS SO ORDERED.

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



Charleston Common Pleas

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

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

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

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

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

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

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

Defendants.

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

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

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

FACTUAL BACKGROUND

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

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

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

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

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

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

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

Id., ¶ 36.

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

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

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

PROCEDURAL BACKGROUND

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

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

Id., ¶ 83.

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

STANDARD OF REVIEW

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

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

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

DISCUSSION

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

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

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

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

II. Plaintiffs Amanda Pampu and John Pampu lack standing.

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

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

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

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

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

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

Id.

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

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

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

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

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

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

Id.

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

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

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

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

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

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

V. Plaintiffs' claims are adverse to public policy.

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

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

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

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

CONCLUSION

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

AND IT IS SO ORDERED.

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

Orangeburg, South Carolina

June _____, 2022



Charleston Common Pleas

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

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

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

NOTICE

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

MOTION

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

the lack of prejudice to Defendants.

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

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

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

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

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

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

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

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

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

Counsel for Plaintiffs

Beaufort, South Carolina

March 19, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

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

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
710 Boundary St., Unit 1
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Counsel for Plaintiffs

Beaufort, South Carolina

March 19, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

COMPLAINT
(Jury Trial Demanded)

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

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

SUMMARY OF THE CASE

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

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

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

PARTIES

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

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

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

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

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

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

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

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

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

JURISDICTION

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

VENUE

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58. The Settlement Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)

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

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

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

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

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

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

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

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

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

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

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

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

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

89. The Lawyers owed fiduciary duties to the Does.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRIAL BY JURY

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

EXPERT AFFIDAVIT

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

PRAYER FOR RELIEF

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

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

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

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

Counsel for Plaintiffs

Beaufort, South Carolina

March 19, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

AMENDED SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

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

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

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

Counsel for Plaintiffs

Beaufort, South Carolina

April 30, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

**AMENDED COMPLAINT
(Jury Trial Demanded)**

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

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

SUMMARY OF THE CASE

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

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

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

PARTIES

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

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

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

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

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

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

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

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

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

JURISDICTION

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

VENUE

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58. The Settlement Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)

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

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

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

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

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

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

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

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

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

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

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

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

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

89. The Lawyers owed fiduciary duties to the Does.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRIAL BY JURY

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

EXPERT AFFIDAVIT

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

PRAYER FOR RELIEF

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

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

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

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

Counsel for Plaintiffs

Beaufort, South Carolina

April 30, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

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

Defendants.

WASHINGTON,
DISTRICT OF COLUMBIA

)
) SS:
)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. My resume is attached as Exhibit 1.

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

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

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

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

The Affiant further sayeth naught.

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



Justin Dillon, KAISERDILLON PLLC, Affiant

Exhibit 1

JUSTIN DILLON

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

(202) 421-5298
jdillon@kaiserdillon.com

EXPERIENCE

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

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

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

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

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

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

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

Trial Attorney, Attorney General's Honors Program

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

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

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

EDUCATION

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

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

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

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

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

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

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

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

BAR MEMBERSHIP: Commonwealth of Virginia; District of Columbia

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

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

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

Plaintiffs,

v.

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

Defendants.

**NOTICE OF MOTION AND
MOTION TO DISMISS**

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

GROUND FOR MOTION

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully Submitted,

May 9, 2021

/s/ James M. Dedman, IV

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

GALLIVAN, WHITE, & BOYD, P.A.

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Attorneys for Defendants Clawson Fagnoli, LLC,

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

Christina R. Fagnoli, Esq.

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

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

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

Plaintiffs,

v.

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

Defendants.

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

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

GROUND FOR MOTION

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully Submitted,

May 9, 2021

/s/ James M. Dedman, IV

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

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Christina R. Fagnoli, Esq.

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

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

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

Plaintiffs,

v.

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

Defendants.

**NOTICE OF MOTION AND
MOTION TO DISMISS**

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

GROUND FOR MOTION

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

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

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

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

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

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

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

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

CONCLUSION

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

s/ Bruce Wallace

R. Bruce Wallace, SC Bar No. 11653

NEXSEN PRUET, LLC

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Attorneys for Defendants

Barrett R. Brewer and Brewer Law Firm, LLC

May 10, 2021

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

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

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

Plaintiffs,

v.

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

Defendants.

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

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

GROUND FOR MOTION

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

s/ Bruce Wallace

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

May 10, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: [REDACTED]

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

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

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

FACTS

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

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

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

LAW

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

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

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

The Honorable [REDACTED]
13th Judicial Circuit

August __, 2019
Columbia, South Carolina



Pickens Common Pleas

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

Case Number: [REDACTED]

Type: Order/Other

So Ordered

s/ [REDACTED]

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

ACCEPTANCE OF SERVICE

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

Respectfully submitted,

GALLIVAN WHITE & BOYD, P.A.

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

ACCEPTANCE OF SERVICE

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

Defendants.

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

Respectfully submitted,

NEXSEN PRUET, LLC

s/ R. Bruce Wallace
R. Bruce Wallace (SC Bar # 11653)
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Charleston, South Carolina

May 13, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

SECOND AMENDED SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

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

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
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Counsel for Plaintiffs

Beaufort, South Carolina

June 16, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

SUMMARY OF THE CASE

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

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

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

PARTIES

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

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

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

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

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

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

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

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

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

JURISDICTION

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

VENUE

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58. The Settlement Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)

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

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

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

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

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

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

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

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

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

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

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

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

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

89. The Lawyers owed fiduciary duties to the Does.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRIAL BY JURY

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

EXPERT AFFIDAVIT

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

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

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

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

PRAYER FOR RELIEF

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

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

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

Counsel for Plaintiffs

Beaufort, South Carolina

June 16, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

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

Defendants.

WASHINGTON,
DISTRICT OF COLUMBIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. My resume is attached as Exhibit 1.

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

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

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

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

The Affiant further sayeth naught.

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



Justin Dillon, KAISERDILLON PLLC, Affiant

Exhibit 1

JUSTIN DILLON

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

(202) 421-5298
jdillon@kaiserdillon.com

EXPERIENCE

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

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

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

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

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

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

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

Trial Attorney, Attorney General's Honors Program

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

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

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

EDUCATION

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

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

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

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

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

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

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

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

BAR MEMBERSHIP: Commonwealth of Virginia; District of Columbia

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

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

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

Plaintiffs,

v.

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

Defendants.

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

(JURY TRIAL DEMANDED)

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

FOR A FIRST DEFENSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77. Defendants deny the allegations contained in paragraph 77 of the Second Amended Complaint.

78. Defendants deny the allegations contained in paragraph 78 of the Second Amended Complaint.

79. In response to the allegations of paragraph 79 of the Second Amended Complaint, Defendants incorporate their responses to paragraphs 1 through 78 of the Second Amended Complaint as if stated herein verbatim.

80. Defendants admit the allegations contained in paragraph 80 of the Second Amended Complaint.

81. Defendants admit the allegations contained in paragraph 81 of the Second Amended Complaint.

82. The allegations contained in paragraph 82 of the Second Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 82 of the Second Amended Complaint to the extent that they are contrary to the statutory and/or common law of the State of South Carolina.

83. Defendants deny the allegations contained in paragraph 83 of the Second Amended Complaint.

84. Defendants deny the allegations contained in paragraph 84 of the Second Amended Complaint.

85. Defendants deny the allegations contained in paragraph 85 of the Second Amended Complaint.

86. Defendants deny the allegations contained in paragraph 86 of the Second Amended Complaint.

87. Defendants deny the allegations contained in paragraph 87 of the Second Amended Complaint.

88. Defendants deny the allegations contained in paragraph 88 of the Second Amended Complaint.³

87. In response to the allegations of paragraph 87 of the Second Amended Complaint, Defendants incorporate their responses to paragraphs 1 through 88 of the Second Amended Complaint as if stated herein verbatim.⁴

88. Defendants admit the allegations contained in paragraph 88 of the Second Amended Complaint.⁵

89. The allegations contained in paragraph 89 of the Second Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 89 of the Second Amended Complaint to the extent that they are contrary to the statutory and/or common law of the State of South Carolina.

³ Defendants note that the paragraph numbering in the Second Amended Complaint is not sequential beginning on page 18. The numbering beginning on page 18 starts with paragraph 88, followed by paragraph 87 and another paragraph 88. Defendants' paragraph numbering on this page mirrors the paragraph numbering in the Second Amended Complaint in an attempt to avoid further confusion.

⁴ As noted above, this is the second paragraph 87 in the Second Amended Complaint.

⁵ As noted above, this is the second paragraph 88 in the Second Amended Complaint.

90. The allegations contained in paragraph 90 of the Second Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 90 of the Second Amended Complaint to the extent that they are contrary to the statutory and/or common law of the State of South Carolina.

91. Defendants deny the allegations contained in paragraph 91 of the Second Amended Complaint.

92. Defendants deny the allegations contained in paragraph 92 of the Second Amended Complaint.

93. Defendants deny the allegations contained in paragraph 93 of the Second Amended Complaint.

94. Defendants deny the allegations contained in paragraph 94 of the Second Amended Complaint.

95. Defendants deny the allegations contained in paragraph 95 of the Second Amended Complaint.

96. Defendants deny the allegations contained in paragraph 96 of the Second Amended Complaint.

97. In response to the allegations of paragraph 97 of the Second Amended Complaint, Defendants incorporate their responses to paragraphs 1 through 96 of the Second Amended Complaint as if stated herein verbatim.

98. Defendants admit the allegations contained in paragraph 98 of the Second Amended Complaint.

99. Defendants deny the allegations contained in paragraph 99 of the Second Amended Complaint.

100. Defendants deny the allegations contained in paragraph 100 of the Second Amended Complaint.

101. Defendants deny the allegations contained in paragraph 101 of the Second Amended Complaint, including the subparagraph beginning with “WHEREFORE [...].”

102. The allegations contained in paragraph 102 of the Second Amended Complaint contain a jury demand and do not require a response from Defendants. To the extent that a response is required, Defendants admit that the Does appear to have requested a jury trial in their Second Amended Complaint. Defendants note that they, too, also request a jury trial.

103. Defendants deny the allegations contained in paragraph 103 of the Second Amended Complaint.

104. Defendants deny the allegations contained in footnote 1 of the Second Amended Complaint. As noted above, Defendants contend that Plaintiffs have waived their purported right to proceed using pseudonyms.

105. Defendants deny the allegations set forth in the Prayer for Relief of the Complaint.

106. To the extent that Defendants have not addressed any of the allegations of the Complaint, Defendants deny them, each and every, all and singular.

FOR A SECOND DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Pursuant South Carolina Code § 15-36-100, Plaintiffs' claims should be dismissed because they failed to timely provide the required expert witness affidavit. Specifically, when Plaintiffs filed their original Complaint against Defendants, they failed to contemporaneously file an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim on the available evidence at the time of the filing of the affidavit as required by South Carolina Code § 15-36-100(B). Accordingly, Plaintiffs' claims against Defendants should be dismissed pursuant to South Carolina Code § 15-36-100(C)(1).

3. To the extent that Plaintiffs have now filed a tardy affidavit following the filing of their original Complaint, Plaintiffs' claims should be dismissed pursuant to South Carolina Code § 15-36-100 because the exceptions to contemporaneously filing an expert witness affidavit found in § 15-36-100(C)(1) do not apply based on the facts and circumstances of this matter. Specifically, Plaintiffs did not show that the statute of limitations would expire on the claims in the original Complaint within ten (10) days of filing, and Plaintiffs did not allege that an affidavit of an expert could not be prepared due to time constraints. Plaintiff's attempts to correct or otherwise address these issues in their Second Amended Complaint fail as a matter of law. Therefore, Plaintiffs' claims against Defendants should be dismissed.

4. The claims set forth in Plaintiffs' Second Amended Complaint should be dismissed pursuant to South Carolina Code § 15-36-100(A)(3) due to the insufficiency of the credentials of Plaintiffs' purported expert, Justin Dillon. Although Mr. Dillon purports to offer opinions about the actions of South Carolina attorneys involved in litigation pending in federal court in South Carolina, Mr. Dillon is not, and apparently has never been, licensed to practice in the state and federal courts of South Carolina or the U.S. District Court for the Fourth Circuit Court of Appeals. Further, Mr. Dillon makes no claim in his affidavit that he has ever been

specially admitted to practice *pro hac vice* in any state or federal court in South Carolina. Further, in his affidavit, Mr. Dillon makes no claim of familiarity with the nature of federal practice in the U.S. District Court for the District of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina (including, but not limited to, the South Carolina state ADR Rules). Finally, Mr. Dillon notes in his affidavit that he has reviewed only scant materials related to the underlying federal and state litigation at issue (indicating that his review of materials is insufficient to render any opinions in this matter). As such, Mr. Dillon's credentials and affidavit are insufficient. For the same reasons, pursuant to South Carolina Code § 15-36-100(E), Mr. Dillon's affidavit is defective, and as such, Plaintiffs' claims set forth in the Second Amended Complaint should be dismissed.

FOR A THIRD DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted because the gravamen of Plaintiffs' Second Amended Complaint is simply post-mediation "buyer's remorse." Plaintiff John Doe participated in a formal mediation in the federal litigation referenced in the Second Amended Complaint and personally signed a memorandum of settlement agreeing to the terms of a settlement to which he now objects. As such, Plaintiffs fail to state a claim upon which relief can be granted.

FOR A FOURTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Plaintiffs' claims are barred by the doctrines waiver, laches, and unclean hands.

FOR A FIFTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. To the extent that Plaintiffs recover from Defendants in this matter, Defendants are entitled to a credit and/or set-off to the extent Plaintiffs have recovered proceeds from other sources.

FOR A SIXTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert the affirmative defense of the statutory cap for any award of punitive damages found at South Carolina Code §§ 15-32-520 and 15-32-530. Defendants assert all protections set forth in South Carolina Code §§ 15-32-520 and 15-32-530 and further assert any and all defenses and limitations to punitive damages, including, but not limited to, any and all additional statutory caps pursuant to South Carolina statutory and case law.

FOR A SEVENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Standing is determined at the time of the filing of a complaint. Based on the facts and circumstances of this matter, Plaintiff Jane Doe Mother and Plaintiff John Doe Father lack standing to pursue the claims asserted in the Complaint. As such, this Court lacks subject matter jurisdiction to hear their claims.

FOR AN EIGHTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Plaintiffs' damages were caused by the actions or omissions of third parties and/or others over whom Defendant has no authority and/or control.

FOR A NINTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Any damages allegedly suffered by Plaintiffs, without admitting same to be true, are due to and caused by the sole acts/omissions or negligence, recklessness, willfulness, wantonness, carelessness and gross negligence of Plaintiffs, and were not caused by Defendants. The negligence of Plaintiffs is a complete bar to Plaintiffs' attempt to recover from Defendants.

3. Alternatively, Plaintiffs' claimed damages, which are denied, should be reduced in accordance with their fault.

FOR A TENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that any injuries or damages sustained by Plaintiffs was due to and caused by Plaintiffs' negligence, carelessness, and/or recklessness ("negligence"), combining, concurring, and contributing with the alleged negligence of Defendants, if any, without which, the Plaintiffs' alleged injuries and damages would not have been incurred or sustained. Should the negligence of Plaintiffs be shown to be greater than that of the Defendants, Plaintiffs are not entitled to any recovery. Should the negligence of Plaintiffs be shown to be less

than that of the Defendants, Plaintiffs' recovery should be reduced by Plaintiffs' percentage of fault.

FOR AN ELEVENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that any alleged injuries or damages sustained by Plaintiffs, which injuries and/or damages are hereby specifically denied, was due to and was the proximate result of the sole negligence and/or recklessness of third persons or parties, for whose conduct Defendants are not liable to the Plaintiffs in any sum whatsoever. Plaintiffs have not suffered any damages caused by the action of Defendants.

FOR A TWELFTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that Plaintiffs' claim for punitive damages violates both the Fourteenth Amendment of the United States and Article I, Section 3 of the South Carolina Constitution in one or more of the following particulars:

- a. that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees;
- b. that, even if a standard governing the award of punitive damages does exist, this standard is void for vagueness; and
- c. that the amount of punitive damages awarded is based upon the wealth of the Defendants in violation of their right to equal protection of the laws.

FOR A THIRTEENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that Plaintiffs' claim for punitive damages is barred by South Carolina Code Ann. §15-78-180.

FOR A FOURTEENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that Plaintiffs' claims are barred by the Statute of Limitations and/or the applicable Statute of Repose.

FOR A FIFTEENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that Plaintiffs failed to mitigate damages, and therefore, all claims asserted by Plaintiffs against Defendants should be either barred or reduced to the extent that Plaintiffs could have taken prompt and reasonable action to avoid the occurrence of the alleged damages.

FOR A SIXTEENTH DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants assert that any damages alleged in Plaintiffs' Second Amended Complaint were caused by the intervening and superseding acts or omissions on the part of

someone other than Defendants, over whom Defendants had no control or right of control, thereby barring or diminishing Plaintiffs' alleged right of recovery.

FOR A SEVENTEENTH DEFENSE

1. Plaintiffs accepted and ratified the settlement of the federal case described in the Complaint, and such ratification bars Plaintiffs' claims.

FOR AN EIGHTEENTH DEFENSE

1. One or more of Plaintiffs' causes of action are duplicative and should be dismissed as a matter of law.

FOR A NINETEENTH DEFENSE

1. Plaintiffs must elect their remedy.

FOR A TWENTIETH DEFENSE

1. Plaintiffs assumed the risks of litigation, such that their claims should be barred or Plaintiffs' claim damages, which are denied, should be reduced in accordance with their fault in assuming the risk.

FOR A TWENTY-THIRD DEFENSE

1. Defendants incorporate herein the allegations of their other defenses which are consistent with this defense.

2. Defendants reserve the right to plead and/or proof any additional affirmative defenses that may become known during the course of discovery investigation. Defendants also avail themselves of, and adopt such other defenses, raised by any other Defendants as may be applicable.

**FOR A TWENTY-FOURTH DEFENSE AND BY WAY OF COUNTERCLAIMS
AGAINST PLAINTIFFS JOHN DOE, JANE DOE MOTHER,
AND JOHN DOE FATHER**

1. Defendants restate and reassert the prior paragraphs to the extent not inconsistent herewith.

PARTIES

2. Counterclaim-Plaintiff Clawson Fagnoli, LLC is a Limited Liability Corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

3. Counterclaim-Plaintiff Samuel R. Clawson, Jr., Esq., is a citizen and resident of Charleston County, South Carolina, and is a lawyer licensed to practice law in South Carolina.

4. Counterclaim-Plaintiff Christina R. Fagnoli, Esq., is a citizen and resident of Charleston County, South Carolina, and is a lawyer licensed to practice law in South Carolina.

5. Upon information and belief, Counterclaim-Defendant John Doe is a citizen and resident of Charleston County, South Carolina.

6. Upon information and belief, Counterclaim-Defendant Jane Doe Mother is a citizen and resident of Charleston County, South Carolina.

7. Upon information and belief, Counterclaim-Defendant John Doe Father is a citizen and resident of Charleston County, South Carolina.

JURISDICTION AND VENUE

8. Counterclaim Plaintiffs expressly incorporate by reference their other pleadings and motions, and repeats all allegations asserted therein as if fully set forth herein verbatim.

9. A portion of the events upon which these counterclaims are based occurred in Charleston County, South Carolina, or, to the extent any events occurred outside of Charleston

County, South Carolina, they are inextricably linked to Plaintiffs' Second Amended Complaint, which was filed in Charleston County, South Carolina.

10. These matters are compulsory counterclaims, therefore this Court has jurisdiction and venue is proper.

FACTUAL ALLEGATIONS

11. In late-2017, Counterclaim-Plaintiff Clawson Fagnoli, LLC, Counterclaim-Plaintiff Samuel R. Clawson, Jr., Esq., and Counterclaim-Plaintiff Christina R. Fagnoli, Esq. (collectively the "Counterclaim Plaintiffs"), along with Barret R. Brewer, Esq. and Brewer Law Firm, LLC (collectively "Brewer"), agreed to represent Counterclaim-Defendant John Doe, Counterclaim-Defendant Jane Doe Mother, and Counterclaim-Defendant Father John Doe (collectively the "Counterclaim Defendants") in a lawsuit pending in the United States District Court for the District of South Carolina (the "federal case").

12. At or around the same time, Counterclaim Plaintiffs, along with Brewer, agreed to represent the Counterclaim Defendants in another lawsuit pending in the Court of Common Pleas in a County in South Carolina (the "state case").

13. Counterclaim Plaintiffs and Counterclaim Defendants had a contingency fee agreement setting the fee for Counterclaim Plaintiffs' services at forty (40) percent of any recovery by Counterclaim Defendants. The contingency fee was to be divided equally between Counterclaim Plaintiffs and Brewer.

14. On or about March 21, 2018, Counterclaim Plaintiffs and Counterclaim Defendants participated in mediation of the federal case. Counterclaim Defendants agreed to settle the case for \$100,000 and executed a Mediation Settlement Agreement indicating such agreement to settle for that amount.

15. On or about March 23, 2018, Counterclaim Defendant John Doe signed Counterclaim Plaintiffs' Disbursement Statement, which specifically indicated that Counterclaim Defendant John Doe had read and understood the Disbursement Statement, and that he consented to the disbursement.

16. On or about May 8, 2018, Counterclaim Defendants met with Counterclaim Plaintiffs and terminated their representation and attorney-client relationship.

17. On or about May 9, 2018, Counterclaim Plaintiffs sent a letter to Counterclaim Defendant John Doe asserting a lien in the amount of \$40,000 on the federal case (i.e., 40% of the \$100,000 settlement amount).

18. On or about May 24, 2018, the defendant in the underlying federal case filed a Motion to Enforce Settlement.

19. On or about June 15, 2018, Counterclaim Defendant John Doe filed a Memorandum in Opposition to [underlying defendant]'s Motion to Enforce, as well as a Cross-Motion to Void Settlement in Principle and Reopen the Instant Action.

20. On or about November 9, 2018, the Court held a hearing on the underlying defendant's Motion to Enforce. The matter was taken under advisement.

21. On or about March 25, 2019, the Court issued an Order granting the underlying defendant's Motion to Enforce the Settlement Agreement and denying Counterclaim Defendant John Doe's Cross-Motion to Void Settlement in Principle and Reopen the Instant Action.

22. On or about May 21, 2019, the Court held a status conference to discuss the disbursement of the settlement. The Court issued a Minute Entry stating that any disputed attorneys' fees were to remain in a South Carolina trust account pending resolution of any liens.

23. Counterclaim Plaintiffs have not yet received their portion of the settlement funds, despite numerous requests to Counterclaim Defendants and their various attorneys.

AS A FIRST CAUSE OF ACTION AGAINST COUNTERCLAIM DEFENDANTS
JOHN DOE, JANE DOE MOTHER, AND JOHN DOE FATHER
(Breach of Contract)

24. Counterclaim Defendants restate and reassert the prior paragraphs to the extent not inconsistent herewith.

25. Counterclaim Defendants entered into valid contractual obligations with Counterclaim Plaintiffs, whereby Counterclaim Defendants agreed to pay Counterclaim Plaintiffs for legal representation in the two underlying lawsuits.

26. Counterclaim Plaintiffs fully performed all obligations owed to Counterclaim Defendants.

27. In spite of Counterclaim Plaintiffs' good faith performance, Counterclaim Defendants breached their contractual obligations by, among other things, failing to pay Counterclaim Plaintiffs the amounts owed for legal services rendered.

28. As a result of Counterclaim Defendants' breaches, Counterclaim Plaintiffs have suffered actual damages.

29. Counterclaim Plaintiffs are entitled to judgment against Counterclaim Plaintiffs for the amount of its actual, general, compensatory, special, and consequential damages relating to Counterclaim Defendants' contractual breaches, including attorneys' fees incurred in pursuing these counterclaims.

AS A SECOND CAUSE OF ACTION AGAINST COUNTERCLAIM DEFENDANTS
JOHN DOE, JANE DOE MOTHER, AND JOHN DOE FATHER
(Unjust Enrichment)

30. Counterclaim Defendants restate and reassert the prior paragraphs to the extent not inconsistent herewith.

31. Counterclaim Defendants have performed certain services for the benefit and/or at the request of Counterclaim Plaintiffs.

32. In connection with the provision of these services, Counterclaim Plaintiffs incurred certain costs.

33. Counterclaim Defendants realized the benefit of these services and expenditures.

34. Counterclaim Defendants retained the benefit of these services and expenditures.

35. Counterclaim Plaintiffs did not authorize Counterclaim Defendants to retain these benefits without compensating Counterclaim Plaintiffs.

36. Permitting Counterclaim Defendants to retain the benefit of these services and expenditures without compensation to Counterclaim Plaintiffs would be unjust and inequitable.

37. Counterclaim Defendants have been unjustly enriched and should pay restitution such that Counterclaim Plaintiffs are fairly compensated for the services provided to Counterclaim Defendants in the underlying lawsuits.

CONCLUSION

Having fully answered each and every allegation contained in Plaintiffs' Second Amended Complaint, Defendants Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fargnoli, Esq. pray to the Court as follows:

1. That Plaintiffs have and recover nothing of Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq.;
2. For dismissal of Plaintiffs' action with prejudice;
3. Judgment in favor of Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. on their counterclaims;
4. An award of prejudgment and post-judgment interest at the maximum rates allowed by law;
5. A trial by jury;
6. The recovery of its costs and fees to the extent permitted by law; and
7. That the Court order such other and further relief as it may deem just and proper.

Respectfully Submitted,

June 28, 2021

/s/ James M. Dedman, IV

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Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. demand trial by jury of all issues triable by jury.

/s/ James M. Dedman, IV

James M. Dedman, IV (S.C. Bar #70664)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Edgar W. Dickson, Circuit Court Judge

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Unpublished Opinion
No. 2025-UP-272 (S.C. Ct. App. filed July 30, 2025)

Andrew Pampu; Amanda Pampu; and John Pampu, ... Petitioners-Respondents,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.;
Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents-Petitioners.

PETITIONERS-RESPONDENTS' APPENDIX (Vol. 2 of 3)

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Andrew Pampu; Amanda Pampu; and John
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

RECORD ON APPEAL VOLUME 2 OF 2

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STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

John Doe; Jane Doe Mother; and
John Doe Father,

Plaintiffs,

v.

Clawson Fagnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fagnoli, Esq.;
Barret R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

**NOTICE OF MOTION AND
MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

Pursuant to South Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(6) and South Carolina Code § 15-36-100, Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (“Defendants”) move to dismiss all claims brought by Plaintiffs John Doe, Jane Doe Mother, and John Doe Father (“Plaintiffs”) in their Second Amended Complaint in this matter.

GROUND FOR MOTION

1. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiffs’ claims should be dismissed for failure to state a claim upon which relief can be granted.
2. Pursuant to South Carolina Rule of Civil Procedure 12(b)(1), the claims of Plaintiffs Jane Doe Mother and Jane Doe Father should be dismissed for lack of subject matter jurisdiction. Specifically, Plaintiffs Jane Doe Mother and John Doe Father lack standing to assert the claims set forth in the Second Amended Complaint, and as such, their claims should be dismissed.

3. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100, Plaintiffs' claims should be dismissed because they failed to timely provide the required expert witness affidavit. Specifically, when Plaintiffs filed their original Complaint against Defendants, they failed to contemporaneously file an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim on the available evidence at the time of the filing of the affidavit as required by South Carolina Code § 15-36-100(B). Accordingly, Plaintiffs' claims against Defendants should be dismissed pursuant to South Carolina Code § 15-36-100(C)(1) for failure to state a claim.

4. To the extent that Plaintiffs have now filed a tardy affidavit following the filing of their original Complaint, Plaintiffs' claims should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100 because the exceptions to contemporaneously filing an expert witness affidavit found in § 15-36-100(C)(1) do not apply based on the facts and circumstances of this matter. Specifically, Plaintiffs did not show that the statute of limitations would expire on the claims in the original Complaint within ten (10) days of filing, and Plaintiffs did not allege that an affidavit of an expert could not be prepared due to time constraints. Plaintiff's attempts to correct or otherwise address these issues in their Second Amended Complaint fail as a matter of law. Therefore, Plaintiffs' claims against Defendants should be dismissed.

5. The claims set forth in Plaintiffs' Second Amended Complaint should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100(A)(3) due to the insufficiency of the credentials of Plaintiffs' purported expert, Justin Dillon. Although Mr. Dillon purports to offer opinions about the actions of South Carolina attorneys involved in litigation pending in federal court in South Carolina, Mr. Dillon is not, and

apparently has never been, licensed to practice in the state and federal courts of South Carolina or the U.S. District Court for the Fourth Circuit Court of Appeals. Further, Mr. Dillon makes no claim in his affidavit that he has ever been specially admitted to practice *pro hac vice* in any state or federal court in South Carolina. Further, in his affidavit, Mr. Dillon makes no claim of familiarity with the nature of federal practice in the U.S. District Court for the District of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina (including, but not limited to, the South Carolina state ADR Rules). Finally, Mr. Dillon notes in his affidavit that he has reviewed only scant materials related to the underlying federal and state litigation at issue (indicating that his review of materials is insufficient to render any opinions in this matter). As such, Mr. Dillon's credentials and affidavit are insufficient. For the same reasons, pursuant to South Carolina Code § 15-36-100(E), Mr. Dillon's affidavit is defective, and as such, Plaintiffs' claims set forth in the Second Amended Complaint should be dismissed.

6. Pursuant to South Carolina Rule of Civil Procedure 12(b)(1) and 12(b)(6), the claims of Plaintiff Jane Doe Mother and Plaintiff John Doe Father should be dismissed for lack of standing. Specifically, neither Plaintiff Jane Doe Mother nor Plaintiff John Doe Father were parties to the federal litigation brought by Plaintiff John Doe in the U.S. District Court for the District of South Carolina or the state court litigation brought by Plaintiff John Doe. Further, neither Plaintiff Jane Doe Mother nor Plaintiff John Doe Father signed the memorandum of understanding generated at the mediation in the federal litigation that serves as the primary basis for the claims asserted by Plaintiffs in this matter. Thus, Plaintiff Jane Doe Mother and Plaintiff John Doe Father lack standing to pursue the claims asserted against Defendants in this matter. For the same reasons, they fail to state a claim upon which relief can be granted in this matter.

7. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted because the gravamen of Plaintiffs' Second Amended Complaint is simply post-mediation "buyer's remorse." Plaintiff John Doe participated in a formal mediation in the federal litigation referenced in the Second Amended Complaint and personally signed a memorandum of settlement agreeing to the terms of a settlement to which he now objects. As such, Plaintiffs fail to state a claim upon which relief can be granted.

CONCLUSION

For these reasons, Defendants respectfully request that this Court grant their motion.

Respectfully Submitted,

June 28, 2021

/s/ James M. Dedman, IV

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STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

John Doe; Jane Doe Mother; and
John Doe Father,

Plaintiffs,

v.

Clawson Fargnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fargnoli, Esq.;
Barret R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

**NOTICE OF MOTION AND MOTION TO
PROHIBIT PLAINTIFFS FROM USING
PSEUDONYMS**

Pursuant to South Carolina Rules of Civil Procedure 10(a) and 17(a), Defendants Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fargnoli, Esq. (“Defendants”) move to prohibit Plaintiffs John Doe, Jane Doe Mother, and John Doe Father (“Plaintiffs”) from using pseudonyms in this litigation. For the reasons set forth below, the Court should grant the Motion and require Plaintiffs to proceed in their proper true names.

GROUND FOR MOTION

1. On March 19, 2021, Plaintiffs filed this litigation under fictitious and/or pseudonymous names but elected to identify each of the five defendants by their true names. In footnote one to the original and Second Amended Complaint, Plaintiffs note that “[d]ue to the subject matter of these underlying cases, information in this Complaint will refer only to John Doe, Jane Doe Mother, and John Doe Father by those pseudonyms or will be otherwise redacted to preserve John Doe’s anonymity.” However, in one of those “underlying cases,” Plaintiff John Doe is litigating his claims under his own true name. In that underlying state court action

pending in South Carolina, Plaintiff John Doe is prosecuting the underlying claims at issue under his own true name and has been doing so for nearly two years. In fact, in September of 2019, the trial court in the underlying case specifically rejected Plaintiff John Doe's request to proceed under a pseudonym based upon the very same set of operative facts. Thus, there is no basis for any plaintiff to litigate this case under fictitious, anonymous, or pseudonymous names. This Court should disallow Plaintiffs from using pseudonyms for themselves in this action.

2. In South Carolina, there is a presumption of openness in judicial proceedings. South Carolina Rule of Civil Procedure 10(a) mandates that the summons and complaint "shall include the names of all parties" Further, South Carolina Rule of Civil Procedure 17(a) requires that "[e]very action shall be prosecuted in the name of the real party in interest." The exceptions to these rules in *Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2005) simply do not apply to permit Plaintiffs to conceal their identities from the public in this matter. Here, Defendants will suffer great prejudice if Plaintiffs are permitted to litigate under pseudonyms (particularly when Plaintiff John Doe is simultaneously litigating the underlying facts under his own name in another county in this state).

3. Plaintiffs have waived any claim to litigate under fictitious and/or pseudonymous names because their own expert, Justin Dillon, disclosed sufficient information to identify Plaintiffs in his publicly filed expert affidavit (including Plaintiffs' surname). On April 30, 2021, Plaintiffs filed an Amended Complaint along with an affidavit of their purported expert, Mr. Dillon. On page seven of that affidavit, Mr. Dillon thrice disclosed the surname of Plaintiffs and also provided the case number of the underlying litigation in which Plaintiff John Doe is litigating the underlying claims under his own true name. As such, by filing this expert affidavit, Plaintiffs have already disclosed their own surnames and sufficient information to enable any

individual to locate the underlying litigation in which Plaintiff John Doe is litigating under his own name. On June 14, 2021, Plaintiffs filed the affidavit of Mr. Dillon a second time in conjunction with the Second Amended Complaint. Once again, it included the surname of Plaintiffs. Thus, there is no basis to permit Plaintiffs to continue using fictitious or pseudonymous names.

4. Defendants anticipate issuing a number of subpoenas to third parties and taking a number of depositions of third parties in this litigation. However, Defendants' ability to litigate this matter and defend themselves will be prejudiced if they are unable to issue proper subpoenas because of the fictitious and/or pseudonymous names utilized by Plaintiffs in this matter.

5. For the foregoing reasons, Plaintiffs should be prohibited from using any fictitious and/or pseudonymous names when prosecuting their claims in this litigation.

CONCLUSION

Defendants respectfully request that this Court prohibit Plaintiffs from using pseudonyms in this action and order Plaintiffs to file amended pleadings in their true names. Defendants further request that this Court deny Plaintiffs' March 19, 2021 motion to seal.

Respectfully Submitted,

June 28, 2021

/s/ James M. Dedman, IV

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

JOHN DOE, et al.,
Plaintiffs,
vs.
CLAWSON FARGNOLI, LLC, et al.,
Defendants.

Case No. 2021-CP-10-1343

**ANSWER OF BARRETT R. BREWER
AND THE BREWER LAW FIRM, LLC TO
THE SECOND AMENDED COMPLAINT
AND COUNTERCLAIMS**

JURY TRIAL DEMANDED

Defendants Barrett R. Brewer and The Brewer Law Firm, LLC, (collectively, "Brewer Lawyers") answering the Second Amended Complaint filed herein (hereafter, the "Complaint"), would allege and show unto this Honorable Court:

FOR A FIRST DEFENSE

1. Brewer Lawyers deny each and every allegation of the Complaint not specifically admitted herein.
2. Brewer Lawyers deny the allegations of Paragraphs 1 and 2 of the Complaint.
3. Brewer Lawyers admit the allegations of Paragraphs 3, 4, 5, 6, 7, and 8 of the Complaint.
4. Brewer Lawyers deny the allegations of Paragraphs 9 and 10 of the Complaint upon information and belief.
5. The allegations of Paragraphs 11 and 12 of the Complaint constitute legal conclusions to which no answer is required.
6. In answer the allegations of Paragraphs 13 and 14 of the Complaint, Brewer Lawyers crave reference to that certain written retainer agreement for the scope

of representation to which Brewer Lawyers agreed to represent Plaintiff John Doe. Brewer Lawyers deny all allegations inconsistent therewith.

7. In answer to the allegations of Paragraph 15 of the Complaint, Brewer Lawyers admit the Federal Case was filed June 15, 2016 and the State Case was filed June 15, 2017.

8. In answer to the allegations of Paragraphs 16 and 17 of the Complaint, Brewer Lawyers crave reference to the Complaint filed in the Federal Case described therein for the allegations and causes of action alleged therein, and deny any allegations inconsistent therewith.

9. In answer to the allegations of Paragraph 18 of the Complaint, Brewer Lawyers will show John Doe engaged in sexual intercourse with a female student in October 2015. Brewer Lawyers also admit that the Federal Case and the State Case involved claims that Plaintiff John Doe engaged in a nonconsensual sexual intercourse with said female student.

10. In answer to the allegations of Paragraph 19 of the Complaint, Brewer Lawyers admit only that Clemson University conducted a hearing on February 26, 2016, found Plaintiff John Doe engaged in nonconsensual sexual intercourse with the female student, and issued a one-semester suspension of John Doe. Brewer Lawyers would show that John Doe alleged Clemson University committed errors in that hearing. Brewer Lawyers lack sufficient information to form a belief as to the remaining allegations contained in paragraph 19 and, therefore, deny them.

11. In answer to the allegations of Paragraph 20 of the Complaint, Brewer Lawyers admit only that John Doe followed Clemson University's appeal process.

12. Brewer Lawyers admit the allegations of Paragraph 21 of the Complaint.

13. In answer to the allegations of Paragraph 22 of the Complaint, Brewer Lawyers crave reference to the text messages described therein for the terms and conditions thereof, and deny all allegations inconsistent therewith.

14. The allegations of Paragraph 23 of the Complaint reference a “Charles Doe”, who is not identified in any other fashion in this litigation. As such, Brewer Lawyers lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 23 of the Second Amended Complaint and, therefore, deny them.

15. In answer to the allegations of Paragraph 24 of the Complaint, Brewer Lawyers crave reference to the Complaint filed in the State Case described therein for the allegations and causes of action alleged therein, and deny any allegations inconsistent therewith.

16. The allegations of Paragraph 25 of the Complaint require no answer of Brewer Lawyers.

17. Brewer Lawyers deny the allegations of Paragraph 26 of the Complaint.

18. Brewer Lawyers deny the allegations of Paragraph 27 of the Complaint.

19. In answer to the allegations of Paragraph 28 of the Complaint, Brewer Lawyers admit so much of the allegations contained in paragraph 28 of the Complaint as allege that there were some references to bodily injuries in an initial set of discovery requests. Defendants deny the remaining allegations contained in paragraph 28 of the Complaint.

20. Brewer Lawyers deny the allegations of Paragraph 29 of the Complaint.

21. Brewer Lawyers admit the allegations of Paragraph 30 of the Complaint.

22. In answer to the allegations of Paragraph 31 of the Complaint, Brewer Layers crave reference to the Report described therein for the findings thereof, and deny all allegations inconsistent therewith.

23. Brewer Lawyers deny the allegations of Paragraphs 32, 33, 34, and 35 of the Complaint.

24. In answer to the allegations of Paragraph 36 of the Complaint, Brewer Lawyers admit that John Doe and his parents set forth, in an email, five mediation goals, which is incorrectly set forth in Paragraph 36. One of these alleged goals was “[u]nderstand monetary limitations of negligence and the IRF”. In further answer to the allegations of Paragraph 36, Brewer Lawyers crave reference to the email described therein for the goals thereof, and deny all allegations inconsistent therewith. Brewer Lawyers would also show that a subsequent meeting was conducted with the Does wherein their mediation goals were discussed at length and substantially revised. Plaintiffs rejected recommendations to mediate the State Case and the Federal Case together. Any remaining allegations are denied.

25. Brewer Lawyers admit the allegations of Paragraph 37 of the Complaint.

26. In answer to the allegations of Paragraph 38 of the Complaint, Brewer Lawyers admit so much of the allegations contained in Paragraph 38 as allege that Plaintiff John Doe, after consulting in private with his parents, agreed to settle the litigation that he had initiated in the Federal Case, pursuant to the Settlement Terms presented. Brewer Lawyers deny the remaining allegations contained in paragraph 38 of the Second Amended Complaint.

27. In answer to the allegations of Paragraph 39 of the Complaint, Brewer Lawyers admit only that John Doe signed the settlement agreement freely and voluntarily, without duress, after private consultation with his attorneys, the mediator, and Plaintiff Doe's parents who were present to advise and support him during the entire mediation process, and who had consulted with him privately prior to his decision.

28. In answer to the allegations of Paragraph 40 of the Complaint, Brewer Lawyers crave reference to the email described therein for the statements contained therein, and deny all allegations inconsistent therewith. Other than the receipt of the alleged email, Brewer Lawyers deny the allegations of Paragraph 40 and any implications about the veracity of the communications contained therein.

29. Brewer Lawyers deny the allegations of Paragraphs 41, 43, 44, and 45 of the Complaint.

30. In answer to the allegations of Paragraph 46 of the Complaint, Brewer Lawyers crave reference to the Order described therein for the terms and conditions thereof, and deny all allegations inconsistent therewith.

31. In answer to the allegations of Paragraph 47 of the Complaint, Brewer Lawyers crave reference to the emails described therein for the terms and conditions thereof, and deny all allegations inconsistent therewith.

32. Brewer Lawyers admit the allegations of Paragraph 48 of the Complaint.

33. In answer to the allegations of Paragraph 49 of the Complaint, Brewer Lawyers crave reference to the Letter described therein, and deny all allegations inconsistent therewith. Brewer Lawyers specifically deny they were fired for cause.

34. In answer to the allegations of Paragraph 50 of the Complaint, Brewer Lawyers crave reference to the letter described therein for the terms and conditions thereof, and deny all allegations inconsistent therewith.

35. Brewer Lawyers lack sufficient information on which to form a belief as to the allegations of Paragraphs 51 and 52 of the Complaint, and therefore deny the same.

36. In answer to the allegations of Paragraph 53 of the Complaint, Brewer Lawyers crave reference to the text order described therein for the terms and conditions thereof, and deny all allegations inconsistent therewith.

37. Brewer Lawyers lack sufficient information on which to form a belief as to the allegations of Paragraphs 54, 55, and 56 of the Complaint, and therefore deny the same.

38. In answer to the allegations of Paragraph 57 of the Complaint, Brewer Lawyers crave reference to the Order described therein for the terms and conditions thereof, and deny all allegations inconsistent therewith.

39. Brewer Lawyers deny the allegations of Paragraph 58 of the Complaint.

40. In answer to the allegations of Paragraph 59 of the Complaint, Brewer Lawyers crave reference to the minute entry described therein for the terms and conditions thereof, and deny all allegations inconsistent therewith.

41. Brewer Lawyers deny the allegations of Paragraph 60 of the Complaint.

42. In answer to the allegations of Paragraphs 61 and 62 of the Complaint, Brewer Lawyers crave reference to the letters described therein for the terms and conditions thereof, and deny all allegations inconsistent therewith. Defendants deny that said correspondence had any negative effect on Plaintiffs' litigation.

43. Brewer Lawyers deny the allegations of Paragraph 63 of the Complaint.

44. Brewer Lawyers lack sufficient information on which to form a belief as to the allegations of Paragraph 64 of the Complaint, and therefore deny the same.

45. Brewer Lawyers deny the allegations of Paragraph 65 of the Complaint.

46. In answer to the allegations of Paragraph 66 of the Complaint, Brewer Lawyers admit they continue to assert a lien for legal fees against the settlement proceeds from Clemson University. Brewer Lawyers deny the remaining allegations of Paragraph 66.

47. Brewer Lawyers deny the allegations of Paragraphs 67, 68, 69, 70, 71, and 72 of the Complaint.

48. In answer to the allegations of Paragraph 73 of the Complaint, Brewer Lawyers admit only that Mr. Clawson and Ms. Fagnoli were members of Clawson Fagnoli, LLC.

49. Brewer Lawyers deny the allegations of Paragraphs 74 and 75 of the Complaint.

50. In answer to the allegations of Paragraph 76 of the Complaint, Brewer Lawyers admit only that Mr. Brewer was a member of The Brewer Law Firm, LLC.

51. Brewer Lawyers deny the allegations of Paragraphs 77 and 78 of the Complaint.

[As to the First Cause of Action](#)

52. In answer to the allegations of Paragraph 79 of the Complaint, Brewer Lawyers incorporate the foregoing allegations of this Answer as if set forth herein *verbatim*.

53. In answer to the allegations of Paragraph 80 of the Complaint, Brewer Lawyers admit only that there existed an attorney-client relationship between Brewer Lawyers and Plaintiffs for that scope of representation set forth in the written retainer agreement signed by Brewer Lawyers and Plaintiffs.

54. In answer the allegations of Paragraph 81 of the Complaint, Brewer Lawyers crave reference to that certain written retainer agreement for the scope of representation to which Brewer Lawyers agreed to represent Plaintiff John Doe. Brewer Lawyers deny all allegations inconsistent therewith.

55. Brewer Lawyers admit the allegations of Paragraph 82 of the Complaint constitute a general statement of the legal obligations owed by lawyers, but deny that such allegations constitute the appropriate standard of care for a legal malpractice claim in South Carolina.

56. Brewer Lawyers deny the allegations of Paragraphs 83, 84, 85, and 86 of the Complaint.

57. Brewer Lawyers deny the allegations of the first Paragraph 87, and the first Paragraph 88 of the Complaint.¹

[As to the Second Cause of Action](#)

58. In answer to the allegations of the second Paragraph 87 of the Complaint under the Second Cause of Action, Brewer Lawyers incorporate the foregoing allegations of this Answer as if set forth herein *verbatim*.

59. In answer to the allegations of the second Paragraph 88 of the Complaint, Brewer Lawyers crave reference to that certain written retainer agreement for the scope

¹ Plaintiffs' Second Amended Complaint contains two paragraphs numbered 87 and two paragraphs numbered 88.

of representation to which Brewer Lawyers agreed to represent Plaintiff John Doe. Brewer Lawyers deny all allegations inconsistent therewith.

60. In answer to the allegations of the Paragraph 89 of the Complaint, Brewer Lawyers admit only that they owed fiduciary duties to Plaintiffs by virtue of serving as their attorney. Brewer Lawyers deny the remaining allegations of Paragraph 89.

61. Brewer Lawyers admit the allegations of Paragraph 90 of the Complaint constitute a general statement of fiduciary duties owed by lawyers, but deny that such allegations constitute the appropriate standard of care for a breach of fiduciary duty claim in South Carolina.

62. Brewer Lawyers deny the allegations of Paragraphs 91, 92, 93, 94, 95, and 96 of the Complaint.

[As to the Third Cause of Action](#)

63. In answer to the allegations of Paragraph 97 of the Complaint, Brewer Lawyers incorporate the foregoing allegations of this Answer as if set forth herein *verbatim*.

64. In answer to the allegations of Paragraph 98 of the Complaint, Brewer Lawyers crave reference to that certain written retainer agreement for the scope of representation to which Brewer Lawyers agreed to represent Plaintiff John Doe. Brewer Lawyers deny all allegations inconsistent therewith.

65. Brewer Lawyers deny the allegations of Paragraph 99, 100, and 101 of the Complaint.

66. The allegations of Paragraph 102 of the Complaint constitute legal conclusions to which no answer is required.

67. Brewer Lawyers deny the allegations of Paragraph 103 of the Complaint, and the unnumbered paragraphs that follow Paragraph 103. Brewer Lawyers specifically deny the allegations regarding time constraints. Brewer Lawyers would further show that on February 26, 2021, counsel for Plaintiffs sent to Defendants a draft, unfiled Verified Complaint consisting of the same three causes of action, containing 93 paragraphs over 23 pages, and which specifically referenced an expert affidavit of an unnamed Expert Witness.

FOR A SECOND DEFENSE

Rule 12(b)(6)

68. One or more of Plaintiffs' claims fail to allege sufficient facts to constitute a cause of action, such that those claims should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

Comparative Negligence

69. Plaintiffs acts and omissions, including without limitation, their voluntary consent to settle the Federal Case, constitute comparative negligence, such that Plaintiffs' claimed damages, which are denied, should be reduced in accordance with their fault, or the claims barred, as found by the trier of fact.

FOR A FOURTH DEFENSE

Assumption of the Risk

70. Plaintiffs assumed the risk of litigation, such that their claims should be barred or Plaintiffs' claimed damages, which are denied, should be reduced in accordance with their fault in assuming the risk.

FOR A FIFTH DEFENSE

Ratification

71. Plaintiffs accepted and ratified the settlement of the Federal Case described in the Complaint, and such ratification bars Plaintiffs' claims.

FOR A SIXTH DEFENSE

Intervening Acts

72. The intervening acts of third parties, over whom Brewer Lawyers exercised no control, constitute an intervening cause of Plaintiffs' damages, which are denied.

FOR A SEVENTH DEFENSE

Duplication of Causes

73. One or more of Plaintiffs' causes of action are duplicative and should be dismissed as a matter of law.

FOR AN EIGHTH DEFENSE

Election of Remedies

74. Plaintiffs must elect their remedy.

FOR A NINTH DEFENSE

Statute of Limitations

75. Plaintiffs' claims are barred by the applicable statute of limitations.

FOR A TENTH DEFENSE

S.C. Code Ann. § 15-36-100

76. Plaintiffs' Complaint and Expert Affidavit fail to comply with the requirements of S.C. Code Ann. § 15-36-100, such that Plaintiffs' Complaint should be dismissed.

FOR AN ELEVENTH DEFENSE

Standing

77. Plaintiffs' Jane Doe Mother and John Doe Father lack standing to maintain this action such that their claims should be barred.

78. As a result of Jane Doe Mother's and John Doe Father's lack of standing, this court lacks subject matter jurisdiction to hear their claims.

FOR A TWELFTH DEFENSE

Punitive Damages

79. Brewer Lawyers plead all statutory and common law defenses to Punitive Damages, including without limitation, those contained in Article 5, Chapter 32 of Title 15 of the S.C. Code.

80. Brewer Lawyers also plead protection of S.C. Code Ann. § 15-33-135.

FOR A THIRTEENTH DEFENSE

81. Plaintiffs' Complaint may be barred by the doctrines of waiver, laches, and unclean hands.

FOR A FOURTEENTH DEFENSE

82. Plaintiffs' claim for punitive damages is barred by S.C. Code Ann. § 15-78-180.

FOR A FIFTEENTH DEFENSE

83. Plaintiffs' failed to mitigate their damages and therefore, all claims alleged by Plaintiffs against Defendants should be barred or reduced to the extent Plaintiffs could have taken prompt and reasonable action to avoid the occurrence of the alleged damages, which are denied.

FOR A SIXTEENTH DEFENSE AND BY WAY OF A COUNTERCLAIMS
AGAINST PLAINTIFFS JOHN DOE, JANE DOE MOTHER, AND JOHN DOE
FATHER

84. Brewer Lawyers incorporate the foregoing allegations of this Answer as if set forth herein verbatim, to the extent not inconsistent herewith.

PARTIES

85. Counterclaim-Plaintiff Brewer Law Firm, LLC is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

86. Counterclaim-Plaintiff Barrett R. Brewer is a citizen and resident of Charleston County, South Carolina, and is a lawyer licensed to practice law in South Carolina.

87. Upon information and belief, Counterclaim-Defendant John Doe is a citizen and resident of Charleston County, South Carolina.

88. Upon information and belief, Counterclaim-Defendant Jane Doe Mother is a citizen and resident of Berkeley County, South Carolina.

89. Upon information and belief, Counterclaim-Defendant John Doe Father is a citizen and resident of Berkeley County, South Carolina.

JURISDICTION AND VENUE

90. Counterclaim Plaintiffs expressly incorporate by reference their other pleadings and motions, and repeats all allegations asserted therein as if fully set forth herein verbatim.

91. A portion of the events upon which these counterclaims are based occurred in Charleston County, South Carolina, or, to the extent any events occurred

outside of Charleston County, South Carolina, they are inextricably linked to Plaintiffs' Second Amended Complaint, which was filed in Charleston County, South Carolina.

92. These matters are compulsory counterclaims, therefore this Court has jurisdiction and venue is proper.

FACTUAL ALLEGATIONS

93. In late 2017, Counterclaim-Plaintiff Barrett R. Brewer and Brewer Law Firm, LLC (collectively the "Counterclaim Plaintiffs"), along with Christy Fagnoli, Sam Clawson, and Clawson Fagnoli, LLC (collectively "Clawson Fagnoli"), agreed to represent Counterclaim-Defendant John Doe, Counterclaim-Defendant Jane Doe Mother, and Counterclaim-Defendant Father John Doe (collectively the "Counterclaim Defendants") in a lawsuit pending in the United States District Court for the District of South Carolina (the "Federal Case").

94. At or around the same time, Counterclaim Plaintiffs, along with Clawson Fagnoli, agreed to represent the Counterclaim Defendants in another lawsuit pending in the Court of Common Pleas in a County in South Carolina (the "State Case").

95. Counterclaim Plaintiffs and Counterclaim Defendants had a contingency fee agreement setting the fee for Counterclaim Plaintiffs' services at forty (40) percent of any recovery by Counterclaim Defendants. The contingency fee was to be divided equally between Counterclaim Plaintiffs and Clawson Fagnoli.

96. On or about March 21, 2018, Counterclaim Plaintiffs and Counterclaim Defendants participated in mediation of the Federal Case. Counterclaim Defendants agreed to settle the case for \$100,000 and executed a Mediation Settlement Agreement indicating such agreement to settle for that amount.

97. On or about March 23, 2018, Counterclaim Defendant John Doe signed Counterclaim Plaintiffs' Disbursement Statement, which specifically indicated that Counterclaim Defendant John Doe had read and understood the Disbursement Statement, and that he consented to the disbursement.

98. On or about May 8, 2018, Counterclaim Defendants met with Counterclaim Plaintiffs and terminated their representation and attorney-client relationship.

99. On or about May 9, 2018, Counterclaim Plaintiffs sent a letter to Counterclaim Defendant John Doe asserting a lien for \$40,000 on the Federal Case (i.e., 40% of the \$100,000 settlement amount).

100. On or about May 24, 2018, the defendant in the Federal Case filed a Motion to Enforce Settlement.

101. On or about June 15, 2018, Counterclaim Defendant John Doe filed a Memorandum in Opposition to the Motion to Enforce, as well as a Cross-Motion to Void Settlement in Principle and Reopen the Instant Action.

102. On or about November 9, 2018, the United States District Court conducted a hearing on the Motion to Enforce and took the matter under advisement.

103. On or about March 25, 2019, the district court issued an Order granting the Motion to Enforce the Settlement Agreement and denying Counterclaim Defendant John Doe's Cross-Motion to Void Settlement in Principle and Reopen the Instant Action.

104. On or about May 21, 2019, the district court held a status conference to discuss the disbursement of the settlement. The district court issued a Minute Entry

stating that any disputed attorneys' fees were to remain in a South Carolina trust account pending resolution of any liens.

105. Counterclaim Plaintiffs have not yet received their portion of the settlement funds, despite numerous requests to Counterclaim Defendants and their various attorneys.

AS A FIRST CAUSE OF ACTION AGAINST COUNTERCLAIM DEFENDANTS
JOHN DOE, JANE DOE MOTHER, AND JOHN DOE FATHER
(Breach of Contract)

106. Counterclaim Defendants incorporate the foregoing allegations of this Answer as if set forth herein verbatim, to the extent not inconsistent herewith.

107. Counterclaim Defendants entered into valid contractual obligations with Counterclaim Plaintiffs, whereby Counterclaim Defendants agreed to pay Counterclaim Plaintiffs for legal representation in the two underlying lawsuits.

108. Counterclaim Plaintiffs fully performed all obligations owed to Counterclaim Defendants.

109. In spite of Counterclaim Plaintiffs' good faith performance, Counterclaim Defendants breached their contractual obligations by, among other things, failing to pay Counterclaim Plaintiffs the amounts owed for legal services rendered.

110. As a result of Counterclaim Defendants' breaches, Counterclaim Plaintiffs have suffered actual damages.

111. Counterclaim Plaintiffs are entitled to judgment against Counterclaim Plaintiffs for its actual, general, compensatory, special, and consequential damages relating to Counterclaim Defendants' contractual breaches, including attorneys' fees incurred in pursuing these counterclaims.

AS A SECOND CAUSE OF ACTION AGAINST COUNTERCLAIM DEFENDANTS
JOHN DOE, JANE DOE MOTHER, AND JOHN DOE FATHER
(Unjust Enrichment)

112. Counterclaim Defendants incorporate the foregoing allegations of this Answer as if set forth herein verbatim, to the extent not inconsistent herewith.

113. Counterclaim Defendants have performed certain services for the benefit of and at the request of Counterclaim Plaintiffs.

114. In connection with the provision of these services, Counterclaim Plaintiffs incurred certain costs.

115. Counterclaim Defendants realized the benefit of these services and expenditures.

116. Counterclaim Defendants retained the benefit of these services and expenditures.

117. Counterclaim Plaintiffs did not authorize Counterclaim Defendants to retain these benefits without compensating Counterclaim Plaintiffs.

118. Permitting Counterclaim Defendants to retain the benefit of these services and expenditures without compensation to Counterclaim Plaintiffs would be unjust and inequitable.

119. Counterclaim Defendants have been unjustly enriched and should pay restitution such that Counterclaim Plaintiffs are fairly compensated for the services provided to Counterclaim Defendants in the underlying lawsuits.

WHEREFORE, having fully answered each and every allegation contained in Plaintiffs' Second Amended Complaint, Defendants Barrett R. Brewer and the Brewer Law Firm, LLC pray to this Honorable Court as follows:

- (a) That Plaintiffs have and recover nothing of Defendants Barrett R. Brewer, and Brewer Law Firm, LLC;
- (b) For dismissal of Plaintiffs' action with prejudice;
- (c) Judgment in favor of Defendants Barrett R. Brewer, and Brewer Law Firm, LLC on their counterclaims;
- (d) An award of prejudgment and post-judgment interest at the maximum rates allowed by law;
- (e) A trial by jury;
- (f) The recovery of their costs and fees to the extent permitted by law; and
- (g) Such other and further relief as this Honorable Court may deem just and proper.

s/ Bruce Wallace

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Attorneys for Defendants
 BARRETT R. BREWER and
 THE BREWER LAW FIRM, LLC

June 30, 2021

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

JOHN DOE; JANE DOE MOTHER; and
JOHN DOE FATHER,

Plaintiffs,

v.

CLAWSON FARGNOLI, LLC;
SAMUEL R. CLAWSON, JR., ESQ.;
CHRISTINA R. FARGNOLI, ESQ.;
BARRET R. BREWER, ESQ.; and
BREWER LAW FIRM, LLC,

Defendants.

IN THE COURT OF COMMONS PLAS
NINTH JUDICIAL CIRCUIT

Case No. 2021-CP-10-01343

**NOTICE OF MOTION AND
MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

Pursuant to South Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(6) and South Carolina Code § 15-36-100, Defendants Barrett R. Brewer and Brewer Law Firm, LLC ("Defendants") move to dismiss all claims brought by Plaintiffs John Doe, Jane Doe Mother, and John Doe Father ("Plaintiffs") in this matter.

GROUND FOR MOTION

1. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted.

2. Pursuant to South Carolina Rule of Civil Procedure 12(b)(1), the claims of Plaintiffs Jane Doe Mother and Jane Doe Father should be dismissed for lack of subject matter jurisdiction. Specifically, Plaintiffs Jane Doe Mother and Jane Doe Father lack standing to assert the claims set forth in the Complaint, and as such, their claims should be dismissed.

3. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100, Plaintiffs' claims should be dismissed because they failed to timely provide the required expert witness affidavit. Specifically, when Plaintiffs filed their Complaint against Defendants, they failed to contemporaneously file an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim on the available evidence at the time of the filing of the affidavit as required by South Carolina Code § 15-36-100(B). Accordingly, Plaintiffs' claims against Defendants should be dismissed pursuant to South Carolina Code § 15-36-100(C)(1) for failure to state a claim.

4. Plaintiffs have now filed a tardy affidavit following the filing of their original Complaint, such that Plaintiffs' claims should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100 because the exceptions to contemporaneously filing an expert witness affidavit found in § 15-36-100(C)(1) do not apply based on the specific facts and circumstances of this matter. Specifically, Plaintiffs have not shown the statute of limitations will expire on the claim set forth in the Complaint within ten (10) days of filing, and Plaintiffs did not allege that an affidavit of an expert could not be prepared due to time constraints. Plaintiff's attempts to correct or otherwise address these issues in their Second Amended Complaint fail as a matter of law. Therefore, the Court should dismiss Plaintiffs' claims against Defendants.

5. Plaintiffs' expert affidavit is deficient because the expert is not licensed in South Carolina and the affidavit fails to comply with S.C. Code Ann. § 15-36-100(B) as a matter of law for the reasons set forth in the Motion to Dismiss filed by Defendants Christy Fargnoli, Sam Clawson, and Clawson Fargnoli, LLC on June 28, 2021.

6. Pursuant to South Carolina Rule of Civil Procedure 12(b)(1) and 12(b)(6), the claims of Plaintiff Jane Doe Mother and Plaintiff John Doe Father should be dismissed for lack of standing. Specifically, neither Plaintiff Jane Doe Mother nor Plaintiff John Doe Father were parties to the federal litigation brought by Plaintiff John Doe in the U.S. District Court for the District of South Carolina or the state court litigation brought by Plaintiff John Doe in the Pickens County Court of Common Pleas. Further, neither Plaintiff Jane Doe Mother nor Plaintiff John Doe Father were signatories to the memorandum of understanding generated at the mediation in the federal litigation that serves as the primary basis for the claims asserted by Plaintiffs in this matter. Accordingly, Plaintiff Jane Doe Mother and Plaintiff John Doe Father lack standing to pursue the claims asserted against Defendants in this matter. For the same reasons, they fail to state a claim upon which relief can be granted in this matter.

7. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted because the gravamen of Plaintiffs' complaint is simply post-mediation "buyer's remorse." Plaintiff John Doe participated in a formal mediation in the federal litigation referenced in the Complaint and personally signed a memorandum of settlement agreeing to the terms of a settlement to which he now objects. As such, Plaintiffs fail to state a claim upon which relief can be granted.

8. Alternatively, Plaintiff's second cause of action for breach of fiduciary duty should be dismissed pursuant to Rule 12(b)(6), because it is duplicative of the first cause of action.

CONCLUSION

For these reasons, Defendants respectfully request that this Court grant their motion.

s/ Bruce Wallace

R. Bruce Wallace, SC Bar No. 11653
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Attorneys for Defendants
Barrett R. Brewer and Brewer Law Firm, LLC

June 30, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq.,

Defendants.

**PLAINTIFFS' REPLY TO BREWER
DEFENDANTS' COUNTERCLAIM
(Jury Trial Demanded)**

TO: R. BRUCE WALLACE, ESQ., COUNSEL FOR BREWER DEFENDANTS:

Plaintiffs, John Doe; Jane Doe Mother; and John Doe Father, (collectively "the Does" or "Plaintiffs"), serve their Reply to the Counterclaim filed on behalf of Defendants, BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (collectively "the Brewer Defendants" or "Defendants") and would respectfully show the Court as follows:

GENERAL OBJECTIONS

Plaintiffs generally and specifically deny each and every allegation, statement, matter, and/or thing set forth and alleged in the Counterclaim portions of the "Answer of Barrett R. Brewer and the Brewer Law Firm, LLC to the Second Amended Complaint and Counterclaims" filed on June 30, 2021, unless specifically and expressly admitted, qualified, or explained.

Plaintiffs object to the extent any allegation in Defendants' Answer to the Second Amended Complaint and Counterclaim calls for a legal conclusion.

FOR A DEFENSE TO THE COUNTERCLAIM

Defendants' Counterclaim fails to state facts sufficient to constitute a cause of action against Plaintiffs.

FOR A DEFENSE TO THE COUNTERCLAIM

Defendants' Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A DEFENSE TO THE COUNTERCLAIM

Defendants' Counterclaim is barred by the Doctrine of Set Off.

FOR A DEFENSE TO THE COUNTERCLAIM

Defendants' Counterclaim is barred by the Doctrine of Estoppel.

REPLY TO COUNTERCLAIM

The paragraph numbers on the left margin of each response are intended to correspond to the paragraph numbers before the allegations contained in the Counterclaim portion of "Answer of Barrett R. Brewer and the Brewer Law Firm, LLC to the Second Amended Complaint and Counterclaims".

84. Plaintiffs restate the factual and jurisdictional allegations in their Second Amended Complaint as though set forth verbatim.

85. Admitted, upon information and belief.

86. Admitted, upon information and belief.

87. Admitted.

88. Admitted.

89. Admitted.

90. Plaintiffs restate their prior responses to the Counterclaim as though set forth verbatim.

91. Admitted.

92. The allegations in Paragraph 92 of the Counterclaim are legal conclusions, to which no answer or response is required to the extent an answer or response is required, Plaintiffs admit the allegations.

93. Admitted.

94. Admitted.

95. Admitted.

96. Plaintiffs admit they participated in mediation of the federal case on March 21, 2018. Plaintiffs deny the remaining allegations as stated.

97. Plaintiffs admit John Doe signed Defendants' Disbursement Statement on March 28, 2018. The remaining allegations are denied as stated.

98. Admitted.

99. Admitted.

100. Admitted.

101. Admitted.

102. Admitted.

103. Admitted.

104. Admitted.

105. Plaintiffs admit that Defendants have not been paid any legal fees, because Defendants' acts and omissions were below the standard of care for lawyers causing Defendants to be terminated for cause and not entitled to any compensation; and because of Defendants' conduct in clear and serious breach of their fiduciary duties to Plaintiffs, Defendants have forfeited their claim for legal fees.

106. Plaintiffs restate their prior responses to the Counterclaim as though set forth verbatim.

107. Admitted.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

112. Plaintiffs restate their prior responses to the Counterclaim as though set forth verbatim.

113. Admitted.

114. Admitted, upon information and belief.

115. Plaintiffs admit they may have benefited from certain expenses incurred by Defendants but deny the remaining allegations.

116. Plaintiffs admit they may have benefited from certain expenses incurred by Defendants but deny the remaining allegations.

117. Denied as stated.

118. Denied.

119. Denied.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, John Doe, Jane Doe Mother, and John Doe Father, pray for judgment against Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fargnoli, Esq; Barrett R. Brewer, Esq., and BREWER LAW FIRM, LLC, for all actual damages, consequential damages, and incidental damages; punitive damages,

and prejudgment interest, all in an amount to be more specifically proven at trial; for an Order dismissing the Brewer Defendants' counterclaims with prejudice; together with the costs of this action and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis

Thomas A. Pendarvis (SC Bar #64918)

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Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

July 28, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fargnoli, Esq; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq.,

Defendants.

**PLAINTIFFS' REPLY TO
CLAWSON FARGNOLI
DEFENDANTS' COUNTERCLAIM
(Jury Trial Demanded)**

TO: JAMES M. DEDMAN, IV, ESQ. AND MEGAN L. ALLEN, ESQ., COUNSEL FOR THE CLAWSON FARGNOLI DEFENDANTS:

Plaintiffs, John Doe; Jane Doe Mother; and John Doe Father, (collectively "the Does" or "Plaintiffs"), serve their Reply to the Counterclaim filed on behalf of Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fargnoli, Esq (collectively "the Clawson Fargnoli Defendants") and would respectfully show the Court as follows:

GENERAL OBJECTIONS

Plaintiffs generally and specifically deny each and every allegation, statement, matter, and/or thing set forth and alleged in the Counterclaim portions of Defendants' Answer to the Second Amended Complaint and Counterclaim filed on June 28, 2021, unless specifically and expressly admitted, qualified, or explained.

Plaintiffs object to the extent any allegation in Defendants' Answer to the Second Amended Complaint and Counterclaim calls for a legal conclusion.

FOR A DEFENSE TO THE COUNTERCLAIM

Defendants' Counterclaim fails to state facts sufficient to constitute a cause of action against Plaintiffs.

FOR A DEFENSE TO THE COUNTERCLAIM

Defendants' Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A DEFENSE TO THE COUNTERCLAIM

Defendants' Counterclaim is barred by the Doctrine of Set Off.

FOR A DEFENSE TO THE COUNTERCLAIM

Defendants' Counterclaim is barred by the Doctrine of Estoppel.

REPLY TO COUNTERCLAIM

The paragraph numbers on the left margin of each response are intended to correspond to the paragraph numbers before the allegations contained in the Counterclaim portion of Defendants' Answer to the Second Amended Complaint and Counterclaim.

1. Plaintiffs restate the factual and jurisdictional allegations in their Second Amended Complaint as though set forth verbatim.
2. Admitted, upon information and belief.
3. Admitted, upon information and belief.
4. Admitted, upon information and belief.
5. Admitted.
6. Admitted.
7. Admitted.

8. Plaintiffs restate their prior responses to the Counterclaim as though set forth verbatim.

9. Admitted.

10. The allegations in Paragraph 10 of the Counterclaim are legal conclusions, to which no answer or response is required to the extent an answer or response is required, Plaintiffs admit the allegations.

11. Admitted.

12. Admitted.

13. Admitted.

14. Plaintiffs admit they participated in mediation of the federal case on March 21, 2018. Plaintiffs deny the remaining allegations as stated.

15. Plaintiffs admit John Doe signed Defendants' Disbursement Statement on March 28, 2018. The remaining allegations are denied as stated.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Plaintiffs admit that Defendants have not been paid any legal fees, because Defendants' acts and omissions were below the standard of care for lawyers causing Defendants to be terminated for cause and not entitled to any compensation; and

because of Defendants' conduct in clear and serious breach of their fiduciary duties to Plaintiffs, Defendants have forfeited their claim for legal fees.

24. Plaintiffs restate their prior responses to the Counterclaim as though set forth verbatim.

25. Admitted.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Plaintiffs restate their prior responses to the Counterclaim as though set forth verbatim.

31. Admitted.

32. Admitted, upon information and belief.

33. Plaintiffs admit they may have benefited from certain expenses incurred by Defendants but deny the remaining allegations.

34. Plaintiffs admit they may have benefited from certain expenses incurred by Defendants but deny the remaining allegations.

35. Denied as stated.

36. Denied.

37. Denied.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, John Doe, Jane Doe Mother, and John Doe Father, pray for judgment against Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr.,

Esq.; Christina R. Fagnoli, Esq; Barrett R. Brewer, Esq., and BREWER LAW FIRM, LLC, for all actual damages, consequential damages, and incidental damages; punitive damages, and prejudgment interest, all in an amount to be more specifically proven at trial; for an Order dismissing the Clawson Fagnoli Defendants' counterclaims with prejudice; together with the costs of this action and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
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Counsel for Plaintiffs

Beaufort, South Carolina

July 28, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE CIRCUIT COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and
John Doe Father,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R.
Fargnoli, Esq.; Barrett R. Brewer,
Esq., and BREWER LAW FIRM, LLC,

Defendants.

**STIPULATIONS
PER RULE 43(k), SCRPC**

Plaintiffs, John Doe, Jane Doe Mother, and John Doe Father (collectively “the Plaintiffs”), and Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fargnoli, Esq.(collectively “the Clawson Fargnoli Defendants”); BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (collectively “the Brewer Defendants”), through their respective counsel, stipulate to the following under Rule 43(k), SCRPC:

RELEVANT PROCEDURAL BACKGROUND

1. On March 19, 2021, Plaintiffs filed a “Summons and Complaint” to commence this lawsuit against the Clawson Fargnoli Defendants and Brewer Defendants. The allegations in the Complaint generally assert professional liability allegations.

2. On April 30, 2021, Plaintiffs filed an “Amended Summons and Complaint” to include the affidavit of Justin Dillon, Esq., an expert witness and lawyer with experience in litigating Title IX matters, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of filing the affidavit.

3. On May 9, 2021, the Clawson Fargnoli Defendants filed a “Motion to Dismiss Complaint.”

4. On May 10, 2021, the Brewer Defendants filed a “Motion to Dismiss Complaint.”

5. On June 16, 2021, Plaintiffs filed “Plaintiffs’ Motion for Default Judgment Against All Defendants, Alternatively, Plaintiffs’ Motion to Strike Defendants’ Motion to Dismiss” (“Plaintiffs Motion for Default”), claiming the Defendants were in default because they did not simultaneously file Answers to the Amended Complaint as required under S.C. CODE ANN. § 15-36-100(C)(1) or S.C. CODE ANN. § 15-36-100(E).

6. On June 16, 2021, Plaintiffs filed a “Second Amended Summons and Complaint” based on the arguments in the Defendants’ respective Motions to Dismiss filed on May 9 and May 10, 2021.

7. On June 21, 2021, Plaintiffs filed “Rule 11(a) Certification concerning Plaintiffs’ Motion for Default Judgment Against All Defendants, Alternatively, Plaintiffs’ Motion to Strike Defendants’ Motion to Dismiss.”

8. On June 28, 2021, the Clawson Fargnoli Defendants filed their “Answer to the Second Amended Complaint and Counterclaim Against All Plaintiffs” and a “Motion to Dismiss Second Amended Complaint.”

9. On June 30, 2021, the Brewer Defendants filed their “Answer to the Second Amended Complaint and Counterclaims” and a “Motion to Dismiss Second Amended Complaint.”

STIPULATIONS

1. The Clawson Fargnoli Defendants agree to withdraw their Motion to Dismiss filed on May 9, 2021.

2. The Brewer Defendants agree to withdraw their Motion to Dismiss filed on May 10, 2021.

3. Plaintiffs agree to withdraw Plaintiffs' Motion for Default filed on June 16, 2021.

WE SO STIPULATE:

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Counsel for Defendants, Samuel R. Clawson, Jr., Esq., Christina R. Fagnoli, Esq.,

and the law firm, CLAWSON FARGNOLI, LLC

PENDARVIS LAW



August 17, 2021

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: *John Doe; Jane Doe Mother; and John Doe Father vs. CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC*

Civil Action No.: 2021-CP-10-01343

Dear Ms. Armstrong:

On August 16, 2021 our office inadvertently filed an incorrect Stipulation Per Rule 43(k) which omitted the revisions from counsel.

Enclosed please find the correct Stipulation Per Rule 43(k) for filing.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Tracy Lyn Landry

Enclosures

cc: James M. Dedman, IV, Esq.
R. Bruce Wallace, Esq.

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Appendix216

ELECTRONICALLY FILED - 2021 Aug 17 1:00 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001343

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

John Doe; Jane Doe Mother; and
John Doe Father,

Case No. 2021-CP-10-01343

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R.
Fargnoli, Esq.; Barrett R. Brewer,
Esq., and BREWER LAW FIRM, LLC,
Defendants.

**STIPULATIONS
PER RULE 43(k), SCRPC**

Plaintiffs, John Doe, Jane Doe Mother, and John Doe Father (collectively “the Plaintiffs”), and Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fargnoli, Esq.(collectively “the Clawson Fargnoli Defendants”); BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (collectively “the Brewer Defendants”), through their respective counsel, stipulate to the following under Rule 43(k), SCRPC:

RELEVANT PROCEDURAL BACKGROUND

1. On March 19, 2021, Plaintiffs filed a “Summons and Complaint” to commence this lawsuit against the Clawson Fargnoli Defendants and Brewer Defendants. The Complaint asserts causes of action for professional negligence, breach of fiduciary duty, and breach of contract.

2. On April 30, 2021, Plaintiffs filed an “Amended Summons and Complaint” to include the affidavit of Justin Dillon, Esq., an expert witness and lawyer claiming to have experience in litigating Title IX matters.

3. On May 9, 2021, the Clawson Fargnoli Defendants filed a “Motion to Dismiss Complaint.”

4. On May 10, 2021, the Brewer Defendants filed a “Motion to Dismiss Complaint.”

5. On June 16, 2021, Plaintiffs filed “Plaintiffs’ Motion for Default Judgment Against All Defendants, Alternatively, Plaintiffs’ Motion to Strike Defendants’ Motion to Dismiss” (“Plaintiffs Motion for Default”).

6. On June 16, 2021, Plaintiffs filed a “Second Amended Summons and Complaint”.

7. On June 21, 2021, Plaintiffs filed “Rule 11(a) Certification concerning Plaintiffs’ Motion for Default Judgment Against All Defendants, Alternatively, Plaintiffs’ Motion to Strike Defendants’ Motion to Dismiss.”

8. On June 28, 2021, the Clawson Fagnoli Defendants filed their “Answer to the Second Amended Complaint and Counterclaim Against All Plaintiffs” and a “Motion to Dismiss Second Amended Complaint.”

9. On June 30, 2021, the Brewer Defendants filed their “Answer to the Second Amended Complaint and Counterclaims” and a “Motion to Dismiss Second Amended Complaint.”

STIPULATIONS

1. The Clawson Fagnoli Defendants agree to withdraw their Motion to Dismiss filed on May 9, 2021.

2. The Brewer Defendants agree to withdraw their Motion to Dismiss filed on May 10, 2021.

3. Plaintiffs agree to withdraw Plaintiffs’ Motion for Default Judgment filed on June 16, 2021.

4. The following motions remain pending and are scheduled for hearing on August 30, 2021:

- a. Plaintiffs' Motion to Proceed Anonymously under Pseudonyms, filed March 19, 2021;
- b. The Clawson Fagnoli Defendants' Motion to Prohibit Plaintiffs from Using Pseudonyms, filed May 9, 2021;
- c. The Brewer Defendants' Motion to Unmask Plaintiffs Using Pseudonyms, filed May 10, 2021;
- d. The Clawson Fagnoli Defendants' Motion to Prohibit Plaintiffs from Using Pseudonyms, filed June 28, 2021;
- e. The Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint, filed June 28, 2021; and
- f. The Brewer Defendants' Motion to Dismiss the Second Amended Complaint, filed June 30, 2021.

WE SO STIPULATE:

PENDARVIS LAW OFFICES, P.C.

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**Counsel for Defendants, Samuel R. Clawson, Jr., Esq., Christina R. Fagnoli, Esq.,
and the law firm, CLAWSON FARGNOLI, LLC**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John Doe
Father,
Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fagnoli,
Esq.; Barrett R. Brewer, Esq., and BREWER
LAW FIRM, LLC,
Defendants.

**PLAINTIFFS' COMBINED
MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTIONS TO DISMISS
SECOND AMENDED COMPLAINT**

TO: JAMES M. DEDMAN, IV, ESQ., COUNSEL FOR DEFENDANTS, CLAWSON FARGNOLI, LLC, SAMUEL R. CLAWSON, JR., ESQ., AND CHRISTINA R. FARGNOLI, ESQ.; AND R. BRUCE WALLACE, ESQ., COUNSEL FOR DEFENDANTS, BARRETT R. BREWER, ESQ. AND BREWER LAW FIRM, LLC:

Plaintiffs, John Doe, Jane Doe Mother, and John Doe Father, respectfully submit this Combined Memorandum in Opposition to the Motions to Dismiss the Second Amended Complaint filed on behalf of Defendants' CLAWSON FARGNOLI, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (collectively "the Clawson and Fagnoli Defendants"), and on behalf of Defendants, BREWER LAW FIRM, LLC, and Barrett R. Brewer, Esq. (collectively "the Brewer Defendants").

Summary of the Arguments

1. Plaintiffs Jane Doe Mother and John Doe Father have standing to assert claims against Defendants based on the allegations in the Second Amended Complaint alleging they were clients of Defendants concerning the "Federal Case" and the "State Case;" and the allegations Jane Doe Mother and John Doe Father entered into a contract of representation with the Defendants.

2. Mr. Dillon's expert affidavit was timely filed and satisfied all aspects of S.C. CODE ANN. § 15-36-100. On March 19, 2021, the Summons & Complaint was filed without an expert affidavit. March 19, 2021, was three days before the three-year anniversary of the date on which any reasonable person would know or should have known of a claim having accrued against Defendants. On April 30, 2021, which is within 45 days of March 19, 2021, an Amended Summons

& Amended Complaint was filed, along with Mr. Dillon's expert affidavit, which satisfied the requirements for timely filing the expert affidavit under S.C. CODE ANN. § 15-36-100(C)(1).

3. Mr. Dillon is well-qualified to serve as an expert in this matter based on his lengthy experience with Title IX disputes as shown on his curriculum vitae, which was included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint. Defendants' 12(b)(6) motion does not satisfy the requirements under S.C. CODE ANN. § 15-36-100(E) because their challenges only go to the weight of Mr. Dillon's experience, and not the lack thereof. Being licensed to practice law in South Carolina does not a requirement to serve as an expert on legal malpractice matters, especially when the underlying issues concern federal Title IX disputes. Mr. Dillon reviewed the materials available at the time of filing his expert affidavit, to the extent necessary to form his opinions. This is all that is required under S.C. CODE ANN. § 15-36-100. Nowhere in the Motions to Dismiss due Defendants contend this is a frivolous lawsuit.

4. Addition to Defendants' breach of their professional and fiduciary duties to Plaintiffs during the mediation in the underlying lawsuit, the Second Amended Complaint contains allegations of Defendants' tortious conduct causing financial injuries to Plaintiffs long after the mediation.

Legal Standard

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCPP, the appellate court applies the same standard of review as the [circuit] court." HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 631, 699 S.E.2d 699, 703 (Ct. App. 2010). See also, Fabian v. Lindsay, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) ("A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true."); Wilkinson v. E. Cooper Cmty. Hosp., Inc., 410 S.C. 163, 169, 763 S.E.2d 426, 430 (2014) (quoting Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). "In deciding whether the [circuit] court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid claim for relief." Id. "The [circuit] court and this [c]ourt on appeal must presume all well pled facts to be true." Id. at 635, 699 S.E.2d at 705 ((internal quotation marks omitted).

Procedural Background

On March 19, 2021, Plaintiffs filed a Summons and Complaint to commence this lawsuit

against the Defendants generally alleging errors in Defendants' representation of Plaintiffs' in federal court lawsuit against a University for violations of Title IX, the United States Constitution, and the University's own disciplinary process arising from errors and mishandling of an investigation of an incident of John Doe's alleged nonconsensual sex with another student, and a state court lawsuit against the individuals and others who made false statements and gave false testimony supporting the University's investigation. The allegations focus on errors made during a mediation in the underlying lawsuits on March 21, 2018, which was 2 years and 262 days before this lawsuit was filed.

On March 19, 2021, Plaintiffs also filed a Motion to Proceed Anonymously Under Pseudonyms based on the sensitive nature of the allegations and evidence supporting the claims in this case; the likelihood public disclosure of Plaintiffs' identities will cause embarrassment and humiliation; and the lack of prejudice to Defendants.

On April 30, 2021, Plaintiffs filed an Amended Summons and Complaint, which included the affidavit of Justin Dillon, Esq., an expert witness and lawyer with experience in litigating Title IX matters. Mr. Dillon's affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of filing the affidavit.

On May 9, 2021, the Clawson and Fagnoli Defendants filed a Motion to Dismiss Complaint and Amended Complaint, and a Motion to Prohibit Plaintiffs from using Pseudonyms.

On May 10, 2021, the Brewer Defendants filed Motion to Dismiss Complaint on the grounds, virtually identical to the Motion to Dismiss filed by the Clawson and Fagnoli Defendants; and also filed a Motion to Unmask Plaintiffs using Pseudonyms.

On June 16, 2021, Plaintiffs filed a Second Amended Summons and Complaint based on the arguments in the Defendants' respective Motions to Dismiss claiming Mr. Dillon's affidavit is defective because he is not licensed in South Carolina, even though there is no such requirement under S.C. CODE ANN. § 15-36-100.

On June 28, 2021, the Clawson and Fagnoli Defendants filed their Answer to the Second Amended Complaint and Counterclaim Against All Plaintiffs and contemporaneously filed a Motion to Dismiss Second Amended Complaint.

On June 28, 2021, the Brewer Defendants filed Motion to Prohibit Plaintiffs from using Pseudonyms.

On June 30, 2021, the Brewer Defendants filed their Answer to the Second Amended Complaint and Counterclaims, and contemporaneously filed a Motion to Dismiss Second Amended Complaint.

ARGUMENTS IN OPPOSITION

I. Plaintiffs Jane Doe Mother and John Doe Father have standing to assert claims against Defendants based on the allegations in the Second Amended Complaint alleging they were clients of Defendants.

If the South Carolina Supreme Court found SELECT INSURANCE COMPANY had standing to sue and assert legal malpractice claims against MAYBANK LAW FIRM, LLC, and Roy P. Maybank, Esq., then surely the allegations in the Second Amended Complaint stating Plaintiffs Jane Doe Mother and John Doe Father were clients of the Defendants in the “Federal Case” and the “State Case” and the allegations they entered into a contract of representation with the Defendants satisfies the standing requirements under South Carolina law. See e.g., (Second Amended Complaint, ¶¶ 1, 2, 13, 14, 28, 29, 36, 37, 40, 49, 56, 61, and 66). Standing alone, the allegations in Paragraph 13, provides standing for Plaintiffs Jane Doe Mother and John Doe Father:

13. On or around November 2, 2017, the ***Lawyers accepted the representation of the Does to provide legal advice, services, and representation of the Does*** in a lawsuit pending in the United States District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against a University (“the University”); and representing the Does in a lawsuit pending in a lawsuit pending in the Court of Common Pleas in a County in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against individuals involved in submitting to the University false claims against John Doe, which led to a disciplinary action that was mishandled by the University. (Emphasis added).

The allegations in the Second Amended Complaint easily satisfy the requirements to state a legal malpractice claim and breach of fiduciary duty claim on behalf of Plaintiffs Jane Doe Mother and John Doe Father. See Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 525, 787 S.E.2d 485, 489 (2016) (“A claimant in a legal malpractice action must establish four elements: (1) ***the existence of an attorney-client relationship***, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client’s damages by the breach.”) (citing Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 636, 760 S.E.2d 399, 407 (2014)) (emphasis added); Turpin v. Lowther, 404 S.C. 581, 589, 745 S.E.2d 397, 401 (Ct. App. 2013) (“To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the ***existence of a fiduciary duty***, (2) a breach of that duty, and (3) damages proximately resulting from the

wrongful conduct of the defendant.”) (citing RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012)) (emphasis added); “The existence of a fiduciary duty is a question of law for the court.” Turpin, 404 S.C. at 589, 745 S.E.2d at 401.

The Motions to Dismiss Plaintiffs Jane Doe Mother and John Doe Father on the grounds of lack of standing should be denied.

II. Mr. Dillon’s expert affidavit was timely filed and satisfied all aspects of S.C. CODE ANN. § 15-36-100.

The Summons & Complaint was filed without an expert affidavit three days before the three-year anniversary of the date on which any reasonable person would know or should have known of a claim having accrued against Defendants. Less than 45 days later, the Amended Summons & Amended Complaint was filed along with Mr. Dillon’s expert affidavit, which satisfied the requirements for timely filing the expert affidavit under S.C. CODE ANN. § 15-36-100(C)(1). Defendants’ Motions to Dismiss ignore the specific allegations in Paragraph 103 in the Second Amended Complaint, which must be taken as true for the purposes of these Motions:

103. In February and early March 2021, the Lawyers refused to enter into a statute of limitations tolling agreement to toll the statute of limitations on Plaintiffs’ legal professional negligence claims against the Lawyers. As stated in Paragraphs 37-39, a substantial portion of the Lawyers’ liability arises from the Lawyers’ acts and omissions during a mediation on March 21, 2018 in the Federal Case. As a result, Plaintiffs had a good faith basis to believe the three-year statute of limitations on Plaintiffs’ legal professional negligence cause of action against the Lawyers would expire on March 21, 2021, which was within 10 days of the date the Summons & Complaint was filed on March 19, 2021. Because of time constraints, an affidavit of an expert could not be prepared in time to file the Summons & Complaint before March 21, 2021.

Under S.C. CODE ANN. § 15-36-100(C)(1), included with the filing of the Amended Summons & Amended Complaint and marked as Exhibit 1 was the affidavit of Justin Dillon, Esq., an expert witness and lawyer licensed to practice law in the Commonwealth of Virginia and in the District of Columbia, which satisfies S.C. CODE ANN. § 15-36-100(A)(1) to qualify Mr. Dylan to serve as an expert in this matter. Another copy of Mr. Dillion’s affidavit is filed with this Second Amended Summons & Amended Complaint as Exhibit 1. Mr. Dillon has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in the active practice litigating Title IX matters for at least three of the last five years immediately preceding his opinions, which satisfies S.C. CODE ANN. § 15-36-100(A)(2)(b)(i) to qualify Mr. Dylan to serve as an expert in this matter. Mr. Dillion has been invited to speak before organizations including the American Bar

Association, the National Association of Criminal Defense Lawyers, the Association of Title IX Administrators, the Higher Education Consultants Association, the Colorado Bar Association, the Virginia State Bar, the District of Columbia Bar, and has guest lectured on Title IX matters at Harvard Law School, George Washington University, American University, and the University of Maryland. Mr. Dillion has other specialized knowledge in Title IX matters, which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of his study, experience, or both, which satisfies S.C. CODE ANN. § 15-36-100(A)(3) to qualify Mr. Dylan to serve as an expert in this matter.

Mr. Dillon's affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of Mr. Dillion's affidavit.

This Second Amended Summons & Amended Complaint is being filed under S.C. CODE ANN. § 15-36-100(E), which permits an amended pleading to be filed to cure the alleged defects. This Second Amended Summons & Amended Complaint is being filed based on the specious arguments contained in the Lawyers' respective Motions to Dismiss claiming Mr. Dillon's affidavit is defective because he is not licensed in South Carolina, when the Lawyers knew or should have known there is no such requirement under S.C. CODE ANN. § 15-36-100.

The Summons & Complaint, the Amended Summons & Amended Complaint with Mr. Dillon's expert affidavit, and the Second Amended Summons & Second Amended Complaint also filed with Mr. Dillon's expert affidavit as an exhibit, all satisfy the requirements under S.C. CODE ANN. § 15-36-100. Defendants' Motions to Dismiss on the grounds Mr. Dillon's expert affidavit was not timely filed should be denied.

III. Mr. Dillon is extraordinarily well-qualified to serve as an expert to file the affidavit of merit in this matter.

Defendants' Motions to Dismiss did not mention the portions of Mr. Dillon's expert affidavit and his curriculum vitae outlining his vast experience with Title IX disputes. In his affidavit, Mr. Dillon, who graduated DUKE UNIVERSITY and then from HARVARD LAW SCHOOL, recites his professional experience as follows:

11. I am a lawyer licensed to practice law in the Commonwealth of Virginia (since 2002) and the District of Columbia (since 2007). I have also been admitted to practice in the United States District Court for the Eastern District of Virginia, the United States District Court for the District of Columbia, the United States District Court for the Central District of Illinois, the United States District Court for the Eastern District of Michigan, the United States District Court for the Northern District of Ohio, the United States Court of Appeals for the District of

Columbia Circuit, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court.

12. I have gained nationwide attention for my work representing students and professors in Title IX and other campus misconduct cases, which my firm and I have handled at more than 100 schools across the country. I was the first lawyer in the country to win summary judgment against a university in a campus sexual misconduct case in modern era, which I did against GEORGE MASON UNIVERSITY in 2016. I have settled numerous lawsuits and potential lawsuits against colleges nationwide. Along with my partner Matt Kaiser, I am the author of *The KAISERDILLON PLLC Guide to Representing Yourself in a Campus Sexual Assault Case*. I have been published or quoted regarding campus sexual misconduct issues in more than a dozen national newspapers and magazines, including *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Philadelphia Inquirer*, *National Review*, *The Nation*, and *The Weekly Standard*. I have also spoken on these issues before organizations such as the American Bar Association, the Association of Title IX Administrators, HARVARD LAW SCHOOL, the University of Kentucky's Center for Research on Violence Against Women, the Higher Education Consultants Association, the District of Columbia Bar, the Virginia State Bar, and the Colorado Bar Association. Immediately before joining KAISER DILLON, PLLC, I spent five and a half years as an Assistant United States Attorney in Washington, DC, where I led more than 100 Grand Jury investigations, tried more than 60 criminal cases, and handled more than a dozen appeals. Earlier in my career, I worked at the Civil Rights Division of the U.S. Department of Justice. I am a Georgia native and a graduate of Duke University and Harvard Law School.

See (Expert Affidavit by Justin Dillon, Esq., Ex. 1 to Amended Complaint and Ex. 1 to Second Amended Complaint).

There is no requirement for lawyer serving as an expert in legal malpractice case to be licensed in South Carolina. In Smith v. Haynsworth, Marion, McKay & Geurard, the South Carolina Supreme Court found the trial court had erred in disqualifying Dr. Gregory B. Adams as an expert in legal malpractice matter because he was not licensed to practice law in South Carolina. The South Carolina Supreme Court held:

Further, the fact that Adams is not licensed to practice law in this state does not disqualify him as an expert. See McMillan v. Durant, 312 S.C. 200, 439 S.E.2d 829 (1993) (practitioner's experience teaching in a particular specialty and his professional interaction with practitioners of that specialty are facts sufficient to support his qualification as an expert. Defects in qualification go to weight rather than admissibility). Likewise, the fact that Adams is not a real estate lawyer does not prohibit his testimony concerning those ethical obligations which are relevant to appellants' claims.

Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 438, 472 S.E.2d 612, 614 (1996).

Defendants' Motions to Dismiss claiming Mr. Dillon's affidavit is defective, should be denied based on Mr. Dillon's substantial experience with Title IX disputes as shown in his Affidavit and on his curriculum vitae, which was included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint. South Carolina rejected the "locality rule" concerning expert testimony and expert affidavits. Mr. Dillon is more than qualified to provide the testimony in his affidavit. Defendants Motions to Dismiss should be denied.

IV. The Second Amended Complaint contains allegations of Defendants' tortious conduct causing financial injuries to Plaintiffs long after the mediation.

Defendants' arguments, the Second Amended Complaint should be dismissed under Rule 12(b)(6), SCRCP, because the "gravamen of Plaintiffs' Second Amended Complaint is simply post-mediation 'buyer's remorse,'" ignores the allegations in Plaintiffs' pleadings about Defendants conduct long after the mediation. In Paragraphs 61-63, Plaintiffs allege:

61. On February 28, 2019, the Lawyers sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case.

62. On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case's opposing counsel and mediation mediator, interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation, all of which added and continued to cause damages to John Doe.

63. The February 28, 2019, letter from the Lawyers interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation.

See (Second Amended Complaint, ¶¶ 61-63).

The mediation in the underlying matter took place in March 2018. Defendants' conduct stated in these 3 paragraphs took place almost a year later.

CONCLUSION

The Motions to Dismiss should be denied for all of the reasons stated in this memorandum in opposition.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

/s/ Thomas A. Pendarvis

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October 20, 2021

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

John Doe; Jane Doe Mother; and
John Doe Father,

Plaintiffs,

v.

Clawson Fagnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fagnoli, Esq.;
Barret R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

**JOINT MEMORANDUM IN SUPPORT
OF DEFENDANTS' MOTIONS TO
PROHIBIT PLAINTIFFS FROM USING
PSEUDONYMS**

Pursuant to South Carolina Rules of Civil Procedure 10(a) and 17(a), Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., Christina R. Fagnoli, Esq., Barret R. Brewer, Esq., and Brewer Law Firm, LLC ("Defendants")¹ submit this Memorandum in Support of their Motions to Prohibit Plaintiffs John Doe, Jane Doe Mother, and John Doe Father ("Plaintiffs") from using pseudonyms in this litigation.² Defendants request that the Court enter an order prohibiting Plaintiffs from using Pseudonyms.³

¹ Defendants Barrett R. Brewer and the Brewer Law Firm LLC filed a motion to Unmask Plaintiffs Using Pseudonyms on May 10, 2021, and they join in this Memorandum.

² Of note, on March 19, 2021, Plaintiffs filed a Motion to Proceed Anonymously Under Pseudonyms in this matter. This brief is submitted both in opposition to Plaintiffs' Motion to Proceed Anonymously Under Pseudonyms and in support of Defendants' own Motion to Prohibit Plaintiffs From Using Pseudonyms.

³ Defendants previously filed a Motion to Prohibit Plaintiffs From Using Pseudonyms on May 9, 2021. Thereafter, on June 16, 2021, Plaintiffs filed their Second Amended Complaint. Out of an abundance of caution, Defendants updated and re-filed their Motion to Prohibit Plaintiffs From Using Pseudonyms on June 28, 2021.

FACTUAL AND PROCEDURAL BACKGROUND

This case stems from Plaintiffs’ allegations of legal professional negligence and breach of fiduciary duty against Defendants. On November 2, 2017, Defendants agreed to represent Plaintiff John Doe in two pre-existing lawsuits – one pending in the U.S. District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against his university (the “University”) and another pending in a Court of Common Pleas in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against an accuser who submitted to the University claims of sexual misconduct against Plaintiff John Doe. (See Second Am. Compl. at ¶ 13).

Prior to the institution of the Federal Case and the State Case, Plaintiff John Doe was accused of and ultimately found by the University to have engaged in “nonconsensual sexual activities” at an administrative hearing and punished with suspension. (See Second Am. Compl. at ¶ 19). Plaintiff John Doe appealed the University’s administrative hearing decision. (See Second Am. Compl. at ¶ 20). The appeals process resulted in the imposition of heavier sanctions against Plaintiff John Doe, including an additional suspension. (See Second Am. Compl. at ¶ 21). Plaintiff John Doe thereafter sued the University in the Federal Case, “alleging, among other things, violation of Title IX of the Education Amendments of 1972, failure to provide John Doe with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment. (Second Am. Compl. at ¶ 16).

After a successful mediation in the Federal Case, Plaintiff John Doe developed “buyer’s remorse” and attempted to abandon the settlement. In response to Plaintiff John Doe’s change of heart after settlement, the University moved to enforce the settlement, which the District Court ultimately granted. (See Second Am. Compl. at ¶ 55-57).

Approximately one year after filing the Federal Case, Plaintiff John Doe sued his accuser in the State Case, asserting claims for defamation, abuse of process, intentional infliction of emotional distress, and civil conspiracy. (See Second Am. Compl. at ¶ 24). While the Federal Case resolved at mediation, the State Case remains pending. Notably, and perhaps most importantly, **Plaintiff John Doe is litigating the State Case under his own name.**⁴ Plaintiff John Doe initially attempted to litigate the State Case under a pseudonym and a Motion to Proceed Under Pseudonym and For Protective Order. However, that Court denied those motions and specifically found that “[Plaintiff John Doe] failed to establish any of the factors which would support proceeding in this matter under pseudonyms.” A redacted version of this order is attached as **Exhibit A.**⁵

Here, Plaintiffs assert claims for legal professional negligence and breach of fiduciary duty. They allege “[t]he Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the Does⁶ to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the Does; meet the goals of the Federal

⁴ Of note, Plaintiff John Doe recently filed a 35-page memorandum in opposition to his accuser’s Motion for Summary Judgment in the State Case. Over the course of thirty-five pages, this memorandum offers substantial detail about the allegations levied against Plaintiff John Doe, as well as personal details about his life, relationships, education, and sexual history. This memorandum uses Plaintiff John Doe’s real name, as well as the real names of all other parties involved in the underlying allegations of sexual misconduct. If the true identities of the parties can be used in the underlying State Case which is actually litigating the allegations of sexual misconduct, there is no reason why the true identities of the Plaintiffs cannot be used in the instant case, which is litigating allegations of legal malpractice that are ancillary, at best, to the “sensitive,” “embarrassing,” and “humiliating” allegations at issue in the State Case. Upon request, Defendants are willing to submit copies of that summary judgment briefing to the Court in camera until such time as the pseudonym issue is resolved.

⁵ Notably, Plaintiffs never appealed the subject Order and, thus, whatever public policy concerns Plaintiffs attempt to now raise, they were apparently not important enough to appeal the subject Order when it was issued.

⁶ Both Jane Doe Mother and John Doe Father have sought to litigate this matter under pseudonyms, although neither were parties to the underlying State Case or Federal Case. Moreover, there are no allegations against either Jane Doe Mother or John Doe Father that are “sensitive in nature” or that would cause them embarrassment and humiliation. In fact, there is no reason why either Jane Doe Mother or John Doe Father would need to conceal their identities.

Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.” (Second Am. Compl. at ¶ 83). Despite the fact that Plaintiff John Doe is litigating the underlying sexual misconduct allegations in another state court proceeding, Plaintiffs seek to use pseudonyms in this case “based on the sensitive nature of the allegations and evidence supporting the claims in this case; the likelihood public disclosure of Plaintiffs’ identities will cause embarrassment and humiliation; and the lack of prejudice to Defendants.”

ARGUMENT

To use a pseudonym, a party’s stated interest in anonymity must be balanced against and outweigh the public’s interest in openness and any prejudice that anonymity would pose to an opposing party. *Co. Doe v. Pub. Citizen*, 749 F.3d 246, 274 (4th Cir. 2014). The trial court must balance the plaintiff’s interest in maintaining anonymity against the “customary and constitutionally-embedded presumption of openness in judicial proceedings.” *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981). In the civil context, a plaintiff instigates the action, and, except in the most exceptional cases, must be prepared to proceed on the public record. *Doe v. Bell Atl. Bus. Sys. Servs.*, 162 F.R.D. 418, 422 (D. Mass. 1995). Trial courts have a “judicial duty to inquire into the circumstances of particular cases to determine whether the dispensation [of anonymity] is warranted.” *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993). “[C]ourts have generally been reluctant to provide anonymity based on a plaintiff’s potential embarrassment, even if the case involves sexual assault.” *Doe v. North Carolina Cent. Univ.*, No. 1:98CV01095, 1999 U.S. Dist. LEXIS 9804 (M.D. N.C. April 15, 1999).

A. Pseudonyms are not justified in this litigation.

The nature of the allegations and underlying facts in this case do not justify allowing Plaintiffs to proceed anonymously (especially since Plaintiff John Doe is litigating the underlying sexual misconduct allegations in a related state court proceeding without the use of a pseudonym).

The fact that the underlying State Case and Federal Case involve allegations of sexual misconduct does not justify discarding the “customary and constitutionally-embedded presumption of openness in judicial proceedings.” *Stegall*, 653 F.2d at 186. As noted above, on March 19, 2021, Plaintiffs filed this litigation under pseudonymous names but elected to identify each of the five defendants by their true names. In footnote one to the Second Amended Complaint, Plaintiffs note that “[d]ue to the subject matter of these underlying cases, information in this Complaint will refer only to John Doe, Jane Doe Mother, and John Doe Father by those pseudonyms or will be otherwise redacted to preserve John Doe’s anonymity.” However, as noted above, Plaintiff John Doe is currently litigating his claims under his own true name in one of those “underlying cases” (i.e., the State Case). In fact, he has been doing so for nearly two years. Further, as noted above, the trial court in the underlying State Case specifically rejected Plaintiff John Doe’s request to proceed under a pseudonym based upon the very same set of operative facts at issue here. The Court specifically found that “[Plaintiff John Doe] failed to establish any of the factors which would support proceeding in this matter under pseudonyms.” See Exhibit A.

Plaintiffs purport that pseudonyms are necessary here “based on the sensitive nature of the allegations and evidence supporting the claims in this case; the likelihood public disclosure of Plaintiffs’ identities will cause embarrassment and humiliation; and the lack of prejudice to Defendants.” However, as noted above, this is a legal malpractice case, not a sexual misconduct case and, moreover, Plaintiff John Doe’s identity has already been disclosed in the underlying State Case, which is directly litigating the sexual misconduct allegations. Moreover, as noted above in footnote 3, Plaintiff John Doe recently filed a 35-page memorandum in opposition to his accuser’s Motion for Summary Judgment in the State Case. The memorandum offers significant detail about the allegations levied against Plaintiff John Doe, as well as personal details about his

life, relationships, education, and sexual history, all while using his real name. Lastly, Plaintiffs took no issue in publicly naming the defendants in this lawsuit – a legal malpractice case where the reputations of the defendant lawyers are at issue. The allegations levied by Plaintiffs against Defendants may very well be embarrassing or harmful to their professional reputations in the legal community, yet Defendants are not litigating under pseudonyms.

For these reasons, there is no basis here for any party to litigate this case under fictitious, anonymous, or pseudonymous names. This Court should disallow them.

B. The law compels Plaintiffs to litigate their claims under their own names.

When taken as a whole, the South Carolina Rules of Civil Procedure, relevant case law (including the case cited by Plaintiffs), public policy, and fairness compel Plaintiffs to proceed under their actual names. In South Carolina, there is a presumption of openness in judicial proceedings. South Carolina Rule of Civil Procedure 10(a) mandates that the summons and complaint “shall include the names of all parties” Further, South Carolina Rule of Civil Procedure 17(a) requires that “[e]very action shall be prosecuted in the name of the real party in interest.” “There is no litmus test in South Carolina to determine whether a litigant in a civil proceeding should be allowed to proceed anonymously.” *Doe v. Howe*, 362 S.C. 212, 217, 607 S.E.2d 354, 356 (Ct. App. 2004). Both the South Carolina Court of Appeals and the Fourth Circuit Court of Appeals have utilized the following factors to determine whether a litigant should be allowed to proceed anonymously: “(1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is it to preserve privacy in a matter of sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; (3) the ages of the persons whose privacy interests are sought to be protected; (4)

whether the action is against a government or private party; (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.” *Id.*

While Plaintiffs attempt to rely on the *Doe v. Howe* case, analysis of the factors enumerated above simply do not apply to permit Plaintiffs to conceal their identities from the public in this matter. As to the first and second factors, Plaintiff John Doe is simultaneously litigating the underlying facts under his own name in another county in this state. Moreover, the claims and defenses at issue in this case are related to the legal representation of Plaintiffs (particularly at mediation of the federal case), rather than the underlying allegations of sexual misconduct levied against Plaintiff John Doe. As to the third factor, all Plaintiffs are legal, competent adults. As to the fourth factor, all parties involved in this lawsuit are private parties. As to the fifth factor, Defendants will suffer great prejudice if Plaintiffs are permitted to litigate under pseudonyms. Defendants anticipate issuing subpoenas to third parties and taking a number of depositions of third parties in this litigation.⁷ It will be incredibly difficult to conduct the type of discovery necessary for this case without using Plaintiffs’ real names. It is unclear how Defendants would be expected to issue subpoenas to key witnesses, such as the University and others, for records and documents related to “John Doe” if disclosure of Plaintiffs’ true names was prohibited. Defendants’ ability to defend themselves will be substantially prejudiced if they are unable to issue proper subpoenas because of the pseudonymous names utilized by Plaintiffs in this matter.

Moreover, Plaintiffs attempt to equate this case with the *Doe v. Howe* case is misplaced. While *Doe v. Howe* is a legal malpractice case, the underlying allegations of sexual misconduct are distinguishable from those at issue here. *See id.* First, the large majority of the underlying

⁷ Of note, Plaintiffs have already identified approximately 200 individuals and entities in discovery to date. Given the context of the immense scope of anticipated discovery in this case, Defendants would be substantially prejudiced if they are not able to issue subpoenas which identify Plaintiff John Doe by his true name.

sexual misconduct allegations at issue in *Doe v. Howe* occurred when the victim was a minor student at Porter Gaud School. *See id.* The victim, his brother, and a number of other minor students alleged years of sexual abuse by an employee of the school. *See id.*

As to the underlying sexual misconduct allegations at issue here, neither Plaintiff John Doe nor his accuser are minors, nor were they at the time of the alleged incident. Moreover, there are no allegations of an imbalance of power here, such as with the student-teacher relationship at issue in *Doe v. Howe*. Nor are there multiple minor accusers or years of alleged abuse at issue here, as in the *Doe v. Howe* case. Notably, the *Doe* court specifically pointed out the need to protect the names of *child victims* of sexual abuse, and the prohibition on public disclosure of the names of *victims* of criminal sexual conduct in news media. *See id.* at 217, 607 S.E.2d at 356. Here, Plaintiff John Doe is neither a minor, nor an alleged victim of sexual abuse. Rather, Plaintiff John Doe is the alleged perpetrator of a sexual assault on a fellow student at the University.

Moreover, as noted above, Plaintiff John Doe has already fought this exact same battle in the State Case and lost. If Plaintiff John Doe is participating in the underlying State Case which directly litigates the underlying sexual misconduct allegations using his real name, then he should also be required to litigate the instant malpractice case using his real name. It seems obvious that the State Case would concern matters that were more “highly sensitive and personal nature and highly inflammatory and prejudicial if repeated,” as compared to the allegations at issue in this legal malpractice action. (See Plaintiffs’ Motion to Proceed Anonymously at 2-3). Yet, Plaintiff John Doe continues to litigate the State Case using his true identity and real name.

For these reasons, Plaintiffs have failed to show why they should be permitted to proceed under pseudonyms and, as such, the Court should grant Defendants’ motion.

C. Plaintiffs have already disclosed their identity in this litigation.

Despite the foregoing, Plaintiffs have already disclosed their identity in this litigation because their own expert, Justin Dillon, revealed sufficient information to identify Plaintiffs in his publicly filed expert affidavit (including Plaintiffs' surname). On April 30, 2021, Plaintiffs filed their First Amended Complaint along with an affidavit of their purported expert, Mr. Dillon. On page seven of that affidavit, Mr. Dillon thrice disclosed the surname of Plaintiffs and also provided the case number of the underlying litigation in which Plaintiff John Doe is litigating the underlying claims under his own true name. As such, by filing this expert affidavit, Plaintiffs have already disclosed their own surnames and sufficient information to enable any individual to locate the underlying litigation in which Plaintiff John Doe is litigating under his own name.

Defendants filed a Motion to Dismiss the First Amended Complaint and, therein, pointed out the fact that Mr. Dillon had disclosed the Plaintiffs' surname in his affidavit. On June 14, 2021, Plaintiffs filed the affidavit of Mr. Dillon a second time in conjunction with the Second Amended Complaint. However, even after Defendants raised the issue in their Motion to Dismiss, Plaintiffs failed to fix the issue, and the second affidavit again included the surname of Plaintiffs. Thus, there is no basis to permit Plaintiffs to continue using pseudonymous names, as two of their own filings include disclosure of their real surname and sufficient information to ascertain their true identities.

CONCLUSION

For the reasons stated above, Defendants respectfully requests that this Court grant its Motion to Prohibit Plaintiffs from Using Pseudonyms.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted this 22nd day of October, 2021.

/s/ James M. Dedman, IV

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EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF [REDACTED]

CIVIL ACTION NO: [REDACTED]

[REDACTED]

Plaintiff,

v.

[REDACTED]

[REDACTED]

Defendants.

**ORDER DISALLOWING PLAINTIFF
FROM USING PSEUDONYMS
FOR HIMSELF, JANE DOE,
AND RICHARD DOE**

This matter came before this Court on Defendant's Jane Doe ([REDACTED]) and Richard Doe ([REDACTED]) motion for an Order disallowing Plaintiff John Doe ([REDACTED]) from using pseudonyms in this action. A hearing was held on [REDACTED]. Appearing on behalf of the Plaintiff, John Doe, was [REDACTED] Esquire, and appearing for the Defendants Jane Doe and Richard Doe, was [REDACTED] Esquire, as well as [REDACTED] Esquire, appearing on behalf of behalf of Defendant Charles Doe.

FACTS

On, [REDACTED] the Plaintiff, [REDACTED] brought this action against [REDACTED] and [REDACTED] for Defamation and Civil Conspiracy. The legal claims in this suit and others relate to an [REDACTED] sexual encounter between [REDACTED] and [REDACTED] while [REDACTED] was incapacitated due to intoxication. At the time of the encounter, both [REDACTED] and [REDACTED] were students enrolled in [REDACTED] University ("[REDACTED]"). Shortly after the sexual encounter, a Title IX investigation was initiated and on [REDACTED] [REDACTED]'s five person Administrative Hearing Board conducted a formal hearing. Subsequent to the hearing, on [REDACTED] [REDACTED] issued a written determination that [REDACTED] was in violation of the student code of conduct by a

preponderance of the evidence, specifically for: (1) sexual misconduct, (2) harm to person, (3) disorderly conduct, and (4) alcohol. [REDACTED] filed two appeals both of which were denied by [REDACTED]'s administration.

When [REDACTED] brought this civil action in the [REDACTED] County Court of Common Pleas in [REDACTED] he filed an Ex Parte Motion to Proceed Under Pseudonym and For Protective Order. Even though he never obtained an Order from the Court granting that Motion, this matter has proceeded under the names, John Doe for [REDACTED] Jane Doe for [REDACTED] Richard Doe for [REDACTED] and Charles Doe for [REDACTED]

LAW

In Doe v. Howe, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2004), the South Carolina Court of Appeals set forth the factors to be considered in determining whether a party should be allowed to proceed anonymously. In Howe, the Court of Appeals recognized that "there is a presumption of openness of judicial proceedings." Id. at 218, 357. When considering whether a party should be allowed to proceed anonymously, the court should consider the following factors:

- (1) Whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature;
- (2) Whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties;
- (3) The ages of the persons whose privacy interests are sought to be protected;
- (4) Whether the action is against a governmental or private party; and

- (5) The risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Id., (quoting James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993)). The Court of Appeals also pointed out in Howe that the better approach for a trial court to use when considering a motion to proceed anonymously is one which avoids a rigid, formulaic application of the listed factors, and instead allows the trial court a degree of flexibility in this fact-sensitive area. Id., at 217.

During the hearing, [REDACTED] argued that the Court should not focus on applying the factors set out in Howe and asked the Court to consider applying similar standards used by the Second Circuit Court of Appeals and the Ninth Circuit Court of Appeals. Both of the Plaintiff's suggested standards included substantially the same list of factors as those set out in Howe. Ultimately, [REDACTED] failed to establish any of the factors which would support proceeding in this matter under pseudonyms.

CONCLUSION

After hearing the arguments of both parties, and for the reasons stated above, it is therefore ORDERED, ADJUDGED, and DECREED that [REDACTED] Ex Parte Motion to Proceed Under Pseudonym and For Protective Order is DENIED and [REDACTED] and [REDACTED]'s Motion to Disallow Plaintiff from Using Pseudonyms is GRANTED.

IT IS SO ORDERED.

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED], South Carolina



Common Pleas

Case Caption: John Doe VS Jane Doe , defendant, et al

Case Number: [REDACTED]

Type: Order/Other

So Ordered

s/ [REDACTED]

Electronically signed on [REDACTED] 13:46:36 page 4 of 4

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

John Doe; Jane Doe Mother; and
John Doe Father,

Plaintiffs,

v.

Clawson Fagnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fagnoli, Esq.;
Barret R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

**JOINT MEMORANDUM IN SUPPORT
OF DEFENDANTS' MOTION TO
DISMISS SECOND AMENDED
COMPLAINT**

Pursuant to South Carolina Rules of Civil Procedure 10(a) and 17(a), Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., Christina R. Fagnoli, Esq., Barret R. Brewer, Esq., and Brewer Law Firm, LLC ("Defendants") submit this Joint Memorandum in Support of their Motions to Dismiss Second Amended Complaint.

FACTUAL AND PROCEDURAL BACKGROUND

This case stems from Plaintiffs' allegations of legal professional negligence and breach of fiduciary duty against Defendants. On November 2, 2017, Defendants agreed to represent Plaintiff John Doe in two preexisting lawsuits – one pending in the U.S. District Court for the District of South Carolina (the "Federal Case") asserting Title IX and other claims against his university (the "University") and another pending in a Court of Common Pleas in South Carolina (the "State Case") asserting defamation, civil conspiracy, and other tort claims against an accuser who submitted to the University claims of sexual misconduct against Plaintiff John Doe. (See Second

Am. Compl. at ¶ 13). Notably, Plaintiff Jane Doe Mother and Plaintiff John Doe Father were not parties to either the Federal Case or State Case.¹

Prior to the institution of the Federal Case and the State Case, Plaintiff John Doe was accused of and ultimately found by the University to have engaged in “nonconsensual sexual activities” at an administrative hearing and punished with suspension. (See Second Am. Compl. at ¶ 19). Plaintiff John Doe thereafter appealed the University’s administrative hearing decision. (See Second Am. Compl. at ¶ 20). The appeals process resulted in the imposition of heavier sanctions against Plaintiff John Doe, including an additional suspension. (See Second Am. Compl. at ¶ 21). Plaintiff John Doe thereafter sued the University in the Federal Case, “alleging, among other things, violation of Title IX of the Education Amendments of 1972, failure to provide John Doe with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment. (Second Am. Compl. at ¶ 16).

As part of the Federal Case, Defendants represented Plaintiff John Doe at a court-ordered mediation on March 21, 2018. (See Second Am. Compl. at ¶ 37). Before the mediation, Defendants purportedly received an email from Plaintiffs stating Plaintiff John Doe’s mediation goals, including: “(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against John Doe, which by implication would have limited the University’s future treatment of John Doe’s academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) John Doe’s arguments regarding lack of due process afforded by the University during the

¹ Upon information and belief, Plaintiff Jane Doe Mother and Plaintiff John Doe Father helped Plaintiff John Doe pay for Defendants’ legal services; however, Plaintiff Jane Doe Mother and Plaintiff John Doe Father were not parties to the underlying lawsuits. Additionally, while they attended the court-ordered mediation in the Federal Case, they were not signatories to the Settlement Agreement. (See Second Am. Compl. at ¶ 39).

investigation and adjudicatory process be buttressed by reference to the cases listed in the email.” (Second Am. Compl. at ¶ 36). At the conclusion of the mediation session, “Plaintiff John Doe signed the ‘Settlement Agreement.’” (Second Am. Compl. at ¶ 39). A redacted version of the settlement agreement is attached hereto as **Exhibit A**. Plaintiffs contend that “[t]he Settlement Agreement conflicted with the goals explained in the March 2, 2018 email and conflicted with the goals of both the Federal Case and the State Case. (Second Am. Compl. at ¶ 41). After the successful mediation in the Federal Case, however, Plaintiff John Doe developed “buyer’s remorse” and attempted to abandon the settlement. On or about May 8, 2018, Plaintiffs terminated their attorney-client relationship with Defendants and sought new counsel. (See Second Am. Compl. at ¶ 47-48). The University filed a motion to enforce the settlement, which was ultimately granted by the Court. (See Second Am. Compl. at ¶ 55-57). The Order enforcing settlement is attached hereto as **Exhibit B**.²

Approximately one year after filing the Federal Case, Plaintiff John Doe sued his accuser in the State Case, asserting claims for defamation, abuse of process, intentional infliction of emotional distress, and civil conspiracy. (See Second Am. Compl. at ¶ 24). While the Federal Case resolved at mediation, the State Case remains pending.

Here, Plaintiffs assert claims for legal professional negligence and breach of fiduciary duty. They allege “[t]he Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the Does to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case,

² A court’s reliance on transcripts and court orders does not convert a motion to dismiss to a motion for summary judgment. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, n.2, 754 S.E.2d 494, 497-98, n. 2 (2014). “A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records.” *Wise v. Wise*, 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011) (quoting *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984)); see also *Porter v. South Carolina Pub. Serv. Comm’n*, 327 S.C. 220, 223, 489 S.E.2d 467, 469 (1997) (holding the supreme court will take judicial notice of South Carolina statutes).

and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the Does; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.” (Second Am. Compl. at ¶ 83). However, Plaintiffs’ claims should be dismissed.

ARGUMENT

A. Plaintiffs fail to state a claim upon which relief can be granted.

Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiffs’ claims should be dismissed for failure to state a claim upon which relief can be granted because the gravamen of Plaintiffs’ Second Amended Complaint is simply post-mediation “buyer’s remorse.”

The mediation at issue took place in South Carolina federal court. Pursuant to Rule 16.04(A) of the Local Civil Rules for the U.S. District Court District of South Carolina, mediation is defined as “[a]n informal process in which a third-party mediator facilitates settlement discussions between parties.” This Rule further provides that “[a]ny settlement is voluntary.” However, Plaintiff John Doe, as an individual party to the Federal Case, was required to attend the Federal Case mediation. Plaintiff John Doe did in fact participate in a formal, court-ordered mediation in the Federal Case, just like every other party to a South Carolina federal case, all of which are subject to the mandatory mediation requirement.

Rule 16.08(D) of the Local Civil Rules for the United States District Court District of South Carolina states:

If agreement is reached, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign it along with their attorneys. If the agreement executed by the parties and their attorneys in mediation envisions the execution of a more formal agreement, the mediator shall assign one of the parties’ attorneys to prepare the formal agreement and such papers to be filed with the court as may be necessary. Such documents shall be executed by the

parties within fourteen (14) days of the date of the mediation conference. A copy shall be forwarded to the mediator.

Here, Plaintiff John Doe personally signed a memorandum of settlement, as contemplated by the Local Rules, agreeing to the terms of settlement reached at by the parties at mediation. After signing it, Plaintiff John Doe came to regret his agreement to the terms of settlement. However, post mediation regret or “buyer’s remorse” is not a proper ground for a legal malpractice claim.

In fact, based on the rules governing the confidentiality of the mediation process, it would be extraordinarily difficult for Defendants to combat Plaintiffs’ claims, further suggesting that such claims are not proper. Pursuant to Rule 16.08(C) of the Local Civil Rules for the U.S. District Court District of South Carolina, “[c]ommunications during the mediation conferences shall be confidential.” The Rule further provides that “[t]he parties, their attorneys, and other persons present shall maintain the confidentiality of the mediation and shall not rely on, introduce, or attempt to introduce as evidence in any arbitral, judicial, or other proceeding, any event, document, or communication relating in any way to the mediation.” Plaintiffs appear to have violated that rule by instituting this litigation, further establishing the impermissibility of such claims.

If Plaintiffs’ claims were somehow permissible, the mediator would be the key witness, as the mediator could testify objectively as to how Plaintiffs behaved and reacted during the mediation process. However, pursuant to Local Civil Rule 16.10(E), absent extraordinary circumstances, “the mediator shall not be listed or called as a witness or be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum.” That rule further provides that “[a]ll records, reports, and other documents received or created by the mediator while serving in that capacity shall be confidential.” Thus, while the mediator could almost certainly provide some insight as to Plaintiff John Doe’s execution of the memorandum of settlement, as well as the sufficiency of Defendants’

representation of Plaintiff John Doe at the mediation, the Rules prohibit him/her from providing any such insight, absent a Court order and exceptional circumstances. If a mediation buyer's remorse legal malpractice claim were permissible, mediators would often be witnesses in such cases, thereby eliminating the need for any such rule. However, the great limitations on securing testimony or evidence from a mediator confirms the notion that mediation buyer's remorse claims are not permissible in the legal malpractice arena. Thus, Plaintiffs fail to state a claim.

B. Plaintiffs Jane Doe Mother and Jane Doe Father lack standing.

Simply put, Plaintiffs Jane Doe Mother and Jane Doe Father lack standing, and thus, this Court does not have subject matter jurisdiction to entertain their claims. Neither were parties to the federal litigation brought by Plaintiff John Doe in the U.S. District Court for the District of South Carolina, nor the state court litigation brought by Plaintiff John Doe. Further, neither Plaintiff Jane Doe Mother nor Plaintiff John Doe Father signed the memorandum of understanding generated at the mediation in the federal litigation that serves as the primary basis for the claims asserted by Plaintiffs in this matter. Of course, they did not sign that memorandum of understanding because they were not parties to that litigation. Here, the centerpiece of Plaintiffs' claim is the conduct at the mediation in the Federal Case. Although Plaintiff John Doe was a party to that matter, his parents were not. As such, they cannot litigate claims that, by their very nature, would only belong to parties to the Federal Case. Thus, Plaintiff Jane Doe Mother and Plaintiff John Doe Father lack standing to pursue the claims asserted against Defendants in this matter. For these reasons, the claims of Plaintiffs Jane Doe Mother and John Doe Father should be dismissed for lack of subject matter jurisdiction, pursuant to South Carolina Rule of Civil Procedure 12(b)(1). For the same reasons, they fail to state a claim upon which relief can be granted in this matter and their claims should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

C. Plaintiffs' untimely expert witness affidavit justifies dismissal.

When Plaintiffs initially filed their Complaint, they did not include the required expert witness affidavit and their attempt to correct that deficiency was untimely. As such, pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100, Plaintiffs' claims should be dismissed because they failed to timely provide the required expert witness affidavit. South Carolina Code § 15-36-100(B) requires that "in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) [...], the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." However, when Plaintiffs filed their original Complaint against Defendants, they failed to contemporaneously file an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim on the available evidence at the time of the filing of the affidavit as required by South Carolina Code § 15-36-100(B). Accordingly, Plaintiffs' claims against Defendants should be dismissed for failure to state a claim pursuant to Rule 12(b)(6) and South Carolina Code § 15-36-100(C)(1).

To the extent that Plaintiffs have now filed a tardy affidavit following the filing of their original Complaint, Plaintiffs' claims should be dismissed pursuant to Rule 12(b)(6) and South Carolina Code § 15-36-100 because the exceptions to contemporaneously filing an expert witness affidavit found in § 15-36-100(C)(1) simply do not apply to the facts of this litigation.

South Carolina Code § 15-36-100(C)(1) states that "[t]he contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint,

within ten days of the date of filing and, because of time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.” Here, Plaintiffs did not show that the statute of limitations would expire on the claims in the original Complaint within ten (10) days of filing, and Plaintiffs did not allege that an affidavit of an expert could not be prepared due to time constraints.³ Therefore, Plaintiffs’ claims against Defendants should be dismissed.

D. Plaintiff’s expert witness affidavit, even if timely, is insufficient as a matter of law.

The claims set forth in Plaintiffs’ Second Amended Complaint should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6) and South Carolina Code § 15-36-100(A)(3) due to the insufficiency of the credentials of Plaintiffs’ purported expert, Justin Dillon.

South Carolina Code § 15-36-100 enumerates the requirements for an expert who files an affidavit in professional negligence lawsuits. Specifically, South Carolina Code § 15-36-100(A)(3) states that an expert witness “means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who: [...] (3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual’s study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert’s credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert’s credentials pursuant to subsection (E).”

³ If Plaintiffs now allege that they failed to file a timely affidavit due to concerns regarding the statute of limitations, then such delay on their part should not be imputed to Defendants. In *Bruce v. Smith*, the Fourth Circuit Court of Appeals addressed a statute of limitations issue in the context of amended pleadings and noted: “Plaintiff’s original complaint was filed only one day before the statute of limitations ran. It is unfortunate that the plaintiff left himself so slender a margin for error. However, that was his decision, and it was not affected by the conduct of the Defendant.” *Bruce v. Smith*, 581 F. Supp. 902 (1984). Here, in the event that Plaintiffs waited until the limitations period was about to expire to file suit, such is a strategic choice on their part and its consequences should not be imputed to Defendants.

Mr. Dillon is not a resident or practitioner in South Carolina but purports to be an expert in legal malpractice claims. Although he purports to offer opinions about the actions of South Carolina attorneys involved in litigation pending in federal court in South Carolina, Mr. Dillon is not, and apparently has never been, licensed to practice in the state and federal courts of South Carolina or the U.S. District Court for the Fourth Circuit Court of Appeals. Further, Mr. Dillon makes no claim in his affidavit that he has ever been specially admitted to practice *pro hac vice* in any state or federal court in South Carolina. In fact, Mr. Dillon does not appear to have ever litigated or mediated a case in the state or federal courts of South Carolina (and his affidavit certainly does not claim or suggest that he has ever done so). Further, in his affidavit, Mr. Dillon makes no claim of familiarity with the nature of federal practice in the U.S. District Court for the District of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina (including, but not limited to, the South Carolina state ADR Rules). Finally, Mr. Dillon notes in his affidavit that he has reviewed only scant materials related to the underlying federal and state litigation at issue (indicating that his review of materials is insufficient to render any opinions in this matter). It is telling that Plaintiffs were unable to secure the services of an expert with experience in the South Carolina state or federal courts. The fact that Plaintiffs rely on an out-of-state lawyer with no experience of any kind in the South Carolina state or federal courts clearly merits dismissal.

It is curious how Mr. Dillon can have an informed opinion as to what is or is not appropriate at a federal mediation in South Carolina, when he has no familiarity with the practice of law in South Carolina generally, nor the specific rules applicable to the subject mediation. As such, Mr. Dillon's credentials and affidavit are insufficient. For the same reasons, pursuant to

South Carolina Code § 15-36-100(E), Mr. Dillon's affidavit is defective, and as such, Plaintiffs' claims set forth in the Second Amended Complaint should be dismissed.

E. Plaintiffs' claims should be dismissed because they are averse to public policy.

Plaintiffs' claims should be dismissed because they violate the important public policy on the finality of mediation in civil cases. South Carolina courts "greatly favor the settlement of cases and allowing litigants to achieve their own resolution to disputes." *Riddle v. City of Anderson*, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015). In fact, the public policy of South Carolina favors settlement of cases and early resolution to disputes so much so that mediation is required in every case in both the state and federal courts of South Carolina. *See, e.g.*, Local Civ. Rule 16.05 (D.S.C.); Rule 3 of the South Carolina ADR Rules.

Most civil cases settle before trial. This is likely due in large part to the fact that every case in South Carolina is subject to mediation. Mediation gives the parties in a lawsuit a real chance to resolve their disputes and, often, results in the avoidance of unnecessary costs associated with prolonged litigation. Mediation serves to help litigants identify the strengths and weaknesses of the claims and defenses at issue and agree on a mutually satisfactory solution. While mediation is an invaluable tool for South Carolina litigants, participants rarely, if ever, leave mediation completely satisfied with the outcome and having had all of their desires met. Mediation is about compromising to reach a solution that all parties can tolerate.

Here, Plaintiff John Doe was satisfied with the solution reached at the subject mediation. He only began to develop buyer's remorse in the days after mediation and started looking for a means by which to escape the settlement he agreed to in writing. As noted above, the Court issued an order enforcing the settlement. Rather than accepting the Court's ruling, Plaintiffs then began searching out other potential paths by which they could call the settlement into question.

Apparently, Plaintiffs saw the instant malpractice suit as a method by which they could attack the settlement to which Plaintiff John Doe agreed. However, Plaintiffs do not appear to realize the gravity of what they allege in this case. If this Court were to permit Plaintiffs' malpractice claims to continue against Defendants, it would essentially open the flood gates to frivolous claims made by unhappy litigants who were not completely satisfied with the outcome of mediation. Plaintiffs' claims are little more than a thinly veiled attempt to relitigate the validity of the underlying settlement – an issue that has already been litigated and ruled on by the federal courts of South Carolina. Plaintiff John Doe signed the memorandum of settlement on his own volition and only later had second thoughts about the agreed upon terms. As noted above, compromise is a cornerstone of mediation and parties rarely leave mediation completely satisfied with all of their desires having been met. A litigant having second thoughts about the outcome of mediation simply does not and cannot amount to legal malpractice on the part of his attorneys. Here, Plaintiffs' buyer's remorse simply does not warrant allegations of legal malpractice against Defendants.

CONCLUSION

Defendants respectfully requests that this Court grant its Motion to Dismiss.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted this 22nd day of October, 2021.

/s/ James M. Dedman, IV

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
[REDACTED] DIVISION

John Doe,

Plaintiff,

vs

Civil Action No: [REDACTED]

SETTLEMENT AGREEMENT

Defendants.

WHEREAS, the parties have resolved this action between them, it is agreed by the parties and counsel that in exchange for payment of [REDACTED] which involves all costs, disbursements, attorneys fees and any damages of any sort arising from this action.

plaintiff will execute a binding *release*, which document (and accompanying court order, if applicable) shall be prepared by counsel for the Defendant [REDACTED].

That further conditions of settlement are 1) [REDACTED] will reinstate the hearing Board's decision of [REDACTED] as upheld by the University vice president of Student Affairs 2) [REDACTED] will comply with the student code of ~~conduct~~ *conduct* (i) regarding student conduct records 3) plaintiff will

This Agreement is binding upon all parties to this matter, and is enforceable in any Court of

law.

not seek to enroll at [REDACTED] 4) the parties will contemporaneously exchange [REDACTED] documents upon receipt of a valid subpoena of [REDACTED] and satisfaction of notice requirements 5) [REDACTED] to comply with notification requirements of CLERY Act VAWA & Title 9.



Attorneys for the Plaintiff



Attorneys for the Defendants

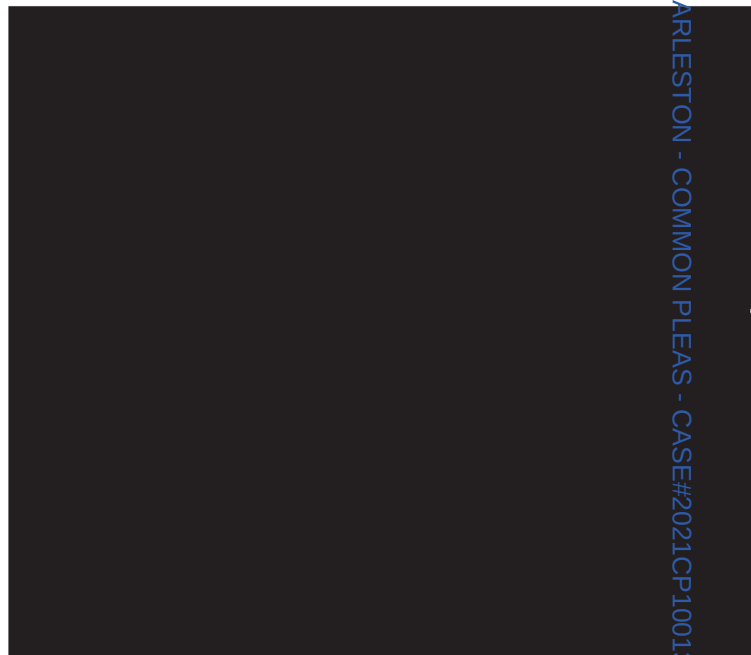


EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
DIVISION

John Doe,

Plaintiff,

v.



Defendants.

C/A No.

OPINION AND ORDER

This matter is before the Court on Defendants' Motion to Enforce Settlement Agreement. ECF No. Plaintiff filed a Response in Opposition and Cross-Motion to Void Settlement in Principle and Reopen the Instant Action. ECF No.

BACKGROUND

On Plaintiff filed a Complaint alleging several causes of action related to Defendants' handling of allegations of nonconsensual sexual activity against Plaintiff. ECF No. On the parties participated in mediation and

resolved the case. At mediation, the terms of the agreement were reduced to writing in a Settlement Agreement. ECF No. [REDACTED]. The Settlement Agreement states:¹

[REDACTED]

[REDACTED]

The Settlement Agreement was signed by the Plaintiff, Plaintiff's counsel,² the General Counsel for [REDACTED] University, and counsel for Defendants. ECF No. [REDACTED]. On [REDACTED] this Court entered an Order of Dismissal, which dismissed the case without costs and without prejudice, permitting the parties to petition the Court within sixty days to reopen the case if settlement is not consummated or, alternatively, to enforce the settlement agreement. ECF No. [REDACTED].

On [REDACTED] Plaintiff terminated his relationship with his former attorneys and sought new counsel. ECF No. [REDACTED] at 10. On [REDACTED] Defendants sent Plaintiff a "Settlement Agreement and Mutual Release which [they had] drafted for [his] review and execution." ECF No. [REDACTED] at 2. The Settlement Agreement and Mutual Release

¹ Much of the Settlement Agreement was handwritten. Therefore, the Court will recite the exact language, punctuation, and capitalization used by the parties.

² Plaintiff has subsequently retained new counsel.

memorialized the terms of the Settlement Agreement reached during the mediation. *Id.* at 4–9. Defendants' letter acknowledged Plaintiff's termination of his attorneys and also forwarded a Stipulation of Dismissal with Prejudice for Plaintiff to sign, noting that a check would be sent as soon as the documents were received. *Id.* at 2–3. Defendants' letter requested signed copies of these documents within five days of receipt of the letter. *Id.* at 3.

Thereafter, Plaintiff retained new counsel who called counsel for Defendants. ECF No. [REDACTED] at 10. According to Plaintiff, "during that call, counsel for Defendants could not articulate: (1) how [REDACTED] would treat [his] disciplinary records internally; (2) how [REDACTED] would respond to third-party requests inquiring about [his] disciplinary records; or (3) whether [REDACTED] would disclose any settlement agreement when confronted with a public records information request for same and, if so, whether [his] identity would be safeguarded." *Id.* Following the call, Plaintiff's new counsel submitted redlined changes to the Settlement Agreement and Mutual Release to Defendants. *Id.* In response, Defendants filed a Motion to Enforce the Settlement Agreement, and Plaintiff filed a Response in Opposition and Cross-Motion to Void Settlement in Principle and Reopen the Instant Action. ECF Nos. [REDACTED] Since that time, the Court has held several telephone conferences and hearings and has permitted the parties to engage in prolonged mediation to attempt to resolve the outstanding Motions. On [REDACTED] the Court was informed that the parties have reached an impasse.

LEGAL STANDARD

District Courts "have inherent authority, deriving from their equity power, to enforce settlement agreements. *Hensley v. Alcon Laboratories, Inc.*, 277 F.3d 535, 540 (4th Cir. 2002) (citing *Millner v. Norfolk & W. Ry. Co.*, 643 F.2d 1005, 1009 (4th Cir. 1981)). "[T]o exercise its inherent power to enforce a settlement agreement, a district court (1) must find that the parties reached a complete agreement and (2) must be able to determine its terms and conditions." *Id.* at 540–41 (citation omitted). "If there is a factual dispute over the existence of an agreement, over the authority of attorneys to enter into the agreement, or over the agreements terms, the district court may not enforce a settlement agreement *summarily*." *Id.* at 541 (citation omitted). "Instead, when such factual disputes arise, the court must conduct a plenary evidentiary hearing in order to resolve that dispute and make findings on the issues in dispute." *Id.* (internal citations and quotations omitted). "If a district court concludes that no settlement agreement was reached or that agreement was not reached on all the material terms, then it must deny enforcement." *Id.*

DISCUSSION

Throughout the filings in this case, Plaintiff contends that he was told "more is coming" at the mediation. However, it is uncontested that Plaintiff signed the Settlement Agreement drafted during the mediation, which does not include any of the terms Plaintiff now claims he expects to be addressed, such as "how [REDACTED] will treat Plaintiff's disciplinary record, as opposed to Plaintiff's transcript; how Plaintiff's transcript will reflect the parties' proposed agreement; how [REDACTED] will respond to third-party requests for Plaintiff's disciplinary record; and how [REDACTED] would handle a public records request concerning the proposed settlement agreement." ECF No. [REDACTED] at 5. While those concerns

are legitimate, it appears from the plain language of the Settlement Agreement that they were not addressed during mediation.

After reviewing the filings in this case and the arguments of counsel, the Court finds that the parties unambiguously reached a settlement during the mediation. The plain terms of that settlement are set forth in the signed Settlement Agreement:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ECF No. [REDACTED] at 2–3.

In an effort to minimize the legal effect of this signed agreement, Plaintiff points out that the proposed lengthier Settlement Agreement and Mutual Release, which was sent to Plaintiff on [REDACTED] contains the following language:

[REDACTED]

ECF No. [REDACTED] at 7. According to Plaintiff, the lack of any merger or integration clause in

this recital indicates that the parties understood the March 21, 2018 handwritten document to not be a binding settlement agreement. The Court rejects Plaintiff's argument, as the [REDACTED] Settlement Agreement and Mutual Release was simply a proposed agreement with standard, boilerplate language to complement the agreed upon terms in the [REDACTED] Settlement Agreement. Regardless of the substance of the proposed [REDACTED] agreement, Defendants have only moved to enforce the [REDACTED] Settlement Agreement that was signed at mediation.

While the Court finds that the terms of the [REDACTED] Settlement Agreement are clear and unambiguous, the Court held a hearing on the Motions and accepted evidence from the parties out of an abundance of caution. To that end, the Court reviewed the Affidavits of (1) [REDACTED] General Counsel for [REDACTED] University, (2) John Doe; (3) John Doe's Mother; (4) and John Doe's Father. ECF Nos. [REDACTED]. The representations of John Doe and his parents regarding more being promised during the settlement negotiations are simply unsupported by the plain and unambiguous language of the Settlement Agreement, as signed by the parties at the mediation immediately after an agreement was reached. Accordingly, the Court enforces the Settlement Agreement as executed on [REDACTED]. Defendants are directed to provide Plaintiff with a check for [REDACTED] in consideration for Plaintiff's release of his claims against the Defendants.

That said, the Court understands that this is a difficult case for all parties involved. The events underlying this lawsuit have changed the course of young peoples' lives. In every interaction with the Court, Defendants have shown a willingness to try to accommodate Plaintiff's needs in preserving his reputation. However, the subject matter

of student educational and disciplinary records are governed by a variety of laws, which may constrain what Defendants are able to do to accommodate Plaintiff above and beyond what the Settlement Agreement requires. The Court strongly encourages Defendants to continue in their efforts to help Plaintiff and his accuser move past this incident. Unfortunately, given the plain and unambiguous terms of the Settlement Agreement—which Plaintiff signed—strong encouragement is all the Court can provide.

CONCLUSION

For the reasons set forth above, Defendants' Motion to Enforce Settlement Agreement, ECF No. [REDACTED], is **GRANTED**, and Plaintiff's Cross-Motion to Void Settlement in Principle and Reopen the Instant Action, ECF No. [REDACTED] is **DENIED**.

IT IS SO ORDERED.

[REDACTED]

[REDACTED]

, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-10-01343

John Doe; Jane Doe Mother; and John Doe
Father,
Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; Samuel R.
Clawson, Jr., Esq.; Christina R. Fagnoli,
Esq.; Barrett R. Brewer, Esq., and BREWER
LAW FIRM, LLC,
Defendants.

**PLAINTIFFS' COMBINED
MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTIONS TO DISMISS
SECOND AMENDED COMPLAINT**

TO: JAMES M. DEDMAN, IV, ESQ., COUNSEL FOR DEFENDANTS, CLAWSON FARGNOLI, LLC, SAMUEL R. CLAWSON, JR., ESQ., AND CHRISTINA R. FARGNOLI, ESQ.; AND R. BRUCE WALLACE, ESQ., COUNSEL FOR DEFENDANTS, BARRETT R. BREWER, ESQ. AND BREWER LAW FIRM, LLC:

Plaintiffs, John Doe, Jane Doe Mother, and John Doe Father, respectfully submit this Combined Memorandum in Opposition to the Motions to Dismiss the Second Amended Complaint filed on behalf of Defendants' CLAWSON FARGNOLI, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (collectively "the Clawson and Fagnoli Defendants"), and on behalf of Defendants, BREWER LAW FIRM, LLC, and Barrett R. Brewer, Esq. (collectively "the Brewer Defendants") The Clawson and Fagnoli Defendants and Brewer Defendants will be referred to collectively as "the Defendants."

Summary of the Arguments

1. Plaintiffs' Second Amended Complaint states facts sufficient to support a cause of action against Defendants because under established South Carolina law former clients are permitted to bring legal malpractice claims against their former lawyers based on errors leading to an insufficient settlement.

2. Plaintiffs Jane Doe Mother and John Doe Father have standing to assert claims against Defendants based on the allegations in the Second Amended Complaint alleging they were clients of Defendants concerning the "Federal Case" and the "State Case;" and the allegations Jane Doe Mother and John Doe Father entered into a contract of representation with the Defendants.

3. Mr. Dillon's expert affidavit was timely filed and satisfied all aspects of S.C. CODE ANN. § 15-36-100. On March 19, 2021, the Summons & Complaint was filed without an expert affidavit. March 19, 2021 was three days before the three-year anniversary of the date on which any reasonable person would know or should have known of a claim having accrued against Defendants. On April 30, 2021, which is within 45 days of March 19, 2021, an Amended Summons & Amended Complaint was filed, along with Mr. Dillon's expert affidavit, which satisfied the requirements for timely filing the expert affidavit under S.C. CODE ANN. § 15-36-100(C)(1).

4. Mr. Dillon is well-qualified to serve as an expert in this matter based on his lengthy experience with Title IX disputes as shown on his curriculum vitae, which was included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint. Defendants' 12(b)(6) motion does not satisfy the requirements under S.C. CODE ANN. § 15-36-100(E) because their challenges only go to the weight of Mr. Dillon's experience, and not the lack thereof. Being licensed to practice law in South Carolina does not a requirement to serve as an expert on legal malpractice matters, especially when the underlying issues concern federal Title IX disputes. Mr. Dillon reviewed the materials available at the time of filing his expert affidavit, to the extent necessary to form his opinions. This is all that is required under S.C. CODE ANN. § 15-36-100. Nowhere in the Motions to Dismiss due Defendants contend this is a frivolous lawsuit.

5. Addition to Defendants' breach of their professional and fiduciary duties to Plaintiffs during the mediation in the underlying lawsuit, the Second Amended Complaint contains allegations of Defendants' tortious conduct causing financial injuries to Plaintiffs long after the mediation.

Legal Standard

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCPP, the appellate court applies the same standard of review as the [circuit] court." HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 631, 699 S.E.2d 699, 703 (Ct. App. 2010). See also, Fabian v. Lindsay, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) ("A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true."); Wilkinson v. E. Cooper Cmty. Hosp., Inc., 410 S.C. 163, 169, 763 S.E.2d 426, 430 (2014) (quoting Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). "In deciding whether the [circuit] court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts

alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid claim for relief.” Id. “The [circuit] court and this [c]ourt on appeal must presume all well pled facts to be true.” Id. at 635, 699 S.E.2d at 705 ((internal quotation marks omitted)).

Procedural Background

On March 19, 2021, Plaintiffs filed a Summons and Complaint to commence this lawsuit against the Defendants generally alleging errors in Defendants’ representation of Plaintiffs’ in federal court lawsuit against a University for violations of Title IX, the United States Constitution, and the University’s own disciplinary process arising from errors and mishandling of an investigation of an incident of John Doe’s alleged nonconsensual sex with another student, and a state court lawsuit against the individuals and others who made false statements and gave false testimony supporting the University’s investigation. The allegations focus on errors made during a mediation in the underlying lawsuits on March 21, 2018, which was 2 years and 262 days before this lawsuit was filed.

On March 19, 2021, Plaintiffs also filed a Motion to Proceed Anonymously Under Pseudonyms based on the sensitive nature of the allegations and evidence supporting the claims in this case; the likelihood public disclosure of Plaintiffs’ identities will cause embarrassment and humiliation; and the lack of prejudice to Defendants.

On April 30, 2021, Plaintiffs filed an Amended Summons and Complaint, which included the affidavit of Justin Dillon, Esq., an expert witness and lawyer with experience in litigating Title IX matters. Mr. Dillon’s affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of filing the affidavit.

On May 9, 2021, the Clawson and Fagnoli Defendants filed a Motion to Dismiss Complaint and Amended Complaint, and a Motion to Prohibit Plaintiffs from using Pseudonyms.

On May 10, 2021, the Brewer Defendants filed Motion to Dismiss Complaint on the grounds, virtually identical to the Motion to Dismiss filed by the Clawson and Fagnoli Defendants; and also filed a Motion to Unmask Plaintiffs using Pseudonyms.

On June 16, 2021, Plaintiffs filed a Second Amended Summons and Complaint based on the arguments in the Defendants’ respective Motions to Dismiss claiming Mr. Dillon’s affidavit is defective because he is not licensed in South Carolina, even though there is no such requirement under S.C. CODE ANN. § 15-36-100.

On June 28, 2021, the Clawson and Fagnoli Defendants filed their Answer to the Second Amended Complaint and Counterclaim Against All Plaintiffs and contemporaneously filed a Motion to Dismiss Second Amended Complaint.

On June 28, 2021, the Brewer Defendants filed Motion to Prohibit Plaintiffs from using Pseudonyms.

On June 30, 2021, the Brewer Defendants filed their Answer to the Second Amended Complaint and Counterclaims, and contemporaneously filed a Motion to Dismiss Second Amended Complaint.

Procedural Objections

Plaintiffs object to the Court's consideration of Exhibit A or Exhibit B to "Defendants Join Memorandum in Support of Defendants' Motion to Dismiss Second Amended Complaint" ("Defendants' Memorandum") as Exhibit A and Exhibit B are not part of the Second Amended Complaint. See Farmer v. CAGC Ins. Co., 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. App. 2018), reh'g denied (2018), cert. dismissed (2019) ("In deciding a Rule 12(b)(6) motion, the court looks only at the complaint and, taking the facts alleged as true and construing all reasonable inferences and doubts in plaintiff's favor, asks whether the complaint would entitle the plaintiff to relief under any theory."). Defendants' Exhibit A and Exhibit B are not a transcript of proceedings before *this* Court or an Order issued by *this* Court subject to judicial notice along the lines of the cases cited in Footnote 2 in Defendants' Memorandum. See Defendants' Memorandum (quoting "Doe v. Bishop of Charleston, 407 S.C. 128, 134, n.2, 754 S.E.2d 494, 497-98, n. 2 (2014). 'A court can take judicial notice of ***its own*** records, files[,] and proceedings for all proper purposes including facts established in its records.'") (bold and italic emphasis added). Exhibit A is a copy of a private settlement agreement, which is clearly not a transcript or an order. When a court is considering a motion to dismiss and matters outside the pleadings are presented to and not excluded by the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, [SCRCP,] and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 452, 814 S.E.2d 643, 654 (Ct. App. 2018), reh'g denied (2018), cert. denied (2018). Plaintiff respectfully requests the Court delay ruling on Defendants' Motion until discovery is completed if the Court considers Defendants' Exhibit A as part of this Motion.

ARGUMENTS IN OPPOSITION

I. Plaintiffs' Second Amended Complaint states facts sufficient to support a cause of action against Defendants.

A. South Carolina law permits former clients to bring legal malpractice claims against their former lawyers based on errors leading to an insufficient settlement.

Defendants' "post-mediation 'buyer's remorse'" argument should be rejected. Defendants cite no authority for their incredible proposition lawyers are immune to professional liability claims from professional errors made leading to their clients signing a settlement agreement. The South Carolina Supreme Court permits pursuing legal malpractice claims based on errors by the former client's lawyer leading to a settlement. "[W]here where a client alleges his former attorney was negligent in advising him to accept a settlement, that alleged negligence is not a ground for attacking the settlement itself but rather is a matter left for a malpractice suit between the client and his attorney." Crowley v. Harvey & Battey, P.A., 327 S.C. 68, 70, 488 S.E.2d 334, 335 (1997) (citing Shelton v. Bressant, 312 S.C. 183, 439 S.E.2d 833 (1993)). Other jurisdictions are in accord. See e.g., Kay v. McGuirewoods, LLP, 240 W. Va. 54, 807 S.E.2d 302 (2017) (former clients' settlement of tax liability dispute with IRS did not bar legal malpractice claims against law firm); Miller v. Finizio & Finizio, P.A., 226 So. 3d 979 (Fla. Dist. Ct. App. 2017) (former client's voluntary acceptance of marital settlement agreement in underlying case did not bar her legal malpractice action); and Angeles v. Aronsky, 109 A.D.3d 720, 974 N.Y.S.2d 329 (1st Dep't 2013) (former client can proceed with legal malpractice action against former counsel on allegations settlement of underlying action was effectively compelled by mistakes of counsel).

B. South Carolina law provides there is no confidentiality on matters involved in a mediation to prove a professional liability claim.

The Court should reject Defendants' arguments concerning the application of mediation rules concerning the confidentiality terms of mediation because they contradict provisions in the

South Carolina Rules of Evidence, which govern the admissibility of evidence in this lawsuit. See Rule 101, SCRE (“Except as otherwise provided by rule or by statute, these rules govern proceedings in the courts of South Carolina to the extent and with the exceptions stated in Rule 1101.”); Rule 1101(b), SCRE (“(b) Proceedings Generally. These rules apply generally to civil actions and proceedings, to criminal cases and proceedings, and to contempt proceedings except those in which the court may act summarily.”). Cf. State v. Weinberg, 229 S.C. 286, 92 S.E.2d 842 (1956).

Defendants’ Memorandum avoided citation to Rule 8(c)(3), SCADR, which provides:

(c) Limited Exceptions to Confidentiality. There is no confidentiality attached to information that is disclosed during a mediation:

(3) offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding[.]

Rule 8(c)(3), SCADR.

Finally, evidentiary concerns do not affect whether Plaintiffs’ Second Amended Complaint states facts sufficient to support causes of action against Defendants. The Court should reject Defendants’ arguments on this point and deny their Motions to Dismiss.

II. Jane Doe Mother and John Doe Father have standing to assert claims against Defendants based on the allegations in the Second Amended Complaint alleging they were clients of Defendants.

If the South Carolina Supreme Court found SELECT INSURANCE COMPANY had standing to sue and assert legal malpractice claims against MAYBANK LAW FIRM, LLC, and Roy P. Maybank, Esq., then surely the allegations in the Second Amended Complaint stating Plaintiffs Jane Doe Mother and John Doe Father were clients of the Defendants in the “Federal Case” and the “State Case” and the allegations they entered into a contract of representation with the Defendants satisfies the standing requirements under South Carolina law. See e.g., (Second Amended Complaint, ¶¶ 1, 2, 13, 14, 28, 29, 36, 37, 40, 49, 56, 61, and 66). Standing alone, the allegations in Paragraph 13, provides standing for Plaintiffs Jane Doe Mother and John Doe Father:

13. On or around November 2, 2017, the ***Lawyers accepted the representation of the Does to provide legal advice, services, and representation of the Does*** in a lawsuit pending in the United States District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against a University (“the University”); and representing the Does in a lawsuit pending in a lawsuit pending in the Court of Common Pleas in a County in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against individuals involved in submitting to the University false claims against John Doe, which led to a disciplinary action that was mishandled by the University. (Emphasis added).

The allegations in the Second Amended Complaint easily satisfy the requirements to state a legal malpractice claim and breach of fiduciary duty claim on behalf of Plaintiffs Jane Doe Mother and John Doe Father. See Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 525, 787 S.E.2d 485, 489 (2016) (“A claimant in a legal malpractice action must establish four elements: (1) ***the existence of an attorney-client relationship***, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client’s damages by the breach.”) (citing Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 636, 760 S.E.2d 399, 407 (2014)) (emphasis added); Turpin v. Lowther, 404 S.C. 581, 589, 745 S.E.2d 397, 401 (Ct. App. 2013) (“To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the ***existence of a fiduciary duty***, (2) a breach of that duty, and (3) damages proximately resulting from the wrongful conduct of the defendant.”) (citing RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012)) (emphasis added); “The existence of a fiduciary duty is a question of law for the court.” Turpin, 404 S.C. at 589, 745 S.E.2d at 401.

The Court should deny Defendants’ Motions to Dismiss Plaintiffs Jane Doe Mother and John Doe Father on the grounds of lack of standing.

II. Mr. Dillon’s expert affidavit was timely filed and satisfied all aspects of S.C. CODE ANN. § 15-36-100.

The Summons & Complaint was filed without an expert affidavit three days before the three-year anniversary of the date on which any reasonable person would know or should have known of a claim having accrued against Defendants.¹ Less than 45 days later, the Amended

¹ Legal malpractice claims are subject to the three-year statute of limitations provided in S.C. CODE ANN. § 15-3-530 and the statutory “discovery rule” set forth in S.C. CODE ANN. § 15-3-535. See Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (In a “legal malpractice cause of action ... predicated on an injury or damage caused by the failure of an underlying suit due to an attorney’s alleged malpractice ... there can be no legal malpractice

Summons & Amended Complaint was filed along with Mr. Dillon's expert affidavit, which satisfied the requirements for timely filing the expert affidavit under S.C. CODE ANN. § 15-36-100(C)(1). Defendants' Motions to Dismiss ignore the specific allegations in Paragraph 103 in the Second Amended Complaint, which must be taken as true for the purposes of these Motions:

103. In February and early March 2021, the Lawyers refused to enter into a statute of limitations tolling agreement to toll the statute of limitations on Plaintiffs' legal professional negligence claims against the Lawyers. As stated in Paragraphs 37-39, a substantial portion of the Lawyers' liability arises from the Lawyers' acts and omissions during a mediation on March 21, 2018 in the Federal Case. As a result, Plaintiffs had a good faith basis to believe the three-year statute of limitations on Plaintiffs' legal professional negligence cause of action against the Lawyers would expire on March 21, 2021, which was within 10 days of the date the Summons & Complaint was filed on March 19, 2021. Because of time constraints, an affidavit of an expert could not be prepared in time to file the Summons & Complaint before March 21, 2021.

Under S.C. CODE ANN. § 15-36-100(C)(1), included with the filing of the Amended Summons & Amended Complaint and marked as Exhibit 1 was the affidavit of Justin Dillon, Esq., an expert witness and lawyer licensed to practice law in the Commonwealth of Virginia and in the District of Columbia, which satisfies S.C. CODE ANN. § 15-36-100(A)(1) to qualify Mr. Dylan to serve as an expert in this matter. Another copy of Mr. Dillion's affidavit is filed with this Second Amended Summons & Amended Complaint as Exhibit 1. Mr. Dillon has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in the active practice litigating Title IX matters for at least three of the last five years immediately preceding his opinions, which satisfies S.C. CODE ANN. § 15-36-100(A)(2)(b)(i) to qualify Mr. Dylan to serve as an expert in this matter. Mr. Dillion has been invited to speak before organizations including the American Bar Association, the National Association of Criminal Defense Lawyers, the Association of Title IX Administrators, the Higher Education Consultants Association, the Colorado Bar Association, the Virginia State Bar, the District of Columbia Bar, and has guest lectured on Title IX matters at Harvard Law School, George Washington University, American University, and the University of Maryland. Mr. Dillion has other specialized knowledge in Title IX matters, which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of his study, experience, or both, which satisfies S.C.

cause of action without an adverse verdict, judgment, or ruling."); Pers. Care, Inc. v. Theos, 426 S.C. 78, 89, 825 S.E.2d 281, 286 (Ct. App. 2019) (applying discovery rule in a legal malpractice case).

CODE ANN. § 15-36-100(A)(3) to qualify Mr. Dylan to serve as an expert in this matter.

Mr. Dillon's affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of Mr. Dillion's affidavit.

This Second Amended Summons & Amended Complaint is being filed under S.C. CODE ANN. § 15-36-100(E), which permits an amended pleading to be filed to cure the alleged defects. This Second Amended Summons & Amended Complaint is being filed based on the specious arguments contained in the Lawyers' respective Motions to Dismiss claiming Mr. Dillon's affidavit is defective because he is not licensed in South Carolina, when the Lawyers knew or should have known there is no such requirement under S.C. CODE ANN. § 15-36-100.

The Summons & Complaint, the Amended Summons & Amended Complaint with Mr. Dillon's expert affidavit, and the Second Amended Summons & Second Amended Complaint also filed with Mr. Dillon's expert affidavit as an exhibit, all satisfy the requirements under S.C. CODE ANN. § 15-36-100. The Court should deny Defendants' Motions to Dismiss on the grounds Mr. Dillon's expert affidavit was not timely filed.

III. Mr. Dillon is extraordinarily well-qualified to serve as an expert to file the affidavit of merit in this matter.

The Court should deny Defendants' Motions to Dismiss claiming Mr. Dillon's credentials are insufficient under S.C. CODE ANN. § 15-36-100(A)(3). Mr. Dillion's expert affidavit comports with this Statute. See Eades v. Palmetto Cardiovascular & Thoracic, PA, 422 S.C. 196, 203, 810 S.E.2d 848, 851–52 (2018) ("Thus, [S.C. CODE ANN. § 15-36-100(A)(3)] contemplates the production of an expert affidavit from a doctor who is not certified in or does not practice in the same area of medicine as the defendant doctor, but otherwise possesses specialized knowledge to assist the trier of fact.")

Defendants' Motions to Dismiss and their Memorandum did not mention the portions of Mr. Dillon's expert affidavit and his curriculum vitae outlining his vast experience with Title IX disputes, which like the expert in Eades, identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits. In his affidavit, Mr. Dillon, who graduated DUKE UNIVERSITY and then from HARVARD LAW SCHOOL, recites his professional experience as follows:

11. I am a lawyer licensed to practice law in the Commonwealth of Virginia

(since 2002) and the District of Columbia (since 2007). I have also been admitted to practice in the United States District Court for the Eastern District of Virginia, the United States District Court for the District of Columbia, the United States District Court for the Central District of Illinois, the United States District Court for the Eastern District of Michigan, the United States District Court for the Northern District of Ohio, the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court.

12. I have gained nationwide attention for my work representing students and professors in Title IX and other campus misconduct cases, which my firm and I have handled at more than 100 schools across the country. I was the first lawyer in the country to win summary judgment against a university in a campus sexual misconduct case in modern era, which I did against GEORGE MASON UNIVERSITY in 2016. I have settled numerous lawsuits and potential lawsuits against colleges nationwide. Along with my partner Matt Kaiser, I am the author of *The KAISERDILLON PLLC Guide to Representing Yourself in a Campus Sexual Assault Case*. I have been published or quoted regarding campus sexual misconduct issues in more than a dozen national newspapers and magazines, including *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Philadelphia Inquirer*, *National Review*, *The Nation*, and *The Weekly Standard*. I have also spoken on these issues before organizations such as the American Bar Association, the Association of Title IX Administrators, HARVARD LAW SCHOOL, the University of Kentucky's Center for Research on Violence Against Women, the Higher Education Consultants Association, the District of Columbia Bar, the Virginia State Bar, and the Colorado Bar Association. Immediately before joining KAISER DILLON, PLLC, I spent five and a half years as an Assistant United States Attorney in Washington, DC, where I led more than 100 Grand Jury investigations, tried more than 60 criminal cases, and handled more than a dozen appeals. Earlier in my career, I worked at the Civil Rights Division of the U.S. Department of Justice. I am a Georgia native and a graduate of Duke University and Harvard Law School.

See (Expert Affidavit by Justin Dillon, Esq., Ex. 1 to Amended Complaint and Ex. 1 to Second Amended Complaint).

Lawyers serving as experts in legal malpractice case are not required to be licensed in South Carolina. In Smith v. Haynsworth, Marion, McKay & Geurard, the South Carolina Supreme Court found the trial court had erred in disqualifying Dr. Gregory B. Adams as an expert in legal malpractice matter because he was not licensed to practice law in South Carolina. The South Carolina Supreme Court held:

Further, the fact that Adams is not licensed to practice law in this state does not disqualify him as an expert. See McMillan v. Durant, 312 S.C. 200, 439 S.E.2d 829 (1993) (practitioner's experience teaching in a particular specialty and his

professional interaction with practitioners of that specialty are facts sufficient to support his qualification as an expert. Defects in qualification go to weight rather than admissibility). Likewise, the fact that Adams is not a real estate lawyer does not prohibit his testimony concerning those ethical obligations which are relevant to appellants' claims.

Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 438, 472 S.E.2d 612, 614 (1996).

Defendants' Motions to Dismiss claiming Mr. Dillon's affidavit is defective, should be denied based on Mr. Dillon's substantial experience with Title IX disputes as shown in his Affidavit and on his curriculum vitae, which was included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint. South Carolina rejected the "locality rule" concerning expert testimony and expert affidavits. Mr. Dillon is more than qualified to provide the testimony in his affidavit. Mr. Dillon's affidavit "demonstrate[s] he possesses the specialized knowledge and training that may assist the trier of fact in this case, and he explained why his credentials qualify him to identify a negligent act or omission committed by [Defendant]s ... [and] his affidavit comports with the more general requirements of subsection (A)(3)." Eades, 422 S.C. at 204, 810 S.E.2d at 852. The Court should deny Defendants' Motions to Dismiss on the grounds Mr. Dillon is not qualified to provide expert testimony.

If this Court is inclined to grant Defendants' Motion on these grounds, Plaintiffs would respectfully request additional time to provide a supplement to Mr. Dillon's expert affidavit under the provisions in S.C. CODE ANN. § 15-36-100(E).

IV. The Second Amended Complaint alleges Defendants' tortious conduct caused financial injuries to Plaintiffs long after the mediation.

Defendants' arguments the Second Amended Complaint should be dismissed because the "gravamen of Plaintiffs' Second Amended Complaint is simply post-mediation 'buyer's remorse,'" does not change the fact that the rest of the allegations state claims against Defendants and ignores the allegations in Plaintiffs' pleadings about Defendants conduct long after the mediation. In Paragraphs 61-63, Plaintiffs allege:

61. On February 28, 2019, the Lawyers sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case.

62. On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers

noting that the February 28, 2019, letter, sent to several third parties, and the State Case's opposing counsel and mediation mediator, interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation, all of which added and continued to cause damages to John Doe.

63. The February 28, 2019, letter from the Lawyers interfered with the mediation process, disrupting and negotiations and disadvantaging John Doe's position in the mediation.

See (Second Amended Complaint, ¶¶ 61-63).

The mediation in the underlying matter took place in March 2018. Defendants' conduct stated in these 3 paragraphs took place almost a year later.

V. Defendants' "public policy" arguments for dismissal are contrary to established South Carolina law.

Defendants' Memorandum cites no controlling South Carolina authority on their "public policy" arguments about the finality of mediation. The sole case cited by Defendants was in the context of "settlements in collective actions under the FLSA" where "the district court has broad discretion in approving a settlement of a collective action case, [and] there is a strong presumption in favor of finding a settlement fair." See Riddle v. City of Anderson, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015) (internal quotes and citations omitted). Because settlements in collective actions under the FLSA are judicially supervised, there is a counter check on the equity and fairness of the settlement terms, which underlies the "public policy" objectives in enforcing FLSA settlements. Unlike those circumstances, however, the South Carolina Supreme Court's opinions in Crowley v. Harvey & Battey, P.A., 327 S.C. 68, 70, 488 S.E.2d 334, 335 (1997) and Shelton v. Bressant, 312 S.C. 183, 439 S.E.2d 833 (1993) permit legal malpractice lawsuits based on allegations the lawyer's acts or omissions in leading to the client into signing a private settlement agreement on complex legal matters, where the client's objectives were not satisfied.

The deterrent purpose of tort law is also served by our decision. One reason for making a defendant liable in tort for injuries resulting from a breach of his duty is to prevent such injuries from occurring. Underlying this justification is the assumption that potential wrongdoers will avoid wrongful behavior if the benefits of that behavior are outweighed by the costs imposed by the payment of damages...."

Sentry Select Ins. Co. v. Maybank Law Firm, LLC, 426 S.C. 154, 159, 826 S.E.2d 270, 272 (2019) (quoting F. Patrick Hubbard and Robert L. Felix, THE SOUTH CAROLINA LAW OF TORTS 7 (4th ed.

2011). “A basic purpose of the common law is to preserve the community’s security and liberty by enforcing a reciprocal system of rights and duties among its members.” Snakenberg v. Hartford Cas. Ins. Co., Inc., 299 S.C. 164, 383 S.E.2d 2 (Ct. App. 1989).

CONCLUSION

The Court should deny Defendants’ Motions to Dismiss based on the allegations in Plaintiffs’ Second Amended Complaint and the statements in Mr. Dillon’s expert affidavit, controlling South Carolina law, the South Carolina Rules of Civil Procedure, the South Carolina Rules of Evidence, the South Carolina Rules of Alternative Dispute Resolution, and for all of the reasons stated in this memorandum in opposition. Defendants will have ample opportunity to defend themselves on the merits of these claims.

Respectfully submitted,

/s/ Thomas A. Pendarvis
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December 15, 2021

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2021-CP-10-01343

Andrew Pampu, Amanda Pampu, and John Pampu,

Plaintiffs,

vs.

CLAWSON FARGNOLI, LLC; SAMUEL R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC,

Defendants.

**PLAINTIFFS' MOTION FOR
RECONSIDERATION AND TO ALTER
OR AMEND THE ORDERS GRANTING
DEFENDANTS' MOTIONS TO DISMISS**

Plaintiffs, Andrew Pampu ("Drew Pampu"), Amanda Pampu ("Ms. Pampu"), and John Pampu ("Mr. Pampu") (collectively "the Pampus"), move the Court under Rule 59(e), SCRCF, to reconsider and alter or amend its two Orders ("the Orders") entered on June 23, 2022, dismissing the Pampus' Second Amended Complaint. The first Order was entered at 11:12 am granting the Motion to Dismiss filed under Rule 12, SCRCF, on behalf of Barrett R. Brewer, Esq. and BREWER LAW FIRM, LLC ("the Brewer Defendants"). The second Order as entered at 11:13 am granting the Motion to Dismiss filed under Rule 12, SCRCF, on behalf of CLAWSON FARGNOLI, LLC, SAMUEL R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. ("the Clawson Fagnoli Defendants"). The Defendants are referred to in this Motion collectively as "the Lawyers."

The Pampus respectfully move the Court reconsider its decision and alter or amend the Orders by denying both Motions to effectively reinstate the Second Amended Complaint, or issue an Order or Orders addressing the following:

MATTERS FOR RECONSIDERATION AND ALTERING/AMENDING ORDER

1. The Orders ignore established South Carolina law permitting former clients to bring legal malpractice claims against their former lawyers based on errors alleged in the Second Amended Complaint leading to an insufficient settlement.

2. The Orders ignore specific allegations in the Second Amended Complaint establishing for the purposes of the Motions to Dismiss these facts clearly supporting the Pampus' professional negligence claims:

¶2. Lawyers were negligent in 1) allowing their client, [Andrew Pampu], to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University's future treatment of [Andrew Pampu]'s academic records, the results of which were contrary to what the Lawyers knew were the clients' desires and objectives, which was a key component of the [Pampus]' "consideration" to settle, and without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to [Andrew Pampu] the full implication of this handwritten settlement agreement and how the University could refer to his student records to future schools, especially medical or dental schools; and 3) in the manner in which they prosecuted the state court action, including substantial discovery deficiencies; and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of the [Pampus]. One or more of these negligent actions or related omissions resulted in substantial financial losses to the [Pampus], including their payment of and continuing payment of substantial legal fees to successor counsel to mitigate their damages caused by the Lawyers and frustrating the purpose of the underlying litigation.

¶3. After the Lawyers were discharged as counsel for the [Pampus], the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties, including disclosing information related to their representation of the [Pampus] to counsel for the opposing parties without the [Pampus]' consent.

3. The Orders ignore specific allegations in the Second Amended Complaint that were contained in Mr. Dillon's expert affidavit establishing for the purposes of the Motions to Dismiss these facts clearly supporting the Pampus' professional negligence claims:

¶6. The Lawyers failed to perform their duties and were professionally negligent in multiple ways, including but not limited to:

a. Accepting a monetary settlement from Clemson University that contained no provision for cleaning up Mr. Doe's disciplinary record regarding the sexual misconduct and related findings that Clemson had made against him. I am not aware of any Title IX lawyer who believes that one files these lawsuits simply for money. What matters most, and certainly matters more than money, is cleaning up the student's disciplinary record. It is inconceivable to me that the attorneys who settled this case would have done so for only an amount of money (\$100,000.00) that, I suspect, constituted just a fraction of the Plaintiffs' actual litigation costs.

b. Moreover, as far as I am aware, the original negative finding against Mr. Doe was never struck from Clemson's records, so there was no need to agree that it would be "reinstated," as the settlement agreement did. One need not reinstate something that was never "de-instated." So it was all the more strange to see that not only would the Lawyers fail to secure a *clean* record, but that they would affirmatively agree to a *dirty* one. It is the equivalent of steering the Titanic into the iceberg in exchange for free gas.

c. Any attorney who practices in the Title IX area would be well aware of the downstream implications of a sexual misconduct finding and the paramount importance of a clean disciplinary record. Many schools to which a student might transfer will ask if he has ever been disciplined, as will most graduate or professional schools to which he applies. Moreover, there could be future professional-licensing implications of a negative finding for anyone who is interested in practicing medicine, law, or the like. My understanding is that Mr. Doe hopes to practice medicine and that the Lawyers knew that at the time—and that, indeed, they knew that safeguarding those hopes was the reason Plaintiffs sued in the first place. So the harm of a sexual misconduct finding to a future doctor or lawyer is potentially even worse than it is to a student who does not intend to pursue one of the professions—which is all the more reason why settling solely for money made so little sense in this case.

d. Moreover, schools will often agree to clean up a student's record during settlement negotiations. Schools, like courts, can vacate and expunge disciplinary findings.

e. It is particularly striking that the Lawyers settled the case without cleaning up Mr. Doe's disciplinary record given that Plaintiffs sent them a five-page, single-spaced written document, entitled "Mediator Proposed Mediation Terms," that contemplated exactly what such a resolution would look like. The Lawyers appear to have ignored virtually that entire document and settled only for money—and, incredibly, for an amount of money that was a mere 25% of the \$400,000 contemplated in the document.

4. The Orders ignore specific allegations in the Complaint establishing for the purposes of a motion to dismiss a client-lawyer relationship between Mr. Pampu and Ms. Pampu, on one hand as clients, and the Defendants, on the other as the lawyers. These allegations include allegations establishing they were clients of Defendants concerning the "Federal Case" and the "State Case;" and the allegations Mr. Pampu and Ms. Pampu entered into a contract of representation with the Defendants, any and all of which provide standing for Mr. Pampu and Ms. Pampu to assert the professional negligence claims stated in the Second Amended Complaint. See Second Amended Complaint, ¶¶ 1, 2, 13-14, 28-29, 36-37, 40, 49, 56, 61, and 66.

5. The Orders ignore the dates of filing and the statements in the Second Amended Complaint establishing for the purposes of a motion to dismiss the fact that Mr. Dillon's expert

affidavit was timely filed and satisfied all aspects of S.C. CODE ANN. § 15-36-100(C)(1).

6. The Orders ignore Mr. Dillon's qualifications for serving as an expert as stated in his curriculum vitae included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint, which identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits.

7. The Orders should be amended to reject Defendants' arguments challenging the weight of Mr. Dillon's experience, and not the lack thereof, because S.C. CODE ANN. § 15-36-100(E) does not permit challenging an expert's the substance of an expert's opinions.

8. The Orders should be amended to reject Defendants' arguments Mr. Dillion is not qualified to serve as an expert because he has not actually practiced in South Carolina federal or state court when the Order acknowledges federal Title IX claims were involved in Defendants' underlying representation of the Pampus and ignores Mr. Dillon's vast experience handling Title IX litigation.

9. The Orders incorrectly state "Mr. Dillon holds himself out to be an expert in legal malpractice claims in South Carolina district court litigation." There is no such statement in any materials filed with the Complaint, Amended Complaint, or Second Amended Complaint.

10. The Orders incorrectly imposes a "sufficiently related" standard for an expert witness affidavit filed in a professional liability matter under S.C. CODE ANN. § 15-36-100, which is not stated in the Statute or in any case law interpreting the Statute.

11. The Orders do not explain the basis for the Court considering Exhibit A or Exhibit B to "Defendants Joint Memorandum in Support of Defendants' Motion to Dismiss Second Amended Complaint" ("Defendants' Memorandum") as Exhibit A and Exhibit B are not part of the Second Amended Complaint.

12. The Orders do not explain the basis for the Court accepting the Lawyers' public policy arguments concerning the "finality" of mediation given the controlling provisions in Rule 101, SCRE ("Except as otherwise provided by rule or by statute, these rules govern proceedings in the courts of South Carolina to the extent and with the exceptions stated in Rule 1101."); Rule 1101(b), SCRE ("(b) Proceedings Generally. These rules apply generally to civil actions and proceedings, to criminal cases and proceedings, and to contempt proceedings except those in which the court may act summarily."). Cf. State v. Weinberg, 229 S.C. 286, 92 S.E.2d 842 (1956).

13. The Orders make incorrect finds of fact when they conclude the Pampus "developed buyer's remorse" concerning the settlement in the underlying matter. There are no

such allegations in the Second Amended Complaint.

14. The Orders ignore the specific allegations in Paragraph 103 in the Second Amended Complaint, which should have been taken as true for the purposes of the Lawyers' Motions:

¶103. In February and early March 2021, ***the Lawyers refused to enter into a statute of limitations tolling agreement to toll the statute of limitations*** on Plaintiffs' legal professional negligence claims against the Lawyers. As stated in Paragraphs 37-39, a substantial portion of the Lawyers' liability arises from the Lawyers' acts and omissions during a mediation on March 21, 2018 in the Federal Case. As a result, Plaintiffs had a good faith basis to believe the three-year statute of limitations on Plaintiffs' legal professional negligence cause of action against the Lawyers would expire on March 21, 2021, which was within 10 days of the date the Summons & Complaint was filed on March 19, 2021. ***Because of time constraints***, an affidavit of an expert could not be prepared in time to file the Summons & Complaint before March 21, 2021.

Under S.C. CODE ANN. § 15-36-100(C)(1), included with the filing of the Amended Summons & Amended Complaint and marked as Exhibit 1 was the affidavit of Justin Dillon, Esq., an expert witness and lawyer licensed to practice law in the Commonwealth of Virginia and in the District of Columbia, which satisfies S.C. CODE ANN. § 15-36-100(A)(1) to qualify Mr. Dylan to serve as an expert in this matter. Another copy of Mr. Dillion's affidavit is filed with this Second Amended Summons & Amended Complaint as Exhibit 1. Mr. Dillon has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in the active practice litigating Title IX matters for at least three of the last five years immediately preceding his opinions, which satisfies S.C. CODE ANN. § 15-36-100(A)(2)(b)(i) to qualify Mr. Dylan to serve as an expert in this matter. Mr. Dillion has been invited to speak before organizations including the American Bar Association, the National Association of Criminal Defense Lawyers, the Association of Title IX Administrators, the Higher Education Consultants Association, the Colorado Bar Association, the Virginia State Bar, the District of Columbia Bar, and has guest lectured on Title IX matters at Harvard Law School, George Washington University, American University, and the University of Maryland. Mr. Dillion has other specialized knowledge in Title IX matters, which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of his study, experience, or both, which satisfies S.C. Code Ann. § 15-36-100(A)(3) to qualify Mr. Dylan to serve as an expert in this matter.

Mr. Dillon's affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of Mr. Dillion's affidavit.

This Second Amended Summons & Amended Complaint is being filed

under S.C. Code Ann. § 15-36-100(E), which permits an amended pleading to be filed to cure the alleged defects. This Second Amended Summons & Amended Complaint is being filed based on the specious arguments contained in the Lawyers' respective Motions to Dismiss claiming Mr. Dillon's affidavit is defective because he is not licensed in South Carolina, when the Lawyers knew or should have known there is no such requirement under S.C. Code Ann. § 15-36-100.

15. The Orders should be amended to allow the Pampus to proceed with their breach of fiduciary duty claim because 1) the facts supporting their breach of fiduciary duty claim concerning the Lawyers' *post*-mediation conduct and therefore did not arise of the same factual allegations concerning the Lawyers' mediation conduct, which support their professional negligence claims, 2) Rule 8(a), SCRCP permits filing alternative claims, and 3) the sole South Carolina authority on this point, RFT Mgmt. Co. v. Tinsley & Adams, LLC, 732 S.E.2d 166, 173 (S.C. 2012), dealt with a motion made at trial, and not before trial under Rule 12, SCRCP.

16. The Orders summarily dismiss all claims asserted by the Pampus making no findings dismissing the Pampus' claims for breach of contract.

17. The Orders do not reflect why the trial judge did not disqualify himself when the trial judge's impartiality might reasonably be questioned, including circumstances where the trial court would reasonably appear to have a personal bias in favor Defendant, Samuel R. Clawson, Jr., Esq., based on the trial judge's long-term law partnership with Samuel R. Clawson, Sr., Esq. This was not discovered by the Pampus until after the Court's email advising of the rulings on the Lawyers' motions with no instructions on the trial court's findings of fact or the basis of the trial court's conclusions of law.

LEGAL STANDARD

A. Motions to Reconsider

In South Carolina, Rule 59(e), SCRCP, motions have long been considered a vehicle to seek reconsideration of issues and arguments presented to the court. See Elam v. S.C. Dept. of Transp., 361 S.C. 9, 21,602 S.E.2d 772,778 (2004). It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. A party usually is allowed to ask the court to reconsider its decision, even if it means rehashing all or part of an argument previously presented. Elam v. Dept. of Transp., 361 S.C. at 21,602 S.E.2d at 778-79.

Rule 59(e) provides that a "motion to alter or amend the judgment shall be served no later

than 10 days after receipt of written notice of the entry of the order,” it does not set forth a defined legal standard for reconsideration. Rule 59(e), SCRCF. The South Carolina Supreme Court has established that, “a party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Id., 361 S.C. at 24, 602 S.E.2d at 780. If a lower court fails to rule on an issue raised before it, a party must file a Rule 59(e) motion to preserve that issue for later appeal. E.g., Bodkin v. Bodkin, 388 S.C. 203, 219, 694 S.E.2d 230, 239 (Ct. App. 2010).

B. Motions to Dismiss.

“In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCF, the appellate court applies the same standard of review as the [circuit] court.” HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 631, 699 S.E.2d 699, 703 (Ct. App. 2010). See also, Fabian v. Lindsay, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”); Wilkinson v. E. Cooper Cmty. Hosp., Inc., 410 S.C. 163, 169, 763 S.E.2d 426, 430 (2014) (quoting Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). “In deciding whether the [circuit] court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid claim for relief.” Id. “The [circuit] court and this [c]ourt on appeal must presume all well pled facts to be true.” Id. at 635, 699 S.E.2d at 705 ((internal quotation marks omitted).

Since “a judgment on the pleadings is considered to be a drastic measure,” a motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle a plaintiff to any relief under any theory of the case. Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006); Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005).

CONCLUSION

The Pampus respectfully request the Court reconsider its decision and alter or amend the Orders to deny the Clawson Fargnoli Defendants’ and the Brewer Defendants’ Motions to Dismiss or issue an Order or Orders revising and making specific findings on its rulings in the two Orders

granting the Clawson Fagnoli Defendants' and the Brewer Defendants' Motions to Dismiss.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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Pampu, and John Pampu

Beaufort, South Carolina

July 5, 2022

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
2 COUNTY OF CHARLESTON CASE NO.:2021-CP-10-01343
3
4 -----

5 March 2, 2022

6 **BEFORE:** The Honorable Edgar W. Dickson
7 -----

8 ANDREW PAMPU, AMANDA PAMPU, and JOHN PAMPU,
9 Plaintiffs,

10 vs.

11 CLAWSON FARGNOLI, LLC; SAMUEL R. CLAWSON, JR.,
12 ESQ.; CHRISTINA R. FARGNOLIC, ESQ.; BARRETT R.
13 BREWER, ESQ.; and BREWER LAW FIRM, LLC,

13 Defendants.
14 -----

15 APPEARANCES:

16 Thomas Pendarvis, Esq.
17 Appearing for the Plaintiffs.

18 Bruce Wallace, Esq.
19 Appearing for Defendant Brewer Law Firm,
20 Barrett R. Brewer, Esq.

21 Jim Dedman, Esq.
22 Appearing for Defendant Clawson Fargnoli,
23 LLC and individual Defendants,

24 Also Present: Christy Fargnoli, Esq.;
25 Barrett Brewer, Esq.; Bert Utsey, Esq.,
26 Samuel Clawson, Jr., Esq.

27 Recorded by: WebEx Courtroom

28 Transcriber: Natalie Dahl, RPR
29 SC Official Court Reporter

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EXHIBITS

(None)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality

P R O C E E D I N G S

THE COURT: Let's see. Okay. You all have a bunch of motions on this thing, right? A motion to seal, a motion to prohibit using pseudonyms, motion to dismiss the second complaint -- second amended complaint.

Nobody wants to use pseudonyms? I got like three of those, right?

MR. PENDARVIS: Yes, Your Honor. Thomas Pendarvis for the plaintiffs: John Doe, Mother Doe, and Father Doe. There are several motions, and I think we've had an agreement by counsel, and maybe a better way to proceed -- when the initial summons and complaint were filed, contemporaneous with that was a motion to proceed anonymously, there were motions to not proceed anonymously, and motions to dismiss. Counsel can correct me, but I believe we have agreed to go forward allowing the plaintiff to argue the motion to proceed anonymously, and then defense counsel will respond in support of their motion and opposing plaintiffs' motion. And then we can proceed, if it's okay with the Court, with the motions to dismiss.

THE COURT: We have motions to dismiss, too? Oh, I've got one, yeah. Yeah. Okay. Well, I do.

1 I see them now.

2 All right. So, Mr. Pendarvis is -- this is
3 your motion? If everyone is in agreement with
4 that, that's fine with me.

5 MR. WALLACE: Your Honor, Bruce Wallace for
6 Barrett Brewer and the Brewer Law Firm. I
7 approached Mr. Pendarvis yesterday with that very
8 idea to try to speed this up for the Court's
9 processing and understanding, and we're prepared to
10 proceed that way.

11 THE COURT: Okay. Any objection to that from
12 anybody?

13 You are muted -- oh, I'm muted.

14 MR. PENDARVIS: No -- Mr. Dedman is muted.

15 THE COURT: Oh, okay.

16 MR. PENDARVIS: It's still not coming
17 through.

18 THE COURT: Mr. Dedman, are you trying?
19 Well, Mr. Dedman, you want to shake your head that
20 either you are in agreement or not?

21 Let the record reflect that he's in
22 agreement. All right. All right.

23 Mr. Pendarvis, you want to keep everyone
24 anonymous?

25 MR. PENDARVIS: Yes, Your Honor. The basis

1 for that is the underlying matter. This is a
2 professional liability claim against lawyers who
3 were representing the plaintiffs in matters related
4 to John Doe and some alleged sexual misconducts at
5 a university.

6 The underlying cases were filed under --
7 anonymously, and there were some other motion
8 practices in the materials that were submitted
9 before the Court. There are serious implications
10 from this type of -- the allegations by these
11 people involved at the university were claimed to
12 be false and defamatory. Allowing that
13 continuation of the false and defamatory statements
14 about Plaintiff John Doe is extremely prejudicial
15 to his coming out of college, trying to get a job,
16 possibly graduate work in med schools and dental
17 schools, having these allegations just out there in
18 the public with his name attached to it, it would
19 be contrary to his interest.

20 The really key to this entire thing, Your
21 Honor, is the defendants have argued there is no
22 prejudice to the defendants at all. Everyone
23 involved in the litigation knows exactly who the
24 identification of the plaintiffs are. There was an
25 accidental -- what the expert affidavit has one

1 reference to the plaintiff's name, and I'll be glad
2 to redact that or submit a redacted affidavit.

3 That was inadvertent. But the point being is there
4 is no prejudice to anyone.

5 There are -- this circumstance was before the
6 court of appeals in a case called *Doe v. Howe*. It
7 is cited in everyone's materials, and it was -- the
8 court of appeals felt it was improper under the
9 record before the Court to deny allowing that
10 plaintiff to go forward anonymously. So in sum
11 total, no prejudice to anyone.

12 These are very serious allegations that are
13 involved in the underlying matter that the
14 defendants were litigating on behalf of plaintiff
15 under an anonymous heading. So we feel the case
16 should continue that way. There is no prejudice to
17 anyone, and that is the thrust of the argument set
18 forth in our motion. We respectfully would ask the
19 Court to allow us to proceed anonymously until
20 trial, and that can be addressed by the trial court
21 when and if it gets to that point.

22 THE COURT: Any objections to that request
23 until trial?

24 Mr. Dedman, you look like you are trying to
25 tell me, but, again, I can't hear you.

1 (A difficulty in video and/or audio.)

2 THE COURT: No, I can read your lips
3 occasionally.

4 (A difficulty in video and/or audio.)

5 THE COURT: Well, let me go to somebody else.

6 MR. WALLACE: Bruce Wallace for Barrett
7 Brewer and the Brewer Law Firm.

8 Mr. Dedman and I had originally agreed for
9 him to take this part of the motion. The
10 defendants filed sort of mirror motions asking the
11 Court to unmask or prohibit the plaintiffs from
12 proceeding anonymously.

13 I see Mr. Dedman is gone, so I'll proceed for
14 the moment with the hope and understanding that if
15 he comes back, he can be heard, that he'll take
16 over.

17 A couple of things, Your Honor. First of
18 all, the underlying action that Mr. Pendarvis
19 mentioned is against -- it is by this plaintiff
20 against the female student involved in the alleged
21 sexual intercourse for defamation.

22 In that case, the plaintiff filed a motion to
23 proceed anonymously. The Court denied the motion
24 to proceed anonymously, and the plaintiff did not
25 appeal that motion's denial, which is -- if you

1 read *Doe v. Howe*, it is immediately appealable,
2 Your Honor.

3 So for the last year-and-a-half, the
4 plaintiff has been pursuing the female student
5 against whom he's alleging all of these defamatory
6 statements in the public realm. The record up in
7 the county where it is filed is clear. The case is
8 going to trial later this month, and for whatever
9 reason, the plaintiff chose not to appeal these
10 very important failure to disclose issues. And we
11 think that because the underlying case is not
12 anonymous, there is absolutely no reason to proceed
13 anonymously in this case.

14 Moreover, the default rule -- the default
15 rule in this state is all proceedings are public.
16 All proceedings are supposed to be prosecuted in
17 the real name of the parties.

18 With regard to prejudice, the defendant's
19 position is absolutely we're prejudiced. The
20 plaintiff in the complaint has alleged a variety of
21 personal injury, most of it centered around mental
22 and emotional harm. We have to issue subpoenas to
23 a variety of parties. We have to be able to use
24 his identification name. We have to be able to
25 identify him by name. We have to use his identity

1 in order to get basic discovery from third parties.

2 With regard to *Doe v. Howe*, Your Honor, which

3 Mr. Pendarvis rests his entire argument, it is

4 completely distinguishable from the case at hand.

5 *Doe v. Howe* involved a young man who was abused by

6 a teacher, and he was the victim.

7 I see Mr. Dedman is back, Your Honor. I'll

8 let him take over at that point.

9 Jim, I was distinguishing *Doe v. Howe*.

10 THE COURT: Okay.

11 MR. DEDMAN: Can you all hear me now?

12 THE COURT: Yeah, I can hear you.

13 MR. DEDMAN: Okay. Excellent.

14 *Doe v. Howe* is very distinguishable here.

15 The cases that have been cited by the plaintiff

16 involve victims of sexual assault. *Doe v. Howe*

17 involved a plaintiff whose underlying case involved

18 molestation charges from his school when he was

19 underage. This is not the case where we are

20 (inaudible) the identity of a victim of sexual

21 assault. It is not a case involving someone who

22 was a victim of a crime. This is a case involving

23 a perpetrator.

24 Mr. Doe was accused of sexually assaulting a

25 female university student behind a dumpster at a

1 restaurant in the late hours of the night.

2 *Doe v. Howe* is not designed to protect this
3 situation, and this is not a case where you have a
4 (inaudible) imbalance where a teacher has assaulted
5 a student. This is not a case where a minor is
6 involved. This is a case involving an adult
7 accused of sexual assault while he was an
8 (inaudible).

9 THE COURT: While he was a what?

10 MR. DEDMAN: In light of that, we don't
11 believe that *Doe v. Howe* is --

12 THE COURT: Mr. Dedman, you said something,
13 and I couldn't hear you. This is a case where an
14 adult is doing what?

15 MR. DEDMAN: An adult was accused of sexual
16 assault while he was an adult. There's no minors
17 here.

18 I think that, you know, Mr. Wallace may have
19 gotten into it, but the -- Mr. Doe did attempt to
20 make this argument in the underlying case, in the
21 state court case, and it was rejected. He filed a
22 motion to proceed anonymously in that case, and he
23 was denied that relief.

24 One of the interesting things about *Doe v.*
25 *Howe* is that it allows an immediate appeal of a

1 denial of a motion to proceed anonymously, and
2 despite being denied that relief, Mr. Doe did not
3 appeal that ruling, and as such, in the underlying
4 state court case, he has been proceeding under his
5 own name for two-and-a-half years.

6 He has filed a very detailed motion for
7 summary judgment in that case in which he sets
8 forth a host of personal background facts. And
9 that case is actually set for trial at the end of
10 this month, on March 21st. And so in light of
11 that, essentially, Mr. Doe has waived his right, if
12 any, to proceed anonymously. Because the very
13 sexual conduct that is at issue in this case, in
14 which he argues for relief, is being litigated
15 under his own name and will be tried under his own
16 name.

17 THE COURT: And, Mr. Dedman, where is that
18 case being tried?

19 MR. DEDMAN: Well, we filed the order as an
20 exhibit. We had redacted the county just because,
21 but it's in the upstate, Your Honor.

22 THE COURT: Oh, okay. All right. But it is
23 set for trial March 21st in whatever county, and
24 he's not going by "John Doe" there, right?

25 MR. DEDMAN: That's correct. He's proceeding

1 under his own name.

2 THE COURT: Okay. Mr. Wallace, Mr. Dedman,
3 anything else to add?

4 MR. DEDMAN: No, sir.

5 THE COURT: Anybody else?

6 I'm sorry, what?

7 MR. PENDARVIS: Nothing.

8 MR. WALLACE: Nothing from me, Your Honor.

9 THE COURT: If anyone wants to say anything,
10 waive or something.

11 Well, I'm going to let you respond.

12 MR. PENDARVIS: Oh, okay. Thank you.

13 THE COURT: I'm trying to find out if any of
14 the defendants want to say anything?

15 Nobody?

16 All right. All right. Mr. Pendarvis.

17 MR. PENDARVIS: Your Honor, brief rebuttal.
18 The one thing I didn't hear -- again, there was an
19 argument on lack of prejudice, but where -- where's
20 the problem? What happened in another court, in
21 another proceeding, not today. I'm not counsel for
22 the plaintiffs in the other matter. We, like the
23 rest of the folks on this video, are just watching
24 from the sidelines on how that proceeds. This is a
25 separate matter.

1 Again, there's the -- the -- I'm happy to
2 accept, if defense counsel will stipulate today,
3 that emotional distress damages are available in a
4 malpractice case, we may reconsider that. I heard
5 that argument earlier, to evaluate the emotional
6 claims here, we need discovery. If there is going
7 to be a stipulation of emotional distress, we may
8 withdraw the motion. If there's not a claim of
9 emotional distress damages available in this
10 malpractice case, then there's no prejudice to the
11 defendants.

12 So they got to pick their horse they are
13 riding. They either are going to say that
14 emotional damages are available and we'll proceed
15 under that process, and that they need to do
16 discovery on that, especially in light of the
17 underlying case, we may withdraw the motion. But
18 without that stipulation, Your Honor, there's no
19 argu -- there's no harm. There's no problem with
20 this case proceeding anonymously up until the trial
21 time.

22 If the trial judge decides to allow the
23 parties to proceed with their real names, then so
24 be it. But for the purposes of this case, there's
25 no need to reveal the names and identity of this

1 plaintiff and his parents to make it worse than it
2 already is on the problems with the way this matter
3 was handled by the university, and then compounded
4 by the problems that was handed by the defendants
5 in this case as counsel.

6 THE COURT: And, Mr. Pendarvis, you know,
7 what doesn't make sense to me here is how in the --
8 in the case in chief, as I'm going to call it, he
9 is using his real name, and, yet, here he doesn't
10 want to use his real name. That just doesn't make
11 sense to me, I'm sorry. And that's why I'm trying
12 to -- can you just explain that to me?

13 MR. PENDARVIS: Your Honor, he intended to
14 proceed anonymously in the underlying case.

15 THE COURT: Right.

16 MR. PENDARVIS: There were motions filed and
17 opposed. It wasn't a -- you know, they didn't
18 consent to begin using their real names. It was by
19 motion and by a court order. The reality of some
20 things about the decision not to appeal, you know,
21 obviously relates to timing issues. I mean, this
22 case -- the Court is not aware of all of the
23 allegations in the complaint, but this has been
24 proceeding for quite some time.

25 And whether, you know -- again, I wasn't --

1 I'm not counsel for the plaintiffs in the
2 underlying case.

3 THE COURT: I understand.

4 MR. PENDARVIS: Decisions about whether or
5 not to appeal, the erroneous ruling -- they contend
6 the erroneous ruling, the name is, you know, just
7 the way it happened. But I certainly was not going
8 to be accused of going into this case and not try
9 to proceed in the same fashion. It is terribly
10 damaging to his professional reputation and his
11 ability to seek employment or, you know, get into a
12 graduate school with the improper things that are
13 on his transcript from college and the results from
14 the proceedings that are at issue in the underlying
15 matter, and in this matter.

16 THE COURT: And -- and -- and those things
17 that are -- that are -- are things that you are
18 seeking, he's seeking damages from in this case,
19 right?

20 MR. PENDARVIS: Yes, sir. A large part of it
21 are the legal fees that are being incurred,
22 substantial legal fees that are being incurred in
23 prosecuting the underlying case.

24 But, you know, we heard arguments that he's
25 not a victim of sexual misconduct. Agreed, he's

1 not. He's a victim of defamatory statements and
2 improper proceedings by the university that didn't
3 follow their own rules allowing a false record to
4 be attached to his name and his resume and his
5 transcript and everything else. So he is a victim,
6 no question about it.

7 And there's -- the idea that, you know, the
8 last item -- the big one -- on the list that was
9 considered by the court of appeals is the risk of
10 unfairness to the opposing party. Again, if
11 they're not going to seek emotional distress
12 damages, then they don't need this discovery that
13 they are saying.

14 If they are going to concede emotional
15 distress damages are a material point of damages
16 that can be claimed in this case, I think I can say
17 we would withdraw the motion, but I need to have
18 that stipulation as part of the withdrawal and the
19 dismissal.

20 THE COURT: Okay. I don't think I see anyone
21 jumping up and down -- oh, well, Mr. Dedman, yes.
22 You had -- okay, Mr. Dedman.

23 MR. DEDMAN: I think the only thing we would
24 add is that there is prejudice here. Number one is
25 the courts are supposed to be open, and there's

1 lots of litigants who do not want to expose their
2 plaintiff to the public, but courts are
3 presumptively open. And there is discovery we need
4 to do, and I think the fact that we're having to
5 dance around so many of the core facts -- I mean,
6 we can't name the university. We're concerned
7 about naming the county of the suit. That's going
8 to make this litigation very difficult for
9 everybody if we can't use any proper nouns in the
10 case, so I think that's incredulous.

11 THE COURT: Okay. All right.

12 Mr. Pendarvis -- the feedback is bothering
13 me.

14 Mr. Pendarvis, let me just tell you, I think
15 since -- from my standpoint, since the basic case
16 is going forward in his name and like that, it just
17 does not make any sense to me to make this an
18 anonymous hearing. So I'm going to note your
19 objection to my ruling, but that is going to be my
20 ruling.

21 And, I mean, to me, when you are going to
22 court, unless there is a really good reason for it,
23 everybody should be identified. The university
24 should be identified, the dates and where it is,
25 and all like that. I mean, it's all stuff that is

1 factual and should be said.

2 I think when we try to hide stuff in a
3 courtroom situation it -- it -- it leads to just
4 all kinds of problems, and so I think courts are
5 supposed to be open. I have in -- I've had to
6 listen to too many things in court that I thought
7 were embarrassing that -- that I didn't even want
8 to hear when I was an attorney. And certainly now
9 that I've been a judge I've heard more stuff than I
10 want to hear. But, you know, once you decide to go
11 to court, it's open, and we are going to deal with
12 it in court.

13 So -- but I'm going to note your objection to
14 my ruling so that can be preserved, if you wish to
15 take it up, okay?

16 I'm sorry, Mr. Pendarvis, can you unmute
17 yourself?

18 Yeah. Okay.

19 MR. PENDARVIS: Sorry. I didn't know I muted
20 myself.

21 Thank you, Your Honor. I understand your
22 ruling.

23 THE COURT: Okay. Thank you, sir.

24 All right. So now we need to move into these
25 different motions, right? Did you all have an idea

1 how you wanted to handle those?

2 MR. WALLACE: Bruce Wallace again. I can
3 tell you the rough outline of how we would like to
4 proceed, if it's okay with Your Honor.

5 THE COURT: Okay.

6 MR. WALLACE: So Jim Dedman represents
7 Clawson Fagnoli and the individual lawyers for
8 that firm. I represent Barrett Brewer and his law
9 firm. And, by the way, Mr. Brewer has been here
10 the whole time, but he was unable to be seen by
11 Your Honor until about ten minutes ago, so I just
12 wanted the Court to note that he's been present for
13 the entire hearing.

14 THE COURT: Okay.

15 MR. WALLACE: What Mr. Dedman and I proposed
16 to do is I'll give a factual recitation based on
17 the second amended complaint, and I'll argue very
18 generally the 12(b)(6) motion to dismiss, and the
19 timings of the plaintiffs' expert affidavit, and
20 then Mr. Dedman will take over at that point and
21 get into more detailed arguments related to the
22 sufficiency of the expert's affidavit and a couple
23 other arguments that we raised in our memorandum.

24 THE COURT: Okay. And that will cover all of
25 the motions to dismiss?

1 MR. WALLACE: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. WALLACE: Yes, Your Honor.

4 MR. PENDARVIS: And, Your Honor, plaintiffs
5 agree. That was a good part of our discussion
6 yesterday, and we agree that this is probably the
7 most efficient way to proceed.

8 THE COURT: Okay. Thank you.

9 Mr. Wallace, again, I'll be glad to hear from
10 you.

11 MR. WALLACE: Thank you, Your Honor. I
12 apologize, Your Honor, I prepared my argument in
13 the event that the Court had denied the motion to
14 unmask, so I may at times slip in and say --

15 THE COURT: I mean, if that's what you want
16 to do, Mr. Wallace, I'll reconsider your argument.

17 MR. WALLACE: Your Honor, briefly, as the
18 facts alleged in the complaint, plaintiff was a
19 student at Clemson University, and everyone agrees
20 he had sex with a female student from the
21 university. The salacious details you heard a
22 little bit about, but I'm not going to bring them
23 into court at this time. They are, frankly, rather
24 shocking as a father of a young girl and a father
25 of college-aged boys.

1 So suffice it to say, the young lady in
2 question was drunk at the time of the incident.
3 She accused the plaintiff of non-consensual sexual
4 assault, and the university -- Clemson University
5 convened disciplinary proceedings, and after a
6 hearing found the plaintiff guilty, for lack of a
7 better word, for engaging in non-consensual sexual
8 intercourse with the young female student in
9 question.

10 Initially, the punishment handed down was a
11 one-semester suspension. Both the female student
12 and the plaintiff appealed that determination, and
13 on appeal, also a Clemson University panel, they
14 actually increased the penalty to a one-year
15 suspension.

16 Thereafter, plaintiff sued Clemson University
17 alleging -- among other things -- violation of
18 Title 9 and due process, and he also sued the
19 female student in state court along with several
20 other parties alleging defamation and the like, as
21 you heard Mr. Pendarvis mention. That state court
22 case is the one that continues and is set for trial
23 up in Pickens County for March 21st.

24 After both of these lawsuits were filed, that
25 is when the plaintiff sort of changed courses in

1 mid-stream and hired Clawson Fagnoli and the
2 Brewer Law Firm to represent him in both the
3 federal lawsuit against Clemson University and the
4 state lawsuit against the female student and the
5 other defendants in that state court case. So it
6 came in a little late, but undertook representation
7 in both cases. Clawson Fagnoli and Brewer Law
8 Firm working in tandem to represent the plaintiff
9 in both lawsuits.

10 After orders of substitution, the plaintiff
11 and Clemson University went to mediation in federal
12 court. And as Your Honor no doubt recalls, federal
13 mediation has certain rules just like state court
14 mediation.

15 It's important that the complaint gets to
16 this level of detail, so forgive me, Your Honor,
17 for being a little detailed here, but Paragraph 36
18 in the second amended complaint alleges they sent a
19 written e-mail to the lawyers -- meaning my clients
20 and Mr. Dedman's clients -- with various specific
21 mediation goals. All right. That is Paragraph 36
22 set forth the mediation goals.

23 Paragraph 37, mediation take place on
24 March 21 of 2018. Important to remember that date
25 for reasons I'll get to in a minute.

1 Following mediation, plaintiff signed a
2 written mediation agreement. That's Paragraph 39.

3 Thereafter, plaintiff and his parents
4 informed the lawyers that the written mediation
5 agreement conflicted with the written goals set
6 forth in the e-mails. So Paragraph 31 alleges that
7 the settlement agreement violates the directives of
8 Paragraph 36. All in writing.

9 The settlement agreement itself we've
10 attached as Exhibit A to our motions.

11 The allegations of the complaint under
12 Paragraph 42 is that the written settlement
13 agreement lacked the necessary language and terms.
14 Again, it's a written settlement agreement signed
15 by the plaintiff.

16 They allege also that in Paragraph 58, for
17 reasons best known to the plaintiffs, they
18 repudiated the settlement agreement and they
19 attempted to get out of it.

20 Clemson University filed a motion for
21 settlement, which the plaintiffs opposed. They
22 hired new counsel to oppose it. They filed various
23 memoranda, and a hearing was conducted wherein -- I
24 think it was Judge Cogin (phonetic) enforced the
25 settlement agreement. We've attached the order

1 enforcing -- the redacted order enforcing the
2 settlement agreement. The redacted order is
3 described in Paragraphs 55 and 56 and 57.

4 As we stated, the case against the female
5 student remains pending in state court.

6 Now, the mediation and settlement agreement
7 took place March 21st, 2018. The first complaint
8 in this action, the first legal malpractice claim,
9 was filed March 19, 2021, just two days shy of the
10 three-year statute of limitations going back to the
11 date of the settlement agreement.

12 First complaint contains no affidavit of an
13 expert as required by South Carolina 15-36-100. It
14 does not allege that an expert affidavit cannot be
15 timely prepared. It simply says we're going to
16 file an affidavit in 45 days.

17 So where we're left, Your Honor,
18 procedurally, the big picture is the case against
19 the female student proceeds to trial later this
20 month. The federal case has ended fully because
21 the settlement agreement was enforced. And the
22 plaintiff has referenced and discussed the terms of
23 the settlement agreement and the order in his
24 complaint, but for some reasons best known to
25 Mr. Pendarvis, they object to the Court

1 consideration the order and the settlement
2 agreement as part of this motion to dismiss.
3 Mr. Dedman will address that specific issue.

4 So those are the basic complaints -- basic
5 facts as alleged in the complaint: Mediation,
6 written settlement agreement, and violation of
7 written directives.

8 We filed the motion to dismiss the complaint
9 at each stage, both when -- the first complaint was
10 filed, it was amended in April, and we filed a
11 motion to dismiss at that point. It was amended
12 again, and we filed another motion to dismiss,
13 which is why the Court's E-docket probably shows so
14 many dang motions pending.

15 THE COURT: It shows plenty.

16 MR. WALLACE: Yes. Yes, Your Honor. But
17 there is really only one motion to dismiss filed by
18 each group of defendants, and they are almost
19 identical grounds.

20 THE COURT: Okay.

21 MR. WALLACE: The basis -- the overall basis
22 for why this complaint failed to state a cause of
23 action and should be dismissed pursuant to 12(b)(6)
24 is because the settlement agreement itself is
25 signed by the plaintiff. The plaintiff cut off any

1 potential proximate cause the plaintiff may have
2 been able to allege by signing this settlement
3 agreement. For instance, the plaintiff goes to at
4 length in his second amended complaint to allege
5 that the settlement agreement violates the specific
6 written directives of the plaintiff to the defense
7 lawyers, to my clients and Mr. Dedman's clients.
8 But the plaintiff signed the agreement.

9 The second amended complaint says, yeah, he
10 conceded to the pressure of the lawyers, and he
11 signed it. It says his parents conceded to the
12 pressure of the lawyers. There is no indication or
13 allegation that the pressure was improper.

14 More importantly, Your Honor, the complaint
15 alleges that the agreement itself violates the
16 plaintiff's own instructions and that, Your Honor,
17 as a matter of law, demonstrates plaintiff's
18 damages are not proximately caused by any alleged
19 negligence of the defendant or the defendants, but
20 by the plaintiff's own agreement to a settlement
21 agreement.

22 THE COURT: Okay.

23 MR. WALLACE: Where the facts are susceptible
24 to only one inference, as they are here, Your
25 Honor, it is absolutely appropriate for the Court

1 to consider and to rule and to dismiss this case on
2 proximate causation. We recognize proximate cause
3 is usually a (inaudible), but the plaintiff's own
4 second amended complaint demonstrates the facts
5 clearly. *Tuten v. Joel*, 410 S.C 104, it's a 2014
6 case, speaks directly to these kinds of things.
7 Here, the plaintiff's signing of the settlement
8 agreement is the sole cause of his complaint today.

9 I think Mr. Pendarvis went to great lengths
10 to talk about how you can readily sue people
11 post-settlement. You can sue lawyers
12 post-settlement, but here the facts are so clear,
13 and so clearly pled in such detail, that it
14 demonstrates that it's nothing that the lawyers
15 did, but it's the plaintiff's own actions in
16 accepting an agreement that's in derogation of his
17 own instructions that demonstrates the cause of any
18 alleged loss.

19 So that's -- that's the overarching 12(b)(6)
20 argument. Mr. Dedman will get into some more of
21 the detail in a minute. I want to address the
22 timeliness under 15-36-100 of the expert's
23 affidavit.

24 15-36-100, Subsection C-1, talks about when a
25 contemporaneous expert affidavit does not have to

1 be filed with the complaint, and the circumstances
2 are this -- and I'm quoting from 15-36-100(c)(1).
3 I apologize for quoting to the Court, Your Honor,
4 but I think it's telling. "Contemporaneous filing
5 requirement does not apply to any case in which the
6 period of limitations will expire, or there is good
7 faith basis to believe it will expire on a claim
8 stated in the complaint, within ten days of the
9 date of filing, and because of the time
10 constraints, the plaintiff alleges that an
11 affidavit of an expert cannot be prepared."

12 The statute sets forth exactly what the
13 plaintiff has to do to be excused from filing a
14 late affidavit in this case. The plaintiff did not
15 do that. The first complaint filed herein simply
16 says because the lawyers may contend the statute of
17 limitations are about to expire, we're going to
18 file an affidavit in 45 days. It doesn't allege
19 that an affidavit could not be timely filed. We
20 think that's a critical problem in the plaintiff's
21 case, and it's one that would categorically subject
22 the plaintiff to dismissal. It cannot be cured by
23 filing an affidavit later.

24 If you look at Paragraph 103 of the original
25 complaint, Your Honor, you'll see what I'm talking

1 about. That's the only place where they address an
2 expert affidavit, and they do not allege that an
3 expert affidavit cannot be done.

4 THE COURT: All right. Is that it, Mr.
5 Wallace?

6 MR. WALLACE: Yes, sir, that's it.

7 THE COURT: Okay. And Mr. Dedman has decided
8 to leave us again.

9 MR. DEDMAN: I'm here. Can you hear me?

10 THE COURT: Oh, yeah, I can hear you. There
11 you go. I can hear you, Mr. Dedman.

12 MR. DEDMAN: Okay. Great.

13 THE COURT: Wait. Hold on.

14 Mr. Pendarvis?

15 MR. PENDARVIS: Yes, Your Honor.

16 THE COURT: Can you hear everybody?

17 MR. PENDARVIS: I sure can.

18 THE COURT: Okay. I just -- there you are.
19 Okay. I just couldn't -- you all are going in and
20 out. As long as I can hear you, we'll be okay. I
21 just wanted to double check.

22 All right, Mr. Dedman.

23 MR. DEDMAN: I feel free now that I'm able to
24 communicate through Webex. I'm glad we got that
25 figured out. I apologize for the audio issues

1 before.

2 Building on what Mr. Wallace said about the
3 expert affidavit, as he mentioned, to initiate
4 federal liability, you have got to have an expert
5 affidavit. It is well contended, and we also
6 contend that that affidavit was timely and the case
7 should be dismissed for that reason alone.

8 However, our statutes also grant defendants
9 the right to challenge the sufficiency of the
10 expert affidavit, and that is what we're doing
11 here. This ground is based on the fact that
12 Mr. Dillon, the lawyer who has executed the
13 affidavit accompanying the second amended
14 complaint, simply does not have the right
15 credentials to offer expert opinions in this legal
16 malpractice case.

17 And here's sort of the crux of the argument.
18 We're not saying that Mr. Dillon has to be licensed
19 in South Carolina as a lawyer to offer opinions in
20 this case. He's not licensed in South Carolina,
21 but that alone does not necessarily preclude him
22 from being an expert; however, that is part of the
23 picture. If you look at his affidavit in this
24 case, he does represent that he has experience in
25 other parts of the country litigating Title 9

1 cases. However, he also goes so far as to offer
2 opinions about the duties of the lawyer defendants
3 in this case, and those duties are South Carolina
4 specific, South Carolina law. Despite the fact
5 that he's not licensed in South Carolina, has never
6 represented that he's practiced in South Carolina
7 in our state or federal courts, he's offering his
8 opinions about what the lawyer defendants did at
9 the South Carolina mediation.

10 As we understand it, based on his affidavit,
11 Mr. Dillon is licensed in Virginia and DC. He
12 represents that he's been appearing in the federal
13 courts in Virginia and DC and also pro hac vice in
14 Illinois and Ohio, but he makes no representation
15 that he has familiarized himself with our rules and
16 our practice here in South Carolina, no pro hac
17 vice admission in state or federal court. I think
18 it's important that he makes no representations
19 that he's familiar with the federal court local
20 rules, which would have governed this mediation,
21 and he makes no claim that he has familiarized
22 himself with the South Carolina state ADR rules,
23 which are incorporated by reference into the
24 federal and local rules as well.

25 He doesn't make a representation that he's

1 ever provided as an expert or consulted in a case
2 involving South Carolina (inaudible). You know, it
3 kind of makes you wonder if the reason that
4 Mr. Dillon with his lack of experience in
5 testifying is because there's not a South Carolina
6 lawyer that would have offered these opinions, and
7 certainly the plaintiffs could have offered an
8 expert who is familiar with our practices here in
9 South Carolina, or to the extent that he's a
10 Title 9 expert, they could have retained a separate
11 expert about the duties of South Carolina lawyers
12 under our South Carolina law. But without that
13 kind of experience, we do not believe that
14 Mr. Dillon has the credentials to be able to offer
15 testimony about what South Carolina lawyers should
16 have or should not have done at a mediation in
17 South Carolina Federal Court governed by South
18 Carolina local rules and South Carolina ADR rules.

19 So that is our challenge to the sufficiency
20 of the expert affidavit of Mr. Dillon.

21 The two remaining portions of my argument are
22 going to relate to standing and then public policy.
23 And so as Your Honor may have noticed, it's not
24 just the student plaintiff who is bringing causes
25 of action here, it is his parents as well. And we

1 do not believe that the parents have standing to
2 bring these claims in this case because the damages
3 that are alleged relate to a student.

4 You heard Mr. Pendarvis talk about how the
5 student is not going to be able to find a job
6 because of these allegations, he's not going to be
7 able to participate in society as he hoped to be
8 able to because of these allegations and the like.
9 Those damages are his; they are not his parents'.
10 His parents were not parties to the federal case
11 against the university. His parents were not
12 parties to the state court case that is being tried
13 in a couple of weeks. They have asserted no claims
14 of their own against the accuser or anyone at the
15 university. They did attend the mediation in the
16 federal case, but they did not sign the memorandum
17 of understanding or settlement that was reached
18 that day. At best, they are fact witnesses who,
19 obviously, care a lot about their son, who does
20 happen to be the plaintiff.

21 And so the complaint shows that the
22 defendants took advantage of the student while his
23 parents were out of the room and the mediation
24 (inaudible), but they are really fact witnesses at
25 the end of the day. Damages that the student has

1 are not damages that the parents can claim.

2 And so to the extent that there are claims
3 which can be brought arising from this dispute, the
4 parents do not have standing to bring them.

5 And, lastly, I will address the public policy
6 argument here. Mr. Wallace indicated in his
7 presentation what we have here is a litigant who
8 signed a memorandum of understanding and formal
9 settlement agreement at the mediation, as is
10 required by the federal local rules, which says if
11 you reach a settlement and mediation, you have to
12 memorialize it in writing. And so he signed it,
13 and to the extent that that is inconsistent with
14 his goals prior to the mediation itself, I mean,
15 that's kind of how mediation works. Most
16 mediators, at least the ones I know, start with the
17 old adage that if both parties are not happy in
18 some way, then the mediation did work.

19 So, I mean, I'm trying to find an example of
20 a plaintiff or defendant who recited a bunch of
21 (inaudible) and was able to meet all of them. Part
22 of mediation is giving up what you want to buy your
23 peace and to end the litigation.

24 But two months or so after the mediation --
25 and it's important to remember this was pre-Covid,

1 so the mediation was in person. Everyone was
2 there. So about two months after the mediation
3 takes place, an informal settlement agreement is
4 circulated among the parties, and that is the first
5 time, really, that the student begins to have
6 second thoughts, you know, buyer's remorse about
7 the agreement he signed at the mediation.

8 This leads to the university filing a motion
9 to enforce the settlement, which is granted by the
10 federal district court judge, and we have attached
11 a copy of the order granting the university's
12 motion to enforce the settlement. We did attach a
13 redacted version of that, but we can certainly
14 submit to the Court the un-redacted version since
15 the anonymity has been lifted.

16 But the federal district court judge makes a
17 number of statements in that order, which we think
18 are pretty important, and I'll quote (inaudible) on
19 a couple of these points.

20 It is uncontested that the plaintiff signed
21 the settlement agreement drafted during the
22 mediation, which does not include any of the terms
23 the plaintiff now claims he expects to be
24 addressed. (inaudible) the Court finds that the
25 parties unambiguously reached a settlement during

1 the mediation. The Court said the planned
2 (inaudible) as set forth and the plain terms of
3 that settlement are set forth in the signed
4 settlement agreement. The Court finds the terms of
5 the March 21st, 2018 settlement agreement are
6 clear and unambiguous and (inaudible). The Court
7 said the representation of John Doe and his parents
8 regarding being promised (inaudible) during the
9 settlement negotiations are simply unsupported by
10 the plain and unambiguous language of the
11 settlement agreement as signed by the parties at
12 mediation immediately after an agreement was
13 reached.

14 (Inaudible) is that the student has already
15 attempted to re-litigate this settlement by
16 challenging the motion to enforce brought by the
17 university. He lost on that, and that language
18 that I just read from the federal court's opinion
19 really sets forth in great detail why he lost. And
20 our concern is that our courts, whether they be
21 state or federal in South Carolina, have a public
22 policy of encouraging mediation. Mediation is not
23 mandatory as it was in the federal case, but we
24 want to encourage people to participate fully and
25 completely in mediations so that cases can be

1 resolved without clogging the courts, and that
2 public policy is simply not served if someone is
3 able to do a collateral attack on a settlement and
4 they have decided that it didn't go the way they
5 wanted two months after the fact.

6 You know, this is not a case where a lawyer
7 has missed the statute of limitations or misused
8 the money, you know, your typical malpractice legal
9 case. This is a case where the plaintiff simply
10 came to regret the deal he reached (inaudible), and
11 now wants to use a malpractice case in order to
12 address that buyer's remorse.

13 I think the other example of why we think the
14 public policy would prohibit this type of case is
15 our mediation rules themselves. You know, this was
16 an in-person mediation. Obviously, to the extent
17 that this case goes forward, we will be taking
18 depositions of everybody who was at that mediation
19 to talk about exactly what happened, but one
20 witness who is objective and neutral and who
21 observed and interacted with the plaintiff in this
22 case is the mediator, and we are prohibited by our
23 ADR rules from calling the mediator as a witness.
24 And, in fact, if we did try to do so, that mediator
25 would object and cite to our ADR Rule 8(g), which

1 says quite specifically that the mediator shall not
2 be compelled by subpoena or otherwise to divulge
3 any records or to testify in regards to the
4 mediation in any adversary proceeding or judicial
5 forum.

6 So if our mediation rules specifically
7 prohibit us from calling as a witness the one
8 objective party that could shed light on these
9 claims and defenses, then it clearly suggests that
10 this type of claim is against public policy.
11 Because why protect the mediator from testifying if
12 their testimony would be relevant and helpful to
13 the finder of fact in analyzing crimes like this
14 about what actually occurred at a mediation and who
15 said what?

16 So I think, based on those facts, that this
17 set of claims is against the South Carolina public
18 policy. That's all I have, Your Honor.

19 THE COURT: Thank you, sir.

20 Mr. Pendarvis.

21 MR. PENDARVIS: Thank you, Your Honor. I
22 think it might be -- Your Honor, I would like to
23 proceed backwards. It might be easiest to treat
24 the last arguments you heard first and the
25 response, if that's all right?

1 THE COURT: Mr. Pendarvis, you can do it
2 however you feel most comfortable.

3 MR. PENDARVIS: Thank you, Your Honor.

4 To begin with, on the idea of public policy,
5 totally absent from the arguments you just heard
6 was a quote that I'll read the Court from the South
7 Carolina Supreme Court. In 1997, a case called
8 *Crowley versus Harvey & Battey* where a client
9 alleges his former attorney was negligent in
10 advising him to accept the settlement, that allege
11 negligence is not grounds for attacking the
12 settlement itself, but rather is better left for
13 malpractice suit between the client and the
14 attorney, 327 S.C. 68, Page 7488, S.E.2d 334, Page
15 335. I can't imagine a better pronouncement of the
16 South Carolina Supreme Court's views on public
17 policies about a client being forced into a
18 settlement agreement than that statement.

19 THE COURT: I hate to interrupt you, but 327
20 South Carolina -- what page?

21 MR. PENDARVIS: I'm sorry. 327 S.C 68 is the
22 beginning of the opinion. Page 70 is from where
23 the quoted language I just read is found.

24 THE COURT: That's from the -- I'm sorry,
25 that is all I needed. Go ahead.

1 MR. PENDARVIS: Thank you, Your Honor.

2 So for matters of public policy, the South
3 Carolina Supreme Court has clearly stated South
4 Carolina policy on that point.

5 As for mediation and the arguments you're
6 hearing about the confidentiality and the mediator,
7 it's also dealt with in the rules. I noted that
8 defense completely skipped over South Carolina ADR
9 Rule C(5), which are incorporated into the federal
10 rules, and it's called -- entitled -- the rule
11 itself is called "Limited Exceptions to
12 Confidentiality." Subsection 5 states, "There is
13 no confidentiality attached to information that is
14 disclosed during mediation, colon, offered to
15 report, prove, or disprove professional misconduct
16 occurring during the mediation."

17 So the rule itself, ADR rule itself, permits
18 discovery and admissibility of matters related to
19 conduct, advice, allegations of professional
20 misconduct or professional negligence in a
21 mediation. So for two South Carolina specific
22 points, this case can proceed as a matter of public
23 policy.

24 Moving backwards to the preceding argument.
25 Right before that, you heard arguments that the

1 plaintiffs don't have standing and --

2 THE COURT: Well, the parents don't have
3 standing.

4 MR. PENDARVIS: I'm sorry. You're right.
5 The plaintiff's parents don't have standing. Your
6 Honor, on the 12(b) motion, the allegations in the
7 complaint are taken as true. The allegations in
8 the complaint state -- and I'm reading from
9 Paragraph 13 in the second amended complaint -- "on
10 or about November 2nd, 2017, the lawyers" --
11 referring to the defendants -- "accepted the
12 representation of the Does" -- and that is plural
13 -- "to provide legal advice, services, and
14 representation of the Does."

15 Earlier in the complaint, we grouped all
16 three plaintiffs and referred to them categorically
17 as "the Does." So the allegations in the complaint
18 state that there was an attorney/client
19 relationship between the parents and the defendant
20 lawyers and their law firms. So taken as true,
21 they've alleged they had an attorney/client
22 relationship. This is not in the complaint, and I
23 don't want to go outside for purposes of argument,
24 but there is evidence that we've submitted in the
25 case where these lawyers were taking privileged

1 positions on communication with the parents as to
2 Clemson University and the others that were sued in
3 the state court case.

4 So, you know, have your cake and eat it too,
5 but at the end of the day, the allegations in the
6 complaint have to be accepted as true state that
7 there was an attorney/client relationship.

8 The complaint also seeks recovery of
9 attorney's fees. Everyone is clear: The parents
10 paid the attorney's fees. So in terms of the
11 contractual relationship between the -- and there's
12 a cause of action -- third cause of action, Your
13 Honor, for breach of contract that no one said
14 anything about today, because they know better, but
15 there was a contract for services between the Doe
16 parents and the defendant law firms who the Doe
17 parents paid for legal services that they claim now
18 they didn't get sufficient services.

19 So the allegations in the complaint
20 definitely have claims or cert the basis for the
21 plaintiff parents to have standing to pursue claims
22 in this lawsuit.

23 And to the first argument Mr. Dedman started
24 on and Mr. Wallace stated about, Mr. -- the expert
25 affidavit.

1 THE COURT: Mr. Dillon?

2 MR. PENDARVIS: Mr. Dillon, Justin Dillon,
3 who teaches at places like Harvard and have spoken
4 at American University of George Washington and has
5 tried over a hundred Title 9 cases. And our
6 supreme court has said carefully in the *Smith*
7 *versus Haynsworth, Marion, McKay and Geurard* case,
8 Your Honor, is cited on Page 7 of plaintiffs'
9 memorandum in opposition. The court criticized --
10 the supreme court criticized the trial court
11 excluding Dr. Greg Adams, who is a professor at USC
12 law school, who is not licensed in South Carolina,
13 from giving an opinion as an ethics expert in a
14 real estate malpractice dispute, and the court said
15 that Dr. Adams had the sufficient skills to go in
16 front of a jury and explain the matters at issue in
17 the lawsuit. Obviously -- and I mean, obviously,
18 but this was a 1996 opinion before the statute was
19 -- the statute requiring expert affidavit was
20 created. But, nonetheless, as to his
21 qualifications, the affidavit of Mr. Dillon
22 attached as Exhibit 1 to the complaint contains his
23 curriculum vitae, and it states in lengthy detail
24 his experience in these matters.

25 It's interesting how the arguments on the

1 motion to dismiss were weaving through the reality
2 of the claims. These were federal claims that were
3 being related. The state court claims stem from
4 the federal allegations on Title 9 violations. It
5 is all blended together, and if anyone has the
6 experience necessary to give these kinds of
7 opinions, it is Mr. Dillon.

8 He states in his affidavit that he's -- he
9 and his firm have handled claims against more than
10 a hundred schools across the country. He's handled
11 Title 9 matters. He's spoken on these matters. I
12 think his CV and allegations in the complaint,
13 which are part of the complaint, must be taken as
14 true for the persons of this analysis clearly
15 qualify Mr. Dillon to give an expert opinion in
16 this case.

17 The other arguments about the timeliness of
18 the filing of the complaint without an affidavit,
19 the expert affidavit that was filed in the first
20 amended complaint and the second amended complaint,
21 same affidavit, Your Honor. But the allegations of
22 Paragraph 103 of the now operative pleading, which
23 is the second amended complaint, are cited --
24 quoted, on Page 5 of the memorandum in opposition,
25 but the key portion to respond to the arguments you

1 just heard, is it says -- Paragraph 103, last
2 sentence -- "because of time constraints, an
3 affidavit of an expert could not be prepared in
4 time to file the summons and complaint before
5 March 21, 2020."

6 It's hard to imagine a clearer statement that
7 satisfies the requirements of SC Code
8 15-36-100(c)(1) than that statement, which must be
9 taken as truth for purposes of this argument.

10 So -- also earlier in that paragraph, Your
11 Honor, there were efforts made to try to get a
12 statute of limitations tolling agreement with these
13 defendants that would have prevented this entire
14 lawsuit from being filed when it was filed, and
15 those proposals were rejected. So it wasn't so the
16 plaintiff just waites until the last minute. They
17 were hoping a lot of things would turn out
18 different, Your Honor. We were trying to hold this
19 claim in abeyance while the underlying matter was
20 being litigated. Those arguments were rejected,
21 and we were clear that the mediation date was a
22 trigger of some of the statute of limitations
23 issues.

24 I do want to talk about one other argument --
25 allegation in the complaint that's being skipped

1 over here. There is tortious conduct alleged long
2 after the mediation, and that was just kind of
3 brushed over, and no one has mentioned that to you.
4 And the defense knows better, I think, than to
5 argue this, but Paragraph 61, 62, and 63 talk about
6 post-mediation conduct by the defendants.

7 Paragraph 61 talks about a letter that the
8 lawyer sent to the mediator and third parties.

9 Paragraph 62 talks about a letter of
10 March 26, 2019 after the mediation, again, alleging
11 that these -- this letter interrupted with the
12 process and disrupted continuing negotiations
13 disadvantaging John Doe's position.

14 And then again, February -- another
15 February 28th letter is alleged in the complaint
16 saying that they continued to send letters
17 interfering with -- with the process. And this is
18 2019, not 2018.

19 So there's conduct by itself in those three
20 paragraphs that will support a claim regardless of
21 the date of the mediation. In that aspect, the
22 complaint is clearly timely filed, and the
23 affidavit was timely filed.

24 So we think, Your Honor, this case should go
25 forward. The arguments are -- this case should go

1 forward on the merits. These technical arguments
2 aren't satisfied by any of the arguments the
3 defense has made. The statute was complied with.
4 The affidavit was timely filed under the 45-day
5 exception to the -- in the statute on the filing an
6 amended complaint. The qualifications of this
7 expert are impeccable. So we believe this case
8 should go forward, and the defendants' motion to
9 dismiss the second amended complaint should be
10 denied.

11 THE COURT: Okay. Thank you, sir.

12 Mr. Dedman, you moved towards the screen like
13 you wanted to tell me something else. You can
14 briefly respond.

15 Mr. Dedman?

16 MR. DEDMAN: Yes. Thank you, Your Honor.
17 Very briefly. Mr. Pendarvis brings your attention
18 to the South Carolina mediation rules. It is
19 important to know that they specifically prohibit
20 the mediator from testifying. No matter what else
21 they say, the mediator cannot testify. And it's
22 actually stronger than the federal local rule,
23 which says that only under extraordinary
24 circumstances and it's ordered by the Court can a
25 mediator testify. So we're clearly deprived of

1 calling a very key fact witness in this case in
2 light of the rules.

3 THE COURT: Okay.

4 MR. DEDMAN: The other thing I would mention
5 is with respect to this sufficiency of the
6 credentials of Mr. Dillon, Mr. Pendarvis mentioned
7 a case involving Professor Adams. I think that's
8 the perfect example of our argument, because here
9 Mr. Dillon has no connection, whatsoever, to South
10 Carolina, but Professor Adams has been at the USC
11 law school since 1978 and has written extensively
12 about ethics and South Carolina law for decades.
13 And so even though he may not have been licensed in
14 South Carolina to practice law, he had the
15 requisite experience to testify about South
16 Carolina law because it was years and years of
17 study. Mr. Dillon has none of that. And if you
18 are going to execute an affidavit that says that
19 South Carolina lawyers violated their duties to a
20 South Carolina client, you got to know something
21 about South Carolina law, we think. And so I think
22 that's the important distinction there.

23 And Mr. Wallace has additional thoughts on
24 the other arguments. I'll turn it over to him.

25 THE COURT: All right. Mr. Wallace.

1 MR. WALLACE: Your Honor, there is very good
2 reason why we didn't raise anything related to
3 these letters. There is no testimony from any
4 affidavit that those letters violated any standard
5 of care, so they're not actionable. They make
6 great copy in the complaint, but they are not
7 actionable. Mr. Dillon's affidavit is very limited
8 in what he states the defendants allegedly did
9 wrong. So that's one point.

10 Second point with regards to the Crowley
11 case, that case is a Rule 43 (inaudible) settlement
12 case. It is not operative in a situation where the
13 plaintiff himself signs an agreement that is
14 allegedly a violation of plaintiff's own written
15 instruction.

16 So the Crowley case, for all of its good
17 holding, and it's still good South Carolina law,
18 simply doesn't apply here. Mr. Pendarvis knows
19 that. Those are the only two points I would make,
20 Your Honor.

21 There is one argument that I don't think has
22 been raised yet, and I'll briefly state it because
23 it's black letter law. When a plaintiff asserts
24 negligence and a breach of fiduciary duty in a
25 legal malpractice scenario, and the fiduciary duty

1 arises out of the same relationship of professional
2 negligence, as in this case, one of those cases
3 must be dismissed as duplicative.

4 Now, we think all of the cases should be
5 dismissed for the reasons we've stated, but I also
6 want to make sure that the Court was aware that
7 there is a duplicatable cause of action argument
8 related to fiduciary duty cause of action. It's
9 simply the second cause of action pled, but the
10 case law is quite clear. Whereas, here, the
11 fiduciary duties arise out of the same duties that
12 create the attorney/client relationship -- as
13 alleged here -- is duplicative and must be
14 dismissed.

15 MR. PENDARVIS: Your Honor, can I respond to
16 that?

17 THE COURT: Oh, yes, sir. He doesn't get to
18 say it and then you don't get to say something
19 back, so go ahead.

20 MR. PENDARVIS: That's not the law. The case
21 he was talking about was not a pretrial motion to
22 dismiss the duplicative.

23 The Manos case was at trial. Mr. Ballard
24 (phonetic) tried the case. I know -- anyway, the
25 motion -- the duplicative -- the ruling on the

1 duplicative motions happened at trial after
2 evidence was presented and before the matter was
3 sent to the jury. There is no authority in South
4 Carolina on a pretrial motion for duplicative
5 pleadings. In fact, the rules itself talk about
6 pleading in the alternative. The Manos case -- and
7 I can get Your Honor the cite. I can supplement
8 that later. That wasn't raised in the motion, but
9 I would be glad to give it to the Court. Parties
10 who have read that case know it was a trial,
11 multiple claims, and the Court, after hearing the
12 evidence by experts and fact witnesses, believed
13 that the cases should be -- those two claims should
14 be merged and did that before it sent the matter to
15 the jury. And maybe that happens in this case,
16 maybe not, but it's certainly not a pretrial motion
17 available on a 12(b) matter, especially when it
18 wasn't raised in the motion to dismiss.

19 Thank you, Your Honor.

20 THE COURT: Okay. And I appreciate it, you
21 all.

22 And, Mr. Wallace, you did not mention that in
23 your memorandum, anything like that, correct?

24 MR. WALLACE: Your Honor, I believe it's in
25 our motion to dismiss filed by the Brewer

1 defendants. I'll check, Your Honor. But if it's
2 not, I'll withdraw the argument.

3 THE COURT: Okay. All right. You all look
4 at that, and I've got to look at it myself. So
5 I'll get back to you all with my decision, okay.

6 Thank you, you all. It's been entertaining.

7 Mr. Utsey, you can give me a grade later on.
8 You all have a good day.

9 (whereupon, the hearing concluded.)
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1 CERTIFICATE OF TRANSCRIBER

2
3 Case Name: Andrew Pampu, et.al v. Clawson
4 Fargnoli, LLC, et. al

5 Case No.: 2021-CP-10-01343

6 Date of Hearing: March 2, 2022

7 * * * * *

8
9 I, Natalie Dahl, do hereby certify that the
10 foregoing transcript is a true and correct record
11 of the recorded proceedings; that said proceedings
12 were transcribed to the best of my ability from the
13 audio recording.

14 I do further certify that I am neither of
15 kin, counsel, nor have interest to any party
16 hereto.

17
18 *Natalie Dahl, RPR*

19 _____
20 Natalie Dahl, Registered Professional
21 Reporter and transcriber for the State of
22 South Carolina
23
24
25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fargnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Volume I and Volume II of Appellants' Record on Appeal, filed on behalf of Appellants, Andrew Pampu; Amanda Pampu; and John Pampu, contain all material proposed to be included by any of the parties and not any other material.



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June 20, 2024

Beaufort, South Carolina

RECEIVED

Apr 10 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Edgar W. Dickson, Circuit Court Judge

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Unpublished Opinion
No. 2025-UP-272 (S.C. Ct. App. filed July 30, 2025)

Andrew Pampu; Amanda Pampu; and John Pampu, ... Petitioners-Respondents,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.;
Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents-Petitioners.

PETITIONERS-RESPONDENTS' APPENDIX (Vol. 3 of 3)

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Andrew Pampu; Amanda Pampu; and John
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APPENDIX (Vol. 3)
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Nov 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

NOTICE OF APPEAL

Appellants/Plaintiffs, Andrew Pampu, Amanda Pampu, and John Pampu, appeal the following Orders issued by the Honorable Edgar W. Dickson:

1. Order, signed and filed on June 23, 2022, granting a motion to dismiss filed on behalf of Respondents/Defendants, Barrett R. Brewer and BREWER LAW FIRM, LLC, a copy of which is filed with this Notice of Appeal as **Exhibit 1**;
2. Order, signed and filed on June 23, 2022, granting a motion to dismiss filed on behalf of Respondents/Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq., a copy of which is filed with this Notice of Appeal as **Exhibit 2**; and
3. Order, signed and filed on October 23, 2023, denying Appellants/Plaintiffs' Motion for Reconsideration and to Alter and/or Amend the June 23, 2022 Orders granting Defendants/Respondents' motions to dismiss that was timely filed on July 5, 2022, a copy of which is filed with this Notice of Appeal as **Exhibit 3**.

On October 24, 2023, Appellants/Plaintiffs received written notice of the entry of the Order denying Appellants/Plaintiffs' Motion for Reconsideration and to Alter and/or Amend. A copy of the Orders subject to this appeal are included as Exhibits with this Notice.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fagnoli, LLC; Samuel R. Clawson,
Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC,

Defendants.

**ORDER GRANTING DEFENDANTS
CLAWSON FARGNOLI, LLC, SAMUEL
R. CLAWSON, JR., ESQ., AND
CHRISTINA R. FARGNOLI, ESQ.'S
MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

On March 2, 2022, this Court heard a Motion to Dismiss¹ filed by Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (“Clawson Fagnoli Defendants”). Appearing at the hearing for Plaintiffs Andrew Pampu, Amanda Pampu, and John Pampu (“Plaintiffs”) was Thomas A. Pendarvis, Esquire, of Pendarvis Law Office, PC. Appearing at the hearing for the Clawson Fagnoli Defendants was James A. Dedman, Esquire, of Gallivan, White & Boyd, PA. Appearing at the hearing for Defendants Barrett R. Brewer, Esq. and Brewer Law Firm, LLC (“Brewer Defendants”) was R. Bruce Wallace, Esquire, of Nexsen Pruet, LLC. Following the hearing, this Court took the Motion to Dismiss the Second Amended Complaint under advisement. After careful consideration and review of the Second Amended Complaint and caselaw, along with memoranda submitted by the Clawson Fagnoli Defendants, the Motion to Dismiss is **GRANTED**.

RECEIVED

Nov 14 2023

SC Court of Appeals

¹ The Clawson Fagnoli Defendants and Brewer Defendants filed a joint Memorandum of Law in Support of their Motions to Dismiss. I granted both of their motions but directed counsel to submit a separate proposed order for their client. This order will focus solely on the Clawson Fagnoli Defendants’ representation of Plaintiff Andrew Pampu.

FACTUAL BACKGROUND

This case arises out of Plaintiffs' allegations of legal professional negligence and breach of fiduciary duty by the Clawson Fagnoli Defendants. Plaintiffs' allegations center primarily around the Clawson Fagnoli Defendants' representation of Plaintiff Andrew Pampu in a federal court lawsuit mediation.

On November 2, 2017, the Clawson Fagnoli Defendants agreed to represent Plaintiff Andrew Pampu in two separate lawsuits: (1) a case pending in the United States District Court for the District of South Carolina asserting Title IX and other claims against Clemson University (the "Federal Lawsuit") and (2) a case pending in the Pickens County Court of Common Pleas² asserting causes of action for defamation, civil conspiracy, and other tort claims against an accuser who submitted claims of sexual misconduct against Plaintiff Andrew Pampu to Clemson University (the "State Lawsuit").

The facts underlying the two lawsuits involved an accusation of sexual misconduct against Plaintiff Andrew Pampu. In Fall 2015, Plaintiff Andrew Pampu attended Clemson University as a freshman student. He was accused of and ultimately found by Clemson University to have engaged in "nonconsensual sexual activities" at an administrative hearing, resulting in Plaintiff Andrew Pampu's suspension from the school. (*See* Second Amended Complaint, ¶ 19). Plaintiff Andrew Pampu appealed Clemson University's administrative hearing decision but this appeal resulted in the imposition of heavier sanctions, including an additional suspension. (*Id.*, ¶ 20, 21).

As part of the Clawson Fagnoli Defendants' representation of Plaintiff Andrew Pampu, they participated in mediation with Clemson University. (*Id.*, ¶ 37). On March 2, 2018, prior to the

² A Pickens County jury returned a verdict in favor of Plaintiff Andrew Pampu following his jury trial in March 2022. There are pending post-trial motions that have not yet been ruled upon.

mediation, Plaintiffs emailed the Clawson Fagnoli Defendants with the goals for the mediation, including:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against Andrew Pampu, which by implication would have limited the University's future treatment of Andrew Pampu's academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) Andrew Pampu's arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

Id., ¶ 36.

On March 21, 2018, following a lengthy mediation, Plaintiff Andrew Pampu signed a settlement agreement with Clemson University.³ However, Plaintiff Andrew Pampu developed "buyer's remorse" in the days after the mediation and attempted to abandon the settlement. In the Second Amended Complaint, Plaintiffs contend that the settlement with Clemson University conflicted with the goals explained in the March 2, 2018 email and the goals for both the Federal Lawsuit and State Lawsuit. (*Id.*, ¶ 41).

On May 8, 2018, Plaintiff Andrew Pampu terminated his attorney-client relationship with the Clawson Fagnoli Defendants and sought new counsel. (*Id.*, ¶ 47-48). Clemson University filed a motion to enforce the settlement in the Federal Lawsuit, which was ultimately granted. (*Id.*, ¶ 55-57).

³ Plaintiffs Amanda Pampu and John Pampu were not signatories to the Settlement Agreement. (*Id.*, ¶ 39).

PROCEDURAL BACKGROUND

On June 16, 2021, Plaintiffs filed a Second Amended Summons and Complaint against Defendants in the Charleston County Court of Pleas.⁴ In their Second Amended Complaint, Plaintiffs assert claims against the Clawson Fagnoli Defendants for legal professional negligence and breach of fiduciary duty. They allege:

[t]he Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the Does to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the Does; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

Id., ¶ 83.

On June 28, 2021, the Clawson Fagnoli Defendants filed a Motion to Dismiss the Second Amended Complaint. A hearing on that Motion was held before this Court on March 2, 2022.

STANDARD OF REVIEW

Rule 12(b)(6) motions challenge the legal sufficiency of a complaint. In considering a motion to dismiss, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). SCRCP Rule 12(b)(6) permits a trial judge to dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the Court. *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App.

⁴ Plaintiffs initially filed suit against Defendants on March 19, 2021 and did not include an expert witness affidavit as required by the statute. The Amended Complaint was filed on April 30, 2021 to include an expert witness affidavit from Justin Dillon, Esquire. The Complaint was then amended for a second time on June 16, 2021 to include arguments from the Defendants' respective Motions to Dismiss that asserted Mr. Dillon's affidavit was defective. The substantive allegations across the three (3) Complaints remained virtually the same.

2002). The court “must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). When reviewing a Rule 12(b)(6) motion, a court must view the complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff’s favor. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case,” then the court may not grant a Rule 12(b)(6) motion. *Sloan Constr. Co. v. Southco Grassing Co.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

DISCUSSION

I. Plaintiffs fail to state a claim upon which relief can be granted.

Plaintiffs’ claims are dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Plaintiffs’ allegations of legal malpractice center almost exclusively around Plaintiff Andrew Pampu’s unhappiness with the settlement following the Federal Lawsuit mediation. While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the Clawson Fargnoli Defendants committed professional error in advising Plaintiff Andrew Pampu whether or not to accept the settlement. There are no allegations of professional error on the part of the Clawson Fargnoli Defendants in advising Plaintiff Andrew Pampu as to whether he should accept the terms of the settlement in the Federal Lawsuit. There are also no allegations that the Clawson Fargnoli Defendants induced Plaintiff Andrew Pampu into signing the mediation agreement. Plaintiff Andrew Pampu’s later regret regarding the terms of the settlement agreement is not a proper ground for a legal malpractice claim.

In their Memorandum Law in Opposition to the Motion to Dismiss, Plaintiffs claimed that the Clawson Fargnoli Defendants committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the Clawson Fargnoli Defendants' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the Clawson Fargnoli Defendants. Second, there are no allegations (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

Therefore, Plaintiffs failed to state a claim in the Second Amended Complaint upon which relief can be granted and, therefore, the Motion to Dismiss is **GRANTED**.

II. Plaintiffs Amanda Pampu and John Pampu lack standing.

Plaintiffs Amanda Pampu and John Pampu's claims are dismissed for lack of subject matter jurisdiction pursuant to the South Carolina Rules of Civil Procedure 12(b)(1) as Plaintiffs Amanda Pampu and John Pampu lack standing to assert claims in this lawsuit. Neither Amanda Pampu and John Pampu were parties to the Federal Lawsuit or the State Lawsuit. The only named party is Plaintiff Andrew Pampu. While Plaintiffs Amanda Pampu and John Pampu attended the mediation, Plaintiff Andrew Pampu alone signed the settlement agreement. The only individual that could assert any allegations of legal malpractice by the Clawson Fargnoli Defendants is Plaintiff Andrew Pampu as he was the only party to the Federal Lawsuit and the State Lawsuit. Plaintiff Andrew Pampu was also the only signatory to the Federal Lawsuit settlement agreement.

Plaintiffs assert that their allegation contained within the Second Amended Complaint that the Clawson Fargnoli Defendants undertook representation of all of the Plaintiffs, including Plaintiffs Amanda Pampu and John Pampu, is sufficient for this Court to have subject matter jurisdiction over Plaintiffs Amanda Pampu and John Pampu. Plaintiffs cite to *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 826 S.E.2d 270, 426 S.C. 154 (2019) in arguing that an attorney-client relationship existed between Amanda Pampu, John Pampu, and the Clawson Fargnoli Defendants. However, that case pertains to the contractual relationships between insurers, insureds, and the attorneys hired to defend insureds pursuant to insurance policies. It is therefore factually and legally distinct from the case at bar.

Therefore, the claims of Plaintiffs Amanda Pampu and John Pampu are dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1). The Clawson Fargnoli Defendants' Motion to Dismiss is **GRANTED**.

III. Plaintiffs' required expert witness affidavit was untimely and insufficient as a matter of law.

Plaintiffs' Second Amended Complaint is dismissed as the required expert witness affidavit was untimely and insufficient as a matter of law. On March 19, 2021, Plaintiffs initially filed their Complaint against Defendants in the Charleston County Court of Common Pleas. That Complaint did not include an expert witness affidavit as required by South Carolina statute. South Carolina Code § 15-36-100(B) requires that:

in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) [...], the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

Id.

Plaintiffs amended their Complaint forty-two (42) days later and included an expert witness affidavit. Plaintiffs argue that the Complaint was originally filed three (3) days before the three (3) year anniversary of the date on which any reasonable person would know or should have known of a claim against Defendants (i.e., the date of the Federal Lawsuit mediation). However, this argument does not address their original failure to file an expert witness affidavit. It merely suggests that, based on the filing date of the original Complaint, the Clawson Fargnoli Defendants should have presumed that there were time limitations to obtaining an expert witness affidavit. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint, which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C).⁵ Therefore, Plaintiffs' claims against the Clawson Fargnoli Defendants are dismissed because their expert witness affidavit was untimely filed.

Even if Plaintiffs had asserted that there was not time for an expert witness affidavit to be prepared to be filed with the original Complaint, Plaintiffs' expert witness affidavit is insufficient as a matter of law because he lacks relevant experience. South Carolina Code § 15-36-100(A)(3) states that an expert witness:

means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who: [...] (3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to

⁵ South Carolina Code § 15-36-100(C)(1) provides that:

[t]he contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of time constraints, the *plaintiff alleges that an affidavit of an expert could not be prepared.*

subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

Id.

In the expert witness affidavit, Mr. Dillon holds himself out as an expert in legal malpractice claims in South Carolina district court litigation. However, Mr. Dillon is not, and apparently has never been, licensed to practice in the state and federal courts of South Carolina or the U.S. District Court for the Fourth Circuit Court of Appeals. Mr. Dillon makes no claim of familiarity with the nature of federal practice in the U.S. District Court for the District of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina. Mr. Dillion admits in his affidavit that he has reviewed few materials related to the underlying federal and state litigation at issue.

While Plaintiffs are correct that the Rules do not require a South Carolina barred attorney to serve as an expert witness, the crux of the legal malpractice claim centers almost solely around the Clawson Fagnoli Defendant's advice to Plaintiff Andrew Pampu during the mediation in the Federal Lawsuit. Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint. Based on the forgoing, both Mr. Dillon's affidavit and credentials are deficient. Therefore, the Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

IV. Plaintiffs' claim for breach of fiduciary duty is duplicative.

“Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship.” *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011). Where a breach of fiduciary duty claim and a legal malpractice claim arise out of the attorney-client relationship and the same facts support both claims, the claim for breach of fiduciary duty is duplicative of the claim for legal malpractice. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019). Moreover, where the Complaint fails to allege facts demonstrating the fiduciary relationship arises from some source other than the attorney-client relationship, the court should dismiss the breach of fiduciary duty claim as duplicative. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173 (2012). Plaintiffs’ Second Amended Complaint alleges both a negligence cause of action and a breach of fiduciary duty claim arising out of the same attorney client relationship and the same set of operative facts. As a result, the breach of fiduciary duty is also dismissed as duplicative.

While counsel for Plaintiffs argues this is an election of remedies issue, the above cited cases clearly demonstrate that dismissal is the appropriate remedy because the alleged breach of fiduciary duty arises out of the same operative facts as the attorney-client relationship and is therefore “encompassed by the claim for legal malpractice.” *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt.*, *supra*, 399 S. at 336, 732 S.E.2d at 173). Duplicative matters are always subject to dismissal at this stage. *See also* Rule 12(f), SCRCP (authorizing the court to strike any redundant matter).

Therefore, the Clawson Fagnoli Defendants’ Motion to Dismiss the breach of fiduciary duty cause of action is **GRANTED**.

V. Plaintiffs' claims are adverse to public policy.

Plaintiffs' claims should be dismissed because they violate the important public policy on the finality of mediation in civil cases. South Carolina courts "greatly favor the settlement of cases and allowing litigants to achieve their own resolution to disputes." *Riddle v. City of Anderson*, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015). In fact, the public policy of South Carolina favors settlement of cases and early resolution to disputes so much so that mediation is required in every case in both the state and federal courts of South Carolina. *See, e.g.*, Local Civ. Rule 16.05 (D.S.C.); Rule 3 of the South Carolina ADR Rules.

While mediation is an invaluable tool for South Carolina litigants, participants rarely, if ever, leave mediation completely satisfied with the outcome and having had all of their desires met. Mediation is about compromising to reach a solution that all parties can tolerate. Plaintiffs' allegations of legal malpractice center almost exclusively on the fact that Plaintiff Andrew Pampu did not get everything that he wanted at mediation. Plaintiffs' response to the argument that their claims are against public policy is merely that the Clawson Fagnoli Defendants did not cite to any controlling law. Again, Plaintiffs reiterate that an attorney's act or omissions into leading a client to sign a settlement agreement permit legal malpractice lawsuits. However, the crux of Plaintiffs' claim against the Clawson Fagnoli Defendants is merely that the settlement agreement did not accomplish all of their goals. Plaintiffs did not identify any acts or omissions by the Clawson Fagnoli Defendants that led Plaintiff Andrew Pampu to sign the settlement agreement.

If this Court were to permit Plaintiffs' malpractice claims to continue against the Clawson Fagnoli Defendants, it would essentially open the flood gates to frivolous claims made by unhappy litigants who were not completely satisfied with the outcome of mediation. Therefore,

the Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is
GRANTED.

CONCLUSION

The Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is
GRANTED.

AND IT IS SO ORDERED.

The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court

Orangeburg, South Carolina

June _____, 2022



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2022-06-23 10:20:41 page 13 of 13

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No. 2021-CP-10-01343

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fagnoli, LLC; Samuel R. Clawson,
Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC,

Defendants.

**ORDER DENYING PLAINTIFFS'
MOTION FOR RECONSIDERATION
AND TO ALTER OR AMEND THE
ORDERS GRANTING DEFENDANTS'
MOTIONS TO DISMISS**

The Court has now considered Plaintiffs' Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss. On June 23, 2022, in two separate orders, this Court granted the motion to dismiss of Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, and Christina R. Fagnoli and the motion to dismiss of Defendants Barrett R. Brewer and the Brewer Law Firm, LLC. The orders disposed of all of Plaintiffs' claims in the Second Amended Complaint. On July 5, 2022, Plaintiffs filed their Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss. The Court has considered the motion, pleadings, arguments of counsel, and governing legal authority at issue. Following its review and consideration of the issues, the Court finds that Plaintiffs' Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss should be DENIED.

AND IT IS SO ORDERED.

October ____, 2023

Orangeburg, South Carolina

The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court**RECEIVED****Nov 14 2023****SC Court of Appeals**
Appendix0358



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fargnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Other

IT IS SO ORDERED.

Edgar W. Dickson

Electronically signed on 2023-10-23 11:43:06 page 2 of 2

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fagnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fagnoli, Esq.;
Barrett R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

Case No. 2021-CP-10-01343

**ORDER GRANTING
MOTION TO DISMISS
FOR DEFENDANTS
BARRETT R. BREWER AND
BREWER LAW FIRM, LLC**

This Court heard a Motion to Dismiss¹ on March 2, 2022 filed by Defendants Barrett R. Brewer and Brewer Law Firm, LLC ("Brewer Defendants"). Thomas A. Pendarvis, Esquire, of Pendarvis Law Office, PC appeared at the hearing for Plaintiffs Andrew Pampu, Amanda Pampu, and John Pampu ("Plaintiffs")². R. Bruce Wallace, Esquire, of Nexsen Pruet, LLC appeared at the hearing for the Brewer Defendants. James A. Dedman, Esquire, of Gallivan, White & Boyd, PA appeared at the hearing for Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. ("Clawson Fagnoli Defendants"). Following the hearing, this Court took the Motion to Dismiss under advisement. Upon review of the Second Amended

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SC Court of Appeals

¹ The Clawson Fagnoli Defendants and Brewer Defendants filed a joint Memorandum of Law in Support of their Motions to Dismiss. I granted both of their motions but directed counsel to submit a separate proposed order for their clients. This order will focus solely on the Brewer Defendants' representation of Plaintiff Andrew Pampu.

² By Order dated March 4, 2022, the Court granted Defendants' motions to prohibit Plaintiffs from proceeding anonymously and ordered the Plaintiffs to proceed in this case in their proper true names.

Complaint and relevant case law, along with memoranda submitted by the parties, the Motion to Dismiss is **GRANTED**.

FACTUAL BACKGROUND

This case arises out of Plaintiff's allegations of legal professional negligence and breach of fiduciary duty against the Brewer Defendants and Clawson Fargnoli Defendants which stems in part from their representation of Plaintiff Andrew Pampu in a federal court lawsuit. Specifically, Plaintiffs' complaint contained allegations of legal professional negligence, breach of contract, and breach of fiduciary duty against Defendants.

On November 2, 2017, Defendants agreed to represent Plaintiff Andrew Pampu in two related, ongoing lawsuits. Plaintiffs filed the first suit in the United States District Court for the District of South Carolina (the "Federal Lawsuit") and asserted Title IX and related claims against Clemson University. Plaintiffs filed the second suit in the Pickens County Court of Common Pleas (the "State Lawsuit") and asserted claims for defamation, civil conspiracy, and other causes of action arising out of accusations of sexual misconduct submitted to Clemson University against Plaintiff Andrew Pampu. (See Second Am. Compl. at ¶ 13). These accusations spurred the Title IX investigation which was the subject of the Federal Lawsuit. Notably, neither Plaintiff Amanda Pampu nor Plaintiff John Pampu were parties to the Federal Lawsuit or State Lawsuit.

The underlying facts are taken from the Complaint. While attending Clemson University in the Fall of 2015, a female student accused Plaintiff Andrew Pampu of sexual misconduct. (See Second Am. Compl. at ¶ 19). After conducting an administrative hearing, the University found Plaintiff Andrew Pampu to have engaged in "nonconsensual sexual activities" and suspended him. (*Id.*). Plaintiff Andrew Pampu appealed this

determination, which only resulted in the University issuing heavier disciplinary action, including an additional suspension. (*Id.*, ¶ 20-21). Plaintiff Andrew Pampu subsequently sued the University in the Federal Lawsuit. After the Brewer Defendants substituted as counsel for Andrew, the Brewer Defendants represented Plaintiff Andrew Pampu in a court-ordered mediation on March 21, 2018. (*Id.*, ¶ 16, 37).

On March 2, 2018, prior to the mediation, Plaintiffs sent the Brewer Defendants an email containing the supposed goals for the mediation which included:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against [Andrew Pampu], which by implication would have limited the University's future treatment of [Andrew Pampu's] academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) [Andrew Pampu's] arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

(*Id.*, ¶ 36). When the mediation session concluded, Plaintiff Andrew Pampu signed a written settlement agreement³ on March 21, 2018 with Clemson University, but he soon developed "buyer's remorse" and attempted to abandon the settlement. (*Id.*, ¶ 39). Plaintiffs contend the settlement conflicted with the goals outlined in their aforementioned email to the Brewer Defendants and the goals of the Federal Lawsuit and State Lawsuit. (*Id.*, ¶ 41). Plaintiffs terminated their attorney-client relationship with the Brewer Defendants on or about May 8, 2018 and sought new counsel. (*Id.*, ¶ 47-48).

³ Because Amanda Pampu and John Pampu were not parties to the Federal Lawsuit, they did not sign the settlement agreement. (*Id.*, ¶ 39).

Meanwhile, the University filed a motion to enforce the settlement, which the district court ultimately granted. (*Id.*, ¶ 55-57).

PROCEDURAL BACKGROUND

Plaintiffs initially filed a Complaint in the Charleston County Court of Pleas on March 19, 2021, without any affidavit as required by S.C. Code Ann. § 15-36-100. Plaintiffs then filed an Amended Complaint on April 30, 2021 to include an expert witness affidavit from Justin Dillon, Esquire. When Defendants filed motions to dismiss the first Amended Complaint, Plaintiffs then filed the Second Amended Complaint on June 16, 2021 to address arguments raised by the Brewer Defendants and Clawson Fargnoli Defendants' initial Motions to Dismiss directed to the deficiencies of the expert's affidavit filed with the first Amended Complaint. The Brewer Defendants filed the instant motion to dismiss on June 30, 2021.

STANDARD OF REVIEW

South Carolina Rule of Civil Procedure 12(b)(6) provides that, upon a defendant's motion, a court may dismiss a plaintiff's claim for "failure to state facts sufficient to constitute a cause of action." In considering a motion to dismiss, the court must base its decision on the plaintiff's allegations, as set forth in the complaint." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The question for the Court is whether the pleadings, taken in the light most favorable to the plaintiff, articulate a valid claim for relief. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). A Rule 12(b)(6) motion must be granted if the facts alleged and the inferences reasonably deducible from the pleadings show that the plaintiff could not prevail on any theory of the case. See *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

DISCUSSION

A. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.

Plaintiffs' claims are dismissed for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because Plaintiffs' "buyer's remorse" is not proper grounds for legal malpractice. Plaintiffs only allege facts demonstrating their unhappiness with the settlement agreement that Plaintiff Andrew Pampu voluntarily signed. While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the Brewer Defendants committed professional error in advising him whether or not to accept the settlement. Nor does the Second Amended Complaint present any allegation that Plaintiff Andrew Pampu was improperly induced by the Brewer Defendants to sign the agreement.

Plaintiffs claimed in their response to the Motion to Dismiss that the Brewer Defendants committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the Brewer Defendants' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the Brewer Defendants. Second, there is no allegation (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second

Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

Plaintiffs failed to state a claim in the Second Amended Complaint upon which relief can be granted and, therefore, the Motion to Dismiss is **GRANTED**.

B. Plaintiffs Amanda Pampu and John Pampu lack standing.

Plaintiffs' claims are dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rules of Civil Procedure 12(b)(1) as neither Amanda Pampu or John Pampu have standing to assert these claims. Neither Amanda Pampu nor John Pampu were parties to the State Lawsuit or Federal Lawsuit, and because Andrew Pampu was the only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing to assert the alleged claims.

Plaintiffs' argue that their allegations the Brewer Defendants undertook representation of all named Plaintiffs (See Second Am. Compl. at ¶ 13) in this action. Such allegations are insufficient to confer subject matter jurisdiction. Plaintiffs cite to *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 826 S.E.2d 270, 426 S.C. 154 (2019) in arguing that an attorney-client relationship existed between Amanda Pampu, John Pampu, and the Brewer Defendants. However, that case pertains to the contractual relationships between insurers, insureds, and the attorneys hired to defend insureds pursuant to insurance policies. It is therefore factually and legally distinct from the case at bar. Plaintiffs have provided no evidence of the existence of either an attorney-client relationship or fiduciary duty between Plaintiffs Amanda Pampu and John Pampu and the Brewer Defendants. As such, no legal malpractice action can stand.

Therefore, the claims of Plaintiffs Amanda Pampu and John Pampu should be dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1). Brewer Defendants' motion to dismiss is hereby **GRANTED**.

C. Plaintiffs' required expert witness affidavit was untimely and is insufficient as a matter of law.

Plaintiffs' Second Amended Complaint is dismissed because the required expert witness affidavit was untimely and is insufficient as a matter of law. Plaintiffs filed their initial complaint against the Brewer Defendants on March 19, 2021 but did not include an expert witness affidavit. South Carolina law requires that:

in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) [...], the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

S.C. Code Ann. § 15-36-100(B). Plaintiffs' original Complaint, although it alleged professional negligence, contained no reference to the lack of an expert affidavit required by section 15-36-100.

Plaintiffs then amended their Complaint forty-two (42) days later and included an expert witness affidavit. Plaintiffs now argue that simply by filing the initial Complaint only three (3) days before the expiration of the statute of limitations for their legal malpractice claims, the Brewer Defendants should have presumed an affidavit of an expert witness could not be filed due to time constraints.⁴ However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint which blatantly fails to comply with the

⁴ Legal malpractice claims are subject to three-year statute of limitations under South Carolina Code § 15-3-535.

requirements of S.C. Code § 15-36-100(B)-(C).⁵ Therefore, Plaintiffs' claims against the Brewer Defendants are dismissed because their expert witness affidavit was untimely filed.

Furthermore, even if Plaintiffs had fully complied with the contemporaneous filing requirement or any of its exceptions, Plaintiffs' expert witness affidavit is insufficient as a matter of law because he lacks relevant experience. South Carolina Code § 15-36-100(A)(3) states that an expert witness:

means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who: [...] (3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

Id. In his affidavit, Plaintiffs' proposed expert witness, Mr. Dillon, holds himself out as having expert knowledge of proper attorney action to be undertaken in South Carolina district court litigation. There are several reasons why his claims of expertise in this area are insufficient. First, Mr. Dillon has never been licensed to practice law in South Carolina state or federal courts, nor is he licensed in the Fourth Circuit Court of Appeals. Second,

⁵ South Carolina Code § 15-36-100(C)(1) provides that:

[t]he contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of time constraints, the *plaintiff alleges that an affidavit of an expert could not be prepared.*

Mr. Dillon makes no claim to have obtained *pro hac vice* admission to any court in South Carolina. Third, Mr. Dillon makes no mention of familiarity with the nature of federal practice in the district courts of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina. Lastly, Mr. Dillon notes he has reviewed few materials related to the underlying facts at issue.

Though Plaintiff is correct in stating the Rules do not require an expert to be a South Carolina barred attorney, it is the Brewer Defendants' advice to Plaintiff Andrew Pampu during the mediation in the Federal Lawsuit for a South Carolina case that is at the heart of Plaintiffs' legal malpractice claims. Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint. Based on the forgoing, both Mr. Dillon's affidavit and credentials are deficient. Therefore, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

D. Plaintiffs' claim for breach of fiduciary duty is duplicative.

"Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship." *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011). Where a breach of fiduciary duty claim and a legal malpractice claim arise out of the attorney-client relationship and the same facts support both claims, the claim for breach of fiduciary duty is duplicative of the claim for legal malpractice. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019). Moreover, where the

Complaint fails to allege facts demonstrating the fiduciary relationship arises from some source other than the attorney-client relationship, the court should dismiss the breach of fiduciary duty claim as duplicative. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173 (2012). Plaintiffs' Second Amended Complaint alleges both a negligence cause of action and a breach of fiduciary duty claim arising out of the same attorney-client relationship and the same set of operative facts. As a result, the breach of fiduciary duty is also dismissed as duplicative.

While counsel for Plaintiffs argues this is an election of remedies issue, the above cited cases clearly demonstrate that dismissal is the appropriate remedy because the alleged breach of fiduciary duty arises out of the same operative facts as the attorney-client relationship and is therefore "encompassed by the claim for legal malpractice." *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt.*, *supra*, 399 S. at 336, 732 S.E.2d at 173). Duplicative matters are always subject to dismissal at this stage. See *also* Rule 12(f), SCRPC (authorizing the court to strike any redundant matter).

Therefore, the Brewer Defendants' Motion to Dismiss the breach of fiduciary duty cause of action is **GRANTED**.

E. Plaintiffs' claims are averse to public policy.

Plaintiffs' claims will also be dismissed because they violate the important public policy on the finality of mediation in civil cases. South Carolina courts "greatly favor the settlement of cases and allowing litigants to achieve their own resolution to disputes." *Riddle v. City of Anderson*, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015). In fact, the public policy of South Carolina favors settlement of cases and early resolution to disputes so much so that mediation is required in every case

in both the state and federal courts of South Carolina. See, e.g., Local Civ. Rule 16.05 (D.S.C.); Rule 3 of the South Carolina ADR Rules.

While mediation is an invaluable tool for South Carolina litigants, participants rarely, if ever, leave mediation completely satisfied with the outcome and having had all of their desires met, because mediation is about compromising to reach a solution that all parties can tolerate. Here, the allegations of legal malpractice center almost exclusively on the fact that Plaintiff Andrew Pampu did not get everything that he wanted at mediation. In response, Plaintiffs argue the Brewer Defendants did not cite to any controlling law and that an attorney's negligent representation in settlement agreements can give rise to legal malpractice lawsuits. But as previously stated, Plaintiffs failed to allege facts showing the Brewer Defendants committed professional error in advising or representing Plaintiff Andrew Pampu in the relevant matters, and the Plaintiffs' claims against the Brewer Defendants are merely that the settlement agreement did not accomplish all of their goals.

If this Court were to permit Plaintiffs' "buyer's remorse" masquerading as a malpractice claim to continue against Defendants, it would essentially open the flood gates to frivolous claims made by unhappy litigants who were not completely satisfied with the outcome of mediation. Plaintiffs' claims are little more than a thinly veiled attempt to relitigate the validity of the underlying settlement – an issue that has already been litigated and ruled on by the federal courts of South Carolina. Therefore, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

CONCLUSION

The Court has considered all of the arguments made by the parties, including Plaintiffs' written memoranda in opposition, and the oral arguments they set forth at the

hearing on the Motion. To the extent such arguments are not discussed hereinabove, the court has considered them and rules in favor of the Brewer Defendants on the motion to dismiss. Therefore, for the reasons stated above, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

AND IT IS SO ORDERED.

Electronic signature on following page
The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

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Nov 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on November 14, 2023, a copy of the Notice of Appeal filed on behalf of Appellants/Plaintiffs, Andrew Pampu; Amanda Pampu; and John Pampu, was served on all counsel of record via electronic mail containing the above-referenced document to each counsel's individual AIS email addresses as follows:

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November 14, 2023

Beaufort, South Carolina

Appendix0373

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

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Statement of Issues

- I. Whether the trial court erred by failing to consider the well-pled fact allegations in the Pampus' Second Amended Complaint supporting the legal malpractice claims against their former lawyers stemming from an insufficient settlement in the underlying matter.
- II. Whether the trial court erred by disregarding well-pled fact allegations establishing a claim for breach of fiduciary duty, particularly where the facts alleged demonstrate breaches of loyalty and confidentiality resulting in actual losses.
- III. Whether the trial court erred by disregarding fact allegations that showed the existence of a client-lawyer relationship between Mr. Pampu and Ms. Pampu, on one hand, and the Lawyers, one the other, thereby providing the Pampus with standing to sue.
- IV. Whether the trial court erred by disregarding specific fact allegations supporting the Pampus' breach of contract claim and dismissing those claims without making any findings of fact or conclusions of law on the breach of contract claim.
- V. Whether the trial court erred by dismissing the Pampus' breach of fiduciary duty claim as "duplicative" of their legal malpractice claim.
- VI. Whether the trial court erred by deeming Mr. Dillon's expert opinions supporting the Pampus' professional negligence claims as untimely and insufficient as a matter of law.
- VII. Whether the trial court erred by failing to consider the timeliness of Mr. Dillon's expert affidavit, which was filed in accordance with S.C. CODE ANN. § 15-36-100(E) permitting an amended pleading with an expert affidavit to cure alleged defects.
- VIII. Whether Mr. Dillon's qualifications and expertise in Title IX matters establish the legal sufficiency of his expert opinions.
- IX. Whether the trial court erred by disregarding established South Carolina jurisprudence supporting legal malpractice claims arising from lawyers' errors during mediation and disregarding the exception to the ADR Rules on confidentiality permitting disclosure in a legal malpractice claim of otherwise confidential communications during mediation, in favor of public policy arguments supporting mediation and settlement.

Statement of the Case

On March 19, 2021, Appellants, Andrew Pampu; Amanda Pampu; and John Pampu (collectively “the Pampus”), filed a Summons and Complaint in the Court of Common Pleas for Charleston County, South Carolina, asserting claims for professional negligence, breach of fiduciary duty, and breach of contract against Respondents, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (the individual Respondents will be referred to collectively as “the Lawyers” and the Limited Liability Company Respondents will be referred to as “the Law Firms”). The Lawyers are the attorneys and Members of the Law Firms whose errors caused financial losses to the Pampus during their representation of the Pampus in a) a federal court lawsuit against a University for violations of Title IX, the United States Constitution, and the University’s own disciplinary process arising from errors and mishandling of an investigation of an incident of Andrew Pampu’s alleged nonconsensual sex with another student and b) a state court lawsuit against the individuals and others who made false statements and gave false testimony supporting the University’s investigation.

The Pampus’ Complaint alleged facts showing the Lawyers were negligent in 1) allowing their client, Andrew Pampu, to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University’s future treatment of Andrew Pampu’s academic records, the results of which were contrary to what the Lawyers knew were the clients’ desires and objectives, which was a key component of the Pampus’ “consideration” to settle, and without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to Andrew Pampu the full implication of this handwritten

settlement agreement and how the University could refer to his student records to future schools, especially medical or dental schools; and 3) in the manner in which they prosecuted the state court action, including substantial discovery deficiencies; and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of the Pampus. One or more of these negligent actions or related omissions caused substantial financial losses to the Pampus, including their payment of and continuing payment of substantial legal fees to successor counsel to mitigate their damages caused by the Lawyers and frustrating the purpose of the underlying litigation. These same acts and omissions by the Lawyers form the basis for the Pampus' claim for breach of contract against the Law Firms.

After the Lawyers were discharged as counsel for the Pampus, the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties of loyalty and confidentiality, including disclosing information related to their representation of the Pampus to counsel for the opposing parties without the Pampus' consent.

On April 30, 2021, the Pampus filed an Amended Complaint with the affidavit of Justin Dillon, Esq., an expert witness and lawyer with experience in litigating Title IX matters, which specifies at least one negligent act or omission by the Lawyers claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of his affidavit. (Amended Complaint, ROA ____).

On May 9, 2021 and May 10, 2021, respectively, the Respondents filed their motions to dismiss the Amended Complaint pursuant to Rule 12 (b)(6), SCRCF and Rule 12 (b)(1), SCRCF. (Motions to Dismiss Amended Complaint, ROA ____). The Respondents' motions both asserted that because no facts were stated in the Amended Complaint supporting a claim for relief.

On June 16, 2021, the Pampus filed a Second Amended Complaint asserting claims for professional negligence and breach of fiduciary duty against the Lawyers and a breach of contract claim against the Law Firms. (Sec. Amend. Complaint, ROA ____). The Second Amended Complaint is the operative pleading for this appeal.

On June 28, 2021 and June 30, 2021, respectfully, the Respondents filed motions to dismiss the Second Amended Complaint pursuant to Rule 12(b)(6), SCRCF and Rule 12(b)(1), SCRCF, asserting that the Second Amended Complaint failed to state facts sufficient to support a claim and asserting that Mr. and Ms. Pampu did not have standing to pursue any claims against the Respondents.

On March 2, 2022, a WebEx hearing on the motions to dismiss was held before the Honorable Edgar W. Dickson, during which the Second Amended Complaint, legal memoranda, and arguments of counsel were presented, and after which an Orders were entered on June 23, 2022 (collectively “the Orders”), granting the motions and dismissing the lawsuit. (Orders dismissing Sec. Amend. Complaint, ROA ____).

On July 5, 2022, the Pampus timely filed a Motion for Reconsideration and to Alter or Amended Orders Dismissing Second Amended Complaint. (Motion for Reconsideration and to Alter or Amended Orders Dismissing Sec. Amend. Complaint, ROA ____).

On October 23, 2023, Honorable Edgar W. Dickson entered an Order Denying Plaintiff’s Motion for Reconsideration and to Alter or Amended Orders Dismissing Second Amended Complaint. (Order Denying Plaintiff’s Motion for Reconsideration and to Alter or Amended, ROA ____) (“the Reconsideration Order”).

The Pampus’ Notice of Appeal was timely filed thereafter.

Facts

On or around November 2, 2017, the Lawyers accepted the representation of the Pampus to provide legal advice, services, and representation of the Pampus in a lawsuit pending in the United States District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against a University (“the University”); and representing the Pampus in a lawsuit pending in a lawsuit pending in the Court of Common Pleas in a County in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against individuals involved in submitting to the University false claims against Andrew Pampu, which led to a disciplinary action that was mishandled by the University. (Sec. Amend. Complaint, p. 4 at ¶ 13, ROA ____).

On or about November 2, 2017, Respondent Law Firms entered into a contract with Mr. and Mrs. Pampu to represent the Pampus in the Federal Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.” (Sec. Amend. Complaint, p. 4 at ¶ 14; ROA ____).

At the commencement of this representation, the Federal Case, with its Complaint filed on June 15, 2016, had been pending approximately a year and a half while the State Case, with its Complaint filed on June 15, 2017, had been pending for approximately six months. (Sec. Amend. Complaint, p. 5 at ¶ 15; ROA ____). In the Federal Case, Andrew Pampu’s lawsuit against the University and several related defendants (collectively “the University Defendants”) alleged claims for violation of Title IX of the Education Amendments of 1972, failing to provide Andrew Pampu with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment. (Sec. Amend.

Complaint, p. 5 at ¶ 16; ROA ____). The primary claims against the University Defendants in the Federal Case were premised on theories the University Defendants deprived Andrew Pampu of due process and certain protections under Title IX of the Education Amendments of 1972 and related federal regulations during: the investigation the University Defendants undertook regarding false allegations by a female student (“Jane Doe”); the deliberating processes that the University Defendants applied to conclude that Andrew Pampu had engaged Jane Doe in nonconsensual sexual activity; and the appeals process the University Defendants applied to Andrew Pampu’s appeal. (Sec. Amend. Complaint, p. 5 at ¶ 17; ROA ____). The Federal Case and the State Case involved common facts in that both concerned the allegations by Jane Doe claiming Andrew Pampu engaged in nonconsensual sexual activity with her; and the allegations by a male student, “Charles Doe,” made during the University’s investigation allegedly corroborating Jane Doe’s claims. (Sec. Amend. Complaint, p. 5 at ¶ 18; ROA ____).

Through a variety of errors and omissions by the University Defendants, in an administrative hearing conducted on February 26, 2016, Andrew Pampu was found to have engaged Jane Doe in nonconsensual sexual activities and punished with a one-semester suspension. (Sec. Amend. Complaint, pp. 5-6 at ¶ 19; ROA ____). Thereafter Andrew Pampu followed the University’s appeal process to appeal the incorrect administrative hearing decision. (Sec. Amend. Complaint, p. 6 at ¶ 20; ROA ____). The appeals process actually resulted in greater sanctions imposed by the University upon Andrew Pampu, including an additional year of suspension. (Sec. Amend. Complaint, p. 6 at ¶ 21; ROA ____). On or about January 14, 2017, Charles Doe sent Andrew Pampu text messages admitting that he and Jane Doe lied regarding Jane Doe’s allegations, both during the investigation of those allegations and at the hearing regarding

those allegations. (Sec. Amend. Complaint, p. 6 at ¶ 22; ROA ____). Despite receiving notice of the January 2017 texts sent by Charles Doe, the University Defendants refused or failed to undertake additional action to address the content of those text messages from Charles Doe to Andrew Pampu. (Sec. Amend. Complaint, p. 6 at ¶ 23; ROA ____).

On or about June 15, 2017, the State Case was filed against Jane Doe, Charles Doe, and Richard Doe (Charles Doe's father), asserting claims for defamation, intentional infliction of emotional distress, and civil conspiracy. (Sec. Amend. Complaint, p. 6 at ¶ 24; ROA ____). The State Case also asserted a claim for abuse of process against Jane Doe and Charles Doe based on the two strategically utilizing the University's Title IX process for an illegitimate objective, that is, to further harass, defame, retaliate against, and punish Andrew Pampu. (Sec. Amend. Complaint, p. 6 at ¶ 24; ROA ____). These three defendants will be collectively referred to as the "State Case Defendants").

By November 27, 2017, the Federal Court substituted the Lawyers for Andrew Pampu's previous counsel. (Sec. Amend. Complaint, p. 6 at ¶ 26; ROA ____). During the Lawyers' representation of the Pampus, the Lawyers drafted and, upon information and belief, disclosed to third parties an "apology letter" purportedly from Andrew Pampu to one of the State Case Defendants falsely conceding critical matters. (Sec. Amend. Complaint, p. 7 at ¶ 27; ROA ____). During the Lawyers' representation of the Pampus, the Lawyers served discovery requests tailored to personal injury claims when representing the Pampus on slander and defamation claims. (Sec. Amend. Complaint, p. 7, ¶ 28; ROA ____). During the Respondents' representation of the Pampus, the Lawyers did not provide the Pampus with copies of materials obtained during discovery. (Sec.

Amend. Complaint, p. 7 at ¶ 29; ROA ____). Following extensive written discovery, the parties to the Federal Case scheduled a mediation. (Sec. Amend. Complaint, p. 7 at ¶ 30; ROA ____).

In February of 2018, the Lawyers and the Pampus received an eighty-page report from expert witness Daniel C. Swinton, Ed.D., J.D., B.A. (the “Swinton Report”), detailing a variety of errors and omissions by the University Defendants in the procedural, investigatory, and adjudicative processes the University Defendants applied regarding Jane Doe’s allegations and Andrew Pampu’s prosecution. (Sec. Amend. Complaint, p. 7 at ¶ 31; ROA ____). Based on the text messages from Charles Doe and the content of the Swinton Report, the Lawyers knew or should have known that Andrew Pampu’s claims against the University Defendants and the claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision. (Sec. Amend. Complaint, pp. 7-8 at ¶¶ 32-35; ROA ____).

Before the mediation, the Lawyers received an email from the Pampus stating their mediation goals, including:

- a. Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against Andrew Pampu, which by implication would have limited the University’s future treatment of Andrew Pampu’s academic records;
- b. The State Case remain separate and unaffected by any settlement of the Federal Case;
- c. there be no confidentiality or silencing provisions restricting sharing of the settlement terms; and
- d. Andrew Pampu’s arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

(Sec. Amend. Complaint, p. 8 at ¶ 36; ROA ____).

On March 21, 2018, the Lawyers, the Pampus, and the University Defendants and their counsel participated in a mediation for the Federal Case. (Sec. Amend. Complaint, p. 8 at ¶ 37;

ROA ____). After a grueling eleven (11) hour mediation, the terms that the parties allegedly came to agree upon were memorialized in a short-form “Settlement Agreement,” which the Lawyers approved and strongly urged Andrew Pampu to sign. (Sec. Amend. Complaint, p. 8 at ¶ 38; ROA ____). To accomplish their objective to have the Pampus agree to settle so they could get their contingent fee, the Lawyers took advantage of an opportunity when Appellant, John V. Pampu (Andrew Pampu’s Father) and Appellant, Amanda C. Pampu (Andrew Pampu’s Mother) were out of the room to forcefully urge Andrew Pampu to agree to the University’s proposed settlement terms. (Sec. Amend. Complaint, pp. 8-9 at ¶ 38; ROA ____). Andrew Pampu (and later Andrew Pampu’s parents) conceded to the Lawyers’ pressure to settle and signed a “Settlement Agreement.” (Sec. Amend. Complaint, p. 9 at ¶ 38; ROA ____).

On March 23, 2018, the Lawyers received an email from the Pampus explaining Andrew Pampu’s unawareness of the effect and import of the Settlement Agreement and the negative ramifications of the Settlement Agreement. (Sec. Amend. Complaint, p. 9 at ¶ 40; ROA ____). The Pampus explained that the Settlement Agreement conflicted with the goals explained in the March 2, 2018, email and conflicted with the goals of both the Federal Case and the State Case. (Sec. Amend. Complaint, p. 9 at ¶ 41; ROA ____). The Settlement Agreement the Lawyers convinced the Pampus to sign did not contain necessary language and terms dedicated to the University’s future treatment of Andrew Pampu’s academic records, the results of which were contrary to what the Lawyers knew or should have known were the Pampus’ desires and objectives, which was a key component of the Pampus’ “consideration” to settle, and the Settlement Agreement did not address many other issues necessary to resolve the underlying dispute with the University. (Sec. Amend. Complaint, p. 9 at ¶ 42; ROA ____).

On March 27, 2018, the District Court entered an Order of Dismissal in the Federal Case providing the parties an opportunity to consummate the settlement and providing either side sixty (60) days to file a petition to enforce the settlement. (Sec. Amend. Complaint, p. 10 at ¶ 46; ROA ____).

On May 4, 2018, counsel for the University Defendants forwarded a proposed release to the Lawyers as per the terms of the Settlement Agreement. (Sec. Amend. Complaint, p. 10 at ¶ 47; ROA ____). That same day, the Lawyers sent the Settlement Agreement with proposed revisions back to counsel for the University Defendants. (Sec. Amend. Complaint, p. 10 at ¶ 47; ROA ____). On May 8, 2018, the Lawyers informed counsel for the University Defendants their representation of the Pampus had been terminated and that the Pampus had not yet retained new counsel. (Sec. Amend. Complaint, p. 10 at ¶ 48; ROA ____). On May 9, 2018, the Lawyers memorialized the Pampus' May 8, 2018, termination of their representation in a letter to the Pampus, with language impliedly recognized the Pampus' terminated the attorney-client relationship for cause and attempting to refute some of the bases for termination of the representation for cause. (Sec. Amend. Complaint, p. 10 at ¶ 49; ROA ____). On May 10, 2018, counsel for the University Defendants sent Andrew Pampu a letter with a five (5) day deadline for response enclosing a Settlement Agreement and Mutual Release ("Release"), a Stipulation of Dismissal with Prejudice, and a copy of the settlement check, which would be provided upon execution of the Release and the Stipulation of Dismissal. (Sec. Amend. Complaint, pp. 10-11 at ¶ 50; ROA ____).

On May 11, 2018, Andrew Pampu emailed counsel for the University Defendants indicating he had received the May 8, 2018 letter, he wanted to make changes to the proposed Release, he was retaining new counsel, the five (5) day deadline was not feasible, and his new

attorneys would be in contact early the following week. (Sec. Amend. Complaint, p. 11 at ¶ 51; ROA ____). On May 16, 2018, newly retained counsel (“Successor Counsel”) for the Pampus contacted counsel for the University Defendants requesting the proposed Release document in Word format to make revisions. (Sec. Amend. Complaint, p. 11 at ¶ 52; ROA ____). On May 18, 2018, upon consent motion, a text order was entered by the Federal Court this Court substituting Successor Counsel for the Lawyers as counsel of record for Andrew Pampu. (Sec. Amend. Complaint, p. 11 at ¶ 53; ROA ____). On May 23, 2018, Successor Counsel submitted revisions to the Release to counsel for the University Defendants. (Sec. Amend. Complaint, p. 11 at ¶ 54; ROA ____).

On May 24, 2018, counsel for the University Defendants contended that the revisions materially changed the terms of the Settlement Agreement reached in mediation and in response, the University Defendants moved the Federal Court to enforce the Settlement Agreement. (Sec. Amend. Complaint, p. 11 at ¶ 55; ROA ____). Thereafter, the Pampus expended substantial funds by way of legal fees and expenses in the Federal Case attempting to void the Settlement Agreement the Lawyers had directed Andrew Pampu to sign and oppose its enforcement because of the Lawyers’ errors and omissions. (Sec. Amend. Complaint, p. 11 at ¶ 56; ROA ____).

The Federal Court’s “Redacted Order” upheld and enforced the Settlement Agreement against Andrew Pampu, finding the Settlement Agreement terms were clear and unambiguous; and the plain and unambiguous language of the Settlement Agreement did not support the Pampus’ representations the University promised more during the settlement negotiations. (Sec. Amend. Complaint, p. 12 at ¶ 57; ROA ____).

The Settlement Agreement:

- a. did not contain the necessary language and terms dedicated to the University's future treatment of Andrew Pampu's academic records;
- b. contained language leading to results contrary to what the Respondents knew were the Pampus' desires and objectives, which was a key component of the Pampus' "consideration" to settle;
- c. did not address multiple issues necessary to resolve the underlying dispute with the University; and
- d. did not contain the necessary language addressing the University's ability to disclose any settlement agreement when confronted with a public records information request for same and, if so, whether Andrew Pampu's identity would be safeguarded.

(Sec. Amend. Complaint, p. 12 at ¶ 58; ROA ____).

On January 1, 2019, the Federal Court entered an order by way of minute entry to the docket, requiring the University to make its counsel and an individual with decision-making authority available by telephone for an upcoming mediation in the State Court case, scheduled for March 1, 2019. (Sec. Amend. Complaint, p. 12 at ¶ 59; ROA ____). The Settlement Agreement had a negative impact on the State Case, where the Pampus have been forced to expend additional funds to litigate that case because of the impact of the Settlement Agreement. (Sec. Amend. Complaint, p. 12 at ¶ 60; ROA ____).

On February 28, 2019, the Lawyers sent a letter to the mediator *and counsel for all parties in the State Case and other third parties* asserting an alleged lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case. (Sec. Amend. Complaint, pp. 12-13 at ¶ 61; ROA ____). On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case's opposing counsel and mediation mediator, interfered with the mediation process, disrupting and negotiations

and disadvantaging Andrew Pampu's position in the mediation, all of which added and continued to cause damages to the Pampus. (Sec. Amend. Complaint, p. 13 at ¶ 62; ROA ____).

The February 28, 2019, letter from the Lawyers interfered with the mediation process, disrupted the negotiations, and disadvantaged Andrew Pampu's positions. (Sec. Amend. Complaint, p. 13 at ¶ 63; ROA ____). Thereafter, the Pampus spent several hundred-thousands of dollars litigating the State Court case that was not resolved at mediation because the Pampus' positions on law and facts in dispute were irreparably damaged by errors and omissions by the Lawyers at the mediation of the Federal Case that directly, proximately and foreseeably caused damage to Andrew Pampu's position in the State Case. (Sec. Amend. Complaint, p. 13 at ¶ 65; ROA ____). The Lawyers have continued to assert a charging lien for legal fees against the Pampus' settlement proceeds from the University, despite Andrew Pampu having terminated the Fee Agreement with the Respondents for cause, thereby generating additional expenses for Andrew Pampu to contest those allegations. (Sec. Amend. Complaint, p. 13 at ¶ 66; ROA ____).

As a direct, proximate and foreseeable result of the Lawyers' actions and inactions before and after their being relieved as counsel, the Pampus suffered damages, including loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the Lawyers' acts and omissions. (Sec. Amend. Complaint, pp. 13-14 at ¶ 67; ROA ____).

Had the Lawyers met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice Andrew Pampu in the State Court mediation and litigation, a substantial portion of the damages sustained by the Pampus should have been avoided. (Sec. Amend. Complaint, p. 14 at ¶ 68; ROA ____). Had the Lawyers met the fiduciary standard of

conduct by properly, accurately or timely attempting to assert an alleged charging lien, a substantial portion of the damages sustained by the Pampus should have been avoided. (Sec. Amend. Complaint, p. 14 at ¶ 69; ROA ____). The Pampus suffered damages, including loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm caused by the Respondents' actions and inactions. (Sec. Amend. Complaint; p. 14 at ¶ 70; ROA ____).

Legal Standards

A. Motions to Dismiss.

“In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the [circuit] court.” *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 631, 699 S.E.2d 699, 703 (Ct. App. 2010). *See also, Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”); *Wilkinson v. E. Cooper Cmty. Hosp., Inc.*, 410 S.C. 163, 169, 763 S.E.2d 426, 430 (2014) (*quoting Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). “In deciding whether the [circuit] court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid claim for relief.” *Id.* “The [circuit] court and this [c]ourt on appeal must presume all well pled facts to be true.” *Id.* at 635, 699 S.E.2d at 705 (internal quotation marks omitted).

Since “a judgment on the pleadings is considered to be a drastic measure,” a motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle a plaintiff to any relief under any theory of the case. *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006); *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005).

B. Motions to Reconsider

In South Carolina, Rule 59(e), SCRCP, motions have long been considered a vehicle to seek reconsideration of issues and arguments presented to the court. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court “alter or amend the judgment,” but also as a vehicle to seek “reconsideration” of issues and arguments. A party usually is allowed to ask the trial court to reconsider its decision, even if it means rehashing all or part of an argument previously presented. *Elam*, 361 S.C. at 21, 602 S.E.2d at 778-79.

Rule 59(e) provides that a “motion to alter or amend the judgment shall be served no later than 10 days after receipt of written notice of the entry of the order,” it does not set forth a defined legal standard for reconsideration. Rule 59(e), SCRCP. The South Carolina Supreme Court has established that, “a party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.*, 361 S.C. at 24, 602 S.E.2d at 780. If a lower court fails to rule on an issue raised before it, a party must file a Rule 59(e) motion to preserve that issue for later appeal. *E.g., Bodkin v. Bodkin*, 388 S.C. 203, 219, 694 S.E.2d 230, 239 (Ct. App. 2010).

C. Factual Allegations Required to State Facts Sufficient to Support a Legal Malpractice Claim.

“A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client’s damages by the breach.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 321, 732 S.E.2d 170 (2012).

D. Factual Allegations Required to State Facts Sufficient to Support a Claim for Breach of Fiduciary Duty.

“To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co.* 399 S.C. at 335-36, 732 S.E.2d at 173.

E. Factual Allegations Required to State Facts Sufficient to Support a Claim for Breach of Contract.

“The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012).

F. Requirement for an expert affidavit to be filed with the pleadings.

South Carolina Code Section 15-36-100 requires a plaintiff to present expert testimony regarding the alleged “negligent act or omission” by a professional, including lawyers, to support a claim for professional negligence.

Arguments

I. The trial court committed reversible error by ignoring well-pled fact allegations stating claims for legal malpractice claims against their former lawyers based on an insufficient settlement in the underlying matter.

The thrust of the Pampus' legal malpractice claim is the Lawyers' acts and omissions below the standard of care directly resulted in financial losses to the settlement value of the Federal Lawsuit and the State Lawsuit, as well as losses associated with the failure to require the necessary language and terms dedicated to the University's future treatment of Andrew Pampu's academic records, and the legal fees the Pampus subsequently incurred. As to loss of settlement value, this Court has held,

The client's burden of establishing proximate cause in a legal malpractice action requires that he prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care. The burden does not necessarily compel the client to demonstrate that he would have won the underlying case. Rather, it is enough for the legal malpractice plaintiff to show that he has lost a valuable right; e.g., the settlement value of the underlying case. Stated otherwise, "the client need not show a perfect claim. But the client must show at least that he has lost a *probability* of success as a result of the attorney's negligence."

Doe v. Howe, 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005) (emphasis added) (quoting David A. Barry, *Legal Malpractice in Massachusetts: Recent Developments*, 78 Mass. L. Rev. 74, 79 (1993)). See also, *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) (The former client "could satisfy the 'most probably' requirement and defeat [the lawyer's] summary judgment motion by establishing he 'most probably' would have received a larger settlement than [the settlement obtained by the lawyer] or that he 'most probably' would have prevailed on the underlying claim at trial.").

In the Orders granting the Respondents' motions to dismiss, the trial court made the following findings:

While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the [Respondents] committed professional error in advising Plaintiff Andrew Pampu whether or not to accept the settlement. There are no

allegations of professional error on the part of the [Respondents] in advising Plaintiff Andrew Pampu as to whether he should accept the terms of the settlement in the Federal Lawsuit. There are also no allegations that the [Respondents] induced Plaintiff Andrew Pampu into signing the mediation agreement.

(Orders granting Respondents' motions to dismiss, p. 5, filed on June 23, 2022).

The trial court's Orders erred in ignoring the specific allegations in the Second Amended Complaint establishing for the purposes of the Motions to Dismiss clearly supporting the Pampus' professional negligence claims. The fact allegations in Paragraph 1 standing by themselves state claims against the Lawyers for legal professional negligence and are patently inconsistent with the trial court's findings:

¶1. [] Lawyers were negligent in 1) allowing their client, [Andrew Pampu], to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University's future treatment of [Andrew Pampu]'s academic records, the results of which were contrary to what the Lawyers knew were the clients' desires and objectives, which was a key component of the [Pampus]' "consideration" to settle, and without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to [Andrew Pampu] the full implication of this handwritten settlement agreement and how the University could refer to his student records to future schools, especially medical or dental schools; and 3) in the manner in which they prosecuted the state court action, including substantial discovery deficiencies; and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of the [Pampus]. One or more of these negligent actions or related omissions resulted in substantial financial losses to the [Pampus], including their payment of and continuing payment of substantial legal fees to successor counsel to mitigate their damages caused by the Lawyers and frustrating the purpose of the underlying litigation.

(Sec. Amend. Complaint, pp. 1-2, ¶ 1; ROA ____).

The trial court erred in ignoring the specific allegations in the Second Amended Complaint that were contained in Mr. Dillon's expert affidavit establishing for the purposes of the Motions to Dismiss the following fact allegations and expert opinions clearly supporting the Pampus' professional negligence claims:

¶6. The Lawyers failed to perform their duties and were professionally negligent in multiple ways, including but not limited to:

a. Accepting a monetary settlement from Clemson University that contained no provision for cleaning up Mr. Doe's disciplinary record regarding the sexual misconduct and related findings that Clemson had made against him. I am not aware of any Title IX lawyer who believes that one files these lawsuits simply for money. What matters most, and certainly matters more than money, is cleaning up the student's disciplinary record. It is inconceivable to me that the attorneys who settled this case would have done so for only an amount of money (\$100,000.00) that, I suspect, constituted just a fraction of the Plaintiffs' actual litigation costs.

b. Moreover, as far as I am aware, the original negative finding against Mr. Doe was never struck from Clemson's records, so there was no need to agree that it would be "reinstated," as the settlement agreement did. One need not reinstate something that was never "de-instated." So it was all the more strange to see that not only would the Lawyers fail to secure a clean record, but that they would affirmatively agree to a dirty one. It is the equivalent of steering the Titanic into the iceberg in exchange for free gas.

c. Any attorney who practices in the Title IX area would be well aware of the downstream implications of a sexual misconduct finding and the paramount importance of a clean disciplinary record. Many schools to which a student might transfer will ask if he has ever been disciplined, as will most graduate or professional schools to which he applies. Moreover, there could be future professional-licensing implications of a negative finding for anyone who is interested in practicing medicine, law, or the like. My understanding is that Mr. Doe hopes to practice medicine and that the Lawyers knew that at the time—and that, indeed, they knew that safeguarding those hopes was the reason Plaintiffs sued in the first place. So the harm of a sexual misconduct finding to a future doctor or lawyer is potentially even worse than it is to a student who does not intend to pursue one of the professions—which is all the more reason why settling solely for money made so little sense in this case.

d. Moreover, schools will often agree to clean up a student's record during settlement negotiations. Schools, like courts, can vacate and expunge disciplinary findings.

e. It is particularly striking that the Lawyers settled the case without cleaning up Mr. Doe's disciplinary record given that Plaintiffs sent them a five-page, single-spaced written document, entitled "Mediator Proposed Mediation Terms," that contemplated exactly what such a resolution would look like. The Lawyers appear to have ignored virtually that entire document and settled only for money—and, incredibly, for an amount of money that was a mere 25% of the \$400,000 contemplated in the document.

(Expert Affidavit by Justin Dillon, Esq., pp. 2-4, ¶ 6, Ex. 1 to Second Amended Complaint; ROA ____).

The trial court's Orders dismissing the Pampus' Second Amended Complaint did not accept the facts alleged as true and failed to view the facts and inferences drawn from the facts alleged in the Second Amended Complaint in the light most favorable to the Pampus.

The trial court also erred in creating its own "fact" allegations. On page 3 of the Order granting the Respondents' motions to dismiss, the trial court "found" that "Plaintiff Andrew Pampu developed 'buyer's remorse' in the days after the mediation and attempted to abandon the settlement." (Orders granting Respondents motion to dismiss, p. 3). There are no such allegations of fact in the Second Amended Complaint.

The facts alleged in Paragraph 1 of the Second Amended Complaint and Mr. Dillon's expert opinions state facts supporting a "valid claim for relief" under South Carolina's legal malpractice jurisprudence. The trial court's Orders dismissing the Pampus' Second Amended Complaint should be reversed and this matter should be remanded for trial.

II. The trial court committed reversible error by ignoring well-pled fact allegations stating claims under established South Carolina law permitting former clients to bring breach of fiduciary duty claims when the facts alleged show the fiduciary breached duties of loyalty and confidentiality causing actual losses.

The Pampus' Second Amended Complaint alleges the Lawyers breached their duties of loyalty and confidentiality by disclosing information related to the representation to third parties without the Pampus' knowledge or consent that caused financial losses. The trial court's Orders erred in ignoring the specific allegations in the Second Amended Complaint establishing the Pampus' breach of fiduciary duty claims.

In the Orders granting the Respondents’ motions to dismiss, the trial court made the following findings:

In their Memorandum Law in Opposition to the Motion to Dismiss, Plaintiffs claimed that the [Respondents] committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the [Respondents]’ assertion of a lien for their attorney’s fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the [Respondents]. Second, there are no allegations (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu’s position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

(Orders granting Respondents’ motions to dismiss, p. 6, filed on June 23, 2022).

It was error for the trial court to conclude that “asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the [Respondents]” because there are no such allegations anywhere in the Second Amended Complaint.

The fact allegations in Paragraphs 2, 61, and 62 state facts sufficient to establish breach of fiduciary duty claims against the Lawyers:

¶2. After the Lawyers were discharged as counsel for the [Pampus], the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties, including disclosing information related to their representation of the [Pampus] to counsel for the opposing parties without the [Pampus]’ consent.

¶61. On February 28, 2019, the Lawyers sent a letter to the mediator **and counsel for all parties in the State Case and other third parties** asserting a lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney’s fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney’s fees allegedly owed from the work performed by the Lawyers in the State Case.

¶62. On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case’s opposing counsel and mediation mediator, interfered with the mediation

process, disrupting and negotiations and disadvantaging [Andrew Pampu]’s position in the mediation, all of which added and continued to cause damages to [Andrew Pampu].

(Second Amended Complaint, pp. 2, 12-13, ¶¶ 2, 61, and 62; ROA ____) (emphasis in original).

The allegations that the Lawyers’ letter “interfered with the mediation process, disrupting and negotiations and disadvantaging [Andrew Pampu]’s position in the mediation, all of which added and continued to cause damages to [Andrew Pampu]”, which should have been taken as true by the trial court, all establish a proximate link between the Lawyers’ actions and the Pampus’ damages.

Fiduciary duties are duties of the highest standard required by law of any agent relative to his/her/its principal, which include the duties of loyalty, disclosure, confidentiality, obedience, reasonable care and diligence, and full accounting. *See, e.g.,* Henry Campbell Black, *et al.*, BLACK’S LAW DICTIONARY 625 (6th ed. 1990); *see generally* Ernest Weinrib, *The Fiduciary Obligation*, 25 U. Toronto L.J. 1, 5-6 (1975) (discussing judicial determination of fiduciary relationship). Fiduciary law encompasses the specific set of actors who furnish services to others and who are subject to a legal doctrine that embodies remedial measures intended to prohibit fiduciaries from misappropriating or misusing entrusted property or power. Likewise, when a fiduciary breaches the duty of loyalty, not only is the beneficiary permitted to recover actual damages, but an additional distinctive remedy is available to the beneficiary – disgorgement of the benefit that the fiduciary obtained through the breach. *See, e.g., Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999) (proof of actual damages not necessary to obtain disgorgement of fees due to lawyers’ breach of fiduciary duty to client); *Estate of Re v. Kornstein Veisz & Wexler*, 958 F. Supp. 907 (S.D.N.Y. 1997) (Sotomayor, J.) (client can maintain breach of fiduciary duty action against lawyers despite dismissal of malpractice and contract claims).

A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another, *Ellis v. Davidson*, 358 S.C. 509, 519, 595 S.E.2d 817, 822 (Ct. App. 2004), and a client-lawyer relationship is by its nature a fiduciary relationship. *RFT Management Co., L.L.C. v. Tinsley & Adams, L.L.P.*, 399 S.C. 321, 732 S.E.2d 170 (2012); *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011); *Holtz v. Minyard*, 304 S.C. 225, 403 S.E.2d 634 (1991).

As fiduciaries, lawyers owe their clients a duty of loyalty and a duty of confidence, which is separate from their professional duties of competence and care. *Smith v. Hastie*, 367 S.C. 410, 417, 626 S.E.2d 13, 17 (Ct. App. 2005). *See also*, *First Am. Corp. v. Al-Nahyan*, 17 F. Supp.2d 10, 27 (D.D.C.1998); *BCCI Holdings v. Clifford*, 964 F. Supp. 468, 481 (D.D.C.1997). The allegations in Paragraphs 2, 61, and 62 state facts sufficient to establish breach of fiduciary duty claims based on the Lawyers' letter to third-parties asserting an alleged charging lien wreaked havoc in the Pampus' attempts to resolve their claims against the University defendants in the Federal Lawsuit. The information contained in the Lawyers' letter was confidential and his disclosure was a breach of the Lawyers' fiduciary duties of loyalty and confidentiality.

"One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." *Davis v. Greenwood School Dist.* 50, 365 S.C. 629, 620 S.E.2d 65 (2005); *Moore v. Benson*, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010); *Smith v. Hastie*, 367 S.C. at 417, 626 S.E.2d at 17; *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004). *See also*, RESTATEMENT (SECOND) OF TORTS § 874 (1979) ("One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.").

To recover on a claim for breach of fiduciary duty, the plaintiff must prove by a preponderance of the evidence that a fiduciary duty existed between the parties, that the defendant violated that fiduciary obligation, and that the plaintiff suffered damages resulting from the violation. *Walbeck v. I’On Co., LLC*, 439 S.C. 568, 585, 889 S.E.2d 537, 546 (2023), *reh’g denied* (July 26, 2023); *Smith*, 367 S.C. at 417, 626 S.E.2d at 17. There is no requirement that the plaintiff show “he or she most probably would have been successful in the underlying suit”. *Smith*, 367 S.C. at 417, 626 S.E.2d at 17.

The trial court committed reversible error by ignoring well-pled fact allegations in the Second Amended Complaint stating claims for breach of fiduciary duty to recover damages caused by the Lawyers’ breach of their duties of loyalty and confidentiality. The Orders granting the Respondents’ motions to dismiss should be reversed and this case should be remanded.

III. The trial court committed reversible error by ignoring specific fact allegations establishing a client-lawyer relationship between Mr. Pampu and Ms. Pampu and the Lawyers that provided standing to sue.

The trial court dismissed the claims by Mr. and Ms. Pampu for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCP. This ruling constitutes reversible error, because the trial court ignored the specific allegations in the Complaint establishing a client-lawyer relationship between Mr. Pampu and Ms. Pampu, on one hand as clients, and the Lawyers, on the other as the attorneys concerning the “Federal Case” and the “State Case.” See (Sec. Amend. Complaint, ¶¶ 1, 2, 13-14, 28-29, 36-37, 40, 49, 56, 61, and 66). Here a few examples:

¶1. This case seeks recovery of damages caused by the Lawyers’ errors during their representation of *the [Pampus]* in a) a federal lawsuit against ... The Lawyers were negligent in 1) allowing their client, John Doe, to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University’s future treatment of John Doe’s academic records, the results of which were contrary to what the Lawyers knew were the clients’ desires and objectives, which was a key component of *the [Pampus]*’ “consideration” to settle,

.... and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of *the [Pampus]*. One or more of these negligent actions or related omissions resulted in substantial financial losses to *the [Pampus]*, ...

¶12. After the Lawyers were discharged as counsel for *the [Pampus]*, the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties, including disclosing information related to their representation of *the [Pampus]* to counsel for the opposing parties without *the [Pampus]*' consent.

¶13. On or around November 2, 2017, the Lawyers accepted the representation of *the [Pampus]* to provide legal advice, services, and representation of *the [Pampus]* in a lawsuit

¶14. On or about November 2, 2017, [the Law Firms] contracted to represent *the [Pampus]* in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

The trial court's findings on pages 6-7 of the Orders that Mr. and Ms. Pampu lacked standing were premised on the fact that neither Mr. Pampu nor Ms. Pampu were parties to the Federal Lawsuit or the State Lawsuit. The existence of a client-lawyer relationship is not dependent on whether the client is a party to a lawsuit or later becomes a party to a lawsuit. Taking the allegations in the Second Amended Complaint is true, Mr. Pampu and Ms. Pampu specifically alleged they were clients of the Lawyers and parties to contracts of representation with the Law Firms.

It was clear error by the trial court to dismiss the claims asserted by Mr. Pampu and Ms. Pampu for alleged lack of subject matter jurisdiction under Rule 12(b)(1), SCRCF. These findings should be reversed, and the entire matter should be remanded to the Circuit Court.

IV. The trial court committed reversible error by ignoring specific fact allegations establishing the Pampus' breach of contract claim.

The Orders summarily dismissed the Pampus' claims for breach of contract without making or identifying any findings of fact or specific conclusions of law. The Orders did not

properly treat the specific allegations in the Second Amended Complaint that established, for the purposes of a motion to dismiss, a contractual relationship between Mr. Pampu and Ms. Pampu and the Law Firms for the Law Firm to provide legal services to pursue the Pampus' claims in "Federal Case" and the "State Case." These allegations provide standing for Mr. Pampu and Ms. Pampu to assert the breach of contract claims stated in the Second Amended Complaint.

The Second Amended Complaint contains these allegations of fact concerning the Pampus' breach of contract claim:

¶14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively "the Law Firms") contracted to represent the [Pampus] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

¶98. Law Firms entered into a Contract with the Does agreeing and contracting to provide legal services to represent the [Pampus] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

¶99. Law Firms breached the contract by failing to provide such services.

¶100. The [Pampus] satisfied all necessary preconditions, if any, and performed their part of the contract, and/or was, at the appropriate time, able, ready, and willing to perform.

¶101. As a direct and proximate result of the Law Firms' breach of their contractual duties, the [Pampus] sustained actual, consequential and incidental damages in an amount to be determined by the jury at the trial of this case.

The trial court erred in ignoring the specific allegations in the Complaint that Mr. Pampu and Ms. Pampu entered into a contract of representation with the Law Firms, thereby providing standing for Mr. Pampu and Ms. Pampu to assert the breach of contract claims stated in the Second Amended Complaint. *See* (Sec. Amend. Complaint, pp. 4, 19-20, ¶¶ 14, 98-101, and Wherefore clause on p. 20). This result should be reversed, and the entire matter should be remanded to the Circuit Court.

V. The trial court committed reversible error by dismissing the Pampus' breach of fiduciary duty claim as "duplicative" of their legal malpractice claim.

The Orders should be reversed and allow the Pampus to proceed with their breach of fiduciary duty claim because the Second Amended Complaint alleges facts supporting their breach of fiduciary duty claim as argued above. Notwithstanding the fact that the Pampus' Second Amended Complaint states facts sufficient to support a breach of fiduciary duty claim, the Pampus should be permitted to pursue that claim, along with their legal malpractice claim and breach of fiduciary duty claim because Rule 8(a), SCRCP permits filing alternative claims. *See* Rule 8(a), SCRCP ("Relief in the alternative or of several different types may be demanded."); *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (finding the pleadings appropriately alleged alternative theories of liability). The trial court's findings effectively take away a legal malpractice plaintiff's ability to assert alternative claims in their pleadings as Rule 8(a) permits for all other litigants.

In addition, the trial court's reliance on the Supreme Court's opinion, *RFT Mgmt. Co. v. Tinsley & Adams, LLC*, 732 S.E.2d 166, 173 (S.C. 2012), does not support the ruling as that case dealt with a motion made at trial, and not before trial under Rule 12, SCRCP. Similarly, the trial court's reliance on the Supreme Court's opinion in *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019), is also misplaced because that matter was before the trial court on a motion for summary judgment, and not a motion to dismiss. In addition, this Court previously recognized the propriety of pleadings alleging a legal malpractice claim and a breach of fiduciary duty claim. *See Smith v. Hastie*, 367 S.C. 410, 419, 626 S.E.2d 13, 18 (Ct. App. 2005) ("We therefore hold Smith presented adequate evidence on the merits of her claims for negligence and breach of fiduciary duty.") (Emphasis added).

Based on the express language in Rule 8(a), SCRCF, it was error for the trial court to conclude that the Pampus' breach of fiduciary duty claim was duplicative of their professional negligence claim. These findings should be reversed, and the entire matter should be remanded to the Circuit Court.

VI. The trial court committed reversible error by concluding Mr. Dillon's expert opinions supporting the Pampus' professional negligence claims were untimely and insufficient as a matter of law.

Mr. Dillon has substantial experience in representing clients on Title IX matters and in litigating disputes under Title IX. Mr. Dillon's expert affidavit was timely filed with the Amended Complaint, and also with the Second Amended Complaint under S.C. CODE ANN. § 15-36-100(E).

A. The trial court committed reversible error by ignoring the allegations in the Second Amended Complaint showing Mr. Dillon's expert affidavit was timely filed under S.C. CODE ANN. § 15-36-100(E) permitting an amended pleading with an expert affidavit to be filed to cure alleged defects.

The trial court erred in ignoring the dates of filing and the statements in the Second Amended Complaint establishing for the purposes of a motion to dismiss the fact that Mr. Dillon's expert affidavit was timely filed and satisfied all aspects of S.C. CODE ANN. § 15-36-100(C)(1).

The trial court also erred in ignoring the specific allegations in Paragraph 103 in the Second Amended Complaint, which should have been taken as true for the purposes of the Lawyers' Motions:

¶103. In February and early March 2021, *the Lawyers refused to enter into a statute of limitations tolling agreement to toll the statute of limitations on Plaintiffs' legal professional negligence claims against the Lawyers.* As stated in Paragraphs 37-39, a substantial portion of the Lawyers' liability arises from the Lawyers' acts and omissions during a mediation on March 21, 2018 in the Federal Case. As a result, Plaintiffs had a good faith basis to believe the three-year statute of limitations on Plaintiffs' legal professional negligence cause of action against the Lawyers would expire on March 21, 2021, which was within 10 days of the date the Summons & Complaint was filed on March 19, 2021. *Because of time constraints, an affidavit of an expert could not be prepared in*

time to file the Summons & Complaint before March 21, 2021.

Under S.C. CODE ANN. § 15-36-100(C)(1), included with the filing of the Amended Summons & Amended Complaint and marked as Exhibit 1 was the affidavit of Justin Dillon, Esq., an expert witness and lawyer licensed to practice law in the Commonwealth of Virginia and in the District of Columbia, which satisfies S.C. CODE ANN. § 15-36-100(A)(1) to qualify Mr. Dylan to serve as an expert in this matter. Another copy of Mr. Dillion's affidavit is filed with this Second Amended Summons & Amended Complaint as Exhibit 1. Mr. Dillon has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in the active practice litigating Title IX matters for at least three of the last five years immediately preceding his opinions, which satisfies S.C. CODE ANN. § 15-36-100(A)(2)(b)(i) to qualify Mr. Dylan to serve as an expert in this matter. Mr. Dillion has been invited to speak before organizations including the American Bar Association, the National Association of Criminal Defense Lawyers, the Association of Title IX Administrators, the Higher Education Consultants Association, the Colorado Bar Association, the Virginia State Bar, the District of Columbia Bar, and has guest lectured on Title IX matters at Harvard Law School, George Washington University, American University, and the University of Maryland. Mr. Dillion has other specialized knowledge in Title IX matters, which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of his study, experience, or both, which satisfies S.C. CODE ANN. § 15-36-100(A)(3) to qualify Mr. Dylan to serve as an expert in this matter.

Mr. Dillon's affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of Mr. Dillion's affidavit.

This Second Amended Summons & Amended Complaint is being filed under S.C. CODE ANN. § 15-36-100(E), which permits an amended pleading to be filed to cure the alleged defects. This Second Amended Summons & Amended Complaint is being filed based on the specious arguments contained in the Lawyers' respective Motions to Dismiss claiming Mr. Dillon's affidavit is defective because he is not licensed in South Carolina, when the Lawyers knew or should have known there is no such requirement under S.C. CODE ANN. § 15-36-100.

It was reversible error for the trial court to conclude that Mr. Dillon's expert affidavit was not timely filed. This ruling should be reversed, and the matter should be remanded.

B. Mr. Dillon's qualifications and expertise in Title IX matters establish the legal sufficiency of his expert opinions.

The Orders did not accept as true Mr. Dillon’s qualifications for serving as an expert as stated in his curriculum vitae included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint, which identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits. The standard of review under Rule 12(b)(6), SCRCF, required the trial court to accept all such allegations as true and all inferences from those allegations in favor of the Pampus.

The trial court erred in refusing to accept Mr. Dillon’s opinions in the expert affidavit because the affidavit is facially sufficient given it is sworn and identifies a potentially meritorious legal malpractice claim. *See Ranucci v. Crain*, 409 S.C. 493, 508, 763 S.E.2d 189, 196–97 (2014) (“As to Dr. Crain’s assertions regarding defects in the authorship and content of Dr. Boortz–Marx’s affidavit, we find this is not an appropriate ground to affirm the circuit court’s order because the affidavit is facially sufficient given it is sworn and identifies a potentially meritorious medical malpractice claim.”).

The provisions in S.C. CODE ANN. § 15-36-100(E) do not permit the trial court to address the substance of an expert’s opinions. The trial court erred in ignoring Mr. Dillon’s qualifications for serving as an expert as stated in his curriculum vitae included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint, which identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits. The trial court erred in accepting the Lawyers’ arguments challenging the weight of Mr. Dillon’s experience, and not the lack thereof, because S.C. CODE ANN. § 15-36-100(E) does not permit challenging an expert’s the substance of an expert’s opinions.

The trial court erred in accepting the Lawyers’ arguments that Mr. Dillon is not qualified

to serve as an expert because he has not actually practiced in South Carolina federal or state court when the Order acknowledges federal Title IX claims were involved in Lawyers' underlying representation of the Pampus and ignores Mr. Dillon's vast experience handling Title IX litigation. In addition, South Carolina has long since abandoned the "locality rule" in the context of expert opinions for legal malpractice claims. *See, Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 438, 472 S.E.2d 612, 614 (1996) (the fact that Professor Gregory B. Adams was not licensed to practice law in this state and is not regularly handle real estate matters did not disqualify him as an expert).

The trial court incorrectly found that "Mr. Dillon holds himself out to be an expert in legal malpractice claims in South Carolina district court litigation." There is no such statement in any materials filed with the Complaint, Amended Complaint, or Second Amended Complaint.

The trial court erred in incorrectly imposing a "sufficiently related" standard for an expert witness affidavit filed in a professional liability matter under S.C. CODE ANN. § 15-36-100, which is not stated in the Statute or in any case law interpreting the Statute. *See* (Orders on p. 9; "Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint.").

This ruling should be reversed, and the matter should be remanded.

VII. It was error for the trial court to ignore South Carolina jurisprudence under the guise of public policy arguments in support of mediation and settlement.

The trial court's public policy basis to dismiss the Pampus' claims arguably founded on concerns about protecting the "finality" of mediation are misplaced and contrary to controlling

South Carolina law. Notwithstanding the cases permitting clients to bring legal malpractice claims based on their former lawyers' errors in handling a settlement, *e.g.*, *Doe v. Howe*, the South Carolina Rules for Alternative Dispute Resolution have specific controlling provisions permitting communications during a mediation to be disclosed, for the purpose of a professional malpractice proceeding. See Rule 8(c)(3), SCADR Confidentiality ("There is no confidentiality attached to information that is disclosed during a mediation: (3) **offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding[.]**") (Emphasis added). The provisions in Rule 8(c)(3), SCADR creating an exception to the general confidentiality provisions contemplate legal malpractice lawsuits based on lawyers' conduct during a mediation that adversely affects their clients. The South Carolina Supreme Court would not have included this provision in the "finality" of mediation was sacrosanct in its view.

The trial court's rulings on this basis should be reversed, and this matter should be remanded.

CONCLUSION

Appellants, Andrew Pampu; Amanda Pampu; and John Pampu, respectfully request this Court to reverse the trial court's ruling dismissing their Second Amended Complaint with prejudice and remanding the matter to allow them to maintain their legal malpractice, breach of fiduciary duty, and breach of contract claims against the Respondents.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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Apr 12 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge
Civil Action No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants

v.

Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC..... Respondents

RESPONDENTS' JOINT INITIAL BRIEF

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Statement of Issues on Appeal

1. Are the trial court orders from which Appellants attempt to appeal immediately appealable?
2. Did the trial court correctly hold that Appellants failed to state a claim for legal malpractice?
3. Did the trial court correctly hold that Appellants failed to state a claim for breach of fiduciary duty?
4. Did the trial court correctly hold that Appellant John Pampu and Appellant Amanda Pampu lack standing?
5. Did the trial court correctly hold that Appellants failed to state a claim for breach of contract?
6. Did the trial court correctly hold that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim?
7. Did the trial court correctly hold that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law?
8. Did the trial court correctly find Appellants' claims against public policy?
9. Did Appellants fail to correct the record relating to their recusal argument in their Motion for Reconsideration?

Statement of the Case

Appellants initiated this action on March 19, 2021, asserting causes of action for professional negligence, breach of fiduciary duty, and breach of contract related to legal services Respondents provided in two underlying lawsuits. [See Complaint, ROA ____]. That same day, Appellants filed a Motion to Proceed Anonymously Under Pseudonyms. [See Motion to Proceed Anonymously Under Pseudonyms, ROA ____]. Appellants amended their Complaint on April 30, 2021, and included an affidavit from Justin Dillon, Esq. [See Amended Complaint, ROA ____; *and* Expert Affidavit by Justin Dillon, Esq., ROA ____]. On May 9, 2021, and May 10, 2021, respectively, the Clawson Fargnoli Respondents and the Brewer Respondents filed motions to

dismiss, asking the trial court to dismiss Appellants' Amended Complaint in its entirety. [See Clawson Fagnoli Motion to Dismiss Amended Complaint, ROA ____; and Brewer Motion to Dismiss Amended Complaint, ROA ____]. On those same dates, Respondents also filed motions to prohibit Appellants from using pseudonyms. [See Clawson Fagnoli Motion to Prohibit Pseudonyms, ROA ____; and Brewer Motion to Prohibit Pseudonyms, ROA ____].

In response to Respondents' motions to dismiss, Appellants amended their complaint again on June 16, 2021. [See Second Amended Complaint, ROA ____]. Appellants' Second Amended Complaint remains the operative pleading in this action.

On June 28, 2021, and June 30, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents answered the Second Amended Complaint and asserted counterclaims against Appellants for breach of contract and unjust enrichment related to fees owed to them for their work on one of the underlying lawsuits. [See Clawson Fagnoli Answer to Second Amended Complaint and Counterclaims, ROA ____; and Brewer Answer to Second Amended Complaint and Counterclaims, ROA ____]. On those same dates, Respondents filed motions to dismiss, asking the trial court to dismiss Appellants' Second Amended Complaint in its entirety. [See Brewer Motion to Dismiss Second Amended Complaint, ROA ____; and Clawson Fagnoli Motion to Dismiss Second Amended Complaint, ROA ____]. On July 28, 2021, Appellants replied to Respondents' respective counterclaims. [See Reply to Brewer Counterclaims, ROA ____; and Reply to Clawson Fagnoli Counterclaims, ROA ____]. On October 22, 2021, Respondents jointly submitted a memorandum in support of their motions to dismiss. [See Respondents' Joint Memorandum in Support of Motion to Dismiss Second Amended Complaint, ROA ____]. On December 15, 2021, Appellants submitted a response in

opposition to Respondents' memorandum. [See Combined Memorandum in Opposition to Motions to Dismiss Second Amended Complaint, ROA ____].

On March 2, 2022, the trial court conducted a virtual hearing on Respondents' motions to dismiss and motions to prohibit use of pseudonyms. [See Transcript, ROA ____]. On March 4, 2022, the trial court issued an order granting Respondents' motions to prohibit use of pseudonyms. [See Order Granting Motions to Prohibit Pseudonyms, ROA ____]. On June 23, 2022, the trial court issued separate orders granting Respondents' respective motions to dismiss and dismissing Appellants' Second Amended Complaint in its entirety. [See Order Granting Brewer Motion to Dismiss, ROA ____; and Order Granting Clawson Fagnoli Motion to Dismiss, ROA ____]. Thereafter, on July 5, 2022, Appellants filed a Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss [see ROA ____]. On October 23, 2023, the trial court denied the motion. [See Order Denying Motion for Reconsideration, ROA ____].

On November 14, 2023, Appellants served a Notice of Appeal [see ROA ____]. Appellants seek to appeal three orders issued by the trial court: (1) June 23, 2022 Order Granting Motion to Dismiss for the Brewer Respondents, (2) June 23, 2022 Order Granting Motion to Dismiss for the Clawson Fagnoli Respondents, and (3) October 23, 2023 Order Denying Appellants' Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders. [Notice of Appeal, ROA ____].

Standard of Review

I. Failure to State a Claim

“An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP.” *Cap. City Ins. Co. v. BP Staff*,

Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (citing *Doe v. Marion*, 373 S.C. 390, 393, 645 S.E.2d 245, 246 (2007)). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* (citing *Plyler v. Burns*, 373 S.C. 637, 643, 647 S.E.2d 188, 191 (2007)). “The trial court’s grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law.” *Id.* (citing *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 297 (Ct. App. 2007)).

II. Subject Matter Jurisdiction

“The question of subject matter jurisdiction is a question of law for the court.” *Cap. City Ins. Co.*, 382 S.C. at 99, 674 S.E.2d at 528 (quoting *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 632 (Ct. App. 1993)). This Court is “free to decide questions of law with no deference to the trial court.” *Id.* (citing *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 522, 642 S.E.2d 751, 752 (2007)).

Argument

I. Statement of Facts

This case stems from Appellants’ allegations of legal professional negligence, breach of fiduciary duty, and breach of contract against Respondents Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (“the Clawson Fagnoli Respondents”) and Barrett R. Brewer, Esq. and Brewer Law Firm, LLC (“the Brewer Respondents”) (collectively, “Respondents”). On November 2, 2017, Respondents agreed to represent Appellant Andrew Pampu in two preexisting lawsuits: one pending in the U.S. District Court for the District of

South Carolina (the “Federal Case”)¹ asserting Title IX and other claims against his university (the “University”) and another pending in a Court of Common Pleas in South Carolina (the “State Case”)² asserting defamation, civil conspiracy, and other tort claims against an accuser who submitted to the University claims of sexual misconduct against Appellant Andrew Pampu. [See Second Amended Complaint, p. 4, ¶ 13, ROA ____]. Notably, neither Appellant Amanda Pampu nor Appellant John Pampu were parties to either the Federal Case or State Case, nor were they signatories to any settlement agreement.

Prior to the institution of the Federal Case and the State Case, Appellant Andrew Pampu was accused of and ultimately found by the University at an administrative hearing to have engaged in “nonconsensual sexual activities” and punished with suspension. [See Second Amended Complaint, pp. 5-6, ¶ 19, ROA ____]. Appellant Andrew Pampu thereafter appealed the University’s administrative hearing decision. [See Second Amended Complaint, p. 6, ¶ 20, ROA ____]. The appeals process resulted in the imposition of heavier sanctions against Appellant Andrew Pampu, including increasing his suspension period. [See Second Amended Complaint, p. 6, ¶ 21, ROA ____]. Appellant Andrew Pampu thereafter sued the University in the Federal Case, “alleging, among other things, violation of Title IX of the Education Amendments of 1972, failure to provide [Andrew Pampu] with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment.” [Second Amended Complaint, p. 5, ¶ 16, ROA ____].

¹ See *John Doe v. Clemson University et. al.*, Case No. 8:16-cv-01957, in the United States District Court for the District of South Carolina, Anderson Division.

² See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina.

As part of the Federal Case, Respondents represented Appellant Andrew Pampu at a court-ordered mediation on March 21, 2018. [See Second Amended Complaint, p. 8, ¶ 37, ROA ____]. Before the mediation, Respondents purportedly received an email from Appellants stating Appellant Andrew Pampu’s mediation goals, including:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against [Andrew Pampu], which by implication would have limited the University’s future treatment of [Andrew Pampu’s] academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) [Andrew Pampu’s] arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

[Second Amended Complaint, p. 8, ¶ 36, ROA ____]. At the conclusion of the mediation session, “[Appellant Andrew Pampu] signed the ‘Settlement Agreement.’” [Second Amended Complaint, p. 9, ¶ 39, ROA ____; *see also* Joint Memorandum in Support of Motion to Dismiss Second Amended Complaint, Exhibit A, ROA ____]. There are no allegations that Mr. Pampu was subject to duress or was otherwise forced to sign the settlement agreement.

Appellants contend that “[t]he Settlement Agreement conflicted with the goals explained in the March 2, 2018 email and conflicted with the goals of both the Federal Case and the State Case.” [Second Amended Complaint, p. 9, ¶ 41, ROA ____]. After the settlement agreement was reached on mutually agreeable terms at the mediation in the Federal Case, however, Appellant Andrew Pampu developed “buyer’s remorse” and attempted to abandon the settlement. [See Second Amended Complaint, pp. 9, 11-12, ¶¶ 40, 54-57, ROA ____]. On or about May 8, 2018, Appellants terminated their attorney-client relationship with Respondents and sought new counsel. [See Second Amended Complaint, p. 10, ¶¶ 47-48, ROA ____]. The University filed a

motion to enforce the settlement, which was ultimately granted by the Court. [See Second Amended Complaint, pp. 11-12, ¶¶ 55-57, ROA ____].

Approximately one year after filing the Federal Case, Appellant Andrew Pampu sued his accuser in the State Case, asserting claims for defamation, abuse of process, intentional infliction of emotional distress, and civil conspiracy. [See Second Amended Complaint, p. 6, ¶ 24, ROA ____]. While the Federal Case resolved at mediation, the State Case remained pending at the time Appellants filed their Second Amended Complaint. On March 25, 2022, following a jury trial, a jury returned a verdict in favor of Appellant Andrew Pampu in the State Case and awarded him a total of \$5.3 million. After post-trial motions, the court entered judgment in favor of Mr. Pampu in the amount of \$2.3 million on July 11, 2022. [See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina]. All parties have filed notices of appeal in the State Case, and that appeal remains pending. [*Id.*].³ This Court may take judicial notice of the filings in the Federal Case and the State Case (including the appeal). See *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (“A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records.”) (quoting *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) (alteration in original)).

Counsel for Appellants sent a letter of representation on September 19, 2019 (approximately 18 months prior to the filing of their initial Complaint) [see ROA ____] and an additional letter of representation on February 26, 2021 (approximately three weeks prior to the filing of their initial Complaint) [see ROA ____]. However, when Appellants filed their initial

³ See *Andrew Pampu v. Erin Wingo et al.*, South Carolina Appellate Case No. 2022-001332. Respondents direct the Court to the Record on Appeal in the State Case—specifically, the verdict and judgment.

Complaint on March 19, 2021, they did not include the required expert witness affidavit. [See *generally* Complaint, ROA ____]. Instead, Appellants alleged that pursuant to S.C. Code Ann. § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” [Complaint, p. 20, ¶ 103, ROA ____]. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. [See Amended Complaint, ROA ____]. In response to Respondents’ respective motions to dismiss, which raised Appellants’ untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to the expert affidavit issue. [See Second Amended Complaint, pp. 20-21, ¶ 103, ROA ____]. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. [Second Amended Complaint, pp. 20-21, ¶ 103, ROA ____]. Appellants further claimed that they were filing their Second Amended Complaint under S.C. Code Ann. § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. [Second Amended Complaint, p. 21, ¶ 103, ROA ____].

In the instant action, Appellants have asserted claims for legal professional negligence, breach of fiduciary duty, and breach of contract. They allege:

The Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the [Pampus] to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the [Pampus]; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

[Second Amended Complaint, p. 17, ¶ 83, ROA ____]. Appellants initially filed this action under pseudonyms. [See Complaint, ROA ____; *and* Motion to Proceed Anonymously Under Pseudonyms, ROA ____]. However, on March 4, 2022, the trial court granted Respondents' respective motions seeking to prohibit Appellants from using pseudonyms. [See Order Granting Motions to Prohibit Pseudonyms, ROA ____]. Appellants did not appeal this decision.⁴

On June 28, 2021 and June 30, 2021, respectively, the Clawson Fargnoli Respondents and the Brewer Respondents filed counterclaims against Appellants related to fees owed to them for their work on the Federal Case. [See Brewer Counterclaims, ROA ____; *and* Clawson Fargnoli Counterclaims, ROA ____]. On those same dates, Respondents also filed motions to dismiss, asking the trial court to dismiss Appellants' Second Amended Complaint in its entirety. Respondents asserted the following grounds for their motions:

1. Appellants' claims failed to state a claim upon which relief could be granted;
2. Appellants John Pampu and Amanda Pampu lacked standing;
3. Appellants failed to timely provide an expert witness affidavit as required by S.C. Code Ann. § 15-36-100, and the exceptions found in § 15-36-100(C)(1) were inapplicable;
4. The credentials of Appellants' purported expert were insufficient under § 15-36-100(A)(3);
5. The gravamen of Appellants' Second Amended Complaint was simply post-mediation "buyer's remorse"; and

⁴ See *Doe v. Howe*, 362 S.C. 212, 217, 607 S.E.2d 354, 356 (Ct. App. 2004) (holding that the denial of a motion to proceed anonymously is immediately appealable).

6. Appellants' cause of action for breach of fiduciary duty was duplicative of its cause of action for legal malpractice.

[See Clawson Fagnoli Motion to Dismiss, ROA ____; and Brewer Motion to Dismiss, ROA ____]. On July 28, 2021, Appellants replied to Respondents' respective counterclaims. [See Reply to Brewer Counterclaims, ROA ____; and Reply to Clawson Fagnoli Counterclaims, ROA ____].

The trial court held a virtual hearing on Respondents' respective motions to dismiss and motions to prohibit use of pseudonyms on March 2, 2022. [See Transcript, ROA ____]. Thereafter, the trial court granted Respondents' motions to prohibit use of pseudonyms. [Order Granting Motions to Prohibit Pseudonyms, ROA ____]. The trial court further granted Respondents' motions to dismiss and dismissed all Appellants' causes of action. [See Order Granting Brewer Motion to Dismiss, ROA ____; and Order Granting Clawson Fagnoli Motion to Dismiss, ROA ____]. Appellants thereafter filed a motion for reconsideration and to alter or amend the orders granting Respondents' motions to dismiss. [See Motion for Reconsideration, ROA ____]. Appellants concluded their motion by making troubling allegations that the trial judge did not recuse himself when his impartiality might be questioned. Specifically, Appellants alleged that the trial judge had a personal bias in favor of Respondent Samuel R. Clawson, Jr., Esq. based on an alleged long-term law partnership with Respondent Clawson's father. [Motion for Reconsideration, p. 6, ¶ 17, ROA ____]. However, those allegations were categorically false, as Respondent Clawson's father had never had a professional or personal association with the trial judge, aside from perhaps appearing before the judge, as had many attorneys in this state. When confronted with this fact, counsel for Appellants stated, "[Appellants] will accept your statement and will withdraw the statements contained in Paragraph 17 of the motion and will

make that known to the judge at the outset of the hearing on the motion.” [January 18, 2023 email from Thomas Pendarvis, ROA ____]. However, the trial court ruled on the motion without a hearing, and, to date, the statements have not been withdrawn. Appellants have failed to correct the record, which is now pending before this Court.

Following the denial of their motion for reconsideration [see Order Denying Motion for Reconsideration, ROA ____], Appellants filed this appeal [see Notice of Appeal, ROA ____]. Respondents’ counterclaims remain pending.

II. The trial court orders from which Appellants attempt to appeal are not immediately appealable, and, therefore, this Court lacks jurisdiction.

As an initial matter, the trial court orders from which Appellants attempt to appeal are not immediately appealable. Appellate jurisdiction is governed by S.C. Code Ann. § 14-3-330. This Court has explained:

Section 14-3-330 provides that only final judgments and certain interlocutory orders are immediately appealable. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.

Richardson v. Halcyon Real Est. Servs., LLP, 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023) (internal quotation marks and citations omitted). “The provisions of section 14-3-330 are narrowly construed and serve the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals.’” *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (citing *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005)).

Here, Appellants seek to appeal three orders issued by the trial court: (1) Order Granting Motion to Dismiss for the Brewer Respondents, (2) Order Granting Motion to Dismiss for the

Clawson Fargnoli Respondents, and (3) Order Denying Appellants’ Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders. [Notice of Appeal, ROA ____]. While these orders effectively dismissed all Appellants’ causes of action, Appellants fail to consider the fact that Respondents’ counterclaims remain pending. Notably, Appellants do not address the jurisdiction issue or mention Respondents’ counterclaims in their initial brief. [See *generally* Appellants’ Initial Brief]. As noted above, on June 28, 2021 and June 30, 2021, respectively, the Clawson Fargnoli Respondents and the Brewer Respondents filed counterclaims against Appellants related to fees owed to them for their work on the Federal Case. [Brewer Counterclaims, ROA ____; Clawson Fargnoli Counterclaims, ROA ____]. Those counterclaims should be litigated to a final conclusion before any appeal is ripe. Appellants’ counsel takes the unsupported position that the counterclaim portion of the case is stayed pending appeal. [See March 25, 2024 email from Thomas Pendarvis, ROA ____].⁵

Because Respondents’ counterclaims remain pending, Appellants’ attempt to make a “piecemeal” appeal is improper. Therefore, this Court lacks jurisdiction, and this appeal should be dismissed.

III. The trial court correctly held that Appellants failed to state a claim for legal malpractice.

The trial court correctly held that Appellants failed to state a claim for legal malpractice. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and

⁵ There are no South Carolina cases specifically addressing whether an order dismissing a plaintiff’s claims is immediately appealable where counterclaims remain pending. While not binding on this Court, in the absence of South Carolina authority regarding immediate appealability where counterclaims remain pending, North Carolina law is instructive. *See, e.g., Pawlik v. Fortunati*, 183 N.C. App. 490, 645 S.E.2d 231 (2007) (“Because defendants’ counterclaims are still pending, and plaintiff has failed to demonstrate that this interlocutory appeal is properly before the Court, we dismiss the appeal.”).

(4) proximate causation of the client’s damages by the breach.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012) (citing *Rydde v. Morris*, 381 S.C. 643, 645, 675 S.E.2d 431, 432 (2009)).

Appellants first argue that the trial court erred in dismissing their claim for legal malpractice by “ignoring the specific allegations in the Second Amended Complaint . . . clearly supporting [their] professional negligence claims.” [Appellants’ Initial Brief, p. 18]. Specifically, Appellants point to paragraph 1 of the Second Amended Complaint, in which Appellants allege that Respondents were negligent in (1) allowing Appellant Andrew Pampu to sign the settlement agreement, (2) failing to explain to Appellant Andrew Pampu the full implications of signing the settlement agreement, (3) the manner in which they prosecuted the State Case, and (4) the manner in which they concluded the representation. [Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. Appellants further argue that the trial court erred in dismissing their claim for legal malpractice by “ignoring the specific allegations in the Second Amended Complaint that were contained in Mr. Dillon’s expert affidavit.” [Appellants’ Initial Brief, p. 18]. Appellants argue that the court failed to accept these allegations as true and view them in the light most favorable to them. [Appellants’ Initial Brief, p. 20]. Appellants contend that, taken as true, these allegations establish a claim for legal malpractice. Finally, Appellants argue that the trial court “create[ed] its own ‘fact’ allegations” by stating that Appellant Andrew Pampu “developed buyer’s remorse in the days after the mediation and attempted to abandon the mediation.” [Appellants’ Initial Brief, p. 20; *see also* Order Granting Brewer Motion to Dismiss, p. 3, ROA ____ and Order Granting Clawson Fagnoli Motion to Dismiss, p. 3, ROA ____].

In support of their arguments, Appellants cite *Doe v. Howe* for the proposition that loss of settlement value can form the basis for a legal malpractice claim. [Appellants’ Initial Brief, p. 17

(citing 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005))). However, while this Court contemplated in *Howe* that such a claim might be viable under certain circumstances, this Court affirmed the trial court's grant of summary judgment in favor of the respondents on the appellant's legal malpractice claim. *Howe*, 367 S.C. at 437, 626 S.E.2d at 27. In doing so, this Court referenced the trial court's holding that appellant's expert "never explicitly stated [appellant] most probably would have recovered more than the \$88,000 he received in his settlement" *Id.*, 367 S.C. at 445, 626 S.E.2d at 31. While this Court acknowledged that the trial court "was not imposing an additional requirement for [appellant's] *prima facie* case," it confirmed that a legal malpractice plaintiff must "prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care." *Id.*, 367 S.C. at 446, 626 S.E.2d at 32. In affirming the trial court's grant of summary judgment as to the legal malpractice claim, this court explained, "Notably absent from the record in this case, however, is any mention of settlement value from [any expert] that was brought to the trial judge's attention." *Id.*

While the present case involves motions to dismiss and a motion for reconsideration rather than a motion for summary judgment, Appellants still must allege facts in their complaint that, if true, could support that they "would have obtained a better result in the underlying matter if [Respondents] had exercised reasonable care." *See id.* Instead, the Second Amended Complaint contains merely conclusory allegations that Respondents were negligent in allowing Appellant Andrew Pampu to sign the settlement agreement and purportedly failing to explain to him the implications of it. [See Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. Other jurisdictions have recognized that a former client simply alleging that his former attorney failed to clearly explain settlement documents before the former client signed them and that the former

client expected to receive more than the settlement documents identified is insufficient as a matter of law to state a claim for legal malpractice. *See, e.g., Tarrant v. Ramunno*, 171 A.3d 138 (Del. 2017) (“Even if we accept [appellant/former client’s] allegation that [respondent/former attorney] failed in his duties to her by failing to adequately explain the terms of the settlement documents that she signed, her complaint failed to allege any resulting loss.”).⁶

The Second Amended Complaint further contains merely conclusory allegations that Respondents were negligent in the manner in which they prosecuted the State Case. [See Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. In fact, at the time the Second Amended Complaint was filed, the State Case remained pending. [See generally *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina]. Appellants cannot bring legal malpractice claims for alleged conduct related to a pending lawsuit, as they cannot reasonably allege that any purported conduct resulted in a loss of settlement and/or claim value.⁷ The Supreme Court of South Carolina has held that in “a legal malpractice cause of action that is predicated on an injury or damage caused by the failure of an underlying suit due to an attorney’s alleged malpractice, . . . there can be no legal malpractice cause of action without an adverse verdict, judgment, or ruling.” *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016). Because there was

⁶ The elements of a legal malpractice claim in Delaware are substantially similar to those in South Carolina. *See id.* (“To state a claim for legal malpractice, a plaintiff must allege and prove the following elements: (a) the employment of a lawyer, (b) the lawyer’s neglect of a professional obligation, and (c) resulting loss. To prove a resulting loss, the plaintiff must show that the underlying lawsuit would have been successful but for the lawyer’s negligence.”).

⁷ Notably, on March 25, 2022, following a jury trial, a jury returned a verdict in favor of Appellant Andrew Pampu in the State Case and awarded him a total of \$5.3 million. After post-trial motions, the court entered judgment in favor of Mr. Pampu in the amount of \$2.3 million on July 11, 2022. [See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina].

no verdict, judgment, or ruling—adverse or not—in the State Case at the time Appellants filed their Second Amended Complaint, there are no allegations in the Second Amended Complaint that could give rise to a legal malpractice claim based on any alleged conduct of Respondents in the State Case. Further, even if the \$5.3 million judgment had been obtained at that time, Appellants could not reasonably argue that a more favorable judgement could have been obtained but for Respondents’ alleged professional negligence. Accordingly, the trial court correctly dismissed these claims.

The Second Amended Complaint also contains merely conclusory allegations that Respondents were negligent in the manner in which they concluded the representation. [See Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. Again, Appellants did not articulate in their Second Amended Complaint how Respondents were negligent in concluding their representation or what alleged loss resulted. Moreover, Appellants terminated Respondents, which forced Respondents to conclude the representation. [See Second Amended Complaint, pp. 10, 13, ¶¶ 48-49, 66]. Appellants cannot now argue that Respondents were negligent in doing so. Accordingly, the trial court correctly dismissed these claims.

Moreover, the trial court correctly ruled that Appellants’ expert witness affidavit was both untimely and insufficient as a matter of law.⁸ Notwithstanding the same, the affidavit is simply a rehash of Appellants’ allegations in their Second Amended Complaint that they were unhappy with the settlement agreement that Appellant Andrew Pampu signed. Therefore, the

⁸ This argument is discussed in depth in Section VIII, *infra*.

allegations in the expert witness affidavit did not give rise to a cause of action against Respondents for professional negligence.⁹

Finally, the trial court correctly recognized that Appellants' allegations are largely premised on Appellant Andrew Pampu not getting everything Appellants wanted at mediation, and they only alleged legal malpractice once they realized the settlement could not be undone. The trial court did not create facts by referring to these allegations as "buyer's remorse." Rather, the trial court merely acknowledged that Appellants did not identify any acts or omissions on the part of Respondents other than that Appellant Andrew Pampu did not get everything Appellants wanted at mediation.

The trial court correctly ruled that no allegations in the Second Amended Complaint give rise to a colorable claim that Respondents could be liable for legal malpractice. Accordingly, this Court should affirm the trial court's holding that Appellants failed to state a claim for legal malpractice.

IV. The trial court correctly held that Appellants failed to state a claim for breach of fiduciary duty.

The trial court correctly held that Appellants failed to state a claim for breach of fiduciary duty. "To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant." *RFT Mgmt. Co.*

⁹ Moreover, the expert affidavit contains no allegations whatsoever regarding Respondents' conduct in the State Case or any other post-mediation conduct. Accordingly, for that reason alone, this Court should affirm the trial court's dismissal of Appellants' professional negligence claim as it relates to the State Case and/or any other post-mediation conduct pursuant to S.C. Code Ann. § 15-36-100 ("[T]he plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.").

v. Tinsley & Adams L.L.P., 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012) (citing *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004)).

Appellants first argue the trial court ignored their allegations that Respondents “breached their duties of loyalty and confidentiality by disclosing information related to the representation to third parties without [Appellants’] knowledge or consent that caused financial losses.” [Appellants’ Initial Brief, p. 20]. Specifically, Appellants point to paragraphs 2, 61, and 62 of their Second Amended Complaint, which generally allege that (1) after the conclusion of the representation, Respondents disclosed information related to the representation to counsel for the opposing parties without Appellants’ consent, (2) Respondents sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on any settlement proceeds, and (3) Appellants’ successor counsel sent a letter to Respondents stating that the lien letter interfered with the mediation process, disrupted negotiations, and disadvantaged Appellant Andrew Pampu’s position in the mediation, which caused damages to Mr. Pampu. [Second Amended Complaint, pp. 2, 12-13, ¶¶ 2, 61-62, ROA ____]. Appellants further argue that Respondents’ lien letter “wreaked havoc on [Appellants’] attempts to resolve their claims against the University defendants in the Federal Lawsuit.” [Appellants’ Initial Brief, p. 23].

As an initial matter, Appellants alleged in their Second Amended Complaint that Respondents sent the lien letter on February 28, 2019—after the mediation in the Federal Case. [Second Amended Complaint, pp. 12-13, ¶ 61]. Indeed, Appellants alleged that the lien letter was based, in part, on the fees Respondents allege they are owed due to the outcome of the Federal Case. [*Id.*]. A lien letter sent after the Federal Case settled at mediation could not have “wreaked havoc on [Appellants’] attempts to resolve their claims against the University defendants in the Federal Lawsuit” as Appellants allege. [See Appellants’ Initial Brief, p. 23].

Moreover, to the extent that Appellants contend that Respondents' lien letter disadvantaged Appellant Andrew Pampu's position in the State Case, such an allegation is both baseless and premature. As discussed above in the context of Appellants' legal malpractice claims related to the State Case, because there was no verdict, judgment, or ruling—adverse or not—in the State Case at the time Appellants filed their Second Amended Complaint, there are no allegations in the Second Amended Complaint that could give rise to a legal malpractice claim based on any alleged conduct of Respondents in the State Case. *See Stokes-Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494. For the same reason, Appellants cannot reasonably claim that Respondents' lien letter disadvantaged Mr. Pampu's position in the State Case. Appellants cannot articulate—and, in fact, have not articulated—what damages they allegedly suffered related to the State Case, because the State Case remained pending at the time they filed their Second Amended Complaint. Accordingly, the trial court correctly held that “[t]o the extent [Appellants] claim that [Appellant] Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.” [Order Granting Brewer Motion to Dismiss, pp. 5-6, ROA ____; Order Granting Clawson Fargnoli Motion to Dismiss, p. 6, ROA ____]. Therefore, the trial court correctly dismissed Appellants' breach of fiduciary duty claim, and this Court should affirm that ruling.

V. The trial court correctly held that Appellant John Pampu and Appellant Amanda Pampu lack standing.

The trial court correctly held that Appellant John Pampu and Appellant Amanda Pampu (“the Pampu Parents”) lack standing.

Appellants argue that the trial court ignored allegations establishing a client-lawyer relationship between the Pampu Parents and Respondents related to the Federal Case and the

State Case. [Appellant’s Initial Brief, p. 24]. Specifically, Appellants point to several paragraphs in their Second Amended Complaint generally alleging that Respondents represented “the [Pampus]” in the Federal Case and caused financial losses to “the [Pampus].” [Appellant’s Initial Brief, pp. 24-25]. The trial court held that “because Andrew Pampu was the only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing to assert the alleged claims.” [Order Granting Brewer Motion to Dismiss, p. 6, ROA ____; Order Granting Clawson Fargnoli Motion to Dismiss, p. 6, ROA ____].

Appellants contend that the trial court erred because “[t]he existence of a client-lawyer relationship is not dependent on whether the client is a party to a lawsuit or later becomes a party to a lawsuit.” [Appellants’ Initial Brief, p. 25]. However, regardless of whether the Pampu Parents and Respondents had an attorney-client relationship, they lack standing to assert the claims they allege, as they had no legal interest in the State Case or the Federal Case. As discussed above, in support of their legal malpractice claim, Appellants allege that Respondents were negligent in (1) allowing Appellant Andrew Pampu to sign the settlement agreement, (2) failing to explain to Appellant Andrew Pampu the full implications of signing the settlement agreement, (3) the manner in which they prosecuted the State Case, and (4) the manner in which they concluded the representation. [Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. Further, in support of their breach of fiduciary duty claim, Appellants generally allege that (1) after the conclusion of the representation, Respondents disclosed information related to the representation to counsel for the opposing parties without Appellants’ consent, (2) Respondents sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on any settlement proceeds, and (3) Appellants’ successor counsel sent a letter to Respondents stating that the lien letter interfered with the mediation process, disrupted

negotiations, and disadvantaged Appellant Andrew Pampu's position in the mediation, which caused damages to Mr. Pampu. [Second Amended Complaint, pp. 2, 12-13, ¶¶ 2, 61-62, ROA ____]. Finally, in support of their breach of contract claim, Appellants allege that Respondents "entered into a Contract with the [Pampus] agreeing and contracting to provide legal services to represent the [Pampus] in the Federal Case, the State Case, and 'any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits'" and that Respondents breached this agreement by "failing to provide such services." [Second Amended Complaint, pp. 19-20, ¶¶ 98-99]. In sum, the damages Appellants allege resulted from all their causes of action are a loss of settlement value in the Federal Case and a disadvantaged position in the State Case. Because the Pampu Parents were not parties to either case and had no legal interest in either case, they cannot reasonably claim that they were somehow damaged by any loss of settlement value in the Federal Case or disadvantaged position in the State Case.

Further, to the extent that the trial court erred in holding that the Pampu Parents lacked standing to assert their claims, such error was harmless, as those claims still fail as a matter of law for the reasons discussed herein. Accordingly, this Court should affirm the trial court's holding. *See Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009) ("Error is harmless where it could not reasonably have affected the result of the trial.").

VI. The trial court correctly held that Appellants failed to state a claim for breach of contract.

The trial court correctly held that Appellants failed to state a claim for breach of contract. "The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App.

2019) (quoting *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (Ct. App. 2015)).

Appellants argue that the trial court “summarily dismissed the Pampus’ claims for breach of contract without making or identifying any findings of fact or specific conclusions of law.” [Appellants’ Initial Brief, p. 25]. Appellants further argue that the trial court failed to consider their allegations purportedly establishing a contractual relationship between the Pampu Parents and Respondents to provide legal services related to the Federal Case and the State Case. [Appellants’ Initial Brief, p. 26]. Specifically, Appellants point to paragraphs 14 and 98 through 101 of their Second Amended Complaint, which generally allege that Respondents entered a contract with Appellants to provide legal services related to the Federal Case and the State Case and that Respondents breached this agreement by failing to provide such services. [Second Amended Complaint, pp. 4, 19-20, ¶¶ 14, 98-101, ROA ____]. Appellants contend that these allegations establish that the Pampu Parents have standing to assert the breach of contract claim. [Appellants’ Initial Brief, p. 26].

While the orders granting Respondents’ motions to dismiss did not explicitly address Appellants’ breach of contract claim, the trial court correctly dismissed the claim. Appellants’ breach of contract claim fails for the same reasons that their legal malpractice and breach of fiduciary duty claims fail—namely, because Appellants failed to articulate in their Second Amended Complaint how Respondents allegedly breached any agreement (other than a conclusory allegation that Respondents “fail[ed] to provide such services,” which is clearly not the case) or how any alleged breach proximately caused damages to Appellants (and in particular, the Pampu Parents). Moreover, Appellants’ breach of contract claim is simply a recharacterization of their legal malpractice and breach of fiduciary duty claims and is, therefore,

duplicative of those claims. *See, e.g., Gen. Sec. Ins. Co. v. Jordan, Coyne & Savits, LLP*, 357 F. Supp. 2d 951, 961 (E.D. Va. 2005) (holding that because the plaintiffs’ legal malpractice claim was barred, their breach of fiduciary duty and breach of contract claims were also barred because “they are mere disguises for plaintiffs’ legal malpractice claims,” as “[t]he breach alleged in both the breach of contract and breach of fiduciary duty claims is the same failure to provide adequate legal services that is the crux of the legal malpractice claims.”). Accordingly, the trial court properly dismissed this claim.¹⁰

The trial court correctly dismissed Appellants’ breach of contract claim. Accordingly, this Court should affirm the trial court’s ruling as to Appellants’ breach of contract claim.

VII. The trial court correctly held that Appellants’ breach of fiduciary duty claim is duplicative of their legal malpractice claim.

The trial court correctly held that Appellants’ breach of fiduciary duty claim is duplicative of their legal malpractice claim.

Appellants argue that they should be able to pursue both claims pursuant to South Carolina Rule of Civil Procedure 8(a), which provides that “[r]elief in the alternative or of several different types may be demanded.” [Appellants’ Initial Brief, p. 27; S.C. R. CIV. P. 8(a)]. Appellants further argue that the trial court’s reliance on *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.* and *Gibson v. Epting* do not support its ruling, as those cases dealt with a motion made at later stages in litigation. [Appellants’ Initial Brief, p. 27 (citing *RFT Mgmt. Co.*, 399 S.C. 322, 732 S.E.2d 166 (2012); and *Gibson*, 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019))].

In *RFT Management Co.*, RFT sued its former attorney and his law firm based on their representation of RFT in a transaction involving two real estate investment properties. 399 S.C.

¹⁰ To the extent that the trial court erred by not explicitly addressing Appellants’ breach of contract claim in the orders granting Respondents’ motions to dismiss, such error was harmless. *See Judy*, 384 S.C. at 646, 682 S.E.2d at 842.

at 327, 732 S.E.2d at 168. RFT alleged multiple claims against the respondents, including legal malpractice and breach of fiduciary duty. *Id.* At trial, at the close of evidence, the trial court merged RFT’s breach of fiduciary duty claim into its legal malpractice claim and granted the respondents’ motion for a directed verdict as to RFT’s other claims; therefore, only the legal malpractice claim went to the jury. *Id.*, 399 S.C. at 330, 732 S.E.2d at 170. The jury returned a verdict in favor of the respondents, and the trial court denied RFT’s post-trial motions. *Id.* On appeal, RFT argued, in part, that the trial court erred in “failing to charge the jury on breach of fiduciary duty and merging this cause of action with its first cause of action for legal malpractice.” *Id.* In affirming the trial court’s decision to merge the two causes of action, the Supreme Court of South Carolina explained:

A claim for breach of fiduciary duty, as a general matter, is distinguishable from a claim for legal malpractice because it can arise in contexts other than one involving an attorney-client relationship. . . . In the current matter, however, RFT’s claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and it arose out of the same factual allegations. Thus, RFT’s claim for legal malpractice necessarily encompassed a breach of the fiduciary duty an attorney has to his or her client. . . . Although RFT now argues a breach of fiduciary claim *could* be distinguishable from legal malpractice, RFT does not set forth any specific facts that demonstrate its breach of fiduciary duty claim *is* distinguishable because it arises out of a duty *other than* one created by the attorney-client relationship or because it is based on different material facts. Consequently, we hold the breach of fiduciary duty claim is duplicative.

Id., 399 S.C. at 336–37, 732 S.E.2d at 173 (internal citation omitted) (emphasis in original).

Similarly, in *Gibson*, the appellants (an individual and several of her companies) sued the respondents (several attorneys and their respective law firms) for multiple claims, including legal malpractice and breach of fiduciary duty, related to the attorneys’ representation of them in a real estate matter. 426 S.C. at 350, 827 S.E.2d at 180. The trial court granted summary judgment in favor of the respondents. *Id.* In affirming the trial court’s decision, this Court noted, “[Appellant] asserts Respondents breached their fiduciary duty to her in numerous ways, all of which

duplicate her legal malpractice claim because the duties arose out of the attorney-client relationship and she alleges the same facts as to both claims. . . . Accordingly, we only address [Appellant’s] claim for legal malpractice.” *Id.*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173).

Here, Appellants allege that Respondents breached the fiduciary duties of confidentiality and loyalty. [See Second Amended Complaint, pp. 18-19, ¶¶ 87-96]. Those duties are inherent in the attorney-client relationship. Moreover, Appellants’ breach of fiduciary duty claim is premised on the same factual allegations as their legal malpractice claim. [See Second Amended Complaint, pp. 16-19, ¶¶ 79-96, ROA ____]. Therefore, Appellants’ claim for legal malpractice necessarily encompasses an alleged breach of the fiduciary duty that attorneys have to their clients. See *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173; and *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182. Therefore, Appellants’ breach of fiduciary duty claim is duplicative, and the trial court’s reliance on *RFT Management Co.* and *Gibson* was not in error.

Instead, Appellants contend that *Smith v. Hastie* is more applicable to the present case. [Appellants’ Initial Brief, p. 27 (citing *Smith*, 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005))]. There, Smith sued her former attorney for several claims, including breach of fiduciary duty and professional negligence, arising from the attorney’s creation of a family limited partnership for the appellant and her family. *Smith*, 367 S.C. at 413, 626 S.E.2d at 14. The trial court granted summary judgment in favor of the lawyer and dismissed all of Smith’s claims with prejudice, holding that “(1) Smith failed to commence her lawsuit within the applicable limitations period; (2) Smith’s malpractice claims failed for lack of evidence; and (3) Smith’s claims were barred by the doctrine of collateral estoppel.” *Id.*, 367 S.C. at 415, 626 S.E.2d at 16. While this Court disagreed with the trial court’s grant of summary judgment on Smith’s claims for negligence and

breach of fiduciary duty, the opinion contains no discussion about duplicity or merger of these claims, as that was not an issue before this Court. *See id.*, 367 S.C. at 417–21, 626 S.E.2d at 16–18. Accordingly, *Smith* is not relevant in determining whether the trial court here erred in holding that Appellants’ breach of fiduciary duty claim is duplicative of their legal malpractice claim. For the reasons discussed above, it did not.¹¹

The trial court correctly dismissed Appellants’ breach of fiduciary duty claim. Accordingly, this Court should affirm the trial court’s ruling as to Appellants’ breach of fiduciary duty claim.

VIII. The trial court correctly held that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law.

The trial court correctly held that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law. Pursuant to S.C. Code Ann. § 15-36-100, the plaintiff in a professional negligence action “must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100(B).

A. Timeliness

The trial court correctly held that the affidavit of Justin Dillon was untimely as a matter of law. “If a plaintiff fails to file an affidavit as required by [§ 15-36-100], and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable

¹¹ To the extent that the trial court did err in holding that Appellants’ breach of fiduciary duty claim is duplicative of their legal malpractice claim, such error is harmless, as Appellants failed to state a claim for either cause of action for the reasons discussed herein. *See Judy*, 384 S.C. at 646, 682 S.E.2d at 842.

period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake.” S.C. Code Ann. § 15-36-100(F).

When Appellants filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit. [See *generally* Complaint, ROA ____]. Instead, Appellants alleged that pursuant to § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” [Complaint, p. 20, ¶ 103, ROA ____]. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. [See Amended Complaint, ROA ____]. In response to Respondents’ respective motions to dismiss, which raised Appellants’ untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to expert affidavit issue. [See Second Amended Complaint, pp. 20-21, ¶ 103, ROA ____]. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. [Second Amended Complaint, pp. 20-21, ¶ 103, ROA ____]. Appellants further claimed that they were filing their Second Amended Complaint under § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. [Second Amended Complaint, p. 21, ¶ 103, ROA ____]. Appellants now argue that the trial court ignored these allegations, which they contend establish that the expert affidavit was timely filed. [Appellants’ Initial Brief, pp. 28-29].

As an initial matter, by its plain language, § 15-36-100(E) only applies where a plaintiff has filed an expert affidavit that is alleged to be insufficient, not where a plaintiff has failed to file any expert affidavit. *See* S.C. Code Ann. § 15-36-100(E).¹² Stated differently, this section allows a plaintiff to cure an alleged defect *in the affidavit* by amending *the affidavit* within a certain amount of time. *See id.* It does not permit a plaintiff to cure his failure to file any affidavit at all by amending *the pleadings* to include an affidavit. *See id.* Accordingly, Appellants' reliance on § 15-36-100(E) is misplaced.

Next, § 15-36-100(C)(1) provides, in part, that the contemporaneous filing requirement “does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing **and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.**” § 15-36-100(C)(1) (emphasis added). Simply put, Appellants made no such allegation in their initial Complaint. [*See generally* Complaint, ROA ____].¹³ Further, allowing plaintiffs to circumvent the requirements of § 15-36-100 would effectively extend the statute of limitations for professional negligence claims, contrary to the public policy behind the statute. Accordingly, the trial court correctly held that Appellants' expert affidavit was untimely as a matter of law, which provided an independent basis to dismiss Appellants' legal malpractice

¹² “**If a plaintiff files an affidavit which is allegedly defective**, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective.” *Id.* (emphasis added).

¹³ Moreover, Respondents note that counsel for Appellants sent a letter of representation on September 19, 2019 (approximately 18 months prior to the filing of their initial Complaint) [*see* ROA ____] and an additional letter of representation on February 26, 2021 (approximately three weeks prior to the filing of their initial Complaint) [*see* ROA ____]. Accordingly, Respondents could not have reasonably alleged that an affidavit could not be prepared due to time constraints.

claims. *See* S.C. Code Ann. § 15-36-100(F) (“If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation . . .”).

B. Sufficiency

Further, regardless of whether the expert affidavit was timely filed, the trial court correctly held that the affidavit of Justin Dillon was insufficient as a matter of law. Section 15-36-100(A) requires that the expert be “qualified as to the acceptable conduct of the professional whose conduct is at issue” and lists several additional requirements. *See* S.C. Code Ann. § 15-36-100(A). “The defendant is entitled to challenge the sufficiency of the expert’s credentials pursuant to subsection (E).” *Id.*

The trial court made the following findings regarding Mr. Dillon’s credentials:

- Mr. Dillon has never been licensed (or admitted pro hac vice) to practice law in the state or federal courts or South Carolina, nor is he licensed in the Fourth Circuit Court of Appeals;
- Mr. Dillon does not claim to be familiar with the nature of federal practice in the U.S. District Court for the District of South Carolina, its Local Civil Rules, or the nature or manner of mediations conducted in South Carolina; and
- Mr. Dillon reviewed few of the voluminous materials related to the underlying facts at issue.¹⁴

¹⁴ Mr. Dillon stated in his affidavit that he only reviewed 13 documents in rendering his opinion, which primarily consisted of the pleadings in the underlying lawsuits. [See Second Amended Complaint, Exhibit 1, ROA ____].

[See Order Granting Brewer Motion to Dismiss, pp. 8-9, ROA ____; *and* Order Granting Clawson Fagnoli Motion to Dismiss, p. 9, ROA ____]. The trial court explained that the crux of Appellants’ legal malpractice claim is Respondents’ advice to Appellant Andrew Pampu during the mediation of the Federal Case and that because Mr. Dillon’s purported experience related mainly to Title IX claims but not South Carolina federal or state court procedures or litigation, his experience was not sufficiently related to Appellants’ legal malpractice claims as pled in their Second Amended Complaint. [Order Granting Brewer Motion to Dismiss, p. 9, ROA ____; Order Granting Clawson Fagnoli Motion to Dismiss, p. 9, ROA ____].

Appellants argue that the trial court erred by not accepting as true Mr. Dillon’s qualifications as stated in his curriculum vitae, which was included with his affidavit. [Appellants’ Initial Brief, p. 30]. Specifically, Appellants contend that Mr. Dillon’s CV “identifies his specialized, technical knowledge regarding the Title IX and related matter at issue in the underlying lawsuits.” [Appellants’ Initial Brief, p. 30]. However, while Mr. Dillon’s CV listed his purported experience related to Title IX claims, it indicated no such experience with South Carolina federal or state court statutes, rules, procedures, or standards of care.

Appellants further argue that the affidavit is facially sufficient because it identifies a potentially meritorious legal malpractice claim and that § 15-36-100(E) does not permit the trial court to address the substance of those opinions. [Appellants’ Initial Brief, p. 30]. However, the trial court did not address the substance of Mr. Dillon’s opinions. Rather, the trial court addressed Mr. Dillon’s credentials—specifically, his lack of relevant South Carolina legal expertise and, implicitly, his inability to offer expert opinions relating to the application of South Carolina standards of care for South Carolina attorneys (as distinguished from the substance of any such opinions). [See Order Granting Brewer Motion to Dismiss, pp. 8-9, ROA ____; *and*

Order Granting Clawson Fagnoli Motion to Dismiss, p. 9, ROA ____]. Accordingly, Appellants' arguments regarding the substance of Mr. Dillon's opinions are not at issue on appeal.

Next, Appellants argue that the trial court improperly held that Mr. Dillon's credentials were inadequate "because he has not actually practiced in South Carolina federal or state court." [Appellants' Initial Brief, pp. 30-31]. However, the trial court made no such holding. In fact, the trial court acknowledged that there is no requirement that the expert witness in a legal malpractice action be a South Carolina-barred attorney. [See Order Granting Brewer Motion to Dismiss, p. 9, ROA ____; and Order Granting Clawson Fagnoli Motion to Dismiss, p. 9, ROA ____]. Rather, the trial court explained that the crux of Appellants' legal malpractice claim is Respondents' advice to Appellant Andrew Pampu during the mediation of the Federal Case. [*Id.*]. Because Mr. Dillon's purported experience related mainly to Title IX claims, but not South Carolina federal or state court statutes, rules, procedures, or standards of care, the trial court determined that his experience was not sufficiently related to Appellants' legal malpractice claims as pled in their Second Amended Complaint. [*Id.*].

In support of their argument, Appellants cite *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 472 S.E.2d 612 (1996). However, *Smith* was decided in 1996, while § 15-56-100 became effective in 2005. Accordingly, *Smith* is irrelevant for purposes of assessing the sufficiency of an expert affidavit pursuant to § 15-56-100. Notably, while the court held that the expert's lack of a South Carolina law license did not disqualify him as an expert (in the context of a motion to exclude), the court also ruled regarding the "locality rule":

In the context of legal malpractice, most courts which originally adopted a strict locality rule have expanded the relevant geographical region to create a **statewide** standard of care. The rationale for this development is that **attorneys are generally regulated on a statewide basis, with state rules of procedure and different substantive laws**. Accordingly, we adopt the majority view and rule

that the standard to be applied in determining legal malpractice issues is **statewide**.

Smith, 322 S.C. at 437–38, 472 S.E.2d at 614 (emphasis added) (internal citations omitted). Accordingly, Appellants’ references to the locality rule—and their implied contention that the trial court applied it—is inapposite. Rather, the trial court properly held that Mr. Dillon did not have the requisite qualifications regarding South Carolina federal or state court statutes, rules, procedures, or standards of care pursuant to § 15-56-100(A)(2).

Appellants also argue that the trial court erred in stating that “Mr. Dillon holds himself out to be an expert in legal malpractice claims in South Carolina district court litigation.” [Appellants’ Initial Brief, p. 31]. While Mr. Dillon may not have explicitly stated so in his affidavit, he purported to state opinions regarding alleged acts or omissions of South Carolina attorneys during a South Carolina federal court mediation, implicitly holding himself out as an expert in that area.

Finally, Appellants contend that the trial court incorrectly imposed a “sufficiently related” standard that is absent from § 15-56-100. [Appellants’ Initial Brief, p. 31]. While the phrase “sufficiently related” is not present in the statute, it does require that the expert have “actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given.” S.C. Code Ann. § 15-56-100(A)(2)(b).

The trial court correctly determined that Mr. Dillon—who has never practiced or taught in South Carolina—does not have the requisite expertise to testify as to alleged acts or omissions of South Carolina attorneys during a South Carolina federal court mediation. Accordingly, the trial court properly dismissed Appellants’ legal malpractice claim on this independent basis. *See* S.C. Code Ann. § 15-36-100(E) (“If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed

contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim . . .").

IX. The trial court correctly found Appellants' claims against public policy.

The trial court correctly found that Appellants' claims were against public policy. The trial court properly held that Appellants' claims "violate the important public policy on the finality of mediation in civil cases." [Order Granting Brewer Motion to Dismiss, pp. 10-11, ROA ____; Order Granting Clawson Fagnoli Motion to Dismiss, p. 11, ROA ____]. The trial court further explained that Appellants' allegations "center almost exclusively on the fact that [Appellant] Andrew Pampu did not get everything that he wanted at mediation." [*Id.*].

Appellants argue that the trial courts' holding regarding public policy is contrary to South Carolina law. [Appellants' Initial Brief, pp. 31-32]. Specifically, Appellants point to Rule 8(c)(3) of the South Carolina Rules for Alternative Dispute Resolution, which provides that "[t]here is no confidentiality attached to information that is disclosed during a mediation . . . offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding." SCRADR 8(c)(3). Appellants contend that this rule contemplates legal malpractice lawsuits based on lawyers' conduct at mediations. [Appellants' Initial Brief, p. 32]. However, Appellants ignore Rule 8(g), which explicitly states, "The mediator **shall not** be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and other documents received by the mediator while serving in that capacity shall be confidential." SCRADR 8(g) (emphasis added). Similarly, Rule 16.10(E) of the Local Civil Rules for the United States District Court for the District of South Carolina provides:

Except when ordered by the court for exceptional circumstances shown, the mediator **shall not** be listed or called as a witness or be compelled by subpoena or

otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, and other documents received or created by the mediator while serving in that capacity shall be confidential.

LCvR 16.10 (emphasis added). These rules clearly suggest that these types of claims are against public policy because the mediator would be the key witness, as he could testify objectively to what occurred at the mediation. Therefore, the trial court properly dismissed these claims as against public policy, and this Court should affirm that holding.

X. Appellants have failed to correct the record relating to their recusal argument in their Motion for Reconsideration.

Appellants have failed to correct the record relating to their recusal argument in their Motion for Reconsideration. Appellants concluded their motion by making troubling allegations that the trial judge did not recuse himself when his impartiality might be questioned. Specifically, Appellants alleged that the trial judge had a personal bias in favor of Respondent Samuel R. Clawson, Jr., Esq. based on an alleged long-term law partnership with Respondent Clawson's father. [Motion for Reconsideration, p. 6, ¶ 17, ROA ____]. However, those allegations were categorically false, as Respondent Clawson's father had never had a professional or personal association with the trial judge, aside from perhaps appearing before the judge, as had many attorneys in this state. When confronted with this fact, counsel for Appellants stated, "[Appellants] will accept your statement and will withdraw the statements contained in Paragraph 17 of the motion and will make that known to the judge at the outset of the hearing on the motion." [January 18, 2023 email from Thomas Pendarvis, ROA ____]. However, the trial court ruled on the motion without a hearing, and, to date, the statements have not been withdrawn. Appellants have failed to correct the record, which is now pending before this Court,

thereby perpetuating this falsehood. Accordingly, this Court should order that those statements be stricken from the record in this matter.

Conclusion

For these reasons, Respondents respectfully request that this Court affirm the trial court's orders in their entirety.

April 12, 2024

/s/ Emily E. Seaton

James M. Dedman, IV (S.C. Bar No. 70664)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343
Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

APPELLANTS' INITIAL REPLY BRIEF

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REPLY ARGUMENTS

I. The trial court's Orders dismissing all of Appellants' causes of action with prejudice "involve the merits" and are immediately appealable.

Respondents' arguments claiming the trial court's orders are interlocutory should be rejected on multiple grounds. The Orders a) dismiss the Appellants' claims asserted in their Second Amended Complaint ("Complaint") with prejudice and b) contain findings that will adversely affect the Appellants' defenses to the Respondents' counterclaims. The existence of Respondents' counterclaims has no effect on whether the Orders are subject to an immediate appeal.

A. The trial court's Orders "involve the merits."

The trial court's Orders are ripe for appellate review and are not interlocutory because those Orders contain findings dismissing all Appellants' causes of action asserted against Respondents. An order granting a dispositive motion is immediately appealable. See Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 3-6, 393 S.E.2d 176, 177-79 (1990) (explaining an order dismissing one of multiple claims is immediately appealable).

Section 14-3-330 of the South Carolina Code addresses appellate jurisdiction and provides in part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed therefrom any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

Intermediate orders involving the merits may be immediately appealed pursuant to subsection 14-3-330(1). “An order involves the merits under § 14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense. Stone v. Thompson, 426 S.C. 291, 294-95, 826 S.E.2d 868, 869-70 (2019) (citing Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (“An order involving the merits is one that ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’”). An order “involves the merits,” for purposes of exception to the final judgment rule of appealability, when it finally determines some substantial matter forming the whole or a part of some cause of action or defense. Tillman v. Tillman, 420 S.C. 246, 801 S.E.2d 757 (Ct. App. 2017); Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014).

In this case, the trial court’s Orders granting Respondents’ motions to dismiss finally determined a substantial matter forming all of the Appellants’ causes of action and, therefore, involved the merits. See Stone, 426 S.C. at 295, 826 S.E.2d at 870.

The Respondents’ citation and substantial reliance on this Court’s findings in Richardson v. Halcyon Real Estate Services, LLP,¹ as its primary authority supporting its claim that the Appellants’ appeal is interlocutory is quite remarkable, because unlike the trial court in this case, none of the orders issued by the trial court in Richardson disposed of any claims or counterclaims, but instead dealt with depositions and discovery sanctions. 439 S.C. at 423, 887 S.E.2d at 155.

Interlocutory orders affecting a substantial right may be immediately appealed pursuant to subsection 14-3-330(2). Orders affecting a substantial right “discontinue an action, prevent an

¹ 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023).

appeal, grant or refuse a new trial, or strike out an action or defense.” MidState Distribs., Inc., 310 S.C. at 334 n.4, 426 S.E.2d at 780 n.4.

There is nothing “piecemeal” about the Appellants’ appeal in this case. The trial court’s Orders “involve the merits” and finally dismissed all the Appellants’ causes of action against Respondents. This appeal is appropriate and ripe for review.

B. Incorrect findings in the trial court’s Orders will adversely affect Appellants’ defenses to Respondents’ counterclaims.

Findings in the trial court’s Orders will materially affect the Appellants’ ability to assert the Respondents were terminated “for cause,” thereby adversely affecting their defenses to the Respondents’ counterclaims for fees. The Appellants’ Complaint alleges the Respondents were terminated “for cause”. R. ____; Complaint, ¶¶ 49 and 66.

C. Respondents’ counterclaims are stayed during the appeal because the appeal directly affects those matters.

“Generally, serving [the] notice of appeal divests the lower court of jurisdiction over the order appealed, except for matters not affected by the appeal.” Wilson v. Walker, 340 S.C. 531, 539, 532 S.E.2d 19, 23 (Ct. App. 2000); Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal.” (citing Rule 205, SCACR)).

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR.

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR.

The reference in Rules 205 and 241(a) to the “jurisdiction” of the lower courts does not refer to subject matter jurisdiction. Rather, the rules govern the circumstances under which the exclusive appellate jurisdiction Rule 205 grants to the appellate court deprives the lower court of the power to address a particular issue, or “matter,” during the pendency of the appeal.

Tillman v. Oakes, 398 S.C. 245, 256 n.3, 728 S.E.2d 45, 51 n.3 (Ct. App. 2012).

“When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending.” Id., 398 S.C. at 254-55, 728 S.E.2d at 50.

The matters included in the Appellants’ appeal include whether the Respondents were terminated “for cause” as alleged in Paragraphs 49 and 66 in the Appellants’ Complaint. R. ____.

If the trial court’s Orders are reversed on appeal and if the finder of fact agrees with Appellants’ arguments, such findings would prevent the Respondents from recovering on their claims for legal fees. See e.g., Est. of McClain v. Killmer, Lane & Newman, LLP, ____ P.3d ____, 2024 WL 2066330, *9 (Colo. App. May 9, 2024) (“[A] quantum meruit fee is not permitted when a client terminates the lawyer for cause and the fee agreement lacks a conversion clause.”); Maher v. Quality Bus Service, LLC, 144 A.D.3d 990, 42 N.Y.S.3d 43 (2d Dep’t 2016) (lawyer discharged

for cause is not entitled to compensation).

These Orders are not interlocutory, and the appeal should continue.

II. The Respondents' arguments on the Appellants' legal malpractice claims ignore specific fact allegations in the Complaint showing they would have obtained a better result in the underlying matter if the Respondents had exercised reasonable care.

The Respondents argue that the trial court's Orders properly dismissed the Appellants' legal malpractice claims because they failed to allege specific facts showing they would have obtained a better result in the underlying matter if the Respondents had exercised reasonable care. On page 16 of their Brief, the Respondents' summary description of the trial court's errors in dismissing the Appellants' legal malpractice/professional negligence claims as outlined in the Appellants' Brief, followed by its interpretation of this Court's rulings in Doe v. Howe.²

However, the Respondents carefully avoid mentioning the Appellants' allegations in Paragraphs 68-71 in their Complaint containing specific allegations of fact on how they would have obtained a better result had the Respondents met the standard of care. The Respondents urge this Court to conclude that the "Appellants still must allege facts in their complaint that, if true, would support that they 'would have obtained a better result in the underlying matter if [Respondents] had exercised reasonable care.'" Respondents Brief at 17 citing Doe v. Howe and then referring *only* to Paragraph 1 in the Appellants' Complaint. The problem with Respondents' arguments (and the trial court's rulings) is that the Appellants did allege facts in their Complaint which, if taken as true, would support that they "would have obtained a better result in the underlying matter if Respondents had exercised reasonable care." The trial court's rulings ignoring these allegations constitutes reversible error.

In Paragraphs 67-71 of their Complaint, the Appellants alleged

² 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005).

As a direct, proximate and foreseeable result of the [Respondents]' actions and inactions before and after their being relieved as counsel, [Appellants] suffered damages, including ***loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the [Respondents]' actions and inactions.***

Had the [Respondents] met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice [Appellant, Andrew Pampu] in the State Court mediation and litigation, ***a substantial portion of the damages sustained*** by [Appellant, Andrew Pampu] (recounted throughout this Complaint) ***should have been avoided.***

Had the [Respondents] met the fiduciary standard of conduct by properly, accurately or timely attempting to assert an alleged charging lien, ***a substantial portion of the damages sustained*** by [Appellant, Andrew Pampu] (recounted throughout this Complaint) ***should have been avoided.***

As a direct, proximate and foreseeable result of the [Respondents]' actions and inactions ***in the Federal Case*** and its mediation, the [Appellants] suffered damages, including ***loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm*** caused by the [Respondents]' actions and inactions.

Had the [Respondents] met the standard of care by properly, accurately or timely advising [Appellant, Andrew Pampu] before, during and after the Federal Case mediation regarding any terms of the Federal Case mediation, the damages sustained by [Appellant, Andrew Pampu] (recounted throughout this Complaint) should have been avoided.

R. ____, Complaint, ¶¶ 67-71 (emphasis added).

While the Respondents' Brief accurately states that the State Case was pending when the Complaint was filed, it completely ignores the impact the Respondents' acts and omissions had on the Federal Case, notwithstanding the specific allegations in Paragraphs 69-71.

The arguments in the Respondents' Brief that the Appellants' Complaint. "contains merely conclusory allegations that Respondents were negligent in the manner in which they concluded the representation" ignores the actual pleadings. Like the trial court, Respondents ignore the

allegations about the adverse consequences resulting from Respondents' actions in sending correspondence to opposing counsel and other third parties asserting their alleged "charging lien." Although the Supreme Court's last pronouncement on this issue was in an unpublished opinion, their view is that opposing counsel and other third parties are not subject to any duties to protect a "charging lien" asserted by counsel for the opposing party. See Byrd v. Wausau Underwriters Ins. Cos., No. 2011-MO-002, 2011 WL 11748258, at *1 (S.C. Jan. 7, 2011). Therefore, the allegations in the Appellants' pleadings that the Respondents' sending a lien letter to third parties who had no duties to protect their alleged lien was improper and interfered with the mediation process and settlement negotiations, which caused the Appellants to "spend several hundred thousand dollars litigating" because the matter was not resolved at or shortly after the federal court mediation.

The Respondents did not have the Appellants' permission to disclose information related to the representation of the Appellants to third parties without the Appellants' consent, and the Respondents' breach of those duties are alleged in the Complaint to have caused damages to the Appellants. The Appellants' Complaint states claims for breach of fiduciary duty and the trial court's Orders dismissing this cause of action should be reversed.

The allegations in the Complaint sufficiently state facts on which relief can be granted. Hager v. McCabe, Trotter & Beverly, P.C., 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022) ("If the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper."). The trial court's Orders granting the motions dismissing the Appellants' cause of action for legal malpractice/professional negligence were reversible errors.

III. The trial court's Orders and Respondents' Brief misapprehend South Carolina's fiduciary duty jurisprudence recognizing a fiduciary's liability for breach of their duties of confidentiality and loyalty.

Neither the trial court's Orders nor the Respondents' Brief dispute a fiduciary's liability for disclosing confidential information. Cf., McCormick v. England, 328 S.C. 627, 630, 494 S.E.2d 431, 432 (Ct. App. 1997) (physician can be liable for breach of a duty of confidentiality). Instead, the Respondents' Brief simply disputes whether the Appellants actually suffered any damages and not whether the Complaint states facts sufficient to show damages. The Respondents' Brief pays little to no attention to the allegations in the Complaint alleging damages the Respondents caused to the Appellants' Federal Case, including damages caused by disclosing confidential information to third parties in breach of their fiduciary duties. It was a reversible error for the trial court to grant the motions dismissing the Appellants' breach of fiduciary duty claims.

IV. John Pampu and Amanda Pampu have standing to pursue their breach of contract claims against the Respondents.

Both the trial court and the Respondents' Brief ignore specific allegations in the Complaint alleging 1) the existence of the client-lawyer relationship between the Respondents, as counsel, and John Pampu and Amanda Pampu, as clients, and 2) a contractual relationship in which the Respondents were to provide legal services without regard to whether a client-lawyer relationship existed. The trial court committed reversible error when it disregarded the allegations in Paragraphs 14 and 98 of the Complaint, which state:

14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively "the Law Firms") contracted to represent the [Appellants] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

98. Law Firms entered into a Contract with the [Appellants] agreeing and contracting to provide legal services to represent the [Appellants] in the Federal

Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.”

R. ___, Complaint ¶¶ 14 and 98.

One can reasonably infer John Pampu and Amanda Pampu, as the parents of Andrew Pampu, were paying the legal fees and costs associated with the Respondents’ representation in the underlying matters. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987) (“A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and *inferences reasonably deducible therefrom* would entitle the plaintiff to any relief on any theory of the case.”) (emphasis added); Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (“If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.”).

John Pampu and Amanda Pampu have standing to assert breach of contract claims against the Respondents because they were the parties to the contract who were paying the legal fees. Jaffe v. Gibbons, 290 S.C. 468, 472, 351 S.E.2d 343, 345 (Ct. App. 1986) (“The general rule is that where both parties have signed a contract, the signing by the first party is in effect his proposal or offer, and the signing by the second party is his acceptance thereof; the writing then represents or evidences the bargain between them.”); Fabian v. Lindsay, 410 S.C. 475, 488, 765 S.E.2d 132, 139 (2014) (“Generally, one *not in privity of contract* with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of contract between the defendant and a third-party is not, as such, recoverable by the plaintiff.”) (emphasis added).

The Respondents’ Brief—like the trial court’s Orders—fails to consider as true the Appellants’ allegations that the Respondents agreed and contracted “to provide legal services to

represent the Does in the Federal Case, the State Case, and ‘any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits[,]’” and breached the contract by “failing to provide such services,” which for the purposes of a motion to dismiss or required to be taken as true. See R. ___, Complaint, ¶¶ 98 and 99. The Complaint states a breach of contract claim on behalf of John Pampu and Amanda Pampu.

The Respondents’ arguments that the Appellants’ breach of contract claim “is simply a recharacterization of their legal malpractice and breach of fiduciary duty claims” should be rejected. Rule 8(a), SCRCP, permits “[r]elief in the alternative, or of several different types may be demanded” in a pleading. See Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (“We find it is entirely appropriate for Skydive to allege that some of an individual’s actions were within the scope of their official duties, and some were not, or even to plead alternative theories of liability depending on whether an individual’s actions were within the scope of their duties.”) (citing Rule 8(a), SCRCP). The trial court’s rulings in its Orders were not “harmless error” as argued by the Respondents. John Pampu and Amanda Pampu have legitimate and viable breach of contract claims, which they should be permitted to litigate on the merits.

V. The Respondents’ Brief fails to address the trial court’s reversible error in not permitting the Appellants to plead in the alternative as provided under Rule 8(a) of the South Carolina Rules of Civil Procedure.

Nowhere in the four pages of arguments in the Respondents’ Brief do they make any argument supporting the trial court’s rulings that were contrary to Rule 8(a), SCRCP, which prevented the Appellants from pleading in the alternative. The Appellants’ Brief explains why this was a reversible error by the trial court because the rulings in RFT Management Co. v. Tinsley &

Adams, L.L.P.³ and Gibson v. Epting⁴ were not applicable to the trial court’s rulings on a motion to dismiss. Nothing in the Respondents’ Brief defeats those arguments.

In the light most favorable to the Appellants, there Complaint alleges specific facts supporting claims for professional negligence, see e.g., R. ___, Complaint ¶¶ 28, 29, 38, and 41-42, and also alleges specific facts supporting claims for breach of the fiduciary duties of loyalty and confidentiality. See e.g., R. ___, Complaint ¶¶ 47, 61, 63, and 66. The Appellants’ breach of fiduciary duty claim is **not** “premised on the same factual allegations as their legal malpractice claim” as argued on page 28 of the Respondents’ Brief. Applying Rule 8(a), SCRCF, permitting pleading in the alternative should have controlled the trial court’s rulings, especially given the separate factual allegations supporting each of these two independent claims, legal malpractice, and breach of fiduciary duty.

The Respondents’ Brief argues this Court’s rulings in Smith v. Hastie⁵ are not relevant in determining whether the trial court made an error in this case because that opinion “contains no discussion about duplicity or merger of these claims.” Respondents Brief at pp. 28-29. The problem with the Respondents’ argument is this Court’s ruling in Smith v. Hastie is grounded on the concept that parties are permitted to plead in the alternative, which eliminated the need for any discussion about duplicity or merger of claims. It was error for the trial court to hold that Appellants’ breach of fiduciary duty claim was duplicative of their legal malpractice claim based on the specific factual allegations supporting each of these claims, and based on Rule 8(a), SCRCF, specifically permitting parties to plead in the alternative.

³ 399 S.C. 322, 732 S.E.2d 166 (2012).

⁴ 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019).

⁵ 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005).

VI. The affidavit by the Appellants' expert was timely filed and sufficient to satisfy all statutory requirements.

The statements of fact in Paragraph 103 in the Appellants' Complaint concerning the filing of the expert's affidavit explain the events leading to the timely filing of the affidavit as permitted under S.C. CODE ANN. § 15-36-100, including all subparts. The substance of Justin Dillon, Esq.'s affidavit, including his CV showing the wealth of his experience in federal courts on Title IX matters, demonstrates why he is "qualified as to the acceptable conduct of the professional whose conduct is at issue." The Appellants' Title IX claims that the Respondents "strongly urged" the Appellant, Andrew Pampu, to release as part of the defective settlement agreement are a significant part of the Appellants' legal malpractice claims. Mr. Dillon is eminently qualified to provide expert opinions on the Respondents' failure to meet the standard of care in prosecuting those Title IX claims. Title IX claims are Title IX claims regardless of whether they are being litigated in South Carolina or other jurisdictions. The Respondents' contrary arguments should be rejected and the trial court's rulings should be reversed. Mr. Dillon's affidavit sufficiently and succinctly identified one negligent act by the Respondents.

While, like the amended complaint, this affidavit is generic in some ways, it too contains the minimal information necessary to survive a motion to dismiss. Our supreme court has held that section 15-36-100 requires only that the affidavit specify the "breach" element of malpractice. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 537, 725 S.E.2d 693, 696 (2012). This affidavit does that.

Hager v. McCabe, Trotter & Beverly, P.C., 435 S.C. at 752, 869 S.E.2d at 892.

The trial court erred in concluding that Mr. Dillon's expert affidavit was not timely filed and insufficient as a matter of law. Those rulings should be reversed, and this matter should be remanded for trial.

VII. The Respondents' Brief and the trial court's Orders misapprehend South Carolina's public policy permitting legal malpractice claims based on a lawyer's errors during a mediation.

It is understandable why the Respondents' Brief does not address why Rule 8(c)(3), SCADR, defeats the trial court's findings that the Appellants' claims are against public policy. This is because there would be no reason for the South Carolina Supreme Court to include Rule 8(c)(3) in the South Carolina Rules of Alternative Dispute Resolution if South Carolina public policy did not permit lawsuits based on alleged "professional malpractice occurring during the mediation" as expressly stated in Rule 8(c)(3). The Respondents' arguments about Rule 8(g), SCADR, concerning motions to compel disclosures by a mediator simply have no bearing on the trial court's rulings on South Carolina public policy or this appeal. The plain language in Rule 8(c)(3), SCADR, demonstrates why the trial court's rulings on South Carolina public policy should be reversed.

CONCLUSION

Appellants Andrew Pampu, Amanda Pampu, and John Pampu respectfully request that this Court reverse the trial court's ruling dismissing their Complaint with prejudice and remand the matter to allow them to maintain their legal malpractice, breach of fiduciary duty, and breach of contract claims against the Respondents.

Respectfully submitted,

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RECEIVED

May 22 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on May 22, 2024, a copy of the Appellants Initial Reply Brief filed on behalf of Appellants, Andrew Pampu; Amanda Pampu; and John Pampu, was served on all counsel of record via electronic mail containing the above-referenced documents to each counsel's individual AIS email addresses as follows:

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May 22, 2024

Beaufort, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge
Civil Action No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants

v.

Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and Brewer Law Firm, LLC..... Respondents

RESPONDENTS' FINAL BRIEF

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Statement of Issues on Appeal

1. Are the trial court orders from which Appellants attempt to appeal immediately appealable?
2. Did the trial court correctly hold that Appellants failed to state a claim for legal malpractice?
3. Did the trial court correctly hold that Appellants failed to state a claim for breach of fiduciary duty?
4. Did the trial court correctly hold that Appellant John Pampu and Appellant Amanda Pampu lack standing?
5. Did the trial court correctly hold that Appellants failed to state a claim for breach of contract?
6. Did the trial court correctly hold that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim?
7. Did the trial court correctly hold that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law?
8. Did the trial court correctly find Appellants' claims against public policy?
9. Did Appellants fail to correct the record relating to their recusal argument in their Motion for Reconsideration?

Statement of the Case

Appellants initiated this action on March 19, 2021, asserting causes of action for professional negligence, breach of fiduciary duty, and breach of contract related to legal services Respondents provided in two underlying lawsuits. [See Complaint, R. pp. 36-56]. That same day, Appellants filed a Motion to Proceed Anonymously Under Pseudonyms. [See Motion to Proceed Anonymously Under Pseudonyms, R. pp. 32-34]. Appellants amended their Complaint on April 30, 2021, and included an affidavit from Justin Dillon, Esq. [See Amended Complaint, R. pp. 58-78; and Expert Affidavit by Justin Dillon, Esq., R. pp. 79-87]. On May 9, 2021, and May 10, 2021, respectively, the Clawson Fargnoli Respondents and the Brewer Respondents filed motions to dismiss, asking the trial court to dismiss Appellants' Amended Complaint in its entirety.

[*See* Clawson Fagnoli Motion to Dismiss Amended Complaint, R. pp. 88-91; *and* Brewer Motion to Dismiss Amended Complaint, R. pp. 95-98]. On those same dates, Respondents also filed motions to prohibit Appellants from using pseudonyms. [*See* Clawson Fagnoli Motion to Prohibit Pseudonyms, R. pp. 92-94; *and* Brewer Motion to Prohibit Pseudonyms, R. pp. 99-102].

In response to Respondents' motions to dismiss, Appellants amended their complaint again on June 16, 2021. [*See* Second Amended Complaint, R. pp. 110-41]. Appellants' Second Amended Complaint remains the operative pleading in this action.

On June 28, 2021, and June 30, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents answered the Second Amended Complaint and asserted counterclaims against Appellants for breach of contract and unjust enrichment related to fees owed to them for their work on one of the underlying lawsuits. [*See* Clawson Fagnoli Answer to Second Amended Complaint and Counterclaims, R. pp. 142-68; *and* Brewer Answer to Second Amended Complaint and Counterclaims, R. pp. 176-93]. On those same dates, Respondents filed motions to dismiss, asking the trial court to dismiss Appellants' Second Amended Complaint in its entirety. [*See* Brewer Motion to Dismiss Second Amended Complaint, R. pp. 194-97; *and* Clawson Fagnoli Motion to Dismiss Second Amended Complaint, R. pp. 169-72]. On July 28, 2021, Appellants replied to Respondents' respective counterclaims. [*See* Reply to Brewer Counterclaims, R. pp. 198-202; *and* Reply to Clawson Fagnoli Counterclaims, R. pp. 203-07]. On October 22, 2021, Respondents jointly submitted a memorandum in support of their motions to dismiss. [*See* Respondents' Joint Memorandum in Support of Motion to Dismiss Second Amended Complaint, R. pp. 241-63]. On December 15, 2021, Appellants submitted a response in opposition to Respondents' memorandum. [*See* Combined Memorandum in Opposition to Motions to Dismiss Second Amended Complaint, R. pp. 264-76].

On March 2, 2022, the trial court conducted a virtual hearing on Respondents’ motions to dismiss and motions to prohibit use of pseudonyms. [See Transcript, R. pp. 285-337]. On March 4, 2022, the trial court issued an order granting Respondents’ motions to prohibit use of pseudonyms. [See Order Granting Motions to Prohibit Pseudonyms, R. pp. 3-5]. On June 23, 2022, the trial court issued separate orders granting Respondents’ respective motions to dismiss and dismissing Appellants’ Second Amended Complaint in its entirety. [See Order Granting Brewer Motion to Dismiss, R. pp. 6-18; and Order Granting Clawson Fagnoli Motion to Dismiss, R. pp. 19-30]. Thereafter, on July 5, 2022, Appellants filed a Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants’ Motions to Dismiss [see R. pp. 277-84]. On October 23, 2023, the trial court denied the motion. [See Order Denying Motion for Reconsideration, R. pp. 1-2].

On November 14, 2023, Appellants served a Notice of Appeal. Appellants seek to appeal three orders issue by the trial court: (1) June 23, 2022 Order Granting Motion to Dismiss for the Brewer Respondents, (2) June 23, 2022 Order Granting Motion to Dismiss for the Clawson Fagnoli Respondents, and (3) October 23, 2023 Order Denying Appellants’ Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders.

Standard of Review

I. Failure to State a Claim

“An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP.” *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (citing *Doe v. Marion*, 373 S.C. 390, 393, 645 S.E.2d 245, 246 (2007)). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* (citing *Plyler v. Burns*, 373 S.C. 637, 643, 647 S.E.2d 188, 191 (2007)). “The trial court’s grant of

a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law.” *Id.* (citing *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 297 (Ct. App. 2007)).

II. Subject Matter Jurisdiction

“The question of subject matter jurisdiction is a question of law for the court.” *Cap. City Ins. Co.*, 382 S.C. at 99, 674 S.E.2d at 528 (quoting *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 632 (Ct. App. 1993)). This Court is “free to decide questions of law with no deference to the trial court.” *Id.* (citing *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 522, 642 S.E.2d 751, 752 (2007)).

Argument

I. Statement of Facts

This case stems from Appellants’ allegations of legal professional negligence, breach of fiduciary duty, and breach of contract against Respondents Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (“the Clawson Fagnoli Respondents”) and Barrett R. Brewer, Esq. and Brewer Law Firm, LLC (“the Brewer Respondents”) (collectively, “Respondents”). On November 2, 2017, Respondents agreed to represent Appellant Andrew Pampu in two preexisting lawsuits: one pending in the U.S. District Court for the District of South Carolina (the “Federal Case”)¹ asserting Title IX and other claims against his university (the “University”) and another pending in a Court of Common Pleas in South Carolina (the “State Case”)² asserting defamation, civil conspiracy, and other tort claims against an accuser who

¹ See *John Doe v. Clemson University et. al.*, Case No. 8:16-cv-01957, in the United States District Court for the District of South Carolina, Anderson Division.

² See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina.

submitted to the University claims of sexual misconduct against Appellant Andrew Pampu. [See Second Amended Complaint, R. p. 113, ¶ 13]. Notably, neither Appellant Amanda Pampu nor Appellant John Pampu were parties to either the Federal Case or State Case, nor were they signatories to any settlement agreement.

Prior to the institution of the Federal Case and the State Case, Appellant Andrew Pampu was accused of and ultimately found by the University at an administrative hearing to have engaged in “nonconsensual sexual activities” and punished with suspension. [See Second Amended Complaint, R. pp. 114-15, ¶ 19]. Appellant Andrew Pampu thereafter appealed the University’s administrative hearing decision. [See Second Amended Complaint, R. p. 115, ¶ 20]. The appeals process resulted in the imposition of heavier sanctions against Appellant Andrew Pampu, including increasing his suspension period. [See Second Amended Complaint, R. p. 115, ¶ 21]. Appellant Andrew Pampu thereafter sued the University in the Federal Case, “alleging, among other things, violation of Title IX of the Education Amendments of 1972, failure to provide [Andrew Pampu] with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment.” [Second Amended Complaint, R. p. 114, ¶ 16].

As part of the Federal Case, Respondents represented Appellant Andrew Pampu at a court-ordered mediation on March 21, 2018. [See Second Amended Complaint, R. p. 117, ¶ 37]. Before the mediation, Respondents purportedly received an email from Appellants stating Appellant Andrew Pampu’s mediation goals, including:

- (a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against [Andrew Pampu], which by implication would have limited the University’s future treatment of [Andrew Pampu’s] academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms;

and (d) [Andrew Pampu's] arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

[Second Amended Complaint, R. p. 117, ¶ 36]. At the conclusion of the mediation session, “[Appellant Andrew Pampu] signed the ‘Settlement Agreement.’” [Second Amended Complaint, R. p. 118, ¶ 39; *see also* Joint Memorandum in Support of Motion to Dismiss Second Amended Complaint, Exhibit A, R. pp. 226-]. There are no allegations that Mr. Pampu was subject to duress or was otherwise forced to sign the settlement agreement.

Appellants contend that “[t]he Settlement Agreement conflicted with the goals explained in the March 2, 2018 email and conflicted with the goals of both the Federal Case and the State Case.” [Second Amended Complaint, R. p. 118, ¶ 41]. After the settlement agreement was reached on mutually agreeable terms at the mediation in the Federal Case, however, Appellant Andrew Pampu developed “buyer’s remorse” and attempted to abandon the settlement. [See Second Amended Complaint, R. pp. 118, 120-21, ¶¶ 40, 54-57]. On or about May 8, 2018, Appellants terminated their attorney-client relationship with Respondents and sought new counsel. [See Second Amended Complaint, R. p. 119, ¶¶ 47-48]. The University filed a motion to enforce the settlement, which was ultimately granted by the Court. [See Second Amended Complaint, R. pp. 120-21, ¶¶ 55-57].

Approximately one year after filing the Federal Case, Appellant Andrew Pampu sued his accuser in the State Case, asserting claims for defamation, abuse of process, intentional infliction of emotional distress, and civil conspiracy. [See Second Amended Complaint, R. p. 115, ¶ 24]. While the Federal Case resolved at mediation, the State Case remained pending at the time Appellants filed their Second Amended Complaint. On March 25, 2022, following a jury trial, a jury returned a verdict in favor of Appellant Andrew Pampu in the State Case and awarded him a

total of \$5.3 million. After post-trial motions, the court entered judgment in favor of Mr. Pampu in the amount of \$2.3 million on July 11, 2022. [See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina]. All parties have filed notices of appeal in the State Case, and that appeal remains pending. [*Id.*].³ This Court may take judicial notice of the filings in the Federal Case and the State Case (including the appeal). See *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (“A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records.”) (quoting *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) (alteration in original)).

Counsel for Appellants sent a letter of representation on September 19, 2019 (approximately 18 months prior to the filing of their initial Complaint) and an additional letter of representation on February 26, 2021 (approximately three weeks prior to the filing of their initial Complaint). However, when Appellants filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit. [See *generally* Complaint, R. pp. 36-56]. Instead, Appellants alleged that pursuant to S.C. Code Ann. § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” [Complaint, R. p. 55, ¶ 013]. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. [See Amended Complaint, R. pp. 58-87]. In response to Respondents’ respective motions to dismiss, which raised Appellants’

³ See *Andrew Pampu v. Erin Wingo et al.*, South Carolina Appellate Case No. 2022-001332. Respondents direct the Court to the Record on Appeal in the State Case—specifically, the verdict and judgment.

untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to the expert affidavit issue. [See Second Amended Complaint, R. pp. 129-30, ¶ 103]. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. [Second Amended Complaint, R. pp. 129-30, ¶ 103]. Appellants further claimed that they were filing their Second Amended Complaint under S.C. Code Ann. § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. [Second Amended Complaint, R. p. 130, ¶ 103].

In the instant action, Appellants have asserted claims for legal professional negligence, breach of fiduciary duty, and breach of contract. They allege:

The Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the [Pampus] to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the [Pampus]; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

[Second Amended Complaint, R. p. 126, ¶ 83]. Appellants initially filed this action under pseudonyms. [See Complaint, R. pp. 36-56; *and* Motion to Proceed Anonymously Under Pseudonyms, R. pp. 32-34]. However, on March 4, 2022, the trial court granted Respondents' respective motions seeking to prohibit Appellants from using pseudonyms. [See Order Granting Motions to Prohibit Pseudonyms, R. pp. 3-5]. Appellants did not appeal this decision.⁴

⁴ See *Doe v. Howe*, 362 S.C. 212, 217, 607 S.E.2d 354, 356 (Ct. App. 2004) (holding that the denial of a motion to proceed anonymously is immediately appealable).

On June 28, 2021 and June 30, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents filed counterclaims against Appellants related to fees owed to them for their work on the Federal Case. [See Brewer Counterclaims, R. pp. 188-93; and Clawson Fagnoli Counterclaims, R. pp. 163-70]. On those same dates, Respondents also filed motions to dismiss, asking the trial court to dismiss Appellants' Second Amended Complaint in its entirety. Respondents asserted the following grounds for their motions:

1. Appellants' claims failed to state a claim upon which relief could be granted;
2. Appellants John Pampu and Amanda Pampu lacked standing;
3. Appellants failed to timely provide an expert witness affidavit as required by S.C. Code Ann. § 15-36-100, and the exceptions found in § 15-36-100(C)(1) were inapplicable;
4. The credentials of Appellants' purported expert were insufficient under § 15-36-100(A)(3);
5. The gravamen of Appellants' Second Amended Complaint was simply post-mediation "buyer's remorse"; and
6. Appellants' cause of action for breach of fiduciary duty was duplicative of its cause of action for legal malpractice.

[See Brewer Motion to Dismiss Second Amended Complaint, R. pp. 194-97; and Clawson Fagnoli Motion to Dismiss Second Amended Complaint, R. pp. 169-72]. On July 28, 2021, Appellants replied to Respondents' respective counterclaims. [See Reply to Brewer Counterclaims, R. pp. 198-202; and Reply to Clawson Fagnoli Counterclaims, R. pp. 203-07].

The trial court held a virtual hearing on Respondents' respective motions to dismiss and motions to prohibit use of pseudonyms on March 2, 2022. [See Transcript, R. pp. 285-337].

Thereafter, the trial court granted Respondents' motions to prohibit use of pseudonyms. [Order Granting Motions to Prohibit Pseudonyms, R. pp. 3-5]. The trial court further granted Respondents' motions to dismiss and dismissed all Appellants' causes of action. [See Order Granting Brewer Motion to Dismiss, R. pp. 6-18; *and* Order Granting Clawson Fagnoli Motion to Dismiss, R. pp. 19-33]. Appellants thereafter filed a motion for reconsideration and to alter or amend the orders granting Respondents' motions to dismiss. [See Motion for Reconsideration, R. pp. 277-84]. Appellants concluded their motion by making troubling allegations that the trial judge did not recuse himself when his impartiality might be questioned. Specifically, Appellants alleged that the trial judge had a personal bias in favor of Respondent Samuel R. Clawson, Jr., Esq. based on an alleged long-term law partnership with Respondent Clawson's father. [Motion for Reconsideration, R. p. 282, ¶ 17]. However, those allegations were categorically false, as Respondent Clawson's father had never had a professional or personal association with the trial judge, aside from perhaps appearing before the judge, as had many attorneys in this state. When confronted with this fact, counsel for Appellants stated, "[Appellants] will accept your statement and will withdraw the statements contained in Paragraph 17 of the motion and will make that known to the judge at the outset of the hearing on the motion." However, the trial court ruled on the motion without a hearing, and, to date, the statements have not been withdrawn. Appellants have failed to correct the record, which is now pending before this Court.

Following the denial of their motion for reconsideration [see Order Denying Motion for Reconsideration, R. pp. 1-2], Appellants filed this appeal. Respondents' counterclaims remain pending.

II. The trial court orders from which Appellants attempt to appeal are not immediately appealable, and, therefore, this Court lacks jurisdiction.

As an initial matter, the trial court orders from which Appellants attempt to appeal are not immediately appealable. Appellate jurisdiction is governed by S.C. Code Ann. § 14-3-330. This Court has explained:

Section 14-3-330 provides that only final judgments and certain interlocutory orders are immediately appealable. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.

Richardson v. Halcyon Real Est. Servs., LLP, 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023) (internal quotation marks and citations omitted). “The provisions of section 14-3-330 are narrowly construed and serve the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals.’” *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (citing *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005)).

Here, Appellants seek to appeal three orders issued by the trial court: (1) Order Granting Motion to Dismiss for the Brewer Respondents, (2) Order Granting Motion to Dismiss for the Clawson Fagnoli Respondents, and (3) Order Denying Appellants’ Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders. While these orders effectively dismissed all Appellants’ causes of action, Appellants fail to consider the fact that Respondents’ counterclaims remain pending. Notably, Appellants do not address the jurisdiction issue or mention Respondents’ counterclaims in their initial brief. [See generally Appellants’ Initial Brief]. As noted above, on June 28, 2021 and June 30, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents filed counterclaims against Appellants related to fees

owed to them for their work on the Federal Case. [Brewer Counterclaims, R. pp. 188-93; Clawson Fagnoli Counterclaims, R. pp. 163-70]. Those counterclaims should be litigated to a final conclusion before any appeal is ripe. Appellants' counsel takes the unsupported position that the counterclaim portion of the case is stayed pending appeal.⁵

Because Respondents' counterclaims remain pending, Appellants' attempt to make a "piecemeal" appeal is improper. Therefore, this Court lacks jurisdiction, and this appeal should be dismissed.

III. The trial court correctly held that Appellants failed to state a claim for legal malpractice.

The trial court correctly held that Appellants failed to state a claim for legal malpractice. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012) (citing *Rydde v. Morris*, 381 S.C. 643, 645, 675 S.E.2d 431, 432 (2009)).

Appellants first argue that the trial court erred in dismissing their claim for legal malpractice by "ignoring the specific allegations in the Second Amended Complaint . . . clearly supporting [their] professional negligence claims." [Appellants' Initial Brief, p. 18]. Specifically, Appellants point to paragraph 1 of the Second Amended Complaint, in which Appellants allege

⁵ There are no South Carolina cases specifically addressing whether an order dismissing a plaintiff's claims is immediately appealable where counterclaims remain pending. While not binding on this Court, in the absence of South Carolina authority regarding immediate appealability where counterclaims remain pending, North Carolina law is instructive. *See, e.g., Pawlik v. Fortunati*, 183 N.C. App. 490, 645 S.E.2d 231 (2007) ("Because defendants' counterclaims are still pending, and plaintiff has failed to demonstrate that this interlocutory appeal is properly before the Court, we dismiss the appeal.").

that Respondents were negligent in (1) allowing Appellant Andrew Pampu to sign the settlement agreement, (2) failing to explain to Appellant Andrew Pampu the full implications of signing the settlement agreement, (3) the manner in which they prosecuted the State Case, and (4) the manner in which they concluded the representation. [Second Amended Complaint, R. pp. 110-11, ¶ 1]. Appellants further argue that the trial court erred in dismissing their claim for legal malpractice by “ignoring the specific allegations in the Second Amended Complaint that were contained in Mr. Dillon’s expert affidavit.” [Appellants’ Initial Brief, p. 18]. Appellants argue that the court failed to accept these allegations as true and view them in the light most favorable to them. [Appellants’ Initial Brief, p. 20]. Appellants contend that, taken as true, these allegations establish a claim for legal malpractice. Finally, Appellants argue that the trial court “create[ed] its own ‘fact’ allegations” by stating that Appellant Andrew Pampu “developed buyer’s remorse in the days after the mediation and attempted to abandon the mediation.” [Appellants’ Initial Brief, p. 20; *see also* Order Granting Brewer Motion to Dismiss, R. p. 8 *and* Order Granting Clawson Fagnoli Motion to Dismiss, R. p. 21].

In support of their arguments, Appellants cite *Doe v. Howe* for the proposition that loss of settlement value can form the basis for a legal malpractice claim. [Appellants’ Initial Brief, p. 17 (citing 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005))]. However, while this Court contemplated in *Howe* that such a claim might be viable under certain circumstances, this Court affirmed the trial court’s grant of summary judgment in favor of the respondents on the appellant’s legal malpractice claim. *Howe*, 367 S.C. at 437, 626 S.E.2d at 27. In doing so, this Court referenced the trial court’s holding that appellant’s expert “never explicitly stated [appellant] most probably would have recovered more than the \$88,000 he received in his settlement” *Id.*, 367 S.C. at 445, 626 S.E.2d at 31. While this Court acknowledged that the trial court “was not imposing an

additional requirement for [appellant's] *prima facie* case," it confirmed that a legal malpractice plaintiff must "prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care." *Id.*, 367 S.C. at 446, 626 S.E.2d at 32. In affirming the trial court's grant of summary judgment as to the legal malpractice claim, this court explained, "Notably absent from the record in this case, however, is any mention of settlement value from [any expert] that was brought to the trial judge's attention." *Id.*

While the present case involves motions to dismiss and a motion for reconsideration rather than a motion for summary judgment, Appellants still must allege facts in their complaint that, if true, could support that they "would have obtained a better result in the underlying matter if [Respondents] had exercised reasonable care." *See id.* Instead, the Second Amended Complaint contains merely conclusory allegations that Respondents were negligent in allowing Appellant Andrew Pampu to sign the settlement agreement and purportedly failing to explain to him the implications of it. [See Second Amended Complaint, R. pp. 110-11, ¶ 1]. Other jurisdictions have recognized that a former client simply alleging that his former attorney failed to clearly explain settlement documents before the former client signed them and that the former client expected to receive more than the settlement documents identified is insufficient as a matter of law to state a claim for legal malpractice. *See, e.g., Tarrant v. Ramunno*, 171 A.3d 138 (Del. 2017) ("Even if we accept [appellant/former client's] allegation that [respondent/former attorney] failed in his duties to her by failing to adequately explain the terms of the settlement documents that she signed, her complaint failed to allege any resulting loss.").⁶

⁶ The elements of a legal malpractice claim in Delaware are substantially similar to those in South Carolina. *See id.* ("To state a claim for legal malpractice, a plaintiff must allege and prove the following elements: (a) the employment of a lawyer, (b) the lawyer's neglect of a professional obligation, and (c) resulting loss. To prove a resulting loss, the plaintiff must show that the underlying lawsuit would have been successful but for the lawyer's negligence.").

The Second Amended Complaint further contains merely conclusory allegations that Respondents were negligent in the manner in which they prosecuted the State Case. [See Second Amended Complaint, R. pp. 110-11, ¶ 1]. In fact, at the time the Second Amended Complaint was filed, the State Case remained pending. [See generally *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina]. Appellants cannot bring legal malpractice claims for alleged conduct related to a pending lawsuit, as they cannot reasonably allege that any purported conduct resulted in a loss of settlement and/or claim value.⁷ The Supreme Court of South Carolina has held that in “a legal malpractice cause of action that is predicated on an injury or damage caused by the failure of an underlying suit due to an attorney’s alleged malpractice, . . . there can be no legal malpractice cause of action without an adverse verdict, judgment, or ruling.” *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016). Because there was no verdict, judgment, or ruling—adverse or not—in the State Case at the time Appellants filed their Second Amended Complaint, there are no allegations in the Second Amended Complaint that could give rise to a legal malpractice claim based on any alleged conduct of Respondents in the State Case. Further, even if the \$5.3 million judgment had been obtained at that time, Appellants could not reasonably argue that a more favorable judgement could have been obtained but for Respondents’ alleged professional negligence. Accordingly, the trial court correctly dismissed these claims.

The Second Amended Complaint also contains merely conclusory allegations that Respondents were negligent in the manner in which they concluded the representation. [See

⁷ Notably, on March 25, 2022, following a jury trial, a jury returned a verdict in favor of Appellant Andrew Pampu in the State Case and awarded him a total of \$5.3 million. After post-trial motions, the court entered judgment in favor of Mr. Pampu in the amount of \$2.3 million on July 11, 2022. [See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina].

Second Amended Complaint, R. pp. 110-11, ¶ 1]. Again, Appellants did not articulate in their Second Amended Complaint how Respondents were negligent in concluding their representation or what alleged loss resulted. Moreover, Appellants terminated Respondents, which forced Respondents to conclude the representation. [See Second Amended Complaint, R. pp. 119, 122, ¶¶ 48-49, 66]. Appellants cannot now argue that Respondents were negligent in doing so. Accordingly, the trial court correctly dismissed these claims.

Moreover, the trial court correctly ruled that Appellants' expert witness affidavit was both untimely and insufficient as a matter of law.⁸ Notwithstanding the same, the affidavit is simply a rehash of Appellants' allegations in their Second Amended Complaint that they were unhappy with the settlement agreement that Appellant Andrew Pampu signed. Therefore, the allegations in the expert witness affidavit did not give rise to a cause of action against Respondents for professional negligence.⁹

Finally, the trial court correctly recognized that Appellants' allegations are largely premised on Appellant Andrew Pampu not getting everything Appellants wanted at mediation, and they only alleged legal malpractice once they realized the settlement could not be undone. The trial court did not create facts by referring to these allegations as "buyer's remorse." Rather, the trial court merely acknowledged that Appellants did not identify any acts or omissions on the part

⁸ This argument is discussed in depth in Section VIII, *infra*.

⁹ Moreover, the expert affidavit contains no allegations whatsoever regarding Respondents' conduct in the State Case or any other post-mediation conduct. Accordingly, for that reason alone, this Court should affirm the trial court's dismissal of Appellants' professional negligence claim as it relates to the State Case and/or any other post-mediation conduct pursuant to S.C. Code Ann. § 15-36-100 ("[T]he plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.").

of Respondents other than that Appellant Andrew Pampu did not get everything Appellants wanted at mediation.

The trial court correctly ruled that no allegations in the Second Amended Complaint give rise to a colorable claim that Respondents could be liable for legal malpractice. Accordingly, this Court should affirm the trial court's holding that Appellants failed to state a claim for legal malpractice.

IV. The trial court correctly held that Appellants failed to state a claim for breach of fiduciary duty.

The trial court correctly held that Appellants failed to state a claim for breach of fiduciary duty. "To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012) (citing *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004)).

Appellants first argue the trial court ignored their allegations that Respondents "breached their duties of loyalty and confidentiality by disclosing information related to the representation to third parties without [Appellants'] knowledge or consent that caused financial losses." [Appellants' Initial Brief, p. 20]. Specifically, Appellants point to paragraphs 2, 61, and 62 of their Second Amended Complaint, which generally allege that (1) after the conclusion of the representation, Respondents disclosed information related to the representation to counsel for the opposing parties without Appellants' consent, (2) Respondents sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on any settlement proceeds, and (3) Appellants' successor counsel sent a letter to Respondents stating that the lien letter interfered with the mediation process, disrupted negotiations, and disadvantaged Appellant

Andrew Pampu’s position in the mediation, which caused damages to Mr. Pampu. [Second Amended Complaint, R. pp. 111, 121-22, ¶¶ 2, 61-62]. Appellants further argue that Respondents’ lien letter “wreaked havoc on [Appellants’] attempts to resolve their claims against the University defendants in the Federal Lawsuit.” [Appellants’ Initial Brief, p. 23].

As an initial matter, Appellants alleged in their Second Amended Complaint that Respondents sent the lien letter on February 28, 2019—after the mediation in the Federal Case. [Second Amended Complaint, pp. 12-13, ¶ 61]. Indeed, Appellants alleged that the lien letter was based, in part, on the fees Respondents allege they are owed due to the outcome of the Federal Case. [*Id.*]. A lien letter sent after the Federal Case settled at mediation could not have “wreaked havoc on [Appellants’] attempts to resolve their claims against the University defendants in the Federal Lawsuit” as Appellants allege. [See Appellants’ Initial Brief, p. 23].

Moreover, to the extent that Appellants contend that Respondents’ lien letter disadvantaged Appellant Andrew Pampu’s position in the State Case, such an allegation is both baseless and premature. As discussed above in the context of Appellants’ legal malpractice claims related to the State Case, because there was no verdict, judgment, or ruling—adverse or not—in the State Case at the time Appellants filed their Second Amended Complaint, there are no allegations in the Second Amended Complaint that could give rise to a legal malpractice claim based on any alleged conduct of Respondents in the State Case. See *Stokes-Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494. For the same reason, Appellants cannot reasonably claim that Respondents’ lien letter disadvantaged Mr. Pampu’s position in the State Case. Appellants cannot articulate—and, in fact, have not articulated—what damages they allegedly suffered related to the State Case, because the State Case remained pending at the time they filed their Second Amended Complaint. Accordingly, the trial court correctly held that “[t]o the extent [Appellants] claim that [Appellant]

Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm." [Order Granting Brewer Motion to Dismiss, R. pp. 10-11; Order Granting Clawson Fagnoli Motion to Dismiss, R. p. 24]. Therefore, the trial court correctly dismissed Appellants' breach of fiduciary duty claim, and this Court should affirm that ruling.

V. The trial court correctly held that Appellant John Pampu and Appellant Amanda Pampu lack standing.

The trial court correctly held that Appellant John Pampu and Appellant Amanda Pampu ("the Pampu Parents") lack standing.

Appellants argue that the trial court ignored allegations establishing a client-lawyer relationship between the Pampu Parents and Respondents related to the Federal Case and the State Case. [Appellant's Initial Brief, p. 24]. Specifically, Appellants point to several paragraphs in their Second Amended Complaint generally alleging that Respondents represented "the [Pampus]" in the Federal Case and caused financial losses to "the [Pampus]." [Appellant's Initial Brief, pp. 24-25]. The trial court held that "because Andrew Pampu was the only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing to assert the alleged claims." [Order Granting Brewer Motion to Dismiss, R. p. 11; Order Granting Clawson Fagnoli Motion to Dismiss, R. p. 24].

Appellants contend that the trial court erred because "[t]he existence of a client-lawyer relationship is not dependent on whether the client is a party to a lawsuit or later becomes a party to a lawsuit." [Appellants' Initial Brief, p. 25]. However, regardless of whether the Pampu Parents and Respondents had an attorney-client relationship, they lack standing to assert the claims they allege, as they had no legal interest in the State Case or the Federal Case. As discussed above, in support of their legal malpractice claim, Appellants allege that Respondents were negligent in

(1) allowing Appellant Andrew Pampu to sign the settlement agreement, (2) failing to explain to Appellant Andrew Pampu the full implications of signing the settlement agreement, (3) the manner in which they prosecuted the State Case, and (4) the manner in which they concluded the representation. [Second Amended Complaint, R. pp. 110-11, ¶ 1]. Further, in support of their breach of fiduciary duty claim, Appellants generally allege that (1) after the conclusion of the representation, Respondents disclosed information related to the representation to counsel for the opposing parties without Appellants' consent, (2) Respondents sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on any settlement proceeds, and (3) Appellants' successor counsel sent a letter to Respondents stating that the lien letter interfered with the mediation process, disrupted negotiations, and disadvantaged Appellant Andrew Pampu's position in the mediation, which caused damages to Mr. Pampu. [Second Amended Complaint, R. pp. 111, 121-22, ¶¶ 2, 61-62]. Finally, in support of their breach of contract claim, Appellants allege that Respondents "entered into a Contract with the [Pampus] agreeing and contracting to provide legal services to represent the [Pampus] in the Federal Case, the State Case, and 'any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits'" and that Respondents breached this agreement by "failing to provide such services." [Second Amended Complaint, R. pp. 128-29, ¶¶ 98-99]. In sum, the damages Appellants allege resulted from all their causes of action are a loss of settlement value in the Federal Case and a disadvantaged position in the State Case. Because the Pampu Parents were not parties to either case and had no legal interest in either case, they cannot reasonably claim that they were somehow damaged by any loss of settlement value in the Federal Case or disadvantaged position in the State Case.

Further, to the extent that the trial court erred in holding that the Pampu Parents lacked standing to assert their claims, such error was harmless, as those claims still fail as a matter of law for the reasons discussed herein. Accordingly, this Court should affirm the trial court's holding. *See Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009) ("Error is harmless where it could not reasonably have affected the result of the trial.").

VI. The trial court correctly held that Appellants failed to state a claim for breach of contract.

The trial court correctly held that Appellants failed to state a claim for breach of contract. "The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App. 2019) (quoting *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (Ct. App. 2015)).

Appellants argue that the trial court "summarily dismissed the Pampus' claims for breach of contract without making or identifying any findings of fact or specific conclusions of law." [Appellants' Initial Brief, p. 25]. Appellants further argue that the trial court failed to consider their allegations purportedly establishing a contractual relationship between the Pampu Parents and Respondents to provide legal services related to the Federal Case and the State Case. [Appellants' Initial Brief, p. 26]. Specifically, Appellants point to paragraphs 14 and 98 through 101 of their Second Amended Complaint, which generally allege that Respondents entered a contract with Appellants to provide legal services related to the Federal Case and the State Case and that Respondents breached this agreement by failing to provide such services. [Second Amended Complaint, R. pp. 113, 128-29, ¶¶ 14, 98-101]. Appellants contend that these allegations establish that the Pampu Parents have standing to assert the breach of contract claim. [Appellants' Initial Brief, p. 26].

While the orders granting Respondents' motions to dismiss did not explicitly address Appellants' breach of contract claim, the trial court correctly dismissed the claim. Appellants' breach of contract claim fails for the same reasons that their legal malpractice and breach of fiduciary duty claims fail—namely, because Appellants failed to articulate in their Second Amended Complaint how Respondents allegedly breached any agreement (other than a conclusory allegation that Respondents “fail[ed] to provide such services,” which is clearly not the case) or how any alleged breach proximately caused damages to Appellants (and in particular, the Pampu Parents). Moreover, Appellants' breach of contract claim is simply a recharacterization of their legal malpractice and breach of fiduciary duty claims and is, therefore, duplicative of those claims. *See, e.g., Gen. Sec. Ins. Co. v. Jordan, Coyne & Savits, LLP*, 357 F. Supp. 2d 951, 961 (E.D. Va. 2005) (holding that because the plaintiffs' legal malpractice claim was barred, their breach of fiduciary duty and breach of contract claims were also barred because “they are mere disguises for plaintiffs' legal malpractice claims,” as “[t]he breach alleged in both the breach of contract and breach of fiduciary duty claims is the same failure to provide adequate legal services that is the crux of the legal malpractice claims.”). Accordingly, the trial court properly dismissed this claim.¹⁰

The trial court correctly dismissed Appellants' breach of contract claim. Accordingly, this Court should affirm the trial court's ruling as to Appellants' breach of contract claim.

VII. The trial court correctly held that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim.

The trial court correctly held that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim.

¹⁰ To the extent that the trial court erred by not explicitly addressing Appellants' breach of contract claim in the orders granting Respondents' motions to dismiss, such error was harmless. *See Judy*, 384 S.C. at 646, 682 S.E.2d at 842.

Appellants argue that they should be able to pursue both claims pursuant to South Carolina Rule of Civil Procedure 8(a), which provides that “[r]elief in the alternative or of several different types may be demanded.” [Appellants’ Initial Brief, p. 27; S.C. R. Civ. P. 8(a)]. Appellants further argue that the trial court’s reliance on *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.* and *Gibson v. Epting* do not support its ruling, as those cases dealt with a motion made at later stages in litigation. [Appellants’ Initial Brief, p. 27 (citing *RFT Mgmt. Co.*, 399 S.C. 322, 732 S.E.2d 166 (2012); and *Gibson*, 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019))].

In *RFT Management Co.*, RFT sued its former attorney and his law firm based on their representation of RFT in a transaction involving two real estate investment properties. 399 S.C. at 327, 732 S.E.2d at 168. RFT alleged multiple claims against the respondents, including legal malpractice and breach of fiduciary duty. *Id.* At trial, at the close of evidence, the trial court merged RFT’s breach of fiduciary duty claim into its legal malpractice claim and granted the respondents’ motion for a directed verdict as to RFT’s other claims; therefore, only the legal malpractice claim went to the jury. *Id.*, 399 S.C. at 330, 732 S.E.2d at 170. The jury returned a verdict in favor of the respondents, and the trial court denied RFT’s post-trial motions. *Id.* On appeal, RFT argued, in part, that the trial court erred in “failing to charge the jury on breach of fiduciary duty and merging this cause of action with its first cause of action for legal malpractice.” *Id.* In affirming the trial court’s decision to merge the two causes of action, the Supreme Court of South Carolina explained:

A claim for breach of fiduciary duty, as a general matter, is distinguishable from a claim for legal malpractice because it can arise in contexts other than one involving an attorney-client relationship. . . . In the current matter, however, RFT’s claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and it arose out of the same factual allegations. Thus, RFT’s claim for legal malpractice necessarily encompassed a breach of the fiduciary duty an attorney has to his or her client. . . . Although RFT now argues a breach of fiduciary claim *could* be distinguishable from legal malpractice, RFT does not set forth any specific facts that demonstrate its breach of fiduciary duty claim *is* distinguishable because it arises out of a duty *other than* one created by the attorney-client

relationship or because it is based on different material facts. Consequently, we hold the breach of fiduciary duty claim is duplicative.

Id., 399 S.C. at 336–37, 732 S.E.2d at 173 (internal citation omitted) (emphasis in original).

Similarly, in *Gibson*, the appellants (an individual and several of her companies) sued the respondents (several attorneys and their respective law firms) for multiple claims, including legal malpractice and breach of fiduciary duty, related to the attorneys’ representation of them in a real estate matter. 426 S.C. at 350, 827 S.E.2d at 180. The trial court granted summary judgment in favor of the respondents. *Id.* In affirming the trial court’s decision, this Court noted, “[Appellant] asserts Respondents breached their fiduciary duty to her in numerous ways, all of which duplicate her legal malpractice claim because the duties arose out of the attorney-client relationship and she alleges the same facts as to both claims. . . . Accordingly, we only address [Appellant’s] claim for legal malpractice.” *Id.*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173).

Here, Appellants allege that Respondents breached the fiduciary duties of confidentiality and loyalty. [See Second Amended Complaint, pp. 18-19, ¶¶ 87-96]. Those duties are inherent in the attorney-client relationship. Moreover, Appellants’ breach of fiduciary duty claim is premised on the same factual allegations as their legal malpractice claim. [See Second Amended Complaint, R. pp. 125-28, ¶¶ 79-96]. Therefore, Appellants’ claim for legal malpractice necessarily encompasses an alleged breach of the fiduciary duty that attorneys have to their clients. See *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173; and *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182. Therefore, Appellants’ breach of fiduciary duty claim is duplicative, and the trial court’s reliance on *RFT Management Co.* and *Gibson* was not in error.

Instead, Appellants contend that *Smith v. Hastie* is more applicable to the present case. [Appellants’ Initial Brief, p. 27 (citing *Smith*, 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005))].

There, Smith sued her former attorney for several claims, including breach of fiduciary duty and professional negligence, arising from the attorney's creation of a family limited partnership for the appellant and her family. *Smith*, 367 S.C. at 413, 626 S.E.2d at 14. The trial court granted summary judgment in favor of the lawyer and dismissed all of Smith's claims with prejudice, holding that "(1) Smith failed to commence her lawsuit within the applicable limitations period; (2) Smith's malpractice claims failed for lack of evidence; and (3) Smith's claims were barred by the doctrine of collateral estoppel." *Id.*, 367 S.C. at 415, 626 S.E.2d at 16. While this Court disagreed with the trial court's grant of summary judgment on Smith's claims for negligence and breach of fiduciary duty, the opinion contains no discussion about duplicity or merger of these claims, as that was not an issue before this Court. *See id.*, 367 S.C. at 417–21, 626 S.E.2d at 16–18. Accordingly, *Smith* is not relevant in determining whether the trial court here erred in holding that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim. For the reasons discussed above, it did not.¹¹

The trial court correctly dismissed Appellants' breach of fiduciary duty claim. Accordingly, this Court should affirm the trial court's ruling as to Appellants' breach of fiduciary duty claim.

VIII. The trial court correctly held that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law.

The trial court correctly held that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law. Pursuant to S.C. Code Ann. § 15-36-100, the plaintiff in a professional negligence action "must file as part of the complaint an affidavit of an expert witness

¹¹ To the extent that the trial court did err in holding that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim, such error is harmless, as Appellants failed to state a claim for either cause of action for the reasons discussed herein. *See Judy*, 384 S.C. at 646, 682 S.E.2d at 842.

which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100(B).

A. Timeliness

The trial court correctly held that the affidavit of Justin Dillon was untimely as a matter of law. “If a plaintiff fails to file an affidavit as required by [§ 15-36-100], and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake.” S.C. Code Ann. § 15-36-100(F).

When Appellants filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit. [*See generally* Complaint, R. pp. 36-56]. Instead, Appellants alleged that pursuant to § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” [Complaint, R. p. 55, ¶ 103]. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. [*See* Amended Complaint, R. pp. 58-86]. In response to Respondents’ respective motions to dismiss, which raised Appellants’ untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to expert affidavit issue. [*See* Second Amended Complaint, R. pp. 129-30, ¶ 103]. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—

that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. [Second Amended Complaint, R. pp. 129-30, ¶ 103]. Appellants further claimed that they were filing their Second Amended Complaint under § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. [Second Amended Complaint, R. p. 130, ¶ 103]. Appellants now argue that the trial court ignored these allegations, which they contend establish that the expert affidavit was timely filed. [Appellants' Initial Brief, pp. 28-29].

As an initial matter, by its plain language, § 15-36-100(E) only applies where a plaintiff has filed an expert affidavit that is alleged to be insufficient, not where a plaintiff has failed to file any expert affidavit. *See* S.C. Code Ann. § 15-36-100(E).¹² Stated differently, this section allows a plaintiff to cure an alleged defect *in the affidavit* by amending *the affidavit* within a certain amount of time. *See id.* It does not permit a plaintiff to cure his failure to file any affidavit at all by amending *the pleadings* to include an affidavit. *See id.* Accordingly, Appellants' reliance on § 15-36-100(E) is misplaced.

Next, § 15-36-100(C)(1) provides, in part, that the contemporaneous filing requirement “does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing **and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.**” § 15-36-100(C)(1) (emphasis added). Simply put, Appellants made no

¹² “**If a plaintiff files an affidavit which is allegedly defective**, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective.” *Id.* (emphasis added).

such allegation in their initial Complaint. [*See generally* Complaint, R. pp. 36-56].¹³ Further, allowing plaintiffs to circumvent the requirements of § 15-36-100 would effectively extend the statute of limitations for professional negligence claims, contrary to the public policy behind the statute. Accordingly, the trial court correctly held that Appellants’ expert affidavit was untimely as a matter of law, which provided an independent basis to dismiss Appellants’ legal malpractice claims. *See* S.C. Code Ann. § 15-36-100(F) (“If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation . . .”).

B. Sufficiency

Further, regardless of whether the expert affidavit was timely filed, the trial court correctly held that the affidavit of Justin Dillon was insufficient as a matter of law. Section 15-36-100(A) requires that the expert be “qualified as to the acceptable conduct of the professional whose conduct is at issue” and lists several additional requirements. *See* S.C. Code Ann. § 15-36-100(A). “The defendant is entitled to challenge the sufficiency of the expert’s credentials pursuant to subsection (E).” *Id.*

The trial court made the following findings regarding Mr. Dillon’s credentials:

- Mr. Dillon has never been licensed (or admitted pro hac vice) to practice law in the state or federal courts or South Carolina, nor is he licensed in the Fourth Circuit Court of Appeals;

¹³ Moreover, Respondents note that counsel for Appellants sent a letter of representation on September 19, 2019 (approximately 18 months prior to the filing of their initial Complaint) and an additional letter of representation on February 26, 2021 (approximately three weeks prior to the filing of their initial Complaint). Accordingly, Respondents could not have reasonably alleged that an affidavit could not be prepared due to time constraints.

- Mr. Dillon does not claim to be familiar with the nature of federal practice in the U.S. District Court for the District of South Carolina, its Local Civil Rules, or the nature or manner of mediations conducted in South Carolina; and
- Mr. Dillon reviewed few of the voluminous materials related to the underlying facts at issue.¹⁴

[See Order Granting Brewer Motion to Dismiss, R. pp. 13-14; *and* Order Granting Clawson Fargnoli Motion to Dismiss, R. p. 27]. The trial court explained that the crux of Appellants’ legal malpractice claim is Respondents’ advice to Appellant Andrew Pampu during the mediation of the Federal Case and that because Mr. Dillon’s purported experience related mainly to Title IX claims but not South Carolina federal or state court procedures or litigation, his experience was not sufficiently related to Appellants’ legal malpractice claims as pled in their Second Amended Complaint. [Order Granting Brewer Motion to Dismiss, R. 14; Order Granting Clawson Fargnoli Motion to Dismiss, R. p. 27].

Appellants argue that the trial court erred by not accepting as true Mr. Dillon’s qualifications as stated in his curriculum vitae, which was included with his affidavit. [Appellants’ Initial Brief, p. 30]. Specifically, Appellants contend that Mr. Dillon’s CV “identifies his specialized, technical knowledge regarding the Title IX and related matter at issue in the underlying lawsuits.” [Appellants’ Initial Brief, p. 30]. However, while Mr. Dillon’s CV listed his purported experience related to Title IX claims, it indicated no such experience with South Carolina federal or state court statutes, rules, procedures, or standards of care.

¹⁴ Mr. Dillon stated in his affidavit that he only reviewed 13 documents in rendering his opinion, which primarily consisted of the pleadings in the underlying lawsuits. [See Second Amended Complaint, Exhibit 1, R. pp. 133-41].

Appellants further argue that the affidavit is facially sufficient because it identifies a potentially meritorious legal malpractice claim and that § 15-36-100(E) does not permit the trial court to address the substance of those opinions. [Appellants’ Initial Brief, p. 30]. However, the trial court did not address the substance of Mr. Dillon’s opinions. Rather, the trial court addressed Mr. Dillon’s credentials—specifically, his lack of relevant South Carolina legal expertise and, implicitly, his inability to offer expert opinions relating to the application of South Carolina standards of care for South Carolina attorneys (as distinguished from the substance of any such opinions). [See Order Granting Brewer Motion to Dismiss, R. pp. 13-14; *and* Order Granting Clawson Fargnoli Motion to Dismiss, R. p. 27]. Accordingly, Appellants’ arguments regarding the substance of Mr. Dillon’s opinions are not at issue on appeal.

Next, Appellants argue that the trial court improperly held that Mr. Dillon’s credentials were inadequate “because he has not actually practiced in South Carolina federal or state court.” [Appellants’ Initial Brief, pp. 30-31]. However, the trial court made no such holding. In fact, the trial court acknowledged that there is no requirement that the expert witness in a legal malpractice action be a South Carolina-barred attorney. [See Order Granting Brewer Motion to Dismiss, R. p. 14; *and* Order Granting Clawson Fargnoli Motion to Dismiss, R. p. 27]. Rather, the trial court explained that the crux of Appellants’ legal malpractice claim is Respondents’ advice to Appellant Andrew Pampu during the mediation of the Federal Case. [*Id.*]. Because Mr. Dillon’s purported experience related mainly to Title IX claims, but not South Carolina federal or state court statutes, rules, procedures, or standards of care, the trial court determined that his experience was not sufficiently related to Appellants’ legal malpractice claims as pled in their Second Amended Complaint. [*Id.*].

In support of their argument, Appellants cite *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 472 S.E.2d 612 (1996). However, *Smith* was decided in 1996, while § 15-56-100 became effective in 2005. Accordingly, *Smith* is irrelevant for purposes of assessing the sufficiency of an expert affidavit pursuant to § 15-56-100. Notably, while the court held that the expert’s lack of a South Carolina law license did not disqualify him as an expert (in the context of a motion to exclude), the court also ruled regarding the “locality rule”:

In the context of legal malpractice, most courts which originally adopted a strict locality rule have expanded the relevant geographical region to create a **statewide** standard of care. The rationale for this development is that **attorneys are generally regulated on a statewide basis, with state rules of procedure and different substantive laws**. Accordingly, we adopt the majority view and rule that the standard to be applied in determining legal malpractice issues is **statewide**.

Smith, 322 S.C. at 437–38, 472 S.E.2d at 614 (emphasis added) (internal citations omitted). Accordingly, Appellants’ references to the locality rule—and their implied contention that the trial court applied it—is inapposite. Rather, the trial court properly held that Mr. Dillon did not have the requisite qualifications regarding South Carolina federal or state court statutes, rules, procedures, or standards of care pursuant to § 15-56-100(A)(2).

Appellants also argue that the trial court erred in stating that “Mr. Dillon holds himself out to be an expert in legal malpractice claims in South Carolina district court litigation.” [Appellants’ Initial Brief, p. 31]. While Mr. Dillon may not have explicitly stated so in his affidavit, he purported to state opinions regarding alleged acts or omissions of South Carolina attorneys during a South Carolina federal court mediation, implicitly holding himself out as an expert in that area.

Finally, Appellants contend that the trial court incorrectly imposed a “sufficiently related” standard that is absent from § 15-56-100. [Appellants’ Initial Brief, p. 31]. While the phrase “sufficiently related” is not present in the statute, it does require that the expert have “actual

professional knowledge and experience in the area of practice or specialty in which the opinion is to be given.” S.C. Code Ann. § 15-56-100(A)(2)(b).

The trial court correctly determined that Mr. Dillon—who has never practiced or taught in South Carolina—does not have the requisite expertise to testify as to alleged acts or omissions of South Carolina attorneys during a South Carolina federal court mediation. Accordingly, the trial court properly dismissed Appellants’ legal malpractice claim on this independent basis. *See* S.C. Code Ann. § 15-36-100(E) (“If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff’s complaint is subject to dismissal for failure to state a claim . . .”).

IX. The trial court correctly found Appellants’ claims against public policy.

The trial court correctly found that Appellants’ claims were against public policy. The trial court properly held that Appellants’ claims “violate the important public policy on the finality of mediation in civil cases.” [Order Granting Brewer Motion to Dismiss, R. pp. 15-16; Order Granting Clawson Fagnoli Motion to Dismiss, R. p. 29]. The trial court further explained that Appellants’ allegations “center almost exclusively on the fact that [Appellant] Andrew Pampu did not get everything that he wanted at mediation.” [*Id.*].

Appellants argue that the trial courts’ holding regarding public policy is contrary to South Carolina law. [Appellants’ Initial Brief, pp. 31-32]. Specifically, Appellants point to Rule 8(c)(3) of the South Carolina Rules for Alternative Dispute Resolution, which provides that “[t]here is no confidentiality attached to information that is disclosed during a mediation . . . offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding.” SCRADR 8(c)(3). Appellants contend that this rule

contemplates legal malpractice lawsuits based on lawyers' conduct at mediations. [Appellants' Initial Brief, p. 32]. However, Appellants ignore Rule 8(g), which explicitly states, "The mediator **shall not** be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and other documents received by the mediator while serving in that capacity shall be confidential." SCRADR 8(g) (emphasis added). Similarly, Rule 16.10(E) of the Local Civil Rules for the United States District Court for the District of South Carolina provides:

Except when ordered by the court for exceptional circumstances shown, the mediator **shall not** be listed or called as a witness or be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, and other documents received or created by the mediator while serving in that capacity shall be confidential.

LCvR 16.10 (emphasis added). These rules clearly suggest that these types of claims are against public policy because the mediator would be the key witness, as he could testify objectively to what occurred at the mediation. Therefore, the trial court properly dismissed these claims as against public policy, and this Court should affirm that holding.

X. Appellants have failed to correct the record relating to their recusal argument in their Motion for Reconsideration.

Appellants have failed to correct the record relating to their recusal argument in their Motion for Reconsideration. Appellants concluded their motion by making troubling allegations that the trial judge did not recuse himself when his impartiality might be questioned. Specifically, Appellants alleged that the trial judge had a personal bias in favor of Respondent Samuel R. Clawson, Jr., Esq. based on an alleged long-term law partnership with Respondent Clawson's father. [Motion for Reconsideration, R. p.282, ¶17]. However, those allegations were categorically false, as Respondent Clawson's father had never had a professional or personal

association with the trial judge, aside from perhaps appearing before the judge, as had many attorneys in this state. When confronted with this fact, counsel for Appellants stated, “[Appellants] will accept your statement and will withdraw the statements contained in Paragraph 17 of the motion and will make that known to the judge at the outset of the hearing on the motion.” However, the trial court ruled on the motion without a hearing, and, to date, the statements have not been withdrawn. Appellants have failed to correct the record, which is now pending before this Court, thereby perpetuating this falsehood. Accordingly, this Court should order that those statements be stricken from the record in this matter.

Conclusion

For these reasons, Respondents respectfully request that this Court affirm the trial court’s orders in their entirety.

July 10, 2024

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Jul 11 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

BRIEF OF APPELLANTS

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Statement of Issues

- I. Whether the trial court erred by failing to consider the well-pled fact allegations in the Pampus' Second Amended Complaint supporting the legal malpractice claims against their former lawyers stemming from an insufficient settlement in the underlying matter.
- II. Whether the trial court erred by disregarding well-pled fact allegations establishing a claim for breach of fiduciary duty, particularly where the facts alleged demonstrate breaches of loyalty and confidentiality resulting in actual losses.
- III. Whether the trial court erred by disregarding fact allegations that showed the existence of a client-lawyer relationship between Mr. Pampu and Ms. Pampu, on one hand, and the Lawyers, one the other, thereby providing the Pampus with standing to sue.
- IV. Whether the trial court erred by disregarding specific fact allegations supporting the Pampus' breach of contract claim and dismissing those claims without making any findings of fact or conclusions of law on the breach of contract claim.
- V. Whether the trial court erred by dismissing the Pampus' breach of fiduciary duty claim as "duplicative" of their legal malpractice claim.
- VI. Whether the trial court erred by deeming Mr. Dillon's expert opinions supporting the Pampus' professional negligence claims as untimely and insufficient as a matter of law.
- VII. Whether the trial court erred by failing to consider the timeliness of Mr. Dillon's expert affidavit, which was filed in accordance with S.C. CODE ANN. § 15-36-100(E) permitting an amended pleading with an expert affidavit to cure alleged defects.
- VIII. Whether Mr. Dillon's qualifications and expertise in Title IX matters establish the legal sufficiency of his expert opinions.
- IX. Whether the trial court erred by disregarding established South Carolina jurisprudence supporting legal malpractice claims arising from lawyers' errors during mediation and disregarding the exception to the ADR Rules on confidentiality permitting disclosure in a legal malpractice claim of otherwise confidential communications during mediation, in favor of public policy arguments supporting mediation and settlement.

Statement of the Case

On March 19, 2021, Appellants, Andrew Pampu; Amanda Pampu; and John Pampu (collectively “the Pampus”), filed a Summons and Complaint in the Court of Common Pleas for Charleston County, South Carolina, asserting claims for professional negligence, breach of fiduciary duty, and breach of contract against Respondents, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (the individual Respondents will be referred to collectively as “the Lawyers” and the Limited Liability Company Respondents will be referred to as “the Law Firms”). The Lawyers are the attorneys and Members of the Law Firms whose errors caused financial losses to the Pampus during their representation of the Pampus in a) a federal court lawsuit against a University for violations of Title IX, the United States Constitution, and the University’s own disciplinary process arising from errors and mishandling of an investigation of an incident of Andrew Pampu’s alleged nonconsensual sex with another student and b) a state court lawsuit against the individuals and others who made false statements and gave false testimony supporting the University’s investigation.

The Pampus’ Complaint alleged facts showing the Lawyers were negligent in 1) allowing their client, Andrew Pampu, to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University’s future treatment of Andrew Pampu’s academic records, the results of which were contrary to what the Lawyers knew were the clients’ desires and objectives, which was a key component of the Pampus’ “consideration” to settle, and without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to Andrew Pampu the full implication of this handwritten

settlement agreement and how the University could refer to his student records to future schools, especially medical or dental schools; and 3) in the manner in which they prosecuted the state court action, including substantial discovery deficiencies; and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of the Pampus. R. 35-66; Complaint. One or more of these negligent actions or related omissions caused substantial financial losses to the Pampus, including their payment of and continuing payment of substantial legal fees to successor counsel to mitigate their damages caused by the Lawyers and frustrating the purpose of the underlying litigation. These same acts and omissions by the Lawyers form the basis for the Pampus' claim for breach of contract against the Law Firms. R. 35-66; Complaint.

After the Lawyers were discharged as counsel for the Pampus, the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties of loyalty and confidentiality, including disclosing information related to their representation of the Pampus to counsel for the opposing parties without the Pampus' consent.

On April 30, 2021, the Pampus filed an Amended Complaint with the affidavit of Justin Dillon, Esq., an expert witness and lawyer with experience in litigating Title IX matters, which specifies at least one negligent act or omission by the Lawyers claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of his affidavit. (Amended Complaint, R. 57-87).

On May 9, 2021 and May 10, 2021, respectively, the Respondents filed their motions to dismiss the Amended Complaint pursuant to Rule 12 (b)(6), SCRCF and Rule 12 (b)(1), SCRCF.

(Motions to Dismiss Amended Complaint, R. 88-91, 95-98). The Respondents' motions both asserted that because no facts were stated in the Amended Complaint supporting a claim for relief.

On June 16, 2021, the Pampus filed a Second Amended Complaint asserting claims for professional negligence and breach of fiduciary duty against the Lawyers and a breach of contract claim against the Law Firms. (Sec. Amend. Complaint, R. 109-141). The Second Amended Complaint is the operative pleading for this appeal.

On June 28, 2021 and June 30, 2021, respectfully, the Respondents filed motions to dismiss the Second Amended Complaint pursuant to Rule 12(b)(6), SCRPC and Rule 12(b)(1), SCRPC, asserting that the Second Amended Complaint failed to state facts sufficient to support a claim and asserting that Mr. and Ms. Pampu did not have standing to pursue any claims against the Respondents.

On March 2, 2022, a WebEx hearing on the motions to dismiss was held before the Honorable Edgar W. Dickson, during which the Second Amended Complaint, legal memoranda, and arguments of counsel were presented, and after which an Orders were entered on June 23, 2022 (collectively "the Orders"), granting the motions and dismissing the lawsuit. (Orders dismissing Sec. Amend. Complaint, R. 6-31).

On July 5, 2022, the Pampus timely filed a Motion for Reconsideration and to Alter or Amended Orders Dismissing the Second Amended Complaint. (Motion for Reconsideration and to Alter or Amended Orders Dismissing Sec. Amend. Complaint, R. 277-284).

On October 23, 2023, Honorable Edgar W. Dickson entered an Order Denying Plaintiff's Motion for Reconsideration and to Alter or Amended Orders Dismissing Second Amended

Complaint. (Order Denying Plaintiff’s Motion for Reconsideration and to Alter or Amended, R. 1-2) (“the Reconsideration Order”).

The Pampus’ Notice of Appeal was timely filed thereafter.

Facts

On or around November 2, 2017, the Lawyers accepted the representation of the Pampus to provide legal advice, services, and representation of the Pampus in a lawsuit pending in the United States District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against a University (“the University”); and representing the Pampus in a lawsuit pending in a lawsuit pending in the Court of Common Pleas in a County in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against individuals involved in submitting to the University false claims against Andrew Pampu, which led to a disciplinary action that was mishandled by the University. (Sec. Amend. Complaint, p. 4 at ¶ 13, R. 113).

On or about November 2, 2017, Respondent Law Firms entered into a contract with Mr. and Mrs. Pampu to represent the Pampus in the Federal Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.” (Sec. Amend. Complaint, p. 4 at ¶ 14; R. 113).

At the commencement of this representation, the Federal Case, with its Complaint filed on June 15, 2016, had been pending approximately a year and a half while the State Case, with its Complaint filed on June 15, 2017, had been pending for approximately six months. (Sec. Amend. Complaint, p. 5 at ¶ 15; R. 114). In the Federal Case, Andrew Pampu’s lawsuit against the University and several related defendants (collectively “the University Defendants”) alleged

claims for violation of Title IX of the Education Amendments of 1972, failing to provide Andrew Pampu with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment. (Sec. Amend. Complaint, p. 5 at ¶ 16; R. 114). The primary claims against the University Defendants in the Federal Case were premised on theories the University Defendants deprived Andrew Pampu of due process and certain protections under Title IX of the Education Amendments of 1972 and related federal regulations during: the investigation the University Defendants undertook regarding false allegations by a female student (“Jane Doe”); the deliberating processes that the University Defendants applied to conclude that Andrew Pampu had engaged Jane Doe in nonconsensual sexual activity; and the appeals process the University Defendants applied to Andrew Pampu’s appeal. (Sec. Amend. Complaint, p. 5 at ¶ 17; R. 114). The Federal Case and the State Case involved common facts in that both concerned the allegations by Jane Doe claiming Andrew Pampu engaged in nonconsensual sexual activity with her and the allegations by a male student, “Charles Doe,” made during the University’s investigation allegedly corroborating Jane Doe’s claims. (Sec. Amend. Complaint, p. 5 at ¶ 18; R. 114).

Through a variety of errors and omissions by the University Defendants, in an administrative hearing conducted on February 26, 2016, Andrew Pampu was found to have engaged Jane Doe in nonconsensual sexual activities and punished with a one-semester suspension. (Sec. Amend. Complaint, pp. 5-6 at ¶ 19; R. 114-115). Thereafter, Andrew Pampu followed the University’s appeal process to appeal the incorrect administrative hearing decision. (Sec. Amend. Complaint, p. 6 at ¶ 20; R. 115). The appeals process actually resulted in greater sanctions imposed by the University upon Andrew Pampu, including an additional year of

suspension. (Sec. Amend. Complaint, p. 6 at ¶ 21; R. 115). On or about January 14, 2017, Charles Doe sent Andrew Pampu text messages admitting that he and Jane Doe lied regarding Jane Doe’s allegations, both during the investigation of those allegations and at the hearing regarding those allegations. (Sec. Amend. Complaint, p. 6 at ¶ 22; R. 115). Despite receiving notice of the January 2017 texts sent by Charles Doe, the University Defendants refused or failed to undertake additional action to address the content of those text messages from Charles Doe to Andrew Pampu. (Sec. Amend. Complaint, p. 6 at ¶ 23; R. 115).

On or about June 15, 2017, the State Case was filed against Jane Doe, Charles Doe, and Richard Doe (Charles Doe’s father), asserting claims for defamation, intentional infliction of emotional distress, and civil conspiracy. (Sec. Amend. Complaint, p. 6 at ¶ 24; R. 115). The State Case also asserted a claim for abuse of process against Jane Doe and Charles Doe based on the two strategically utilizing the University’s Title IX process for an illegitimate objective, that is, to further harass, defame, retaliate against, and punish Andrew Pampu. (Sec. Amend. Complaint, p. 6 at ¶ 24; R. 115). These three defendants will be collectively referred to as the “State Case Defendants”).

By November 27, 2017, the Federal Court substituted the Lawyers for Andrew Pampu’s previous counsel. (Sec. Amend. Complaint, p. 6 at ¶ 26; R. 115). During the Lawyers’ representation of the Pampus, the Lawyers drafted and, upon information and belief, disclosed to third parties an “apology letter” purportedly from Andrew Pampu to one of the State Case Defendants falsely conceding critical matters. (Sec. Amend. Complaint, p. 7 at ¶ 27; R. 116). During the Lawyers’ representation of the Pampus, the Lawyers served discovery requests tailored to personal injury claims when representing the Pampus on slander and defamation claims. (Sec.

Amend. Complaint, p. 7, ¶ 28; R. 116). During the Respondents’ representation of the Pampus, the Lawyers did not provide the Pampus with copies of materials obtained during discovery. (Sec. Amend. Complaint, p. 7 at ¶ 29; R. 116). Following extensive written discovery, the parties to the Federal Case scheduled a mediation. (Sec. Amend. Complaint, p. 7 at ¶ 30; R. 116).

In February of 2018, the Lawyers and the Pampus received an eighty-page report from expert witness Daniel C. Swinton, Ed.D., J.D., B.A. (the “Swinton Report”), detailing a variety of errors and omissions by the University Defendants in the procedural, investigatory, and adjudicative processes the University Defendants applied regarding Jane Doe’s allegations and Andrew Pampu’s prosecution. (Sec. Amend. Complaint, p. 7 at ¶ 31; R. 116). Based on the text messages from Charles Doe and the content of the Swinton Report, the Lawyers knew or should have known that Andrew Pampu’s claims against the University Defendants and the claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision. (Sec. Amend. Complaint, pp. 7-8 at ¶¶ 32-35; R. 116-117).

Before the mediation, the Lawyers received an email from the Pampus stating their mediation goals, including:

- a. Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against Andrew Pampu, which by implication would have limited the University’s future treatment of Andrew Pampu’s academic records;
- b. The State Case remain separate and unaffected by any settlement of the Federal Case;
- c. there be no confidentiality or silencing provisions restricting sharing of the settlement terms; and
- d. Andrew Pampu’s arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

(Sec. Amend. Complaint, p. 8 at ¶ 36; R. 117).

On March 21, 2018, the Lawyers, the Pampus, and the University Defendants and their counsel participated in a mediation for the Federal Case. (Sec. Amend. Complaint, p. 8 at ¶ 37; R. 117). After a grueling eleven (11) hour mediation, the terms that the parties allegedly came to agree upon were memorialized in a short-form “Settlement Agreement,” which the Lawyers approved and strongly urged Andrew Pampu to sign. (Sec. Amend. Complaint, p. 8 at ¶ 38; R. 117-118). To accomplish their objective to have the Pampus agree to settle so they could get their contingent fee, the Lawyers took advantage of an opportunity when Appellant, John V. Pampu (Andrew Pampu’s Father) and Appellant, Amanda C. Pampu (Andrew Pampu’s Mother) were out of the room to forcefully urge Andrew Pampu to agree to the University’s proposed settlement terms. (Sec. Amend. Complaint, pp. 8-9 at ¶ 38; R. 117-118). Andrew Pampu (and later Andrew Pampu’s parents) conceded to the Lawyers’ pressure to settle and signed a “Settlement Agreement.” (Sec. Amend. Complaint, p. 9 at ¶ 38; R. 117-118).

On March 23, 2018, the Lawyers received an email from the Pampus explaining Andrew Pampu’s unawareness of the effect and import of the Settlement Agreement and the negative ramifications of the Settlement Agreement. (Sec. Amend. Complaint, p. 9 at ¶ 40; R. 118). The Pampus explained that the Settlement Agreement conflicted with the goals explained in the March 2, 2018, email and conflicted with the goals of both the Federal Case and the State Case. (Sec. Amend. Complaint, p. 9 at ¶ 41; R. 118). The Settlement Agreement the Lawyers convinced the Pampus to sign did not contain necessary language and terms dedicated to the University’s future treatment of Andrew Pampu’s academic records, the results of which were contrary to what the Lawyers knew or should have known were the Pampus’ desires and objectives, which was a key component of the Pampus’ “consideration” to settle, and the Settlement Agreement did not address

many other issues necessary to resolve the underlying dispute with the University. (Sec. Amend. Complaint, p. 9 at ¶ 42; R. 118).

On March 27, 2018, the District Court entered an Order of Dismissal in the Federal Case providing the parties an opportunity to consummate the settlement and providing either side sixty (60) days to file a petition to enforce the settlement. (Sec. Amend. Complaint, p. 10 at ¶ 46; R. 119).

On May 4, 2018, counsel for the University Defendants forwarded a proposed release to the Lawyers as per the terms of the Settlement Agreement. (Sec. Amend. Complaint, p. 10 at ¶ 47; R. 119). That same day, the Lawyers sent the Settlement Agreement with proposed revisions back to counsel for the University Defendants. (Sec. Amend. Complaint, p. 10 at ¶ 47; R. 119). On May 8, 2018, the Lawyers informed counsel for the University Defendants their representation of the Pampus had been terminated and that the Pampus had not yet retained new counsel. (Sec. Amend. Complaint, p. 10 at ¶ 48; R. 119). On May 9, 2018, the Lawyers memorialized the Pampus' May 8, 2018, termination of their representation in a letter to the Pampus, with language impliedly recognized the Pampus' terminated the attorney-client relationship for cause and attempting to refute some of the bases for termination of the representation for cause. (Sec. Amend. Complaint, p. 10 at ¶ 49; R. 119). On May 10, 2018, counsel for the University Defendants sent Andrew Pampu a letter with a five (5) day deadline for response enclosing a Settlement Agreement and Mutual Release ("Release"), a Stipulation of Dismissal with Prejudice, and a copy of the settlement check, which would be provided upon execution of the Release and the Stipulation of Dismissal. (Sec. Amend. Complaint, pp. 10-11 at ¶ 50; R. 119-120).

On May 11, 2018, Andrew Pampu emailed counsel for the University Defendants indicating he had received the May 8, 2018 letter, he wanted to make changes to the proposed Release, he was retaining new counsel, the five (5) day deadline was not feasible, and his new attorneys would be in contact early the following week. (Sec. Amend. Complaint, p. 11 at ¶ 51; R. 120). On May 16, 2018, newly retained counsel (“Successor Counsel”) for the Pampus contacted counsel for the University Defendants requesting the proposed Release document in Word format to make revisions. (Sec. Amend. Complaint, p. 11 at ¶ 52; R. 120). On May 18, 2018, upon consent motion, a text order was entered by the Federal Court this Court substituting Successor Counsel for the Lawyers as counsel of record for Andrew Pampu. (Sec. Amend. Complaint, p. 11 at ¶ 53; R. 120). On May 23, 2018, Successor Counsel submitted revisions to the Release to counsel for the University Defendants. (Sec. Amend. Complaint, p. 11 at ¶ 54; R. 120).

On May 24, 2018, counsel for the University Defendants contended that the revisions materially changed the terms of the Settlement Agreement reached in mediation and in response, the University Defendants moved the Federal Court to enforce the Settlement Agreement. (Sec. Amend. Complaint, p. 11 at ¶ 55; R. 120). Thereafter, the Pampus expended substantial funds by way of legal fees and expenses in the Federal Case attempting to void the Settlement Agreement the Lawyers had directed Andrew Pampu to sign and oppose its enforcement because of the Lawyers’ errors and omissions. (Sec. Amend. Complaint, p. 11 at ¶ 56; R. 120).

The Federal Court’s “Redacted Order” upheld and enforced the Settlement Agreement against Andrew Pampu, finding the Settlement Agreement terms were clear and unambiguous; and the plain and unambiguous language of the Settlement Agreement did not support the Pampus’ representations the University promised more during the settlement negotiations. (Sec. Amend.

Complaint, p. 12 at ¶ 57; R. 121).

The Settlement Agreement:

- a. did not contain the necessary language and terms dedicated to the University's future treatment of Andrew Pampu's academic records;
- b. contained language leading to results contrary to what the Respondents knew were the Pampus' desires and objectives, which was a key component of the Pampus' "consideration" to settle;
- c. did not address multiple issues necessary to resolve the underlying dispute with the University; and
- d. did not contain the necessary language addressing the University's ability to disclose any settlement agreement when confronted with a public records information request for same and, if so, whether Andrew Pampu's identity would be safeguarded.

(Sec. Amend. Complaint, p. 12 at ¶ 58; R. 121).

On January 1, 2019, the Federal Court entered an order by way of minute entry to the docket, requiring the University to make its counsel and an individual with decision-making authority available by telephone for an upcoming mediation in the State Court case, scheduled for March 1, 2019. (Sec. Amend. Complaint, p. 12 at ¶ 59; R. 121). The Settlement Agreement had a negative impact on the State Case, where the Pampus have been forced to expend additional funds to litigate that case because of the impact of the Settlement Agreement. (Sec. Amend. Complaint, p. 12 at ¶ 60; R. 121).

On February 28, 2019, the Lawyers sent a letter to the mediator *and counsel for all parties in the State Case and other third parties* asserting an alleged lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case. (Sec. Amend. Complaint, pp. 12-13 at ¶ 61; R. 121-122). On March 26, 2019, Successor Counsel forwarded a letter to the

Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case's opposing counsel and mediation mediator, interfered with the mediation process, disrupting and negotiations and disadvantaging Andrew Pampu's position in the mediation, all of which added and continued to cause damages to the Pampus. (Sec. Amend. Complaint, p. 13 at ¶ 62; R. 122).

The February 28, 2019, letter from the Lawyers interfered with the mediation process, disrupted the negotiations, and disadvantaged Andrew Pampu's positions. (Sec. Amend. Complaint, p. 13 at ¶ 63; R. 122). Thereafter, the Pampus spent several hundred-thousands of dollars litigating the State Court case that was not resolved at mediation because the Pampus' positions on law and facts in dispute were irreparably damaged by errors and omissions by the Lawyers at the mediation of the Federal Case that directly, proximately and foreseeably caused damage to Andrew Pampu's position in the State Case. (Sec. Amend. Complaint, p. 13 at ¶ 65; R. 122). The Lawyers have continued to assert a charging lien for legal fees against the Pampus' settlement proceeds from the University, despite Andrew Pampu having terminated the Fee Agreement with the Respondents for cause, thereby generating additional expenses for Andrew Pampu to contest those allegations. (Sec. Amend. Complaint, p. 13 at ¶ 66; R. 122).

As a direct, proximate and foreseeable result of the Lawyers' actions and inactions before and after their being relieved as counsel, the Pampus suffered damages, including loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the Lawyers' acts and omissions. (Sec. Amend. Complaint, pp. 13-14 at ¶ 67; R. 122-123).

Had the Lawyers met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice Andrew Pampu in the State Court mediation and litigation, a

substantial portion of the damages sustained by the Pampus should have been avoided. (Sec. Amend. Complaint, p. 14 at ¶ 68; R. 123). Had the Lawyers met the fiduciary standard of conduct by properly, accurately or timely attempting to assert an alleged charging lien, a substantial portion of the damages sustained by the Pampus should have been avoided. (Sec. Amend. Complaint, p. 14 at ¶ 69; R. 123). The Pampus suffered damages, including loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm caused by the Respondents' actions and inactions. (Sec. Amend. Complaint; p. 14 at ¶ 70; R. 123).

Legal Standards

A. Motions to Dismiss.

“In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court applies the same standard of review as the [circuit] court.” *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 631, 699 S.E.2d 699, 703 (Ct. App. 2010). *See also, Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”); *Wilkinson v. E. Cooper Cmty. Hosp., Inc.*, 410 S.C. 163, 169, 763 S.E.2d 426, 430 (2014) (*quoting Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). “In deciding whether the [circuit] court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid claim for relief.” *Id.* “The [circuit] court and this [c]ourt on appeal must presume all well pled facts to

be true.” *Id.* at 635, 699 S.E.2d at 705 (internal quotation marks omitted).

Since “a judgment on the pleadings is considered to be a drastic measure,” a motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle a plaintiff to any relief under any theory of the case. *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006); *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005).

B. Motions to Reconsider

In South Carolina, Rule 59(e), SCRCP, motions have long been considered a vehicle to seek reconsideration of issues and arguments presented to the court. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court “alter or amend the judgment,” but also as a vehicle to seek “reconsideration” of issues and arguments. A party usually is allowed to ask the trial court to reconsider its decision, even if it means rehashing all or part of an argument previously presented. *Elam*, 361 S.C. at 21, 602 S.E.2d at 778-79.

Rule 59(e) provides that a “motion to alter or amend the judgment shall be served no later than 10 days after receipt of written notice of the entry of the order,” it does not set forth a defined legal standard for reconsideration. Rule 59(e), SCRCP. The South Carolina Supreme Court has established that, “a party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.*, 361 S.C. at 24, 602 S.E.2d at 780. If a lower court fails to rule on an issue raised before it, a party must file a Rule 59(e) motion to preserve that issue for later appeal. *E.g., Bodkin v. Bodkin*, 388 S.C. 203, 219, 694 S.E.2d 230, 239

(Ct. App. 2010).

C. Factual Allegations Required to State Facts Sufficient to Support a Legal Malpractice Claim.

“A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client’s damages by the breach.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 321, 732 S.E.2d 170 (2012).

D. Factual Allegations Required to State Facts Sufficient to Support a Claim for Breach of Fiduciary Duty.

“To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co.* 399 S.C. at 335-36, 732 S.E.2d at 173.

E. Factual Allegations Required to State Facts Sufficient to Support a Claim for Breach of Contract.

“The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012).

F. Requirement for an expert affidavit to be filed with the pleadings.

South Carolina Code Section 15-36-100 requires a plaintiff to present expert testimony regarding the alleged “negligent act or omission” by a professional, including lawyers, to support a claim for professional negligence.

Arguments

I. The trial court committed reversible error by ignoring well-pled fact allegations stating claims for legal malpractice claims against their former lawyers based on an insufficient settlement in the underlying matter.

The thrust of the Pampus' legal malpractice claim is the Lawyers' acts and omissions below the standard of care directly resulted in financial losses to the settlement value of the Federal Lawsuit and the State Lawsuit, as well as losses associated with the failure to require the necessary language and terms dedicated to the University's future treatment of Andrew Pampu's academic records, and the legal fees the Pampus subsequently incurred. As to loss of settlement value, this Court has held,

The client's burden of establishing proximate cause in a legal malpractice action requires that he prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care. The burden does not necessarily compel the client to demonstrate that he would have won the underlying case. Rather, it is enough for the legal malpractice plaintiff to show that he has lost a valuable right; e.g., the settlement value of the underlying case. Stated otherwise, "the client need not show a perfect claim. But the client must show at least that he has lost a *probability* of success as a result of the attorney's negligence."

Doe v. Howe, 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005) (emphasis added) (quoting David A. Barry, *Legal Malpractice in Massachusetts: Recent Developments*, 78 Mass. L. Rev. 74, 79 (1993)). See also, *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) (The former client "could satisfy the 'most probably' requirement and defeat [the lawyer's] summary judgment motion by establishing he 'most probably' would have received a larger settlement than [the settlement obtained by the lawyer] or that he 'most probably' would have prevailed on the underlying claim at trial.").

In the Orders granting the Respondents' motions to dismiss, the trial court made the following findings:

While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to

accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the [Respondents] committed professional error in advising Plaintiff Andrew Pampu whether or not to accept the settlement. There are no allegations of professional error on the part of the [Respondents] in advising Plaintiff Andrew Pampu as to whether he should accept the terms of the settlement in the Federal Lawsuit. There are also no allegations that the [Respondents] induced Plaintiff Andrew Pampu into signing the mediation agreement.

(Orders granting Respondents' motions to dismiss, p. 5, filed on June 23, 2022).

The trial court's Orders erred in ignoring the specific allegations in the Second Amended Complaint establishing for the purposes of the Motions to Dismiss clearly supporting the Pampus' professional negligence claims. The fact allegations in Paragraph 1 standing by themselves state claims against the Lawyers for legal professional negligence and are patently inconsistent with the trial court's findings:

¶1. [] Lawyers were negligent in 1) allowing their client, [Andrew Pampu], to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University's future treatment of [Andrew Pampu]'s academic records, the results of which were contrary to what the Lawyers knew were the clients' desires and objectives, which was a key component of the [Pampus]' "consideration" to settle, and without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to [Andrew Pampu] the full implication of this handwritten settlement agreement and how the University could refer to his student records to future schools, especially medical or dental schools; and 3) in the manner in which they prosecuted the state court action, including substantial discovery deficiencies; and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of the [Pampus]. One or more of these negligent actions or related omissions resulted in substantial financial losses to the [Pampus], including their payment of and continuing payment of substantial legal fees to successor counsel to mitigate their damages caused by the Lawyers and frustrating the purpose of the underlying litigation.

(Sec. Amend. Complaint, pp. 1-2, ¶ 1; R. 110-111).

The trial court erred in ignoring the specific allegations in the Second Amended Complaint that were contained in Mr. Dillon's expert affidavit establishing for the purposes of the Motions

to Dismiss the following fact allegations and expert opinions clearly supporting the Pampus' professional negligence claims:

¶6. The Lawyers failed to perform their duties and were professionally negligent in multiple ways, including but not limited to:

- a. Accepting a monetary settlement from Clemson University that contained no provision for cleaning up Mr. Doe's disciplinary record regarding the sexual misconduct and related findings that Clemson had made against him. I am not aware of any Title IX lawyer who believes that one files these lawsuits simply for money. What matters most, and certainly matters more than money, is cleaning up the student's disciplinary record. It is inconceivable to me that the attorneys who settled this case would have done so for only an amount of money (\$100,000.00) that, I suspect, constituted just a fraction of the Plaintiffs' actual litigation costs.
- b. Moreover, as far as I am aware, the original negative finding against Mr. Doe was never struck from Clemson's records, so there was no need to agree that it would be "reinstated," as the settlement agreement did. One need not reinstate something that was never "de-instated." So it was all the more strange to see that not only would the Lawyers fail to secure a clean record, but that they would affirmatively agree to a dirty one. It is the equivalent of steering the Titanic into the iceberg in exchange for free gas.
- c. Any attorney who practices in the Title IX area would be well aware of the downstream implications of a sexual misconduct finding and the paramount importance of a clean disciplinary record. Many schools to which a student might transfer will ask if he has ever been disciplined, as will most graduate or professional schools to which he applies. Moreover, there could be future professional-licensing implications of a negative finding for anyone who is interested in practicing medicine, law, or the like. My understanding is that Mr. Doe hopes to practice medicine and that the Lawyers knew that at the time—and that, indeed, they knew that safeguarding those hopes was the reason Plaintiffs sued in the first place. So the harm of a sexual misconduct finding to a future doctor or lawyer is potentially even worse than it is to a student who does not intend to pursue one of the professions—which is all the more reason why settling solely for money made so little sense in this case.
- d. Moreover, schools will often agree to clean up a student's record during settlement negotiations. Schools, like courts, can vacate and expunge disciplinary findings.
- e. It is particularly striking that the Lawyers settled the case without cleaning up Mr. Doe's disciplinary record given that Plaintiffs sent them a five-page, single-spaced written document, entitled "Mediator Proposed Mediation Terms," that contemplated exactly what such a resolution would

look like. The Lawyers appear to have ignored virtually that entire document and settled only for money—and, incredibly, for an amount of money that was a mere 25% of the \$400,000 contemplated in the document.

(Expert Affidavit by Justin Dillon, Esq., pp. 2-4, ¶ 6, Ex. 1 to Second Amended Complaint; R. 134-136).

The trial court's Orders dismissing the Pampus' Second Amended Complaint did not accept the facts alleged as true and failed to view the facts and inferences drawn from the facts alleged in the Second Amended Complaint in the light most favorable to the Pampus.

The trial court also erred in creating its own "fact" allegations. On page 3 of the Order granting the Respondents' motions to dismiss, the trial court "found" that "Plaintiff Andrew Pampu developed 'buyer's remorse' in the days after the mediation and attempted to abandon the settlement." (Orders granting Respondents motion to dismiss, p. 3). There are no such allegations of fact in the Second Amended Complaint.

The facts alleged in Paragraph 1 of the Second Amended Complaint and Mr. Dillon's expert opinions state facts supporting a "valid claim for relief" under South Carolina's legal malpractice jurisprudence. The trial court's Orders dismissing the Pampus' Second Amended Complaint should be reversed and this matter should be remanded for trial.

II. The trial court committed reversible error by ignoring well-pled fact allegations stating claims under established South Carolina law permitting former clients to bring breach of fiduciary duty claims when the facts alleged show the fiduciary breached duties of loyalty and confidentiality causing actual losses.

The Pampus' Second Amended Complaint alleges the Lawyers breached their duties of loyalty and confidentiality by disclosing information related to the representation to third parties without the Pampus' knowledge or consent that caused financial losses. The trial court's Orders

erred in ignoring the specific allegations in the Second Amended Complaint establishing the Pampus' breach of fiduciary duty claims.

In the Orders granting the Respondents' motions to dismiss, the trial court made the following findings:

In their Memorandum Law in Opposition to the Motion to Dismiss, Plaintiffs claimed that the [Respondents] committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the [Respondents]' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the [Respondents]. Second, there are no allegations (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

(Orders granting Respondents' motions to dismiss, p. 6, filed on June 23, 2022).

It was error for the trial court to conclude that "asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the [Respondents]" because there are no such allegations anywhere in the Second Amended Complaint.

The fact allegations in Paragraphs 2, 61, and 62 state facts sufficient to establish breach of fiduciary duty claims against the Lawyers:

¶2. After the Lawyers were discharged as counsel for the [Pampus], the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties, including disclosing information related to their representation of the [Pampus] to counsel for the opposing parties without the [Pampus]' consent.

¶61. On February 28, 2019, the Lawyers sent a letter to the mediator **and counsel for all parties in the State Case and other third parties** asserting a lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case.

¶62. On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case’s opposing counsel and mediation mediator, interfered with the mediation process, disrupting and negotiations and disadvantaging [Andrew Pampu]’s position in the mediation, all of which added and continued to cause damages to [Andrew Pampu].

(Second Amended Complaint, pp. 2, 12-13, ¶¶ 2, 61, and 62; R. 111, 121-122) (emphasis in original).

The allegations that the Lawyers’ letter “interfered with the mediation process, disrupting and negotiations and disadvantaging [Andrew Pampu]’s position in the mediation, all of which added and continued to cause damages to [Andrew Pampu]”, which should have been taken as true by the trial court, all establish a proximate link between the Lawyers’ actions and the Pampus’ damages.

Fiduciary duties are duties of the highest standard required by law of any agent relative to his/her/its principal, which include the duties of loyalty, disclosure, confidentiality, obedience, reasonable care and diligence, and full accounting. *See, e.g.,* Henry Campbell Black, *et al.*, BLACK’S LAW DICTIONARY 625 (6th ed. 1990); *see generally* Ernest Weinrib, *The Fiduciary Obligation*, 25 U. Toronto L.J. 1, 5-6 (1975) (discussing judicial determination of fiduciary relationship). Fiduciary law encompasses the specific set of actors who furnish services to others and who are subject to a legal doctrine that embodies remedial measures intended to prohibit fiduciaries from misappropriating or misusing entrusted property or power. Likewise, when a fiduciary breaches the duty of loyalty, not only is the beneficiary permitted to recover actual damages, but an additional distinctive remedy is available to the beneficiary – disgorgement of the benefit that the fiduciary obtained through the breach. *See, e.g., Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999) (proof of actual damages not necessary to obtain disgorgement of fees due to lawyers’

breach of fiduciary duty to client); *Estate of Re v. Kornstein Veisz & Wexler*, 958 F. Supp. 907 (S.D.N.Y. 1997) (Sotomayor, J.) (client can maintain breach of fiduciary duty action against lawyers despite dismissal of malpractice and contract claims).

A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another, *Ellis v. Davidson*, 358 S.C. 509, 519, 595 S.E.2d 817, 822 (Ct. App. 2004), and a client-lawyer relationship is by its nature a fiduciary relationship. *RFT Management Co., L.L.C. v. Tinsley & Adams, L.L.P.*, 399 S.C. 321, 732 S.E.2d 170 (2012); *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011); *Holtz v. Minyard*, 304 S.C. 225, 403 S.E.2d 634 (1991).

As fiduciaries, lawyers owe their clients a duty of loyalty and a duty of confidence, which is separate from their professional duties of competence and care. *Smith v. Hastie*, 367 S.C. 410, 417, 626 S.E.2d 13, 17 (Ct. App. 2005). *See also*, *First Am. Corp. v. Al-Nahyan*, 17 F. Supp.2d 10, 27 (D.D.C.1998); *BCCI Holdings v. Clifford*, 964 F. Supp. 468, 481 (D.D.C.1997). The allegations in Paragraphs 2, 61, and 62 state facts sufficient to establish breach of fiduciary duty claims based on the Lawyers' letter to third-parties asserting an alleged charging lien wreaked havoc in the Pampus' attempts to resolve their claims against the University defendants in the Federal Lawsuit. The information contained in the Lawyers' letter was confidential and his disclosure was a breach of the Lawyers' fiduciary duties of loyalty and confidentiality.

"One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." *Davis v. Greenwood School Dist.* 50, 365 S.C. 629, 620 S.E.2d 65 (2005); *Moore v. Benson*, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010); *Smith v. Hastie*, 367 S.C. at 417, 626 S.E.2d at 17; *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004). *See also*, RESTATEMENT (SECOND) OF TORTS § 874 (1979) ("One

standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.”).

To recover on a claim for breach of fiduciary duty, the plaintiff must prove by a preponderance of the evidence that a fiduciary duty existed between the parties, that the defendant violated that fiduciary obligation, and that the plaintiff suffered damages resulting from the violation. *Walbeck v. I’On Co., LLC*, 439 S.C. 568, 585, 889 S.E.2d 537, 546 (2023), *reh’g denied* (July 26, 2023); *Smith*, 367 S.C. at 417, 626 S.E.2d at 17. There is no requirement that the plaintiff show “he or she most probably would have been successful in the underlying suit”. *Smith*, 367 S.C. at 417, 626 S.E.2d at 17.

The trial court committed reversible error by ignoring well-pled fact allegations in the Second Amended Complaint stating claims for breach of fiduciary duty to recover damages caused by the Lawyers’ breach of their duties of loyalty and confidentiality. The Orders granting the Respondents’ motions to dismiss should be reversed and this case should be remanded.

III. The trial court committed reversible error by ignoring specific fact allegations establishing a client-lawyer relationship between Mr. Pampu and Ms. Pampu and the Lawyers that provided standing to sue.

The trial court dismissed the claims by Mr. and Ms. Pampu for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCP. This ruling constitutes reversible error, because the trial court ignored the specific allegations in the Complaint establishing a client-lawyer relationship between Mr. Pampu and Ms. Pampu, on one hand as clients, and the Lawyers, on the other as the attorneys concerning the “Federal Case” and the “State Case.” See (Sec. Amend. Complaint, ¶¶ 1, 2, 13-14, 28-29, 36-37, 40, 49, 56, 61, and 66; R. 110-112, 113, 116-117, 118-121). Here a few examples:

¶1. This case seeks recovery of damages caused by the Lawyers’ errors during their

representation of *the [Pampus]* in a) a federal lawsuit against ... The Lawyers were negligent in 1) allowing their client, John Doe, to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University's future treatment of John Doe's academic records, the results of which were contrary to what the Lawyers knew were the clients' desires and objectives, which was a key component of *the [Pampus]*' "consideration" to settle, ... and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of *the [Pampus]*. One or more of these negligent actions or related omissions resulted in substantial financial losses to *the [Pampus]*, ...

¶2. After the Lawyers were discharged as counsel for *the [Pampus]*, the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties, including disclosing information related to their representation of *the [Pampus]* to counsel for the opposing parties without *the [Pampus]*' consent.

¶13. On or around November 2, 2017, the Lawyers accepted the representation of *the [Pampus]* to provide legal advice, services, and representation of *the [Pampus]* in a lawsuit

¶14. On or about November 2, 2017, [the Law Firms] contracted to represent *the [Pampus]* in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

(Sec. Amend. Complaint, ¶¶ 1, 2, 13-14; R. 110-112, 113).

The trial court's findings on pages 6-7 of the Orders that Mr. and Ms. Pampu lacked standing were premised on the fact that neither Mr. Pampu nor Ms. Pampu were parties to the Federal Lawsuit or the State Lawsuit. The existence of a client-lawyer relationship is not dependent on whether the client is a party to a lawsuit or later becomes a party to a lawsuit. Taking the allegations in the Second Amended Complaint is true, Mr. Pampu and Ms. Pampu specifically alleged they were clients of the Lawyers and parties to contracts of representation with the Law Firms.

It was clear error by the trial court to dismiss the claims asserted by Mr. Pampu and Ms. Pampu for alleged lack of subject matter jurisdiction under Rule 12(b)(1), SCRCP. These findings

should be reversed, and the entire matter should be remanded to the Circuit Court.

IV. The trial court committed reversible error by ignoring specific fact allegations establishing the Pampus' breach of contract claim.

The Orders summarily dismissed the Pampus' claims for breach of contract without making or identifying any findings of fact or specific conclusions of law. The Orders did not properly treat the specific allegations in the Second Amended Complaint that established, for the purposes of a motion to dismiss, a contractual relationship between Mr. Pampu and Ms. Pampu and the Law Firms for the Law Firm to provide legal services to pursue the Pampus' claims in "Federal Case" and the "State Case." These allegations provide standing for Mr. Pampu and Ms. Pampu to assert the breach of contract claims stated in the Second Amended Complaint.

The Second Amended Complaint contains these allegations of fact concerning the Pampus' breach of contract claim:

¶14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively "the Law Firms") contracted to represent the [Pampus] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

¶98. Law Firms entered into a Contract with the Does agreeing and contracting to provide legal services to represent the [Pampus] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

¶99. Law Firms breached the contract by failing to provide such services.

¶100. The [Pampus] satisfied all necessary preconditions, if any, and performed their part of the contract, and/or was, at the appropriate time, able, ready, and willing to perform.

¶101. As a direct and proximate result of the Law Firms' breach of their contractual duties, the [Pampus] sustained actual, consequential and incidental damages in an amount to be determined by the jury at the trial of this case.

(Sec. Amend. Complaint, ¶¶ 14, 98-101; R. 113, 129).

The trial court erred in ignoring the specific allegations in the Complaint that Mr. Pampu

and Ms. Pampu entered into a contract of representation with the Law Firms, thereby providing standing for Mr. Pampu and Ms. Pampu to assert the breach of contract claims stated in the Second Amended Complaint. *See* (Sec. Amend. Complaint, pp. 4 and 19-20, ¶¶ 14, 98-101, and Wherefore clause on p. 20; R. 113, 128-129, 131). This result should be reversed, and the entire matter should be remanded to the Circuit Court.

V. The trial court committed reversible error by dismissing the Pampus’ breach of fiduciary duty claim as “duplicative” of their legal malpractice claim.

The Orders should be reversed and allow the Pampus to proceed with their breach of fiduciary duty claim because the Second Amended Complaint alleges facts supporting their breach of fiduciary duty claim as argued above. Notwithstanding the fact that the Pampus’ Second Amended Complaint states facts sufficient to support a breach of fiduciary duty claim, the Pampus should be permitted to pursue that claim, along with their legal malpractice claim and breach of fiduciary duty claim because Rule 8(a), SCRCF permits filing alternative claims. *See* Rule 8(a), SCRCF (“Relief in the alternative or of several different types may be demanded.”); *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (finding the pleadings appropriately alleged alternative theories of liability). The trial court’s findings effectively take away a legal malpractice plaintiff’s ability to assert alternative claims in their pleadings as Rule 8(a) permits for all other litigants.

In addition, the trial court’s reliance on the Supreme Court’s opinion, *RFT Mgmt. Co. v. Tinsley & Adams, LLC*, 732 S.E.2d 166, 173 (S.C. 2012), does not support the ruling as that case dealt with a motion made at trial, and not before trial under Rule 12, SCRCF. Similarly, the trial court’s reliance on the Supreme Court’s opinion in *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d

178, 182 (Ct. App. 2019), is also misplaced because that matter was before the trial court on a motion for summary judgment, and not a motion to dismiss. In addition, this Court previously recognized the propriety of pleadings alleging a legal malpractice claim and a breach of fiduciary duty claim. *See Smith v. Hastie*, 367 S.C. 410, 419, 626 S.E.2d 13, 18 (Ct. App. 2005) (“We therefore hold Smith presented adequate evidence on the merits of her claims for negligence and breach of fiduciary duty.”) (Emphasis added).

Based on the express language in Rule 8(a), SCRCPP, it was error for the trial court to conclude that the Pampus’ breach of fiduciary duty claim was duplicative of their professional negligence claim. These findings should be reversed, and the entire matter should be remanded to the Circuit Court.

VI. The trial court committed reversible error by concluding Mr. Dillon’s expert opinions supporting the Pampus’ professional negligence claims were untimely and insufficient as a matter of law.

Mr. Dillon has substantial experience in representing clients on Title IX matters and in litigating disputes under Title IX. Mr. Dillon’s expert affidavit was timely filed with the Amended Complaint, and also with the Second Amended Complaint under S.C. CODE ANN. § 15-36-100(E).

A. The trial court committed reversible error by ignoring the allegations in the Second Amended Complaint showing Mr. Dillons’ expert affidavit was timely filed under S.C. CODE ANN. § 15-36-100(E) permitting an amended pleading with an expert affidavit to be filed to cure alleged defects.

The trial court erred in ignoring the dates of filing and the statements in the Second Amended Complaint establishing for the purposes of a motion to dismiss the fact that Mr. Dillon’s expert affidavit was timely filed and satisfied all aspects of S.C. CODE ANN. § 15-36-100(C)(1).

The trial court also erred in ignoring the specific allegations in Paragraph 103 in the Second Amended Complaint, which should have been taken as true for the purposes of the Lawyers’

Motions:

¶103. In February and early March 2021, *the Lawyers refused to enter into a statute of limitations tolling agreement to toll the statute of limitations on Plaintiffs' legal professional negligence claims against the Lawyers.* As stated in Paragraphs 37-39, a substantial portion of the Lawyers' liability arises from the Lawyers' acts and omissions during a mediation on March 21, 2018 in the Federal Case. As a result, Plaintiffs had a good faith basis to believe the three-year statute of limitations on Plaintiffs' legal professional negligence cause of action against the Lawyers would expire on March 21, 2021, which was within 10 days of the date the Summons & Complaint was filed on March 19, 2021. *Because of time constraints*, an affidavit of an expert could not be prepared in time to file the Summons & Complaint before March 21, 2021.

Under S.C. CODE ANN. § 15-36-100(C)(1), included with the filing of the Amended Summons & Amended Complaint and marked as Exhibit 1 was the affidavit of Justin Dillon, Esq., an expert witness and lawyer licensed to practice law in the Commonwealth of Virginia and in the District of Columbia, which satisfies S.C. CODE ANN. § 15-36-100(A)(1) to qualify Mr. Dylan to serve as an expert in this matter. Another copy of Mr. Dillion's affidavit is filed with this Second Amended Summons & Amended Complaint as Exhibit 1. Mr. Dillon has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in the active practice litigating Title IX matters for at least three of the last five years immediately preceding his opinions, which satisfies S.C. CODE ANN. § 15-36-100(A)(2)(b)(i) to qualify Mr. Dylan to serve as an expert in this matter. Mr. Dillion has been invited to speak before organizations including the American Bar Association, the National Association of Criminal Defense Lawyers, the Association of Title IX Administrators, the Higher Education Consultants Association, the Colorado Bar Association, the Virginia State Bar, the District of Columbia Bar, and has guest lectured on Title IX matters at Harvard Law School, George Washington University, American University, and the University of Maryland. Mr. Dillion has other specialized knowledge in Title IX matters, which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of his study, experience, or both, which satisfies S.C. CODE ANN. § 15-36-100(A)(3) to qualify Mr. Dylan to serve as an expert in this matter.

Mr. Dillon's affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of Mr. Dillion's affidavit.

This Second Amended Summons & Amended Complaint is being filed under S.C. CODE ANN. § 15-36-100(E), which permits an amended pleading to be filed to cure the alleged defects. This Second Amended Summons & Amended

Complaint is being filed based on the specious arguments contained in the Lawyers' respective Motions to Dismiss claiming Mr. Dillon's affidavit is defective because he is not licensed in South Carolina, when the Lawyers knew or should have known there is no such requirement under S.C. CODE ANN. § 15-36-100.

(Sec. Amend. Complaint, pp. 20-21, ¶ 103; R. 129-130).

It was reversible error for the trial court to conclude that Mr. Dillon's expert affidavit was not timely filed. This ruling should be reversed, and the matter should be remanded.

B. Mr. Dillon's qualifications and expertise in Title IX matters establish the legal sufficiency of his expert opinions.

The Orders did not accept as true Mr. Dillon's qualifications for serving as an expert as stated in his curriculum vitae included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint, which identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits. The standard of review under Rule 12(b)(6), SCRPC, required the trial court to accept all such allegations as true and all inferences from those allegations in favor of the Pampus.

The trial court erred in refusing to accept Mr. Dillon's opinions in the expert affidavit because the affidavit is facially sufficient given it is sworn and identifies a potentially meritorious legal malpractice claim. *See Ranucci v. Crain*, 409 S.C. 493, 508, 763 S.E.2d 189, 196–97 (2014) (“As to Dr. Crain's assertions regarding defects in the authorship and content of Dr. Boortz–Marx's affidavit, we find this is not an appropriate ground to affirm the circuit court's order because the affidavit is facially sufficient given it is sworn and identifies a potentially meritorious medical malpractice claim.”).

The provisions in S.C. CODE ANN. § 15-36-100(E) do not permit the trial court to address the substance of an expert's opinions. The trial court erred in ignoring Mr. Dillon's qualifications

for serving as an expert as stated in his curriculum vitae included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint, which identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits. The trial court erred in accepting the Lawyers' arguments challenging the weight of Mr. Dillon's experience, and not the lack thereof, because S.C. CODE ANN. § 15-36-100(E) does not permit challenging an expert's the substance of an expert's opinions.

The trial court erred in accepting the Lawyers' arguments that Mr. Dillon is not qualified to serve as an expert because he has not actually practiced in South Carolina federal or state court when the Order acknowledges federal Title IX claims were involved in Lawyers' underlying representation of the Pampus and ignores Mr. Dillon's vast experience handling Title IX litigation. In addition, South Carolina has long since abandoned the "locality rule" in the context of expert opinions for legal malpractice claims. *See, Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 438, 472 S.E.2d 612, 614 (1996) (the fact that Professor Gregory B. Adams was not licensed to practice law in this state and is not regularly handle real estate matters did not disqualify him as an expert).

The trial court incorrectly found that "Mr. Dillon holds himself out to be an expert in legal malpractice claims in South Carolina district court litigation." There is no such statement in any materials filed with the Complaint, Amended Complaint, or Second Amended Complaint.

The trial court erred in incorrectly imposing a "sufficiently related" standard for an expert witness affidavit filed in a professional liability matter under S.C. CODE ANN. § 15-36-100, which is not stated in the Statute or in any case law interpreting the Statute. *See* (Orders on p. 9; R. 14) ("Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's

experience is not sufficiently related to Plaintiffs’ allegations of legal malpractice as contained in the Second Amended Complaint.”).

This ruling should be reversed, and the matter should be remanded.

VII. It was error for the trial court to ignore South Carolina jurisprudence under the guise of public policy arguments in support of mediation and settlement.

The trial court’s public policy basis to dismiss the Pampus’ claims arguably founded on concerns about protecting the “finality” of mediation are misplaced and contrary to controlling South Carolina law. Notwithstanding the cases permitting clients to bring legal malpractice claims based on their former lawyers’ errors in handling a settlement, *e.g.*, *Doe v. Howe*, the South Carolina Rules for Alternative Dispute Resolution have specific controlling provisions permitting communications during a mediation to be disclosed, for the purpose of a professional malpractice proceeding. See Rule 8(c)(3), SCADR Confidentiality (“There is no confidentiality attached to information that is disclosed during a mediation: (3) **offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding[.]**”) (Emphasis added). The provisions in Rule 8(c)(3), SCADR creating an exception to the general confidentiality provisions contemplate legal malpractice lawsuits based on lawyers’ conduct during a mediation that adversely affects their clients. The South Carolina Supreme Court would not have included this provision in the “finality” of mediation was sacrosanct in its view.

The trial court’s rulings on this basis should be reversed, and this matter should be remanded.

CONCLUSION

Appellants, Andrew Pampu; Amanda Pampu; and John Pampu, respectfully request this Court to reverse the trial court's ruling dismissing their Second Amended Complaint with prejudice and remanding the matter to allow them to maintain their legal malpractice, breach of fiduciary duty, and breach of contract claims against the Respondents.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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Jul 11 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

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REPLY ARGUMENTS

I. The trial court's Orders dismissing all of Appellants' causes of action with prejudice "involve the merits" and are immediately appealable.

Respondents' arguments claiming the trial court's orders are interlocutory should be rejected on multiple grounds. The Orders a) dismiss the Appellants' claims asserted in their Second Amended Complaint ("Complaint") with prejudice and b) contain findings that will adversely affect the Appellants' defenses to the Respondents' counterclaims. The existence of Respondents' counterclaims has no effect on whether the Orders are subject to an immediate appeal.

A. The trial court's Orders "involve the merits."

The trial court's Orders are ripe for appellate review and are not interlocutory because those Orders contain findings dismissing all Appellants' causes of action asserted against Respondents. An order granting a dispositive motion is immediately appealable. See Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 3-6, 393 S.E.2d 176, 177-79 (1990) (explaining an order dismissing one of multiple claims is immediately appealable).

Section 14-3-330 of the South Carolina Code addresses appellate jurisdiction and provides in part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed therefrom any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

Intermediate orders involving the merits may be immediately appealed pursuant to subsection 14-3-330(1). “An order involves the merits under § 14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense. Stone v. Thompson, 426 S.C. 291, 294-95, 826 S.E.2d 868, 869-70 (2019) (citing Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (“An order involving the merits is one that ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’”). An order “involves the merits,” for purposes of exception to the final judgment rule of appealability, when it finally determines some substantial matter forming the whole or a part of some cause of action or defense. Tillman v. Tillman, 420 S.C. 246, 801 S.E.2d 757 (Ct. App. 2017); Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014).

In this case, the trial court’s Orders granting Respondents’ motions to dismiss finally determined a substantial matter forming all of the Appellants’ causes of action and, therefore, involved the merits. See Stone, 426 S.C. at 295, 826 S.E.2d at 870.

The Respondents’ citation and substantial reliance on this Court’s findings in Richardson v. Halcyon Real Estate Services, LLP,¹ as its primary authority supporting its claim that the Appellants’ appeal is interlocutory is quite remarkable, because unlike the trial court in this case, none of the orders issued by the trial court in Richardson disposed of any claims or counterclaims, but instead dealt with depositions and discovery sanctions. 439 S.C. at 423, 887 S.E.2d at 155.

Interlocutory orders affecting a substantial right may be immediately appealed pursuant to subsection 14-3-330(2). Orders affecting a substantial right “discontinue an action, prevent an

¹ 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023).

appeal, grant or refuse a new trial, or strike out an action or defense.” MidState Distribs., Inc., 310 S.C. at 334 n.4, 426 S.E.2d at 780 n.4.

There is nothing “piecemeal” about the Appellants’ appeal in this case. The trial court’s Orders “involve the merits” and finally dismissed all the Appellants’ causes of action against Respondents. This appeal is appropriate and ripe for review.

B. Incorrect findings in the trial court’s Orders will adversely affect Appellants’ defenses to Respondents’ counterclaims.

Findings in the trial court’s Orders will materially affect the Appellants’ ability to assert the Respondents were terminated “for cause,” thereby adversely affecting their defenses to the Respondents’ counterclaims for fees. The Appellants’ Complaint alleges the Respondents were terminated “for cause”. R. 45 and 48; Complaint, ¶¶ 49 and 66.

C. Respondents’ counterclaims are stayed during the appeal because the appeal directly affects those matters.

“Generally, serving [the] notice of appeal divests the lower court of jurisdiction over the order appealed, except for matters not affected by the appeal.” Wilson v. Walker, 340 S.C. 531, 539, 532 S.E.2d 19, 23 (Ct. App. 2000); Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal.” (citing Rule 205, SCACR)).

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR.

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR.

The reference in Rules 205 and 241(a) to the “jurisdiction” of the lower courts does not refer to subject matter jurisdiction. Rather, the rules govern the circumstances under which the exclusive appellate jurisdiction Rule 205 grants to the appellate court deprives the lower court of the power to address a particular issue, or “matter,” during the pendency of the appeal.

Tillman v. Oakes, 398 S.C. 245, 256 n.3, 728 S.E.2d 45, 51 n.3 (Ct. App. 2012).

“When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending.” Id., 398 S.C. at 254-55, 728 S.E.2d at 50.

The matters included in the Appellants’ appeal include whether the Respondents were terminated “for cause” as alleged in Paragraphs 49 and 66 in the Appellants’ Complaint. R. 49 and 66. If the trial court’s Orders are reversed on appeal and if the finder of fact agrees with Appellants’ arguments, such findings would prevent the Respondents from recovering on their claims for legal fees. See e.g., Est. of McClain v. Killmer, Lane & Newman, LLP, ___ P.3d ___, 2024 WL 2066330, *9 (Colo. App. May 9, 2024) (“[A] quantum meruit fee is not permitted when a client terminates the lawyer for cause and the fee agreement lacks a conversion clause.”); Maher v. Quality Bus Service, LLC, 144 A.D.3d 990, 42 N.Y.S.3d 43 (2d Dep’t 2016) (lawyer discharged

for cause is not entitled to compensation).

These Orders are not interlocutory, and the appeal should continue.

II. The Respondents' arguments on the Appellants' legal malpractice claims ignore specific fact allegations in the Complaint showing they would have obtained a better result in the underlying matter if the Respondents had exercised reasonable care.

The Respondents argue that the trial court's Orders properly dismissed the Appellants' legal malpractice claims because they failed to allege specific facts showing they would have obtained a better result in the underlying matter if the Respondents had exercised reasonable care. On page 16 of their Brief, the Respondents' summary description of the trial court's errors in dismissing the Appellants' legal malpractice/professional negligence claims as outlined in the Appellants' Brief, followed by its interpretation of this Court's rulings in Doe v. Howe.²

However, the Respondents carefully avoid mentioning the Appellants' allegations in Paragraphs 68-71 in their Complaint containing specific allegations of fact on how they would have obtained a better result had the Respondents met the standard of care. The Respondents urge this Court to conclude that the "Appellants still must allege facts in their complaint that, if true, would support that they 'would have obtained a better result in the underlying matter if [Respondents] had exercised reasonable care.'" Respondents Brief at 17 citing Doe v. Howe and then referring *only* to Paragraph 1 in the Appellants' Complaint. The problem with Respondents' arguments (and the trial court's rulings) is that the Appellants did allege facts in their Complaint which, if taken as true, would support that they "would have obtained a better result in the underlying matter if Respondents had exercised reasonable care." The trial court's rulings ignoring these allegations constitutes reversible error.

In Paragraphs 67-71 of their Complaint, the Appellants alleged

² 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005).

As a direct, proximate and foreseeable result of the [Respondents]' actions and inactions before and after their being relieved as counsel, [Appellants] suffered damages, including ***loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the [Respondents]' actions and inactions.***

Had the [Respondents] met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice [Appellant, Andrew Pampu] in the State Court mediation and litigation, ***a substantial portion of the damages sustained*** by [Appellant, Andrew Pampu] (recounted throughout this Complaint) ***should have been avoided.***

Had the [Respondents] met the fiduciary standard of conduct by properly, accurately or timely attempting to assert an alleged charging lien, ***a substantial portion of the damages sustained*** by [Appellant, Andrew Pampu] (recounted throughout this Complaint) ***should have been avoided.***

As a direct, proximate and foreseeable result of the [Respondents]' actions and inactions ***in the Federal Case*** and its mediation, the [Appellants] suffered damages, including ***loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm*** caused by the [Respondents]' actions and inactions.

Had the [Respondents] met the standard of care by properly, accurately or timely advising [Appellant, Andrew Pampu] before, during and after the Federal Case mediation regarding any terms of the Federal Case mediation, the damages sustained by [Appellant, Andrew Pampu] (recounted throughout this Complaint) should have been avoided.

R. 48-49, Complaint, ¶¶ 67-71 (emphasis added).

While the Respondents' Brief accurately states that the State Case was pending when the Complaint was filed, it completely ignores the impact the Respondents' acts and omissions had on the Federal Case, notwithstanding the specific allegations in Paragraphs 69-71.

The arguments in the Respondents' Brief that the Appellants' Complaint. "contains merely conclusory allegations that Respondents were negligent in the manner in which they concluded the representation" ignores the actual pleadings. Like the trial court, Respondents ignore the

allegations about the adverse consequences resulting from Respondents' actions in sending correspondence to opposing counsel and other third parties asserting their alleged "charging lien." Although the Supreme Court's last pronouncement on this issue was in an unpublished opinion, their view is that opposing counsel and other third parties are not subject to any duties to protect a "charging lien" asserted by counsel for the opposing party. See Byrd v. Wausau Underwriters Ins. Cos., No. 2011-MO-002, 2011 WL 11748258, at *1 (S.C. Jan. 7, 2011). Therefore, the allegations in the Appellants' pleadings that the Respondents' sending a lien letter to third parties who had no duties to protect their alleged lien was improper and interfered with the mediation process and settlement negotiations, which caused the Appellants to "spend several hundred thousand dollars litigating" because the matter was not resolved at or shortly after the federal court mediation.

The Respondents did not have the Appellants' permission to disclose information related to the representation of the Appellants to third parties without the Appellants' consent, and the Respondents' breach of those duties are alleged in the Complaint to have caused damages to the Appellants. The Appellants' Complaint states claims for breach of fiduciary duty and the trial court's Orders dismissing this cause of action should be reversed.

The allegations in the Complaint sufficiently state facts on which relief can be granted. Hager v. McCabe, Trotter & Beverly, P.C., 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022) ("If the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper."). The trial court's Orders granting the motions dismissing the Appellants' cause of action for legal malpractice/professional negligence were reversible errors.

III. The trial court's Orders and Respondents' Brief misapprehend South Carolina's fiduciary duty jurisprudence recognizing a fiduciary's liability for breach of their duties of confidentiality and loyalty.

Neither the trial court's Orders nor the Respondents' Brief dispute a fiduciary's liability for disclosing confidential information. Cf., McCormick v. England, 328 S.C. 627, 630, 494 S.E.2d 431, 432 (Ct. App. 1997) (physician can be liable for breach of a duty of confidentiality). Instead, the Respondents' Brief simply disputes whether the Appellants actually suffered any damages and not whether the Complaint states facts sufficient to show damages. The Respondents' Brief pays little to no attention to the allegations in the Complaint alleging damages the Respondents caused to the Appellants' Federal Case, including damages caused by disclosing confidential information to third parties in breach of their fiduciary duties. It was a reversible error for the trial court to grant the motions dismissing the Appellants' breach of fiduciary duty claims.

IV. John Pampu and Amanda Pampu have standing to pursue their breach of contract claims against the Respondents.

Both the trial court and the Respondents' Brief ignore specific allegations in the Complaint alleging 1) the existence of the client-lawyer relationship between the Respondents, as counsel, and John Pampu and Amanda Pampu, as clients, and 2) a contractual relationship in which the Respondents were to provide legal services without regard to whether a client-lawyer relationship existed. The trial court committed reversible error when it disregarded the allegations in Paragraphs 14 and 98 of the Complaint, which state:

14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively "the Law Firms") contracted to represent the [Appellants] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

98. Law Firms entered into a Contract with the [Appellants] agreeing and contracting to provide legal services to represent the [Appellants] in the Federal

Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.”

R. 39 and 54, Complaint ¶¶ 14 and 98.

One can reasonably infer John Pampu and Amanda Pampu, as the parents of Andrew Pampu, were paying the legal fees and costs associated with the Respondents’ representation in the underlying matters. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987) (“A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and *inferences reasonably deducible therefrom* would entitle the plaintiff to any relief on any theory of the case.”) (emphasis added); Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (“If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.”).

John Pampu and Amanda Pampu have standing to assert breach of contract claims against the Respondents because they were the parties to the contract who were paying the legal fees. Jaffe v. Gibbons, 290 S.C. 468, 472, 351 S.E.2d 343, 345 (Ct. App. 1986) (“The general rule is that where both parties have signed a contract, the signing by the first party is in effect his proposal or offer, and the signing by the second party is his acceptance thereof; the writing then represents or evidences the bargain between them.”); Fabian v. Lindsay, 410 S.C. 475, 488, 765 S.E.2d 132, 139 (2014) (“Generally, one *not in privity of contract* with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of contract between the defendant and a third-party is not, as such, recoverable by the plaintiff.”) (emphasis added).

The Respondents’ Brief—like the trial court’s Orders—fails to consider as true the Appellants’ allegations that the Respondents agreed and contracted “to provide legal services to

represent the Does in the Federal Case, the State Case, and ‘any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits[,]’” and breached the contract by “failing to provide such services,” which for the purposes of a motion to dismiss or required to be taken as true. See R. 54-55, Complaint, ¶¶ 98 and 99. The Complaint states a breach of contract claim on behalf of John Pampu and Amanda Pampu.

The Respondents’ arguments that the Appellants’ breach of contract claim “is simply a recharacterization of their legal malpractice and breach of fiduciary duty claims” should be rejected. Rule 8(a), SCRCP, permits “[r]elief in the alternative, or of several different types may be demanded” in a pleading. See Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (“We find it is entirely appropriate for Skydive to allege that some of an individual’s actions were within the scope of their official duties, and some were not, or even to plead alternative theories of liability depending on whether an individual’s actions were within the scope of their duties.”) (citing Rule 8(a), SCRCP). The trial court’s rulings in its Orders were not “harmless error” as argued by the Respondents. John Pampu and Amanda Pampu have legitimate and viable breach of contract claims, which they should be permitted to litigate on the merits.

V. The Respondents’ Brief fails to address the trial court’s reversible error in not permitting the Appellants to plead in the alternative as provided under Rule 8(a) of the South Carolina Rules of Civil Procedure.

Nowhere in the four pages of arguments in the Respondents’ Brief do they make any argument supporting the trial court’s rulings that were contrary to Rule 8(a), SCRCP, which prevented the Appellants from pleading in the alternative. The Appellants’ Brief explains why this was a reversible error by the trial court because the rulings in RFT Management Co. v. Tinsley &

Adams, L.L.P.³ and Gibson v. Epting⁴ were not applicable to the trial court’s rulings on a motion to dismiss. Nothing in the Respondents’ Brief defeats those arguments.

In the light most favorable to the Appellants, there Complaint alleges specific facts supporting claims for professional negligence, see e.g., R. 42-44, Complaint ¶¶ 28, 29, 38, and 41-42, and also alleges specific facts supporting claims for breach of the fiduciary duties of loyalty and confidentiality. See e.g., R. 45 and 47-48, Complaint ¶¶ 47, 61, 63, and 66. The Appellants’ breach of fiduciary duty claim is **not** “premised on the same factual allegations as their legal malpractice claim” as argued on page 28 of the Respondents’ Brief. Applying Rule 8(a), SCRCF, permitting pleading in the alternative should have controlled the trial court’s rulings, especially given the separate factual allegations supporting each of these two independent claims, legal malpractice, and breach of fiduciary duty.

The Respondents’ Brief argues this Court’s rulings in Smith v. Hastie⁵ are not relevant in determining whether the trial court made an error in this case because that opinion “contains no discussion about duplicity or merger of these claims.” Respondents Brief at pp. 28-29. The problem with the Respondents’ argument is this Court’s ruling in Smith v. Hastie is grounded on the concept that parties are permitted to plead in the alternative, which eliminated the need for any discussion about duplicity or merger of claims. It was error for the trial court to hold that Appellants’ breach of fiduciary duty claim was duplicative of their legal malpractice claim based on the specific factual allegations supporting each of these claims, and based on Rule 8(a), SCRCF, specifically permitting parties to plead in the alternative.

³ 399 S.C. 322, 732 S.E.2d 166 (2012).

⁴ 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019).

⁵ 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005).

VI. The affidavit by the Appellants' expert was timely filed and sufficient to satisfy all statutory requirements.

The statements of fact in Paragraph 103 in the Appellants' Complaint concerning the filing of the expert's affidavit explain the events leading to the timely filing of the affidavit as permitted under S.C. CODE ANN. § 15-36-100, including all subparts. The substance of Justin Dillon, Esq.'s affidavit, including his CV showing the wealth of his experience in federal courts on Title IX matters, demonstrates why he is "qualified as to the acceptable conduct of the professional whose conduct is at issue." The Appellants' Title IX claims that the Respondents "strongly urged" the Appellant, Andrew Pampu, to release as part of the defective settlement agreement are a significant part of the Appellants' legal malpractice claims. Mr. Dillon is eminently qualified to provide expert opinions on the Respondents' failure to meet the standard of care in prosecuting those Title IX claims. Title IX claims are Title IX claims regardless of whether they are being litigated in South Carolina or other jurisdictions. The Respondents' contrary arguments should be rejected and the trial court's rulings should be reversed. Mr. Dillon's affidavit sufficiently and succinctly identified one negligent act by the Respondents.

While, like the amended complaint, this affidavit is generic in some ways, it too contains the minimal information necessary to survive a motion to dismiss. Our supreme court has held that section 15-36-100 requires only that the affidavit specify the "breach" element of malpractice. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 537, 725 S.E.2d 693, 696 (2012). This affidavit does that.

Hager v. McCabe, Trotter & Beverly, P.C., 435 S.C. at 752, 869 S.E.2d at 892.

The trial court erred in concluding that Mr. Dillon's expert affidavit was not timely filed and insufficient as a matter of law. Those rulings should be reversed, and this matter should be remanded for trial.

VII. The Respondents' Brief and the trial court's Orders misapprehend South Carolina's public policy permitting legal malpractice claims based on a lawyer's errors during a mediation.

It is understandable why the Respondents' Brief does not address why Rule 8(c)(3), SCADR, defeats the trial court's findings that the Appellants' claims are against public policy. This is because there would be no reason for the South Carolina Supreme Court to include Rule 8(c)(3) in the South Carolina Rules of Alternative Dispute Resolution if South Carolina public policy did not permit lawsuits based on alleged "professional malpractice occurring during the mediation" as expressly stated in Rule 8(c)(3). The Respondents' arguments about Rule 8(g), SCADR, concerning motions to compel disclosures by a mediator simply have no bearing on the trial court's rulings on South Carolina public policy or this appeal. The plain language in Rule 8(c)(3), SCADR, demonstrates why the trial court's rulings on South Carolina public policy should be reversed.

CONCLUSION

Appellants Andrew Pampu, Amanda Pampu, and John Pampu respectfully request that this Court reverse the trial court's ruling dismissing their Complaint with prejudice and remand the matter to allow them to maintain their legal malpractice, breach of fiduciary duty, and breach of contract claims against the Respondents.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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2025 WL 2158945

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
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**THIS OPINION HAS NO PRECEDENTIAL VALUE.
IT SHOULD NOT BE CITED OR RELIED ON AS
PRECEDENT IN ANY PROCEEDING EXCEPT
AS PROVIDED BY RULE 268(d)(2), SCACR.**

Court of Appeals of South Carolina.

Andrew Pampu, Amanda Pampu,
and John Pampu, Appellants,

v.

Clawson Fagnoli, LLC, Samuel R. Clawson, Jr.,
Esq., Christina R. Fagnoli, Esq., Barrett R. Brewer,
Esq., and Brewer Law Firm, LLC; Respondents.

Appellate Case No. 2023-001779

|

Unpublished Opinion No. 2025-UP-272

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Heard March 6, 2025

|

Filed July 30, 2025

Appeal From Charleston County [Edgar Warren Dickson](#),
Circuit Court Judge

AFFIRMED IN PART AND REVERSED IN PART

Attorneys and Law Firms

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[Barrett Ray Brewer](#).

Opinion

PER CURIAM:

***1** Andrew Pampu, Amanda Pampu, and John Pampu
(collectively, Appellants) appeal the circuit court's order
dismissing their claims for legal professional negligence,
breach of fiduciary duty, and breach of contract pursuant to
[Rule 12\(b\)\(6\)](#), [SCRCP](#).

1. Appellants argue the circuit court erred by dismissing
their claim for legal professional negligence. Additionally,
Appellants argue the circuit court erred in finding their
required expert affidavit untimely and insufficient. We agree.

We hold Appellants' complaint sufficiently alleged facts to
support a cause of action for legal professional negligence
and the circuit court erred in dismissing it. See [Ashley River
Properties I, LLC v. Ashley River Properties II, LLC](#), 374
S.C. 271, 279, 648 S.E.2d 295, 298 (Ct. App. 2007) ("Upon
review of a dismissal of an action pursuant to [Rule 12\(b\)](#)
(6), the appellate court applies the same standard of review
implemented by the trial court."); [Doe v. Marion](#), 373 S.C.
390, 395, 645 S.E.2d 245, 247 (2007) ("In considering a
motion to dismiss a complaint based on a failure to state
facts sufficient to constitute a cause of action, the trial
court must base its ruling solely on allegations set forth in
the complaint."); *id.* ("If the facts alleged and inferences
reasonably deducible therefrom, viewed in the light most
favorable to the plaintiff, would entitle the plaintiff to
relief on any theory, then dismissal under [Rule 12\(b\)\(6\)](#) is
improper."); *id.* at 395, 645 S.E.2d at 247 ("The complaint
should not be dismissed merely because the court doubts the
plaintiff will prevail in the action."). Appellants' complaint
alleged Respondents permitted Andrew to sign a settlement
agreement that failed to address his academic records; did not
meet key objectives of the litigation; and failed to explain the
settlement agreement to Andrew and ensure he understood
its implications, discovery deficiencies, and the disclosure of
materials related to their representation. See [RFT Mgmt. Co.
v. Tinsley & Adams L.L.P.](#), 399 S.C. 322, 331, 732 S.E.2d
166, 170 (2012) ("A plaintiff in a legal malpractice action
must establish four elements: (1) the existence of an attorney-
client relationship, (2) a breach of duty by the attorney, (3)
damage to the client, and (4) proximate causation of the
client's damages by the breach.").

We hold Appellants' expert affidavit was timely filed
and sufficient. Appellants' original complaint cited [section
15-36-100\(C\)\(1\) of the South Carolina Code](#) (Supp. 2024)
and stated Appellants would file an amended complaint with
the required affidavit within forty-five days. Additionally,
Appellants' second amended complaint alleged the affidavit

could not be prepared prior to the expiration of the statute of limitations due to time constraints. We find this adequately met [section 15-36-100\(C\)\(1\)](#)'s exception to the filing requirement. *See S.C. Code Ann. § 15-36-100(B)* (Supp. 2024) (requiring in an action for legal malpractice, the contemporaneous filing with the complaint of "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit"); [§ 15-36-100\(C\)\(1\)](#) ("The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire ... within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared."). Additionally, Appellants' expert testified in his affidavit that he had extensive experience litigating and writing about Title IX cases involving universities across the country. Appellants' legal malpractice claim concerns inadequate representation during Appellants' Title IX litigation against Clemson University; thus, we find the affidavit is sufficient under the statute. *See S.C. Code Ann. § 15-36-100(A)* (Supp. 2024) (stating an "expert witness" is one "who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who ... has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in ... the active practice of the area of specialty of his or her profession for at least three of the last five years immediately preceding the opinion").

***2** 2. Appellants argue the circuit court erred by dismissing their claim for breach of fiduciary duty. We hold Appellants' claim for breach of fiduciary duty is duplicative and arises from the same set of facts as their claim for legal malpractice; thus, the circuit court did not err in dismissing it. *See RFT Mgmt. Co.*, 399 S.C. at 335–37, 732 S.E.2d at 173 (2012) (holding a breach of fiduciary duty claim was duplicative of a legal malpractice claim and failed as a matter of law because the client's claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and the same factual allegations).

3. Appellants argue the circuit court erred by dismissing their claim for breach of contract. They contend the circuit court erred in finding Amanda and John Pampu, Andrew's parents, lacked standing. We disagree. Andrew's parents were not parties to the underlying federal or state lawsuits. Only Andrew was named as a party and signed the settlement agreement, thus, we find only Andrew can bring a claim

against Respondents for any actions arising out of the federal or state lawsuit. *See Sloan v. Greenville County*, 356 S.C. 531, 547, 590 S.E.2d 338, 347 (Ct. App. 2003) ("A plaintiff must have standing to institute an action."); *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480 (Ct. App. 2013) ("Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." (quoting *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008))); *Sloan*, 356 S.C. at 547, 590 S.E.2d at 347 ("To have standing ... one must be a real party in interest. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." (omission in original) (quoting *Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n*, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999))). Further, we hold the circuit court did not err in dismissing Appellants' breach of contract claim. Appellants' complaint fails to allege how Respondents breached any agreement. The complaint only states that Respondents "fail[ed] to provide such services." *See Doe*, 373 S.C. at 395, 645 S.E.2d at 247 ("In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint."); *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012) ("The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach.").

4. Appellants argue the circuit court's last ground for dismissing the complaint, which is that it violates public policy, is an improper ground for dismissal under [Rule 12\(b\)\(6\)](#). *See Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019) ("Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim."). In any event, holding attorneys accountable for unprofessional conduct during a mediation is not a public policy violation. Therefore, it is not surprising that the circuit court cited no specific authority for such a proposition. We agree with Pampu that Rule 8(c)(3), SCADR contemplates legal malpractice lawsuits for "professional malpractice occurring during the mediation" and this provision would not exist if public policy did not permit malpractice suits for attorney conduct during a mediation. Rule 8(c)(3) states, "There is no confidentiality attached to information that is disclosed during a mediation ... offered to report, prove, or disprove professional malpractice

occurring during the mediation, solely for the purpose of the professional malpractice proceeding.”

*3 Respondents cite to Rule 8(g), SCADR and [Rule 16.10\(E\) of the Local Civil Rules](#) for the United States District Court for the District of South Carolina to support their argument that a legal malpractice suit for attorney conduct during a mediation violates public policy “because the mediator would be the key witness” and because these rules prohibit calling the mediator as a witness or compelling the production of records received or created by the mediator. However, these provisions do not prohibit the introduction of any other information disclosed during the mediation for purposes of a professional malpractice proceeding, and they do not otherwise diminish the force of Rule 8(c)(3) or the

clear inference that this rule contemplates legal malpractice lawsuits for professional malpractice occurring during the mediation. Therefore, we find Respondents’ argument neither persuasive nor credible.

AFFIRMED IN PART AND REVERSED IN PART.

[WILLIAMS](#), C.J., and [GEATHERS](#) and TURNER, JJ., concur.

All Citations

Not Reported in S.E. Rptr., 2025 WL 2158945

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.;
Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

APPELLANTS' PETITION FOR REHEARING

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Introduction

Appellants Andrew Pampu, Amanda Pampu, and John Pampu respectfully move for rehearing of the Court's decision affirming in part and reversing in part the dismissal of their claims. Rehearing is warranted because: (1) the ruling incorrectly holds that the breach of fiduciary duty claim is duplicative of the professional negligence claim; (2) Amanda and John Pampu possess standing under the Second Amended Complaint; and (3) the finding that the breach of contract claim was inadequately pled directly contradicts the Complaint's detailed allegations. Reconsideration of these points is necessary to ensure Appellants are afforded the full procedural protections and substantive rights guaranteed by South Carolina law.

Arguments

I. Breach of Fiduciary Duty Claim.

The Court's determination that the breach of fiduciary duty claim merely duplicates the legal malpractice claim misconstrues both the facts and the applicable pleading rules. The Second Amended Complaint plainly differentiates the two: the breach of fiduciary duty is grounded specifically in Respondents' disclosure of confidential information months *after* their client-lawyer relationship had ended, whereas the professional negligence claim concerns standards of care breached *during* the representation. Allegations that the Respondents' unauthorized disclosure interfered with mediation and caused ongoing damages must, at this stage, be accepted as true—demonstrating a discrete injury and proximate causation unique to the fiduciary duty claim

A. Because the fiduciary duty breach occurred after the Respondents were no longer representing the Appellants, it was separate and distinct from the professional negligence claim.

The Appellants' Second Amended Complaint clearly delineates the breach of fiduciary duty as separate from the legal malpractice claim, focusing on the Respondents' disclosure of confidential information without consent approximately nine months *after* the Respondents' representation had been terminated, which caused financial harm to the Appellants. *See* (Second Amended Complaint, ¶¶ 2, 61-62; R. 111, 121-22). The allegations that the Respondents' letter "interfered with the mediation process, disrupting and negotiations and disadvantaging [Andrew Pampu]'s position in the mediation, all of which added and continued to cause damages to [Andrew Pampu]", which should have been taken as true by the trial court, all establish a proximate link between the Respondents' actions and the Pampus' damages. The fiduciary duty claim is based on the Respondents' breach of loyalty and confidentiality after the representation of been terminated, which are distinct from the professional negligence claim that centers on the Respondents' failure to meet the standard of care in during their legal representation.

The Court's reliance on *RFT Mgmt. Co. v. Tinsley & Adams, LLC*, is misplaced; that case did not address the propriety of alternative pleading at the motion to dismiss stage and arose in a wholly different context at the trial of that matter.

B. The Opinion is contrary to the language in Rule 8(a) and 8(e)(2) and the Court of Appeals' *Smith v. Hastie* opinion that permit pleading professional negligence and breach of fiduciary duty claims in the alternative.

Critically, Rule 8(a) and 8(e)(2), SCRPC expressly authorize alternative and even inconsistent claims, so long as pled in good faith. Dismissing the fiduciary duty claim at this early stage imposes a restriction found nowhere else in South Carolina law and

deprives litigants—in particular, clients asserting professional liability claims against their former lawyers—of the procedural rights guaranteed to other parties. As *Smith v. Hastie* confirms, clients may pursue professional negligence and breach of fiduciary duty theories concurrently.

South Carolina courts favor substance over technical formality: “Smith presented adequate evidence on the merits of her claims for negligence and breach of fiduciary duty.” *Smith v. Hastie*, 367 S.C. 410, 419, 626 S.E.2d 13, 18 (Ct. App. 2005) (emphasis added); *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986) (new rules of civil procedure abolished the restriction on pleading inconsistent causes of action; parties are permitted to plead and prove all claims without making an election at the pleading stage). The Supreme Court has abolished former restrictions on inconsistent pleading; concerns over double recovery are handled through election of remedies after verdict, not at the outset. See *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019).

Rule 8(a) and Rule 8(e)(2) of the South Carolina Rules of Civil Procedure govern the requirements for pleadings and explicitly permit parties to plead in the alternative. These provisions reflect the modern approach to civil procedure, which prioritizes flexibility and fairness in pleadings over rigid technicalities. Rule 8(a) allows a party to demand relief in the alternative or of several different types, while Rule 8(e)(2) permits the assertion of multiple statements of a cause of action or defense, even if inconsistent, provided they are made in good faith. This framework ensures that parties can present all potential claims or defenses without prematurely electing a single theory of recovery.

Accordingly, the Court should grant rehearing, withdraw the original opinion, and allow Appellants to proceed on both the breach of fiduciary duty and professional liability claims in conformity with Rule 8 and established precedent.

II. Amanda and John Pampu have standing based on the allegations in the Second Amended Complaint.

The ruling that Amanda and John Pampu lack standing erroneously ignores the well-pled allegations in the Second Amended Complaint, which must be credited as true at the motion to dismiss stage. The Second Amended Complaint alleges that the Respondents contracted to represent all Pampus, including John and Amanda, in the federal and state cases, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.” *See* (Sec. Amend. Complaint, pp. 4-5 at ¶14 and ¶ 15; R .113-14). This forms a basis for standing: contractual privity and a client-lawyer status are alleged, and both Amanda and John Pampu suffered injury as a result of Respondents’ breaches.

The trial court’s findings on pages 6-7 of the Orders that Amanda and John Pampu lacked standing solely because they were not parties to the underlying federal or state litigation misconstrues the law. The existence of a client-lawyer relationship is not dependent on whether the client is a party to a lawsuit or later becomes a party to a lawsuit. Standing is derived from the client-lawyer relationship, which depends on whether a person sought legal advice or representation—even if they were not a named litigant. *See Marshall v. Marshall*, 282 S.C. 534, 320 S.E.2d 44 (Ct. App. 1984) (existence of client-lawyer relationship turns on whether “client” was seeking legal advice or assistance and communicating in confidence with the lawyer for the purpose of obtaining legal advice or employing the lawyer professionally); *Crawford v. Henderson*, 356 S.C. 389, 589 S.E.2d

204 (Ct. App. 2003). The Second Amended Complaint specifically alleges Amanda and John Pampu were clients of Respondents and parties to the relevant contracts. Paragraph 13 alleges “the Lawyers accepted the representation of the Does to provide legal advice, services, and representation of the Does” See (Sec. Amend. Complaint, p. 4 at ¶ 13; R.113). It was clear error by the trial court to dismiss Amanda and John Pampu’s claims for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCp.

The Court’s conclusion that only Andrew Pampu can bring claims arising out of the lawsuits fails to consider the allegations in the Second Amended Complaint, which must be taken as true for the purposes of the motion, and the broader contractual obligations and the damages suffered by Amanda and John Pampu as a result of the Respondents’ conduct. Rehearing is warranted to correct this error and allow their claims to proceed.

III. The Appellants Breach of Contract Claim was Properly Pled.

The affirmation of the trial court’s dismissal of the breach of contract claim cannot stand in light of detailed and specific factual allegations in the Second Amended Complaint. The Second Amended Complaint describes an agreement between the Pampus and the Law Firms for legal services, the failure to deliver those services, and resulting damages. alleges that the Law Firms failed to provide the agreed-upon legal services, resulting in damages to the Pampus. See (Sec. Amend. Complaint, pp. 4, 19-20 at ¶¶ 14, 97-101; R.113, 128-29). The Court’s finding that the Complaint fails to allege how the Respondents breached any agreement is contradicted by the detailed allegations of the Respondents’ failures to meet their contractual obligations. Specifically, the allegations in paragraphs 27-29, 36, 38, 40-42 of the Second Amended Complaint establish breaches by

the Respondents, meeting the standard for pleading a contract claim. *See* (Sec. Amend. Complaint, pp. 7-9, at ¶¶ 27-29, 36, 38, 40-42; R. 116-18).

Contrary to the Court's conclusion, these factual assertions, taken as true, establish a viable claim for relief and merit adjudication on the merits—not dismissal at the pleading stage.

Conclusion

For the foregoing reasons, Appellants respectfully request that the Court grant this petition for rehearing, reverse the rulings under paragraphs 2 and 3, and reconsider the affirmation of the trial court's dismissal of the breach of contract claim. The Appellants seek a remand for further proceedings consistent with these arguments.

Respectfully submitted,

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August 13, 2025

Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Aug 14 2025

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

SC Court of Appeals

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, ... Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents.

PROOF OF SERVICE

Pursuant to Rules 240 and 262 of the South Carolina Rules of Appellate Procedure, the undersigned hereby certifies that on August 14, 2025, a copy of the *Petition for Rehearing* was served on all counsel of record via electronic mail containing the above-referenced documents to each counsel's individual AIS email addresses as follows:

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August 14, 2025

Beaufort, South Carolina

RECEIVED
Aug 28 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge
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Clawson Fargnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R.
Fargnoli, Esq.; Barrett R. Brewer, Esq.; and Brewer Law Firm, LLC Respondents

**RESPONDENTS' JOINT
PETITION FOR REHEARING**

INTRODUCTION

Respondents Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and Brewer Law Firm, LLC (“Respondents”), pursuant to Rule 221, SCACR, respectfully and jointly petition the Court for Rehearing of Respondents’ arguments in this matter. Specifically, pursuant to Rule 221(a), Respondents petition the Court to reconsider its decision that the expert affidavit filed by Appellants was timely pursuant to S.C. Code Ann. § 15-36-100 and, instead, hold that the affidavit was untimely.

BACKGROUND

The relevant background of this Petition concerns Appellants’ failure to contemporaneously file with their original Complaint an expert affidavit pursuant to S.C. Code Ann. § 15-36-100. The Record on Appeal confirms Appellants did not file an expert affidavit with the original Complaint. R. p. 35-56. Appellants do not contest this point. Section 15-36-100 provides an exception to the contemporaneous filing rule but requires the following:

(C)(1) The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing *and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.*

S.C. Code Ann. § 15-36-100(C)(1) (emphasis added). In their original Complaint, Appellants did not allege that, because of the time constraints, an affidavit of an expert could not be prepared. *See* R. p. 35-56.

ARGUMENT

Rehearing is appropriate when the Court has “overlooked or misapprehended [the petitioners’] argument,” *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001), or when a “material fact or principle of law has been either overlooked or disregarded.” *State v.*

Haygood, 413 S.C. 239, 240, 776 S.E.2d 262, 263 (2015); *see Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011). Here, the Court should grant rehearing and reverse its decision that Appellants timely filed the Expert Affidavit pursuant to S.C. Code Ann. § 15-36-100.

The Circuit Court issued two (2) Orders dismissing the Amended Complaint in this action. R. pp. 6-31. In each order, the Circuit Court addressed the timeliness of Appellants' expert affidavit filed pursuant to South Carolina Code Annotated 15-36-100. Specifically, the Circuit Court found in response to the Motion to Dismiss filed by Respondents Barrett Brewer and the Brewer Law Firm:

Plaintiffs now argue that simply by filing the initial Complaint only three (3) days before the expiration of the statute of limitations for their legal malpractice claims, the Brewer Defendants should have presumed an affidavit of an expert witness could not be filed due to time constraints. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C). Therefore, Plaintiffs' claims against the Brewer Defendants are dismissed because their expert witness affidavit was untimely filed.

R. pp. 7-8. In response to the Motion to Dismiss filed by Respondents Clawson Fargnoli, LLC, Christina R. Fargnoli, and Samuel R. Clawson, the Circuit Court found:

However, this argument does not address their original failure to file an expert witness affidavit. It merely suggests that, based on the filing date of the original Complaint, the Clawson Fargnoli Defendants should have presumed that there were time limitations to obtaining an expert witness affidavit. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint, which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C). Therefore, Plaintiffs' claims against the Clawson Fargnoli Defendants are dismissed because their expert witness affidavit was untimely filed.

R. p. 26. Respondents argued on appeal that Appellants' failure to allege that time constraints prevented the filing of the expert affidavit was fatal to their claims.

In its Opinion, this Court found:

We hold Appellants' expert affidavit was timely filed and sufficient. Appellants' original complaint cited section 15-36-100(C)(1) of the South Carolina Code (Supp. 2024) and stated Appellants would file an amended complaint with the required affidavit within forty-five days. Additionally, Appellants' second amended complaint alleged the affidavit could not be prepared prior to the expiration of the statute of limitations due to time constraints. We find this adequately met section 15-36-100(C)(1)'s exception to the filing requirement. *See* S.C. Code Ann. § 15-36-100(B) (Supp. 2024) (requiring in an action for legal malpractice, the contemporaneous filing with the complaint of "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit"); § 15-36-100(C)(1) ("The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire . . . within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.").

Opinion at 3. Appellants concede the statute of limitations ran on their claims on March 21, 2021. R. p. 129, ¶ 103. Appellants did not file any expert affidavit until April 30, 2021, more than thirty (30) days after the expiration of the statute of limitations. And Appellants did not allege until June 16, 2021, more than 88 days after filing the original Complaint, that, because of time constraints, a contemporaneous expert affidavit could not be filed. R. p. 129, ¶ 103.

The Circuit Court correctly held that Appellants' proffered affidavit of Justin Dillon was untimely as a matter of law. "If a plaintiff fails to file an affidavit as required by [§ 15-36-100], and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake." S.C. Code Ann. § 15-36-100(F).

When Appellants filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit. R. pp. 35-56. Instead, Appellants alleged that pursuant to § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” R. p. 55, ¶ 103. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. *See* R. pp. 58-78. In response to Respondents’ respective motions to dismiss, which raised Appellants’ untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to expert affidavit issue. R. pp. 129, ¶ 103. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. *Id.* Appellants further claimed that they were filing their Second Amended Complaint under § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. *Id.* Appellants have argued that the trial court ignored these allegations, which they contend establish that the expert affidavit was timely filed. *See* Appellants’ Brief, pp. 28-29.

As an initial matter, by its plain language, § 15-36-100(E) only applies where a plaintiff has filed an expert affidavit that is alleged to be insufficient, not where a plaintiff has failed to file any expert affidavit. *See* S.C. Code Ann. § 15-36-100(E). Stated differently, this section allows a plaintiff to cure an alleged defect in the affidavit by amending the affidavit within a certain amount of time. *See id.* It does not permit a plaintiff to cure his failure to file any affidavit at all by amending the pleadings to include an affidavit. *See id.* Accordingly, Appellants’ reliance on § 15-36-100(E) is misplaced.

Next, § 15-36-100(C)(1) provides, in part, that the contemporaneous filing requirement “does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, *because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.*” § 15-36-100(C)(1) (emphasis added). Simply put, Appellants made no such allegation in their initial Complaint. *See generally* R. pp. 35-56. And they did not cure this defect in their First Amended Complaint. *See generally* R. pp. 57-87. Moreover, allowing Appellants to circumvent the clear requirements of § 15-36-100 would effectively extend the statute of limitations for professional negligence claims, contrary to the public policy behind the statute. Accordingly, the trial court did not err in holding that Appellants’ expert affidavit was untimely as a matter of law, which provided an independent basis to dismiss Appellants’ legal malpractice claims. *See* S.C. Code Ann. § 15-36-100(F) (“If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation . . .”).

CONCLUSION

This Court’s opinion should be amended pursuant to Rule 221(a) because the Court overlooked or misapprehended Respondents’ argument on the applicable statute. Appellants did not comply with S.C. Code Ann. § 15-36-100(C)(1) because they did not allege in their initial Complaint that, due to time constraints, an expert affidavit could not be prepared. The statute requires Appellants to allege this fact. Their failure to do so is fatal to their legal malpractice claims. As a result, the Circuit Court properly dismissed the Second Amended Complaint.

Respondents request this Court amend its opinion and affirm the Circuit Court on this issue as well.

Respectfully Submitted,

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Aug 28 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Edgar W. Dickson, Circuit Court Judge
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v.

Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and Brewer Law Firm, LLC..... Respondents

CERTIFICATE OF SERVICE

Pursuant to Rules 240(c)(1) and 262(b) of the South Carolina Rules of Appellate Procedure, the undersigned hereby certifies that on August 28, 2025, copies of Respondents' Joint Petition for Rehearing were served on all counsel of record via e-mail as follows:

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The South Carolina Court of Appeals

Andrew Pampu, Amanda Pampu, and John Pampu,
Appellants,

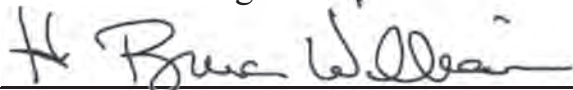
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Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq.,
Christina R. Fargnoli, Esq., Barrett R. Brewer, Esq., and
Brewer Law Firm, LLC; Respondents.

Appellate Case No. 2023-001779

ORDER

After careful consideration of the Appellants' and Respondents' petitions for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:

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James M. Dedman, IV, Esquire

FILED
Sep 29 2025

Appendix0585

Robert Bruce Wallace, Esquire
Emily Elizabeth Seaton, Esquire
The Honorable Edgar Warren Dickson

FILED
Sep 29 2025

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Apr 10 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court
APPEAL FROM CHARLESTON COUNTY
Edgar W. Dickson, Circuit Court Judge

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Unpublished Opinion
No. 2025-UP-272 (S.C. Ct. App. filed July 30, 2025)

Andrew Pampu; Amanda Pampu; and John Pampu, ... Petitioners-Respondents,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett
R. Brewer, Esq.; and BREWER LAW FIRM, LLC, ... Respondents-Petitioners.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Volume 1, Volume 2, and Volume 3 of
Petitioners-Respondents' Appendix, filed on behalf of Petitioners-Respondents, Andrew
Pampu; Amanda Pampu; and John Pampu, contain all material proposed to be included by
any of the parties and not any other material.



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