RECEIVED
Jun 10 2026
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Edgar W. Dickson

---

Appellate Case No. 2025-002188
Court of Appeals Appellate Case No. 2023-001779

---

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

vs.

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

---

# REPLY BRIEF OF PETITIONERS-RESPONDENTS
# (for Pampu Petition)

---

Thomas A. Pendarvis (SC Bar # 064918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Ste. A1
Beaufort, SC 29902
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Petitioners-Respondents
Andrew Pampu, Amanda Pampu, and John Pampu

## Table of Contents

## Table of Authorities

**Cases**



**Statutes, Rules, and Other Authorities**

## Summary of Reply Arguments

Respondents-Petitioners' ("the Lawyers") joint response brief ("Response") sidesteps the core pleading standards that govern this appeal. First, it fails to address Rule 8's express allowance for pleading alternative and even inconsistent theories, including the long-standing remedies for legal malpractice: professional negligence, breach of fiduciary duty, and breach of contract. In fact, the Lawyer's Response does not even mention Rule 8; nor did the Court of Appeals' Opinion. Second, it misstates the Rule 12(b)(6) standard by refusing to credit well-pleaded allegations that the fiduciary breach post-dated and was distinct from any alleged negligence. Third, it leans on "merger" principles based on the RFT Management appeal from rulings at trial, not at the pleadings stage as is the case here. Those doctrines do not support dismissal under Rule 12(b)(6) and, procedurally, RFT Management is inapposite. Fourth, it reframes the standing inquiry for John and Amanda Pampu to require allegations that "get to the heart of the matter," rather than applying the long-standing rule that pleadings are construed in plaintiffs' favor; even the Lawyers acknowledge that the Pampus possess at least a "nominal or technical interest," which—construed favorably—suffices to plead standing for breach of contract. Finally, the Response ignores that the breach-of-contract cause of action incorporated all factual allegations, which, taken as true, state each element of the claim; dismissal was therefore improper.

## Arguments in Reply

### I. Rule 8 permits pleading alternative causes of action—errors were made by both the Lawyers and the Court of Appeals.

The Pampus' Second Amended Complaint stated facts supporting causes of action

for the traditional legal malpractice remedies: professional negligence, breach of fiduciary duty, and breach of contract. R. 110–141 (2nd Amend. Compl.). Rule 8 of the South Carolina Rules of Civil Procedure expressly permits parties to plead alternative and even inconsistent causes of action. Both the Lawyers and the Court of Appeals failed to give effect to this foundational standard. The Response replicated one of the key errors in the Opinion by disregarding the settled South Carolina approach—mandated by Rule 8—that allows plaintiffs to pursue negligence, fiduciary-duty, and contract theories in legal malpractice suits at the pleadings stage. It is quite telling that neither the Response nor the Opinion make any reference to Rule 8, SCRCP.

The South Carolina appellate courts have consistently recognized that these theories are not mutually exclusive and may be advanced in tandem. As the Supreme Court held in Holy Loch Distributors, Inc. v. Hitchcock: "The Court of Appeals did not need to adopt a new breach of an express warranty claim because Holy Loch had recourse under *existing legal malpractice remedies based on negligence, breach of fiduciary duty, and breach of contract*." Holy Loch Distributors, Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000) (emphasis added). This binding precedent forecloses both the Lawyers' argument and the Court of Appeals' position that alternative claims must be elected or are otherwise barred as duplicative at the pleading stage. Other authorities—such as Lifschultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guerard, 334 S.C. 244, 245, 513 S.E.2d 96, 96 (1999); Smith v. Hastie, 367 S.C. 410, 419, 626 S.E.2d 13, 18 (Ct. App. 2005); Majstorich v. Gardner, 361 S.C. 513, 517, 604 S.E.2d 728, 730 (Ct. App. 2004)—reflect the settled practice of permitting alternative or parallel claims for legal malpractice, breach of fiduciary duty, and breach of contract.

Noticeably absent from the Response and the Opinion is any discussion of the authority cited and relied upon in the Pampus' Brief recognizing pleading in the alternative, and specifically, pleading alternative legal malpractice and breach of fiduciary duty claims. See, e.g., Smith v. Hastie, supra.; Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986) (parties are permitted to plead alternative claims).

The Lawyers' reliance on "duplication" to extinguish the fiduciary-duty cause of action at the Rule 12(b)(6) stage inverts both Holy Loch and Rule 8. Rule 8 allows parties to plead claims "alternatively or hypothetically," and to state "as many separate claims or defenses as a party has, regardless of consistency." See Rule 8(e)(2), SCRCP ("A party may set forth two or more statements of a cause of action or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. …. A party may also state as many separate causes of action or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both.").

Under South Carolina's notice-pleading rules, plaintiffs may plead "alternative and even inconsistent" claims. Neither the Response nor the Opinion point to any authority disallowing alternative theories at the pleadings stage, nor do they identify any internal inconsistency that would foreclose Rule 8's protection. Under Rule 8 and Holy Loch, the Pampus were fully entitled to assert all three causes of action as coexisting avenues for relief, and neither the Lawyers nor the Court of Appeals cited any authority justifying a contrary rule.

## II. The Breach of Fiduciary Duty claim should have survived application of the Rule 12(b)(6) standard.

Rule 12(b)(6) requires courts to accept well-pleaded facts as true, draw all

reasonable inferences in the pleader's favor, and sustain the pleading if any theory would entitle relief. Both the Response and the Opinion misapplied this fundamental standard when they treated the breach of fiduciary duty claim as subject to dismissal solely because it was asserted alongside negligence and contract claims. The Lawyers' insistence on dismissal was contrary to long-standing South Carolina law and to the facts alleged—an error, in turn, reproduced in the Court of Appeals' Opinion, which disregarded core pleading principles.

The Second Amended Complaint specifically asserts not just negligence in the provision of legal services but also discrete breaches of fiduciary duty—including failures of loyalty and confidentiality occurring post-engagement and resulting in distinct harms. R. 121-123 (2nd Amend. Compl. ¶¶ 61-67). The precedent in South Carolina is clear: breach of fiduciary duty is a separate, cognizable cause of action in the malpractice context. Holy Loch did not collapse fiduciary duty or contract into negligence, but refused only to recognize a new express warranty claim, affirming that the three established remedies—negligence, breach of fiduciary duty, and breach of contract—each of which supply a valid and independent remedy for the legal malpractice alleged in the Second Amended Complaint.

Nor do the authorities cited by the Lawyers justify dismissal at the pleadings stage. Their brief leans on RFT Management and Gibson to argue merger, but those cases involved later-stage dispositions based on developed evidentiary records demonstrating indistinguishable duties and facts, not an *a priori* prohibition on alternative pleading. The Lawyers concede RFT Management affirmed a trial court's post-evidence merger of fiduciary duty into malpractice when the same duty inherent in the client-lawyer

relationship and the same facts were at issue, and Gibson affirmed summary judgment treating fiduciary claims as duplicative on a developed record. See (Lawyers' Response, p. 6; "At trial, at the close of evidence, the trial court merged RFT's breach of fiduciary duty claim into its legal malpractice claim …."). That posture matters. Rule 12(b)(6) does not permit resolving whether duties and material facts are "duplicative" without discovery, especially where the complaint alleges distinct conduct and injuries.

Here, the Second Amended Complaint does exactly that. The Pampus alleged negligence in the quality of representation during the engagement and, distinctly, post-termination disclosures of confidences to opposing counsel that interfered with mediation and caused discrete, ongoing harms months after the relationship ended. R. 121-123 (2nd Amend. Compl. ¶¶ 61-67). At a Rule 12(b)(6) stage, those allegations must be taken as true and reasonably construed to implicate fiduciary duties of loyalty and confidentiality that are separate from the standard-of-care obligations governing malpractice during representation.

Though legal malpractice remedies include a tort claim grounded in negligence, they may also encompass breach of fiduciary duty claims, which involve breaches of the lawyer's broader ethical and loyalty obligations beyond mere professional skill. See e.g., Spence v. Wingate, 385 S.C. 148, 158-159, 716 S.E.2d 920, 926 (2011). The Pampus' Brief squarely presents this dynamic, as well as a temporal and duty-based distinction and argues that dismissal as "duplicative" prematurely forces an election of remedies contrary to Rule 8. The Lawyers' contrary invitation—to decide "duplication" at the pleading stage—would improperly conflate pleading sufficiency with ultimate entitlement to separate recovery, an issue that can be addressed, if necessary, through later merger instructions, summary

judgment, or verdict-form safeguards rather than threshold dismissal.

## III. The Court of Appeals' ruling on John and Amanda's standing—and the Lawyers' echo—misapplied Rule 12 by recasting the client-lawyer relationship allegations as "party" status and by demanding extra-pleading proof of privity and injury.

The Lawyers' Response urges the same core errors that infected the Court of Appeals' standing analysis: they substitute "party to the underlying suits" for the Rule 12 standing inquiry, ignore the Second Amended Complaint's well-pled allegations that the Law Firms undertook representation of all three Pampus across the federal and state matters and related claims, and invite fact-weighing and extra-pleading filters to negate privity and injury at the threshold (Op. at 2); R. 110–111 (2nd Amend. Compl. ¶¶ 1–2); R. 120 (2nd Amend. Compl. ¶ 56); R. 121 (2nd Amend. Compl. ¶ 60); R. 122–124 (2nd Amend. Compl. ¶¶ 64–72).

The Court of Appeals stated the correct *de novo* standard but did not apply it. It treated John and Amanda's nonparty/signatory status in the underlying litigations and settlement as dispositive, effectively weighed facts and drew inferences against the them, and offered conclusory affirmances that did not address what was alleged. That approach conflicts with the controlling South Carolina authorities on Rule 12(b)(6) and standing the Court of Appeals itself cited, and it cannot be squared with the operative pleading. (Op. at 1, citing Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 279, 648 S.E.23d 295, 298 (Ct. App. 2007) and Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)).

The Second Amended Complaint alleges the Law Firms contracted to represent Andrew, Amanda, and John in the federal and state litigations and any related claims, and

that the Lawyers accepted that representation to provide legal advice and services to the Pampus. R. 113–114 (2nd Amend. Compl. ¶¶ 14–15); R. 113 (2nd Amend. Compl. ¶ 13). The Second Amended Complaint alleges injuries and damages to John and Amanda flowing from Respondents' conduct, including substantial, ongoing fees to successor counsel and frustration of the litigation's purpose. R. 110–111 (2nd Amend. Compl. ¶¶ 1–2); R. 120 (2nd Amend. Compl. ¶ 56); R. 121 (2nd Amend. Compl. ¶ 60); R. 122–124 (2nd Amend. Compl. ¶¶ 64–72). Those allegations support claims against the Law Firms for breach of contract. See Manios v. Nelson, Mullins, Riley & Scarborough, LLP, 389 S.C. 126, 146, 697 S.E.2d 644, 655 (Ct. App. 2010) (affirming a jury verdict in favor of a former client on a breach of contract claim against a law firm).

Under *de novo* review on a Rule 12 record, those well-pled facts must be accepted as true and all reasonable inferences drawn for the Pampus. Dismissal is improper if the facts and inferences would entitle relief on any theory, and doubts about ultimate success are not grounds for dismissal. Ashley River Properties I, LLC, 374 S.C. at 279, 648 S.E.23d at 298; Doe v. Marion, 373 S.C. at 395, 645 S.E.2d at 247.

The standing analysis in the Response and in the Opinion illustrate the error. Rather than engage the client-lawyer privity and the injuries to John and Amanda as alleged in the Second Amended Complaint, the Lawyers' Response and the Court of Appeals resolved standing by pointing to John and Amanda's nonparty status in the underlying actions and the settlement's signature line—facts that do not negate client-lawyer privity or the injuries alleged, and cannot override the Rule 12 requirement to accept those allegations as true. Id. The Opinion affirmed that "only Andrew" could sue because he alone was named in the underlying suits and signed the settlement. (Op. at 2.) That rationale silently rejected

the Complaint's privity and injury allegations and drew inferences against the Pampus.

The Lawyers double down on the same error, urging a "heart of the matter" filter that deems John and Amanda's interests as merely "nominal or technical" and recasts the pleadings to focus exclusively on Andrew's cases. (Response, p. 10). That is a misstatement of the standard of review and an invitation to disregard Rule 12's command to credit the pleadings. By elevating selective quotations and extra-pleading characterizations of who signed or was named in the underlying suits over what the Second Amended Complaint actually alleges about privity and injury, the Lawyers mirror the Court of Appeals' error and recast a pleading-stage question into a merits contest. (Op. at 2); (Response, pp. 9-11).

On a facial Rule 12 challenge, courts do not superimpose such filters or reweigh who is the "real party" at the expense of well-pled client-lawyer privity and injury allegations; they must accept those allegations and test only legal sufficiency. See Fabian v. Lindsay, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014); Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009); Doe v. Marion, 373 S.C. at 395, 645 S.E.2d at 247. Demanding proof-level specifics, resolving factual disputes, or rejecting reasonable inferences in the moving parties' favor inverts the standard and is reversible error. Id.

The Response asserts that the Court of Appeals, "[i]n affirming [its] ruling, *considered the arguments of the parties*." See (Response, p. 9) (emphasis added). But on a Rule 12(b)(6) review, the "relevant consideration" is focused solely on the Complaint's allegations, not adversarial gloss. See, Patterson v. Witter, 425 S.C. 213, 225, 821 S.E.2d 677, 684 (2018). In addition, the Lawyers concede the Pampus possess at least a "nominal or technical interest in this litigation." See (Response, p. 11). At the pleading stage, that

concession—construed favorably—supports a reasonable allegation of contractual rights or interests sufficient for standing to pursue a breach-of-contract claim. Any finer-grained standing issues are for later stages on a developed record, not Rule 12(b)(6) dismissal.

The Second Amended Complaint alleges facts that, when taken as true, support relief for breach of contract in favor of John and Amanda Pampu. R. 110–111 (2nd Amend. Compl. ¶¶ 1–2); R. 120 (2nd Amend. Compl. ¶ 56); R. 121 (2nd Amend. Compl. ¶ 60); R. 122–124 (2nd Amend. Compl. ¶¶ 64–72).

The Court of Appeals and the Lawyers' Response committed the same pleading-stage error on standing by treating John and Amanda Pampu's nonparty or nonsignatory status in the underlying litigation as dispositive, instead of applying *de novo* Rule 12 review to the allegations in the Second Amended Complaint, which allege that the Lawyers undertook to represent "the Pampus," including John and Amanda, and that John and Amanda suffered their own damages traceable to that representation. By recasting a facial standing inquiry into a merits-driven "heart of the matter" test and by refusing to accept the Second Amended Complaint's privity and injury allegations as true with all reasonable inferences drawn for John and Amanda, the Opinion and the Response improperly resolved factual inferences against the nonmovants and foreclosed standing at the threshold.

## IV. The Second Amended Complaint alleges a contract, specific breaches, and damages and the Court of Appeals' contrary characterization and the Lawyers' arguments misapprehend South Carolina notice pleading and the record.

The Opinion held the breach of contract cause of action "fails to allege how" any agreement was breached and "only states" failure to provide services. Op. at 4. That is not a fair reading of the Second Amended Complaint as a whole. Rule 12(b)(6) requires

crediting well-pled facts and reasonable inferences and denying dismissal if those facts support relief under any theory; Rule 8(a) requires only a short and plain statement. See Ashley River Properties I, LLC, 374 S.C. at 279, 648 S.E.23d at 298; Doe v. Marion, 373 S.C. at 395, 645 S.E.2d at 247.

Read holistically with its incorporated factual paragraphs, the contract cause of action pleads the elements—existence of an agreement with the Law Firms, identified breaches tied to specific promised performance in the federal and state matters and related claims, and resulting damages. The Second Amended Complaint alleges the Law Firms contracted to represent all three Pampus in the federal and state cases and any related claims, and that the Lawyers accepted that representation and undertook to provide legal services to the Pampus. R. 110–111 (2nd Amend. Compl. ¶¶ 1–2); R. 113-114 (2nd Amend. Compl. ¶¶ 13-15); R. 120 (2nd Amend. Compl. ¶ 56); R. 121 (2nd Amend. Compl. ¶ 60); R. 122–124 (2nd Amend. Compl. ¶¶ 64–72).

It details concrete service failures within that undertaking, including allowing Andrew to sign a short-form settlement without essential protective terms and failing to explain its implications, discovery/prosecution deficiencies in the state case, and mishandling withdrawal and file surrender/transfer. R. 110–111 (2nd Amend. Compl. ¶¶ 1–2); R. 113-125 (2nd Amend. Compl. ¶¶ 13-78). It alleges damages including substantial, ongoing fees to successor counsel to mitigate harm and frustration of the litigation's objectives. R. 110–111 (2nd Amend. Compl. ¶¶ 1–2); R. 120 (2nd Amend. Compl. ¶ 56); R. 121 (2nd Amend. Compl. ¶ 60); R. 122–124 (2nd Amend. Compl. ¶¶ 64–72). The breach of contract cause of action incorporates and identifies those obligations and breaches as the basis for the Law Firms' liability. R. 128–129 (2nd Amend. Compl. ¶¶ 97–101); R. 116–

118 (2nd Amend. Compl. ¶¶ 27-29, 36, 38, 40-42).

Those allegations answer the Lawyers' refrain that the Second Amended Complaint does not allege each and every instance of "how" the Law Firms breached the contract. South Carolina does not require a plaintiff to quote contract provisions or set out every term to state a claim. Rule 8(a) notice pleading is satisfied by factual averments identifying the agreement, the promised performance, the conduct constituting breach, and resulting damages. See Rule 8(a), SCRCP; Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328 (1987) ("[Rule 8(a)(2), SCRCP] requires a litigant to plead the ultimate facts which will be proved at trial, not evidence which will be used to prove those facts.")

The Lawyers' reliance on Jones v. Gilstrap to brand the Pampus' Second Amended Complaint as "conclusory" is misplaced. Jones involved conclusory averments devoid of supporting facts where the plaintiff merely alleged she was a county employee with an "expectation of continued employment," asserted a "county personnel policy" was part of her employment agreement, and claimed the handbook barred discharge for the alleged conduct—without setting out the pertinent provisions or incorporating the documents, which the court deemed "conclusory only." See Jones v. Gilstrap, 288 S.C. 525, 527, 343 S.E.2d 646, 647-488 (Ct. App. 1986).

The Jones court held the complaint failed to state a contract claim because it did not set out the pertinent provisions of the alleged handbook or incorporate the personnel policies, rendering the allegations conclusory and subject to dismissal. By contrast, the Pampus' Second Amended Complaint pleads the who/what/when/where/how of the contract claim with concrete facts and documents. It identifies the parties to the contract (the two defendant law firms), the date and scope of the engagement, and the particular

contractual obligations owed under that agreement to "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,'" R. 113 (2nd Amend. Compl. ¶ 14), then alleges breach of those obligations and resulting damages. R. 116-118, 121-124 (2nd Amend. Compl. ¶¶ 27-29, 38, 42, 58, 60-72). Based on those allegations, the Second Amended Complaint contains a Third Cause of Action for Breach of Contract against the Law Firms, alleging they "entered into a Contract" to provide those services, that Plaintiffs performed, that the Law Firms "breached the contract by failing to provide such services," and that Plaintiffs suffered actual, consequential, and incidental damages as a proximate result. R. 128-129 (2nd Amend. Compl. ¶¶ 97-101).

The Second Amended Complaint further pleads the specific contractual performance failures with granular, chronological detail tying the breaches to defined objectives and communications. R. 116-118, 121-124 (2nd Amend. Compl. ¶¶ 27-29, 38, 42, 58, 60-72). It alleges the clients' objectives were put in writing and delivered to counsel before the mediation, including that any settlement must vacate University findings and sanctions to protect future academic records; keep the State Case unaffected; avoid confidentiality restrictions; and support due-process arguments, R. 117 (2nd Amend. Compl. ¶ 36). The Second Amended Complaint further alleges that at the March 21, 2018 mediation, the Lawyers urged execution of a short-form settlement that omitted the Pampus' objectives, which Andrew signed based on counsel's advice. R. 117-118 (2nd Amend. Compl. ¶¶ 38-42). The allegations further state that on March 23, 2018, the Pampus emailed the Lawyers explaining John Doe's unawareness of the settlement's effect and its negative ramifications. R. 118 (2nd Amend. Compl. ¶ 40). The complaint alleges

the settlement conflicted with the March 2, 2018 objectives and omitted "necessary language and terms dedicated to the University's future treatment of John Doe's academic records," among other essential terms. R. 118 (2nd Amend. Compl. ¶¶ 41-42). It also pleads downstream causation and damages with specificity, including enforcement litigation in federal court, the adverse impact on the State Case, and additional fees to mitigate the contractual shortfalls. The district court later enforced the settlement upon the University's motion, and Pampus allege the agreement's omissions harmed their positions and forced substantial additional expenditures. R. 119-124 (2nd Amend. Compl. ¶¶ 45-72).

This level of particularity—identifying parties, contract formation and scope, express objectives communicated to counsel, dates, locations, concrete acts/omissions constituting breach, and specific causal consequences—stands in marked contrast to the bare, unincorporated handbook assertions deemed inadequate in Jones. Where the Jones court faulted the complaint for failing to aver the substance of the alleged contractual terms, the Pampus' Second Amended Complaint quotes and describes the engagement's scope and ties the alleged breaches to defined performance obligations and documented communications and pleads a detailed chronology from November 2017 engagement through March 2018 mediation and subsequent enforcement, linking omissions to specific damages in both the federal and state matters. See R. 110–111 (2nd Amend. Compl. ¶¶ 1–2); R. 113-125 (2nd Amend. Compl. ¶¶ 13-78). It alleges damages including substantial, ongoing fees to successor counsel to mitigate harm and frustration of the litigation's objectives. R. 123 (2nd Amend. Compl. ¶¶ 70-71).

The Court of Appeals' statement that the complaint "only states" a failure to provide services cannot be reconciled with allegations in the Second Amended Complaint

or the record paragraphs the breach of contract cause of action expressly incorporates.

Nor is there merit to any suggestion that the claim fails because the engagement agreement was not attached. The Pampus acknowledge the engagement/contract was not appended as an exhibit to the Second Amended Complaint. However, South Carolina's notice-pleading regime does not impose a heightened requirement to attach the contract to state a breach claim; a short and plain statement suffices, and Rule 12(b)(6) dismissal is improper if the pleaded facts and inferences support relief on any theory. See Rule 8(a), SCRCP; Doe v. Marion; Ashley River Props. I.

South Carolina black-letter law is clear that while contracts may be attached as exhibits under Rule 10(c), SCRCP, there is no requirement to do so. In National Loan & Exchange Bank of Columbia v. Argo Development Co., the Supreme Court held that "while an exhibit to a complaint may not be used to supply a material allegation or cure a fatal defect in the complaint, it may be resorted to to make the allegations of the complaint definite and certain." National Loan & Exchange Bank of Columbia v. Argo Development Co., 141 S.C. 72, 139 S.E. 183 (1927). This establishes that exhibits serve to clarify allegations, not to satisfy mandatory pleading requirements.

The standard for breach of contract pleading requires only that the "complaint must contain allegations of a contract and a breach thereof before any damages are recoverable." Tidewater Supply Co. v. Indus. Elec. Co., 253 S.C. 483, 485, 171 S.E.2d 607, 608 (1969). See also, Patterson v. Witter, 425 S.C. 213, 234-35, 821 S.E.2d 677, 688-89 (2018) (rejecting heightened pleading requirements for breach of contract claims, holding that trial courts must base Rule 12(b)(6) rulings solely on allegations in the complaint). This notice pleading standard does not require attaching the contract itself or pleading with heightened

specificity beyond what is necessary to provide fair notice, as the Second Amended Complaint did in this matter.

The Lawyers also echo the Court of Appeals' "no how" rationale by parsing the breach of contract cause of action in isolation. That contravenes basic pleading principles requiring courts to read the complaint as a whole and to credit incorporated factual matter. The breach cause of action incorporates the earlier, detailed factual allegations identifying the undertakings and the failures in performance, R. 116–118 (2nd Amend. Compl. ¶¶27–29, 36, 38, 40–42), and alleges damages, R. 120 (2nd Amend. Compl. ¶ 56); R. 122 (2nd Amend. Compl. ¶ 65) flowing from those breaches. R. 128-129 (2nd Amend. Compl. ¶¶97–101). When the allegations in those paragraphs are considered—as they must be under Rule 12—the claim states the contract elements. See J & W Corporation of Greenwood v. Broad Creek Marina of Hilton Head, LLC, 441 S.C. 642, 668, 896 S.E.2d 328, 342 (Ct. App. 2023) ("The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach.").

Finally, to the extent the Lawyers argue that the complaint did not articulate damages distinct from tort theories, the pleading alleges classic contract damages: the cost of substitute performance/mitigation and diminished value of the services promised. The complaint alleges substantial, ongoing fees to successor counsel and other harms caused by the Law Firms' failures to perform their undertakings. R. 110–111 (2nd Amend. Compl. ¶¶1-2); R. 120 (2nd Amend. Compl. ¶ 56); R. 121 (2nd Amend. Compl. ¶ 60); R. 122-124 (2nd Amend. Compl. ¶¶64-72). That is enough at the pleadings stage.

Because the Second Amended Complaint alleges an agreement with the Law Firms, identifies specific contractual undertakings and failures tied to that agreement, and pleads

resulting damages, Rule 12(b)(6) dismissal was improper. The Court should reject the Response brief's "conclusory/no how/Jones v. Gilstrap" arguments and its insinuation that failure to attach the contract is fatal, and reverse the affirmance of the contract dismissal.

## Conclusion

The Lawyers' Response improperly asks this Court to do what Rule 12(b)(6) forbids: resolve factual disputes, foreclose Rule 8 alternative pleading, and graft trial-stage "merger" concepts onto the pleading standard to eliminate otherwise viable remedies. At this stage, the only question is whether the Complaint reasonably states facts supporting claims for relief—not whether the Lawyers' preferred factual narrative will ultimately prevail. Because South Carolina recognizes legal-malpractice remedies sounding in negligence, breach of fiduciary duty, and breach of contract, and because Pampus were entitled to plead those theories in the alternative, the dismissal of the fiduciary-duty and contract causes of action was error. The Pampus therefore respectfully request that the Court reverse the dismissal of the breach of fiduciary duty and breach of contract claims, hold that John and Amanda Pampu have standing, and remand for further proceedings consistent with the proper Rule 12 standard.

Respectfully submitted,

*/s/ Thomas A. Pendarvis*
Thomas A. Pendarvis (SC Bar # 064918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Ste. A1
Beaufort, SC 29902
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Petitioners-Respondents
Andrew Pampu, Amanda Pampu, and John Pampu