

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. William C. McMaster III, Circuit Court Judge

Appeal 2026-000191

Case Nos. 2022-CP-10-04031
2019-CP-10-05892
2018-CP-10-05802

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

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and
The Bishop of Charleston a corporation Sole, Defendants

AND

Jane Doe 304, Appellant,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and
The Bishop of Charleston a corporation Sole, and Robert E. Guglielmone,
Bishop Of Charleston, Defendants,

AND

Robert Chimento, Appellant,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and The
Bishop of Charleston a corporation Sole, and Robert E. Guglielmone,
Bishop Of Charleston, Defendants,

of which Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, are the Respondents.

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STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners-Plaintiffs,

v.

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

Respondents-Defendants

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Respondents Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, “Lawyer Respondents”) submit this Joint Return pursuant to Rule 229, SCACR, to the Petition for Original Jurisdiction filed by Petitioners John Doe 305, Julie McDonald, and Richard McDonald (collectively, “Petitioners”) and respectfully ask that the Court deny the Petition.

INTRODUCTION

The Petition for Original Jurisdiction is a transparent attempt to improperly circumvent the normal appellate process by recycling issues contained in over one dozen cases Petitioners’ counsel has filed over the past decade in the Court of Common Pleas for the Ninth Judicial Circuit and in other forums, nearly all of which are currently on appeal to the South Carolina Court of

Appeals. This Court should deny the Petition because it falls short of establishing legitimate grounds to invoke this Court's original jurisdiction. Indeed, the entire Petition is based on an inaccurate recital of the factual and procedure background of the underlying class action cases, as well as a flagrant mis-description of a summary judgment order, the appeal of which has been fully briefed and argued before the Court of Appeals. The Petition does not and cannot explain why an extraordinary exercise of this Court's original jurisdiction is needed when the order complained of will be determined by the Court of Appeals, thereafter allowing the *certiorari* process outlined in Rule 242, SCACR. The three reasons given in the Petition to invoke this Court's original jurisdiction are demonstrably false, as set forth more fully below.

This Petition is the latest installment in a campaign undertaken by Petitioners' counsel for more than 13 years to harass and defame the Lawyer Respondents. Time and again, Petitioners' counsel has made scurrilous and baseless allegations of collusion and misfeasance against the Lawyer Respondents and the class action judge, the Honorable Diane Goodstein. Unfortunately, in response to each dismissal, Petitioners' Counsel has repeatedly re-filed the same allegations with *increased* hyperbole. It is well past time for this conduct to be brought to an end. Because the Petition is frivolous on its face and fails to present even a colorable basis for this Court to exercise original jurisdiction, the Lawyer Respondents respectfully request that in addition to denying the Petition this Court impose sanctions on Petitioners' counsel pursuant to Rule 267, SCACR, and award the Lawyer Respondents the fees and costs incurred in responding to the Petition.

PROCEDURAL AND FACTUAL BACKGROUND

A. The Underlying Class Actions.

The Lawyer Respondents represented victims of clerical sexual abuse at the hands of priests of the (Roman Catholic) Diocese of Charleston in consolidated class action lawsuits (the

“Underlying Class Actions”) that were filed in 2006.¹ The Underlying Class Actions were settled in January of 2007 subject to court approval as required by Rule 23, SCRPC. The class action court certified two classes: a “Primary” class consisting of the victims of clerical sexual abuse and a “Consortium” class consisting of certain relatives of the direct victims. (Order Certifying Class and Giving Preliminary Approval to Settlement, January 19, 2007, attached as Exhibit A.) The settlement was approved on both a preliminary and final basis by Judge Diane Goodstein after numerous, extensive fairness hearings on the record. (*Id.*; Order Approving Settlement, July 30, 2007, attached as Exhibit B.) Judge Goodstein even appointed the First Circuit Solicitor, David Pascoe, to investigate Diocesan records for victims’ names as part of the process. In her final approval of the settlement, Judge Goodstein specifically overruled numerous objections filed by Petitioners’ counsel. (See Exhibit B; *see also* Order of the Court, August 31, 2007, attached as Exhibit C.) Petitioners and their current counsel attended at least one of the fairness hearings and were aware of Judge Goodstein’s rulings. However, no appeal was taken to the orders overruling the objections filed by Petitioners’ counsel, nor was an appeal taken to the Order giving final approval to the class settlement.

Under the court-approved class settlement, abuse victims and their family members presented their claims in a non-adversarial arbitration before Arbitrator Marvin Infinger, Esquire. (*Id.*) The arbitrator rendered an award to each claimant based on a court-approved matrix of award ranges for various levels of abuse. (*Id.*) The settlement was dramatically successful insofar as more than 120 victims presented claims and received more than \$7.5 million in arbitration awards.

¹ Petitioners’ counsel erroneously claims that the operative class actions were filed in 2005 in Charleston County. In fact, the cases filed in Charleston County in 2005 were voluntarily dismissed without prejudice, as permitted by Rule 41, SCRPC, after the operative class actions were filed in Dorchester County in 2006. This misstatement by Petitioners’ counsel is emblematic of the many factual errors contained in the Petition, submitted without any documentary evidence.

The Underlying Class Actions are now concluded—and have been for years—contrary to Petitioners’ counsel’s claim that they are somehow improperly open. It is well-settled that final orders approving class actions settlements are just that—final and appealable. *See, e.g., Herrera v. Charlotte School of Law, LLC*, 818 F. App’x 165, 172 (4th Cir. 2020) (unpublished) (permitting appeal of final order approving class action settlement); Newberg on Class Actions §§ 14:5 & 14:13 (noting that court orders approving class action settlements are final and appealable). Here, Judge Goodstein issued the Final Approval Order in July 2007, and no appeal was filed. Further, all claims were adjudicated by Arbitrator Infinger and all settlement funds disbursed by the third-party escrow agent as of March 2008, as the Lawyer Respondents advised the class action court. (March 10, 2008 letter and March 31, 2008 follow up letter, attached as Exhibit D.) The final substantive hearing in a class action settlement is the hearing to approve the settlement, which is typically referred to as a “fairness hearing.” Newberg on Class Actions § 13:42 (outlining the settlement approval process). Therefore, the Underlying Class Actions are concluded, and Petitioners’ counsel’s contention that those cases remain pending is meritless.²

B. The Campaign to Defame and Harass Judge Goodstein and Lawyer Respondents.

Since 2009, Petitioners’ counsel has filed more than 10 cases with complaints with baseless allegations—totaling over 800 pages—against the Lawyer Respondents, each complaint containing the same basic claims (the “Circuit Court Cases”). In addition, a 2008 Petition to this Court seeking original jurisdiction contained largely the same defamatory allegations as in the present Petition. As Petitioners note, that prior Petition was denied summarily.

² Subsequent filings did not alter the finality of the class action cases. In 2013, The Honorable Edgar Dickson heard a motion to enforce the settlement under Rule 43(k), SCRPC. Judge Goodstein had recused herself by that date. Judge Dickson ruled that out-of-state residents were members of the classes but did not permit their late participation in the claims process. (Order of December 17, 2013, attached as Exhibit E.) This ruling further illustrates that the class action cases were concluded with finality.

To summarize, Petitioners' counsel represents a small group of plaintiffs who lived out-of-state at the time of the approved settlement of the Underlying Class Actions.³ Those plaintiffs contend that they did not receive notice of the settlement and should *either* be able to litigate their substantive sexual abuse claims against the Diocese *or* should recover against the Lawyer Respondents' on a legal malpractice / breach of fiduciary duty theory. The most salacious and false allegations in the Circuit Court Cases were claims that the Lawyer Respondents conspired with counsel for the Diocese as well as with the class action judge with the intent to harm the plaintiffs and others who lived out-of-state. After years of pursuing these scurrilous claims, Petitioners' counsel voluntarily abandoned the civil conspiracy claims *before* the circuit court judge could rule on them. (Excerpt of Transcript of July 20, 2017 hearing, attached as Exhibit F.)

Despite conceding to the Circuit Court that the civil conspiracy claims were meritless, Petitioners' counsel now presents to this Court the same claims of collusion by the Lawyer Respondents, the Diocese, and Judge Goodstein. It is nothing short of stunning that Petitioners' counsel would abandon his clients' conspiracy claim in the Circuit Court Cases, and yet now repeat those same baseless, outrageous, and false allegations to this Court.

With the exception of two recently filed cases, all of the Circuit Court Cases have now proceeded to resolution and are on appeal. Petitioners' counsel made the management of the Circuit Court Cases extremely difficult, as he filed a series of separate cases—sometimes even breaking up family members into different cases—with effectively the same claims. He also filed the cases at completely different times—indeed, some as many as ten years apart. Nonetheless,

³ Counsel also represents an individual who lived in South Carolina at the time of the Underlying Class Action settlement but claims to have had a repressed memory at that time, thus preventing him from participating in the class settlement. Because the Petition does not appear to raise any issues with respect to the repressed memory plaintiff, that individual's situation is not further discussed herein.

the Circuit Court Cases have been consolidated (save only the most recent two) and were assigned to a single judge: The Honorable J.C. Nicholson, Jr. (Order Assigning Circuit Court Cases to Judge Nicholson, June 12, 2015, attached as Exhibit G.) The two most recent cases filed by Petitioners' counsel in 2018 and 2019 are effectively stayed pending final disposition of the appeal.

During the pendency of the Circuit Court Cases before the trial court, the parties exchanged extensive written discovery and deposed numerous witnesses, including plaintiffs, family members of plaintiffs, medical professionals, and Diocesan officials.⁴ Following that discovery, Judge Nicholson granted summary judgment to the Lawyer Respondents.

C. The Two Circuit Court Orders at Issue.

In the Circuit Court Cases, Judge Nicholson entered two orders of particular relevance to this Petition.

The Limited Collateral Review Order. Following the command of this Court in *Hospitality Management Associates, Inc. v. Shell Oil, Inc.*, 356 S.C. 644, 591 S.E. 611 (2004), Judge Nicholson conducted a “limited collateral review” of the Underlying Class Actions to determine whether the settlement in that case would bind out-of-state plaintiffs and the Court rendered an order memorializing that review (the “Limited Collateral Review Order”). (Limited Collateral Review Order, October 25, 2016, attached as Exhibit H; see also Amended Order on Limited Collateral Review, May 3, 2017, attach as Exhibit I.) According to the notice plan adopted by the class action court, notice was given directly to class members who could be identified via the Diocese's records and, in addition, was given by publication in and around South Carolina. Judge Nicholson concluded that the notice plan did not bind out-of-state class members who lived

⁴ Petitioners' counsel complains that he has not taken the depositions of the Lawyer Respondents. However, given that the oldest of the Circuit Court Cases has been pending for more than ten years, Petitioners' counsel's claim that Judge Nicholson prevented him from taking his desired discovery is shockingly disingenuous.

outside of the publication area unless those class members received actual notice through some other means. These orders have never been appealed. Notably, when Petitioners' counsel appealed the summary judgment order discussed below, he *did not appeal* the Limited Collateral Review Order or the Amended Limited Collateral Review Order. His failure to do so precludes his request to this Court for judicial review.

In his Orders, Judge Nicholson took as a given that out-of-state sexual abuse victims and the out-of-state relatives of such victims were members of the classes as certified. There was no dispute on this point, as the class definitions as certified by the class action judge in the Underlying Class Actions contained no geographic limitation, and the class action court specifically ruled in 2013 that out-of-state residents were class members.

The Order Granting Summary Judgment. In the Circuit Court Cases, Judge Nicholson granted the Lawyer Respondents summary judgment on August 8, 2017. (Summary Judgment Order, August 11, 2017, attached as Exhibit J.) That order is currently on appeal before the Court of Appeals. The case is fully briefed, and oral argument was conducted before Judges Williams, Huff, and Geathers on September 15, 2020. All that remains is for the Court of Appeals to issue a ruling.

In the Summary Judgment Order, Judge Nicholson considered whether the Lawyer Respondents had fiduciary or attorney-client duties to a putative class before any class was certified. In considering that issue, Judge Nicholson held any such duties, if they existed at all, would flow only to a putative class as defined by the class definitions alleged in the complaints, rather than to a class as later defined by the court order certifying the class. This conclusion mattered because the Underlying Class Action complaints limited the putative classes to South Carolina residents, whereas the classes ultimately certified by the court did not. At no time did

Judge Nicholson hold—nor has any court ever held—that the classes *certified* by the class action court were limited to South Carolina residents.

There is nothing subtle or confusing about Judge Nicholson’s ruling on this point. Rather, he clearly distinguished between the classes ultimately certified by the class action court and the classes alleged in the complaints as follows:

The Lawyer Defendants assert that Plaintiffs’ claims are also barred because they owed no fiduciary duties to the Plaintiffs before class certification. Plaintiffs, in response, argue a fiduciary duty was owed upon filing the class complaints.

* * *

Even if there were a basis to assume a general fiduciary duty, as asserted by Plaintiffs, the question then is who are the intended beneficiaries of that fiduciary duty. Here, Plaintiffs claim to be the intended beneficiaries based on the definitions and notice plan of the Primary and Consortium classes [contained in the order certifying the classes]. Yet, those class definitions (and the classes themselves) did not exist until the Court certified the class under Rule 23 in its January 19, 2007 Order. ***If the intended beneficiaries are to be identified based upon the filing of a class complaint, the better approach is to look to the allegations in the class complaints, for it is those individuals included in the class definitions in the complaint whom the Lawyer Defendants arguably sought to represent and to whom this alleged, general fiduciary duty would run.***

* * *

[T]he ***complaints*** relevant to the Primary Class clearly limited the putative classes to individuals within the geographical boundaries of South Carolina.

* * *

[T]he same geographical limitation applied to the Consortium Class [as alleged in the complaints].

* * *

In these cases before me, all of the Plaintiffs . . . allege themselves to be non-residents of South Carolina. Therefore, even under Plaintiffs’ argument that there is a general fiduciary duty imposed upon lawyers who file a complaint alleging class action claims, I find that the Lawyer Defendants in the cases before me owed no duty to Plaintiffs because the Plaintiffs all fall outside ***the class definitions alleged in the underlying class action complaints.***

(Summary Judgment Order at 16-19 (emphasis added), Ex. I.)

As stated, Judge Nicholson’s Summary Judgment Order is now before the Court of Appeals

as Appellate Case No. 2017-001996. Petitioners’ counsel, however, is apparently unwilling to follow the normal appellate process and has instead filed this Petition in bad faith based on manufactured grounds as set forth more fully below.

LEGAL STANDARD

The Supreme Court has original jurisdiction to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs. S.C. Const. Art. V, § 5; S.C. Code Ann. § 14-3-310 (West 2020). Under Rule 245, SCACR, this Court “will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties.” Rule 245(a), SCACR. When a matter cannot be determine by the lower courts in the first instance, it remains the petitioner’s burden to show that an exercise of original jurisdiction is appropriate in light of the public interest, emergency, or “other good reasons.” *Id.*

ARGUMENT

Petitioners’ counsel gives three reasons for urging this Court to hear this matter in its original jurisdiction: (1) Petitioners’ counsel claims there are “conflicting Circuit Court Orders,” (2) Petitioners’ counsel claims a “substantial apparent fraud on the court” in the Underlying Class actions, and (3) Petitioners’ counsel asks the Court to address his allegation that the Lawyer Respondents placed their own interests ahead of the class in the Underlying Class Actions. Those arguments are so demonstrably false that one can only reasonably conclude that Petitioners’ counsel made them in bad faith, warranting sanctions.

A. The Petition Fails to Identify Any “Conflicting Circuit Court Orders”.

Despite pages of vague references to “conflicting circuit court orders,” Petitioners’ counsel specifically identifies exactly one portion of one order that he falsely claims creates a conflict

among the circuit courts. According to Petitioners' counsel, page 18 of Judge Nicholson's Summary Judgment Order "concluded . . . that the [underlying] settlement class extended only to residents of South Carolina. That order conflicted with past orders, including one from the same circuit judge, and is now on appeal." (Petitioners' Proposed Complaint ¶ 39.)

This contention contains two fundamental flaws. First, Petitioners' counsel does not even attempt to explain why this Court would need to resolve a conflict purportedly created by a circuit court order *when that order is already on appeal to the Court of Appeals*. Counsel merely states that one circuit judge cannot overrule another circuit judge; he fails to acknowledge that the Court of Appeals surely can do so. That is, in fact, the purpose of the appellate process, and Petitioners' counsel fails to give any cognizable reason why this Court should short-circuit that process.

Second, and more obviously, Petitioners' counsel misreads and misstates page 18 of Judge Nicholson's Summary Judgment Order. (See Ex. J.) As explained above, the issue raised by Petitioners' Counsel is reflected on page 18 concerning what if any duties counsel in a putative class action have to the putative class *before the class is certified*. Judge Nicholson's conclusion, as set forth on page 18, was that any such duties would run to the putative class as *proposed* in the operative class complaints and *not to the class as later certified* by the class action court. This conclusion reflects the temporal reality that the only class known to class counsel pre-certification is the class alleged in the complaint, which may, and often does, differ from the class later defined and certified by the class action court. Here, the difference was meaningful, as the class alleged in the complaints was limited to South Carolina residents, whereas the class certified by the class action court was not.

Importantly, **nowhere in Judge Nicholson's order did the Court conclude that the class ultimately certified by the class action court excluded people who lived out of state.** Indeed,

undersigned counsel are not aware of any circuit court reaching that conclusion or any similar conclusion. To the contrary, the underlying circuit court record makes it clear that out-of-state victims and their relatives *were* members of the Primary and Consortium classes. (Order on Motion to Enforce Settlement, December 17, 2013, Exhibit E; Summary Judgment Order, Exhibit I.) Accordingly, there is no conflict on this issue among the various circuit court decisions, and Petitioners' counsel has not identified a legitimate one.

The centerpiece of this Petition—the argument that this Court's intervention is needed to resolve conflicting circuit court orders—is based on a flagrant misstatement of Judge Nicholson's Summary Judgment Order, rendering sanctions appropriate. No reasonable South Carolina lawyer could read Judge Nicholson's order as holding that out-of-state victims were not members of the classes certified by the class action court. Still, Petitioners' counsel has manufactured that reading to petition this Court for relief to which his clients are not entitled. If nothing else, the thirteen years of litigation by Petitioners' counsel against the Lawyer Respondents demonstrates that he will continue these frivolous attacks unless and until he is ordered to stop. The Lawyer Respondents therefore ask not only that this Court deny the Petition but also that this Court sanction Petitioners' counsel pursuant to Rule 269, SCACR, awarding fees and costs associated with responding to the Petition.

B. The Petition Fails to Identify a “Substantial Apparent Fraud on the Court”.

Petitioners' counsel parlays his misreading of Judge Nicholson's Summary Judgment Order into an unsupported and bizarre argument that it was somehow fraudulent for out-of-state victims and their relatives to participate in the Underlying Class Action settlement (since, according to his mischaracterization, they were not proper class members). This contention falls flat because, as discussed above, there was no geographical limitation in the class definition as

certified by the class action court. There is no dispute that out-of-state victims properly participated in the settlement of the Underlying Class Actions. Judge Nicholson's Summary Judgment Order is in perfect harmony with this fact, and, again, whatever issues Petitioners' counsel has with that Order are properly addressed through the appeal currently pending before the Court of Appeals. Counsel had a full opportunity to brief the issues and argue his position before the Court of Appeals and he cannot now attempt, through this frivolous Petition, to undermine the process established for orderly appeals in this state.

Petitioners' counsel has not identified any fraud on the court, any new evidence, or given this Court any cognizable reason to grant his Petition. The misreading of Judge Nicholson's Summary Judgment Order is so blatantly incorrect that it must be intentional. Using that misreading to accuse the Lawyer Respondents of a fraud on the Court piles defamatory fantasy upon defamatory fantasy. It is an abuse of the court system that is wholly inappropriate and contrary to the law, and the Lawyer Respondents therefore respectfully request sanctions for having to respond to this frivolous Petition.

C. The Lawyer Respondents Did Not Place "Their Interests Ahead of the Classes" and These False Allegations Were Addressed by the Circuit Court.

As the final baseless reason for requesting relief, Petitioners' counsel recycles the same meritless allegations of malpractice and financial misfeasance that he has alleged in every one of the Circuit Court Cases that he has filed over the past decade. These allegations are false, and Petitioners' counsel has had more than ten (10) years to prove them to the circuit court *without success*. The Circuit Court has repeatedly and consistently rejected these allegations: Judge Goodstein rejected the objections to the class settlement Petitioners' counsel made at the time she approved the settlement, and Judge Nicholson entered summary judgment in favor of the Lawyer Respondents in the Circuit Court Cases, rejecting again the false and unsupported allegations.

Petitioners' counsel does not even attempt to explain to this Court why it should circumvent the normal appellate process with respect to these allegations. Under Rule 245, SCACR, this Court "will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties." Here, the matter *has been determined in a lower court in the first instance*, as the circuit court has granted summary judgment to the Lawyer Respondents after years of litigation. All that remains is for the Court of Appeals to decide the appeal from the grant of summary judgment, and the parties to engage in the *certiorari* process to the extent appropriate. Accordingly, the prerequisite that the matter cannot be determined in the first instance in the circuit court is clearly and obviously not met here.

In addition, there is no emergency, no overriding public interest, or "other good reason" within the meaning of Rule 245, SCACR, that would warrant this Court's exercise of original jurisdiction. As noted, in the Circuit Court Cases, despite the complexity wrought by the decision of Petitioners' counsel to file the cases seriatim over more than a decade, the parties have engaged in extensive discovery and extensive motion practice before the circuit court. Several of the Circuit Court Cases were set for trial against the Diocese Defendants and were settled with payment from the Diocese to the plaintiff victims.

While Petitioners' counsel spends page after page outrageously and falsely defaming Judge Goodstein, it is undisputed that she has not been involved in the matters in more than ten years, and she was never involved in the Circuit Court Cases. Her involvement was limited to the administration of the class actions, including approval of the class settlement, which Petitioners' counsel himself lauded in open court during the March 9, 2007 fairness hearing:

Your Honor, I do want to start by acknowledging the positive development by both the diocese and class counsel in even bringing the resolution this far. I do have concerns about it, but I really want to commend both the diocese and class counsel for generating what has brought us here today. It's a good thing. It's a good thing

for the organization, it's a good thing for the people they have served and the interest they attempted to serve in the first place.

(Transcript of Fairness Hearing, March 9, 2007, excerpt attached as Exhibit K.)

In summary, the class action court did everything in its power to administer the Class Action Cases and to approve a settlement that was fair and just. In addition, in the Circuit Court Cases Petitioners' counsel has litigated the very issues he presents here, and the circuit court rejected his arguments. Petitioners' counsel has provided no valid reason to wrest these cases from the Court of Appeals or the circuit court. The Petition, therefore, should be denied.

Sanctions for filing this frivolous Petition are appropriate. Petitioners' counsel has not alleged anything new in this Petition; rather, he has simply recycled allegations made in dozens of circuit court complaints and on which the circuit court has rendered a final order that is now on appeal. Rule 245, SCACR, is clear that this Court's original jurisdiction is not an appropriate vehicle for short-circuiting the ordinary trial and appellate processes, yet that is precisely what is requested in this Petition. In an effort to dress up the fact that Rule 245 clearly does not apply, Petitioners' counsel misrepresents Judge Nicholson's Summary Judgment Order and invents a contention that there was a fraud on the court. This Petition for Original Jurisdiction illustrates an abuse of the judicial process, and the Lawyer Respondents respectfully request that sanctions be imposed.

CONCLUSION

For the forgoing reasons, the Petition for Original Jurisdiction should be denied. Moreover, pursuant to Rule 267, SCACR, Petitioners' counsel should be sanctioned and ordered to pay the fees and costs incurred by the Lawyer Respondents' in responding to the Petition.

[SIGNATURE ON FOLLOWING PAGE]

/s/ Benjamin C. Bruner

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December 1, 2020

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT A

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Order Certifying Classes and Giving Preliminary Approval to Settlement, January 19, 2007 in
C/A Nos. 2006-CP-18-01310, 2006-CP-18-01311, and 2006-CP-18-01636

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1636

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

Plaintiffs,)

vs.)

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)
Charleston, in his official capacity,)

Defendants.)

ORDER CERTIFYING CLASSES
AND GIVING PRELIMINARY
APPROVAL TO SETTLEMENT

THIS MATTER is before the court on motion by the plaintiffs for certification of two classes and for approval of a settlement reached between the class representatives and the defendants. After a review of the full record before the court and the law applicable to the issues hereto, the motion to certify the requested classes is GRANTED and the proposed settlement agreement is preliminarily approved, subject to the objection period and Fairness Hearing as set out in this order.

FINDINGS OF FACT

Plaintiffs John Doe #53, John Doe 66, John Doe 66A, and John Doe 67¹ are individuals who, as minors, were sexually abused by priests assigned to the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole, and The Bishop of

¹ Hereinafter all of the plaintiffs will be referred to as "Representatives."

Charleston, in his official capacity (hereinafter "the Diocese"), are the designated governing entities for the Roman Catholic Church in South Carolina. The Corporation Sole was chartered by the General Assembly in the 1880s and its reach is statewide. John Doe #53 claims to have been abused by Father Lawrence Sheedy while John Doe was a minor living at the Charleston orphanage operated by the Diocese. John Does 66, 66A, and 67 were students at Nativity School who were abused by Father James Nyhan while Nyhan was assigned there. Jane Doe 1 is the wife of John Doe #53 and Rachel Roe is his mother. Jane Doe 2 is the wife of John Doe 66A. Each of the proposed class representatives were abused in their minority and brought this action beyond the one year statute of limitations for those reaching majority.

Over the past several decades a number of priests or other agents of the Diocese have been accused, investigated, criminally charged, and/or criminally convicted of sexual activities on minors. Based on information provided by the Diocese of Charleston to the Representatives, between 1950 and 2006, the total numbers of Diocese personnel who are alleged to have committed one or more acts of sexual misconduct on a minor are 28. Of these, 26 were clerical and the remainder non-clerical. The total number of claimed victims during this time period is 50. Some of these victims have brought claims against the Diocese. In almost all of them, the Diocese has asserted the statute of limitations, charitable immunity, and lack of notice/negligence, among other things, in defense of the claims. Additionally, a common issue in cases involving sexual abuse claims is the calculation of damages for mostly psychological damages. Each of the representatives have had the defenses and issues raised here asserted in their own claims. This action is almost identical to actions brought in other states in which the plaintiffs

have alleged sexual abuse upon them by priests and the failure of the Catholic Church in that area to adequately act in response.

Counsel for the representatives has extensive experience in complex plaintiffs' litigation, including potential class actions and cases in which sexual abuse of the plaintiff is the basis for the underlying claim.²

ISSUES

1. Should the plaintiffs' request for certification of classes be granted pursuant to SCRCP Rule 23?
2. Is the Settlement Agreement reached between the parties in the best interests of the class such that it should be preliminarily approved?

LAW/ANALYSIS

A. Certification of the Classes

SCRCP Rule 23 provides that a case may be certified as a class action where the proposed class satisfies the following criteria:

1. the class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interests of the class; and
5. In cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Plaintiffs have requested that the following classes be certified:

² The Diocese, while denying the seminal allegations of the complaint, took no legal or factual position on the motion for class certification.

- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused³ at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
- B. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

I find that certification of these class is appropriate.

1. **Numerosity/ Impracticability of Joinder.**

The first element, commonly referred to as 'numerosity,' requires that the court balance the number of potential members of the class and the ability to join each of the individuals in one suit. There is no definitive standard as to what number is sufficient to be numerous. *Haywood v. Barnes*, 109 F.R.D. 568 (E.D.N.C. 1986). Courts have certified classes where the number has been as small as 14 members. *Manning v. Princeton Consumer Discount Co.*, 390 F.Supp. 320 (ED Pa 1975)(cited by *Middleton v. Sunstar Acceptance Corp.*, 98-CP-07-1131 (SC Court of Common Pleas, Jan. 13, 2000). Further, the exact number does not have to be known. Wright, Miller, & Kane Federal Practice and Procedure (2d) § 1762. The record before the court must reasonably infer numerosity. *Id.* Determining whether numerosity exists requires a liberal interpretation of the rule. *Id.* The key is not simply the number of potential class members, but also the practicability of joining all in one action.

³"Sexual abuse," for these purposes, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

The record before me shows four representatives of the Primary Class and three of the Consortium Class. There have been no less than 28 priests or agents of the Diocese who have been accused, investigated, charged, and/or convicted of sexual abuse crimes on minors. However, the total number is likely to be higher because of the nature of the allegations and many of these priests have had multiple victims. As the representatives have shown, it is difficult for claimants to face up to sexual abuse. This is more true where the abuse has been accomplished by a person such as a priest, who is held by high esteem by the victim.

Further, the Diocese operates statewide and, hence, the breadth of individual claims is particularly great. The size of the Diocese's reach also weighs on the ability of individuals to be joined in the case. In addition, this court may easily take judicial notice that Catholic Dioceses around the country have been taking on the issue of priest sexual abuse in the litigation forum over the last several years. The problem of sexual abuse by priests has been in the forefront of national news which is indicative of the potential number of claimants here.

As to the Consortium Class, because members of the class are the spouses and parents of those who have actually suffered abuse, the number of members for that class is likely to be larger than in the Primary Class. It is not difficult for this court, then, to reasonably infer that the number of potential class members is such that the joinder of all is impractical. Hence, this first prong is met.

2. Commonality/Typicality

The second and third prongs of Rule 23 are general considered to be identical and are most often analyzed together. Commonality is the requirement that common question of

law or fact predominate over other questions in the case. "In fact, a single common issue will suffice if it is important enough." *McGann v. Mungo*, 287 S.C. 561, 340 S.E.2d 154 (Ct.App. 1986). Typicality requires that the claims or defenses of the class be identical. SCRCP Rule 23(a)(3). I find that the claims of the class are common and typical to each of the members.

The key issues of the case, as set out in the complaints, include the responsibility of the Diocese to monitor its agents, its knowledge of their conduct, the acts taken by the Diocese in the face of the knowledge, the type of damage (namely psychological), the applicability of the statute of limitations and defenses thereto, and the applicability of the affirmative defense of charitable immunity. Each of these issues must be addressed in the case of each individual class member in order for a resolution of the matter. Accordingly, the claims of each class member are common and typical to one another.

3. Adequacy of Representation

The fourth prong of Rule 23 is the adequacy of representation. There are two parts to this prong: (1) the plaintiffs' attorney must be qualified, experienced, and generally able to conduct the proposed litigation; (2) the plaintiffs must not have interests antagonistic to those of the class. The plaintiffs here meet these criteria.

First, the record reflects that class counsel is "qualified, experienced, and generally able to conduct the proposed litigation." It is presumed that plaintiffs' counsel is qualified unless the defense shows inadequacy of representation. *McGlothin v. Connors*, 142 F.R.D. 626 (W.V.A. 1992). The record before me shows that plaintiffs' counsel has a history of being involved in numerous complex pieces of litigation and class actions and with great success. The reputation of class counsel is known to the court and, given

their past history and their work in this matter heretofore, I have no question in finding them qualified.

Second, the class representatives' interests are not antagonistic to those of the rest of the class. The representatives have resolved their claims and agreed to be bound by the resolution in the face of whether this court approved class certification or not and the Diocese agreed to pay them regardless of whether the class was approved or not. They have nothing more to gain from the case. Accordingly, the representatives are not in an antagonistic position to the rest of the class.

4. \$100 requirement.

Last, SCRCF Rule 23(a)(5) requires that the amount in controversy exceed \$100 for each member of the class. In order for the amount in controversy prong to be met, the plaintiffs must show that the amount to be gained in the suit exceeds \$100 per class member. *Gardner v. Newson Chevrolet-Buick, Inc.*, SC 328, 404 S.E.2d 200 (1991). The claim for the class here is the medical bills, pain, suffering, psychological injury, and loss of consortium as a result of the Diocese's acts or omissions. These damages clearly seek a gain in excess of \$100 per class member. I find that the amount in controversy element is satisfied.

For the reasons set for above, the elements of SCRCF Rule 23 are met for the classes sought to be certified and, accordingly, I grant the motion to certify the classes herein.

B. Preliminary Approval of the Settlement

The parties have presented a Settlement Agreement for preliminary approval by the court pursuant to SCRCF Rule 23. At this point, the court conducts a two-step process:

1) a review of the settlement to determine whether it is within the realm of approval; and
2) instructions on providing notice to the class for purposes of objection with Notice of a Fairness Hearing for purposes of final approval of the settlement. *Clark v. Experian Information Solutions*, WL 2566433 (D.S.C. 2004).

I have given a full review of the Settlement Agreement with counsel for both parties and I believe that the settlement is fair, reasonable, and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim which encourages individuals to make the same, among other things.

I order a Fairness Hearing be held March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina. The parties are required to follow the following procedure to effectuate final approval of the settlement.

A. Notice. Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*; *The State*; *The Augusta Chronicle*; *The Rock Hill Herald*; *Beaufort Gazette*; *Greenville News* *Spartanburg Herald*; *Orangeburg Times-Democrat*; *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

B. **Objection.** Any potential Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel prior to February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

C. **Prayer for Attorneys Fees.** The Court will also consider at this hearing an award of attorneys' fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys' fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement.

Therefore, it is ordered that the plaintiffs' motion for class certification is GRANTED; and

IT IS FURTHER ORDERED that the Settlement Agreement reached between the parties is preliminarily approved by this court; and

IT IS FURTHER ORDERED that a Fairness Hearing for final approval of the hearing be held before me on March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina subject to the notice and other terms and conditions contained herein.

AND IT IS SO ORDERED!!!


The Honorable Diane S. Goodstein
Presiding Judge

This 19 day of January, 2007

At Summerville South Carolina

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, CODE OF LAWS OF SOUTH CAROLINA (1976).

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

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12th day of January, 2007, by and between the John Doe #53, John Doe 66, John Doe 66A, John Doe 67, individually and as representatives of a class of other persons similarly situated as victims of sex abuse allegedly committed by agents or employees of the defendants in this action, and/or Jane Doe 1, Jane Doe 2, and Rachel Roe, individually and as representatives of parents or spouses who have suffered a loss of consortium as a result of sexual abuse upon John Doe #53, John Doe 66, John Doe 66A, and John 67 or members of their class, and The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity (hereinafter "the Diocese"). This Agreement may be signed in counterparts. This Agreement represents the formal "Settlement and

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Arbitration Agreement" formalizing the agreement reached between the Representatives¹ and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

WHEREFORE, for and in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **FORMATION OF CLASSES.** Plaintiffs shall move in a timely manner for the creation of plaintiff classes against the defendants as follows:
 - A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused² at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
 - B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

¹ The class representatives will be referred to throughout this Agreement as "the Representatives."

² "Sexual abuse," as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement fund, pursuant to the terms and conditions set forth in this agreement and the order approving class certification. The individuals in either class shall hereinafter be referred to as "Claimants."

2. **APPROVAL OF AGREEMENT BY COURT.** In addition to the plaintiffs requesting that the classes stated above be certified, the plaintiffs shall also submit this Settlement and Arbitration Agreement for approval by the court pursuant to SCRCP Rule 23. Should the court deny approval of the certification of the classes substantially defined in paragraph 1 above, the court will be separately asked to approve the conditions of paragraph 4, below. Plaintiffs reserve their right of appeal of any denial of class certification. Approval of the settlement shall be on such terms and conditions as the court may fix. All participation is subject to any term and condition of the approval of the classes set out in the court's order. Provided, however, that this is voluntary settlement agreement and that either the Diocese or the Representatives may interpose an objection to any of the court's rulings on the settlement agreement or claims process and may withdraw from this settlement if its terms are materially altered by the court.

3. **SETTLEMENT FUND AND DISTRIBUTION METHOD.** The parties agree to jointly ask the court to approve the terms of the Settlement Agreement, as mediated June 13 and 14, 2006, as follows:

a. The Diocese shall fund the settlement with two irrevocable letters of credit or other guaranteed pool of funds in the amounts of \$5 million and \$7 million, respectively. Upon disbursement from the initial letter of credit or from an aggregate amount equaling or

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exceeding \$4 million, then in that event, the Diocese shall take such action necessary to have the secondary \$7 million dollars immediately available for disbursement. Both letters of credit (or other pools of funds) shall be guaranteed by the issuing bank to be available as of the date of the approval of this Agreement. In the event the Diocese is unable to obtain letters of credit, it will nevertheless be obligated to pay all sums awarded by the court or the Arbitrator and to deposit funds for this purpose as set forth above. This Agreement supersedes any prior agreement of the parties.

- b. With regard to the claim of any Claimant, the Diocese will pay the Claimant to settle such claim an amount of money to be determined through the arbitration process set forth herein. The arbitration shall be conducted by Marvin Infinger, Esq. (hereinafter "the Arbitrator"). If for any reason Mr. Infinger is unable to continue to serve as arbitrator, the parties shall agree to a successor arbitrator. If the parties are unable to agree to a successor arbitrator one shall be appointed by the court.
- c. Awards shall be based on the criteria set forth herein and the Arbitrator will make awards as follows:

<u>Type of Alleged Abuse</u>	<u>Minimum Payment / Maximum Payment</u>	
Limited inappropriate touching on the victim	\$10,000.00	\$18,500.00
Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts.	\$20,000.00	\$55,000.00
Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances.	\$60,000.00	\$125,000.00
Egregious acts, such as sodomy, any act		

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accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage.

\$150,000.00

\$200,000.00

Loss of consortium (Parent or Spouse)

\$20,000.00

The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be \$20,000.00 for each parent of the Claimant, and \$20,000.00 for the spouse of the Claimant. The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as lack of negligence or notice, statute of limitations, and charitable immunity. The award issued by the Arbitrator shall be left to the sole discretion of the Arbitrator and shall not be subject to objection, review, appeal or suit brought by any Claimant or the Diocese.

d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that a Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fide*, the claim shall be denied and the Claimant shall receive no award. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fide*, and the amount of any damages which were suffered.

e. Any individual, including his/her parents and spouse, whose claim has been otherwise adjudicated, settled or resolved, is barred from filing a claim or collecting from any funds of this class.

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f. The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.

g. Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:

1. The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship;
2. Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser, [i.e. priest/altar boy; coach/ basketball player]
3. A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;

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4. A brief summary of any claimed injury or damages;
 5. Name of parents, whether they are living or deceased;
 6. Name of spouse (if any);
 7. The form must be signed and dated; and
 8. Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein.
- h. Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.
- i. Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.
- j. The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

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shall control. In any event, as to all issues, the orders of the court shall control.

- k. While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.
- l. Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).
- m. If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.
- n. If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

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permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner of the Claimant's membership in one of the plaintiff classes and of the *bona fides* of the claim, and his decision shall be final and not subject to appeal. If at any time prior to the Arbitration of the claim for damages the Arbitrator determines that the Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fides*, the Arbitrator shall notify the parties of such determination and shall not proceed with the Arbitration on the claim for damages. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

- o. Upon submission of the claim, Class Counsel will notify the Claimant that he or she has the opportunity to have a psychological assessment and counseling by Dr. L. Randolph Waid. The Claimant may make this election at the time of his or her claim being filed. The Diocese agrees to pay Dr. Waid, on behalf of the Claimant, for no more than three (3) sessions. Any assessment of any Claimant by Dr. Waid will be provided to the Claimant who may submit it to the Arbitrator as part of the Claimant's damages proof; however, this assessment shall be kept confidential and will not be shared with the Diocese. The payments of counseling fees to Dr. Waid shall be over and above any award made by the Arbitrator and shall not be charged to the Claimant, but shall be paid from the fund.
- p. At the Claimant's hearing, a presentation shall be made by or on behalf of the Claimant concerning his or her damages suffered as a result of the alleged abuse. Each arbitration

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hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or his or her attorney may present other evidence relating to the abuse and injury, including without limitation, affidavits under oath or under the pains and penalties of perjury, from persons with relevant information, medical records, and/or forensic evaluation. Claimant may submit any information, records or testimony bearing upon damages for consideration by the Arbitrator, including videotape and audiotape testimony. Counsel for the Claimant may make comment upon the damages sustained by the Claimant. Before the close of the Claimant's arbitration hearing, Counsel for the Claimant may notify the Arbitrator that the Claimant intends to supplement the information, records or testimony submitted at Claimant's arbitration hearing with written records or information which is to be received by the Arbitrator no later than 21 days after the close of the arbitration hearing. The Arbitrator shall consider no information, records or testimony unless submitted by the Claimant or Claimant's Counsel with the exception of the Diocese's written statement as described in paragraph (q), below. In the event that the Claimant does not appear in person, the Claimant must appear by telephone or video conference. The Claimant may submit a forensic evaluation or a statement from a health care professional, but shall not be required to do so. The Claimant may have any person or persons of his or her choosing speak at the hearing.

- q. Counsel for the Diocese shall not be present at said arbitration hearing regarding damages; however, the Diocese shall be entitled to provide a written submission concerning the Claimant's damages. No person other than the arbitrator shall be present at the hearing.

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without the consent of the Claimant. If the Claimant requests, a representative of the Diocese, who is not an attorney, may be present at Claimant's arbitration hearing for purposes of pastoral support. The Claimant shall be entitled to have present at said hearing any of his/her family, friends, health providers, or other individuals requested by the Claimant.

- r. After the Arbitrator has rendered his decision, but not before, the Claimant may be invited to meet one on one with the Bishop of Charleston or his designee for religious, spiritual, and pastoral support. No Claimant is obligated to meet with the Bishop or his designee.
- s. Any materials of whatever nature submitted by Claimant or on his behalf to the Arbitrator, in connection with the arbitration process which is in any way related to the arbitration awards issued by the Arbitrator shall be returned to the Claimant or his or her counsel by the Arbitrator with the award. The Arbitrator shall not reveal the evidence or written arguments presented during the course of the arbitration hearing to anyone other than those present in the Arbitration or Class Counsel.
- t. The Arbitrator shall issue a written award in conformance with the requirements of paragraph 3(d) no later than twenty (20) days after the close of the Arbitration hearing to and deliver same to Class Counsel, counsel for the Diocese, and Claimant and/or Claimant's counsel. Anyone connected with the claims process in any fashion is bound to maintain the confidentiality of each individual Claimant.
- u. All costs associated with the management of the class shall be paid from the settlement fund.
The fees and costs described herein include those incurred by the Arbitrator, Class Counsel, the escrow agent, Dr. Waid and any other fees and costs approved by the court.

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v. The court approving this Agreement has the authority to enforce any Arbitration award. The Diocese consents to judgment being entered against it in any federal and/or state Court having jurisdiction. The parties release the Arbitrator from any liability arising from any act or omission in connection with the arbitration hearing conducted herein. By participating in the claims process, each Claimant and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

4. SETTLEMENT OF REPRESENTATIVE'S AND POINT CLAIMANT'S CLAIMS. In consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues relevant, the class representatives and/or point plaintiffs shall receive settlement funds as follows:

John Doe #53	\$160,000.00
John Doe 66	\$100,000.00
John Doe 66 A	\$100,000.00
John Doe 67	\$100,000.00
Jane Doe A	\$30,000.00
Jane Doe B	\$30,000.00
Rachel Roe	\$30,000.00

It is understood and agreed that the claims of these claimants are released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.

5. ATTORNEYS FEES. In consideration of the substantial efforts of plaintiffs' counsel (past

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and future), their substantial accomplishments in effectuating the settlement, and the work past and future and their role as class counsel, the parties agree to submit to the court the determination of the amount of attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall such counsel receive fees of neither less than \$950,000.00 nor more than \$2.5 million to be paid to such counsel by the Diocese from the fund referred to in paragraph 3, above, all as determined by the court. Such payment shall be made to Richter & Haller, LLC on behalf of itself no later than ten (10) days after award by the court. The award of attorneys fees as set forth above in this paragraph specifically contingent upon the Court approval of this class certification and settlement agreement.

6. PAYMENT OF CLAIMS.

- A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.
- B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided

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to Class Counsel and the Diocese, if necessary.

- C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.
- D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

7. PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.

The parties understand and acknowledge that the Diocese has done or will do the following:

- a. Comprehensive Policies. For the protection of children and the care of sexual abuse survivors, the Diocese has adopted a set of comprehensive policies called "The Policy of the Diocese of Charleston Concerning Allegations of Sexual Misconduct Or Abuse Of A Minor By Church Personnel" (the "Policies"). The Policies set forth the Diocese's unmitigated condemnation of child sexual abuse and its commitment to work to prevent sexual abuse, deal responsibly with accusations, and reach out with pastoral care for victims. The Policies are reviewed and updated every two years.
- b. Reports Of All Accusations To Solicitor. Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the

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accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

- c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.
- d. Sexual Abuse Advisory Board. Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.
- e. Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board. The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

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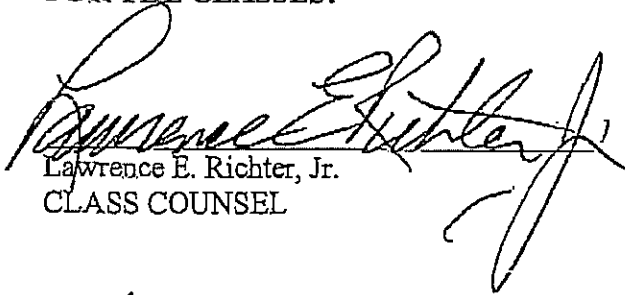
8. RELEASE. When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).
9. DISMISSAL OF ACTIONS. The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.
10. MISCELLANEOUS PROVISIONS. This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

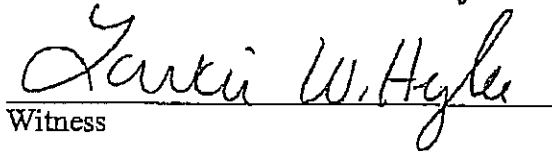
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claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

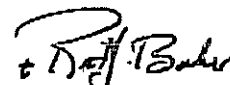
Executed this 12 day of January, 2007.

FOR THE CLASSES:


Lawrence E. Richter, Jr.
CLASS COUNSEL


Witness

FOR THE DEFENDANTS:


The Most Rev. Robert J. Baker
THE BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY AND FOR THE
BISHOP OF CHARLESTON, A
CORPORATION SOLE

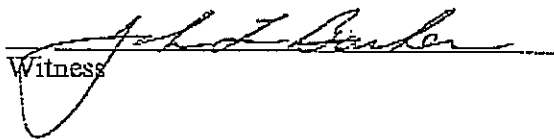

Witness

EXHIBIT 1

CLAIMANT'S GENERAL RELEASE

_____ ("the Claimant") for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ("the Diocese"); any present or former bishops, archbishops or cardinals of the Diocese, in both their individual and official capacity; any entities affiliated with the Diocese; and present or former priests, deacons, other clergy, brothers, nuns, agents, servants, officers, trustees, directors, supervisors, attorneys, employees, volunteers, insurers, predecessors, successors, assigns, subsidiaries and affiliates of the Diocese, including without limitation any such person accused of committing or negligently causing or permitting sexual abuse with respect to the Claimant or members of the Claimant's family (all of the foregoing hereinafter collectively referred to as the "Released Parties") of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit. With respect to any claims arising from or related to an act or acts of abuse which have formed the basis of a claim or suit against the Diocese

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or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the ____ day of _____, 200 ____.

Print Claimant's Name

Claimant's Signature

Witness

Witness

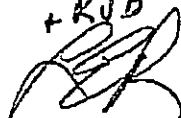
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EXHIBIT 2

DIOCESE LIMITED RELEASE

The Roman Catholic Bishop of Charleston and the Bishop of Charleston in his official capacity, a Corporation Sole ("Diocese"), for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby forever remises, releases and forever discharges _____ ("the Claimant") and Claimant's heirs, attorneys (including their law firms, agents, servants, or employees), executors, predecessors, parents, successors, agents, servants, employees, and assigns of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities which were or could have properly been raised in any form or fashion arising from the incidents alleged by Claimant in his claim submitted pursuant to the Order Approving Class Certification and Settlement Agreement (date to be inserted) in cases numbers 06-CP-18-1310 and 06-CP-18-1311, Claimant's participation in the class process set out in said Order, including any assertions of the Bishop arising from the validity or fraudulent nature of any claim, and/or any defense or claim which was or may have been raised by the Bishop in defense to the Claim or any suit which was or could have been filed against the Bishop but for the Claimant's participation in the claims process set out in the Order referenced herein, whether such claims are now known or unknown. It is the intention of the parties that the Diocese is fully and finally releasing the Claimant from any liability asserted by it against him or her arising from the Claimants assertion of sexual abuse.

IN WITNESS WHEREOF, the Bishop of Charleston has set his hand and seal to this Release

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as of the date written below.

The Bishop of Charleston, a Corporation Sole

By: _____

Its: _____

Date: _____ Witnessed by: _____

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Legal Notice

Notice of Proposed Settlement of Class Action

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity

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2007 JAN 17 PM 3: 29

CLERK OF COURT
DORCHESTER COUNTY

YOU ARE HEREBY NOTIFIED OF A PROPOSED SETTLEMENT OF THIS CLASS ACTION, OF HEARINGS TO BE HELD BY THE COURT TO DETERMINE WHETHER IT SHOULD BE APPROVED AND TO DETERMINE THE REASONABLENESS OF CLASS COUNSEL'S FEES.

Plaintiffs John Doe #53, John Doe 66, John Doe 66A John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated brought these claims on behalf of themselves and others who with claims of sexual abuse in keeping with the class definitions, by agents or employees of the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole and The Bishop of the Diocese of Charleston, in his official capacity have denied any liability or wrongdoing in response to the claims that were made against them and have asserted various defenses in response to the claims.

The court of common pleas for Dorchester County has certified the classes on whose behalf the claims have been asserted. Those classes are:

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

The Class Representatives have reached a settlement on behalf of the classes, and, after a review of the terms of a Settlement Agreement entered into by the Class Representatives and the defendants, the court has preliminarily approved the terms of the settlement as being in the best interest of the classes. The court's preliminary approval is subject to final approval or disapproval after a Fairness Hearing to be held as described below. Copies of the Settlement Agreement may be obtained by a Class member or their counsel at this time by making written request of Class Counsel sent to the address for Class Counsel set forth at the end of this Notice.



The Settlement Agreement resolving this matter will not be effective unless and until the court makes a final determination as to its fairness and that the settlement is a fair, reasonable, and adequate compromise of the aggregate claims of the plaintiff classes as a whole.

In order to assist the Court in making this decision, the Court will hold a Fairness Hearing on such date determined by the court, commencing at 10:00 a.m. at the Dorchester County Courthouse in St. George, South Carolina. The court will also consider at this hearing an award of attorneys fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than November 11, 2006 documentation supporting their request for attorneys fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement. Any Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel fifteen (15) days prior to the Fairness Hearing. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

The proposed settlement includes a claims process to be utilized for qualifying Class members to prove the validity of any claim and have their damages measured for payment from the Settlement Fund. The Class Representatives will also request the approval of the claims process provided for in the Settlement Agreement and for an order providing for a date on which the claims process begins and ends.

CLASS COUNSEL:

Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000
diocesessettlement@richterfirm.com

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT B

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Order Approving Settlement, July 30, 2007, in
C/A Nos.: 2006-CP-18-01310, 2006-CP-18-01311, and 2006-CP-18-01636

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1636

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

Plaintiffs,)

vs.)

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)
Charleston, in his official capacity,)

Defendants.)

ORDER APPROVING SETTLEMENT

THIS MATTER was before the Court for a Fairness Hearing on a proposed class settlement, for an award of attorneys fees and litigation costs, and for approval of certain forms and documents relative to notice to the class and claims process. The Court had preliminarily approved the settlement by order dated January 12, 2007. For the reasons set forth herein, I find the Settlement and Arbitration Agreement to be fair and reasonable as to the Primary Class as a whole, and I approve the same. This Order further addresses the claims procedure, attorney fees and litigation costs.

FACTUAL BACKGROUND/PROCEDURAL HISTORY

1. Notice to Class Members

The Fairness Hearing was noticed by publication in 11 newspapers of general circulation in all parts of the state; potential class members known to the parties were given actual notice by

mail. In addition, the Court takes notice that there was substantial media coverage of the proposed settlement in advance of the Fairness Hearing.

Three objections were filed as of the time of the hearing. The Class Representatives and the Defendants submitted an agreed upon addendum to the settlement which contained an opt-out procedure and restated the parties' intentions as to the meaning of certain terms contained in the agreement. The Court held a full hearing on all of the objections and on the petition for attorney fees.

During the hearing, the Court, *sua sponte*, directed David Pascoe, Solicitor for the First Judicial Circuit, to conduct an investigation into a document entitled, "INSTRUCTION" which plaintiffs' claim was the basis for how sexual abuse allegations were to be handled by the Diocese. In the course of that investigation, Solicitor Pascoe directed the Diocese to review all of its files to determine the names of any individual who alleged that he or she had been sexually abused as a minor to ensure that the names of those individuals had been turned over to law enforcement as required by statute and to ensure that the individuals received actual notice of these proceedings.

In order to protect the confidentiality of individuals who claim abuse and who had informed the Diocese of their claim, the Diocese undertook the responsibility of providing actual notice of the class action and settlement terms to all individuals who might fit within the primary class of the pendency of this action. The Diocese represented that there were 20 such individuals, 16 of whom it located. As to the remaining four, I directed the Diocese to provide those names to class counsel who then assisted in attempting to locate these last four individuals. Plaintiffs provided the Court the affidavit of Steven A. Smith who stated that he identified two individuals who might be those being sought, but that, in his opinion, all reasonable efforts had

been used to locate the individuals and that they could not be found with the limited information in possession of the Diocese.¹

Those individuals who received notice were asked to contact the Court in short order. No objections were received.

2. Investigation by Solicitor David Pascoe

As mentioned above, the Court directed David Pascoe, First Circuit Solicitor, to investigate into certain matters, in particular, a document entitled "INSTRUCTION," concerning the manner in which sexual abuse allegations were to be handled. On July 13, 2007, at hearing was held at the Dorchester County Courthouse, St. George, South Carolina, where Solicitor Pascoe reported that his investigation included the Diocese review of its files and conversations with the General Counsel. During the July 13th hearing, Solicitor Pascoe stated that he made contact with the South Carolina Attorney General and the United States Attorney for the District of South Carolina concerning the INSTRUCTION. The report from the United States Attorney's Office was that a similar investigation had been conducted by the United States Attorney in Massachusetts and that no criminal charges were ever brought as a result of it.

At the July 13th hearing, Solicitor Pascoe reported that his investigation continues; however, he reported no reason that the civil action should not proceed.

ORDER

1. Notice to All Members of the Class

The "INSTRUCTION" raised concerns with the Court that some individuals did not or would not receive proper notice of the class settlement in order to object to or participate in the settlement proposed for the class. The parties and the Court considered several options on how

¹One of the remaining two was reported to the Diocese by a victim who has indicated that he has no specific knowledge that the individual was actually abused.

best to address this concern and to protect the interests of both the absent class members and the Diocese's right to have the conclusive effect of a class action.

As stated above, the Diocese undertook on its own to notify the potential members of the class known to it. Normally, this burden would fall on the plaintiffs. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974). Nevertheless, because of the nature of the allegations, the Diocese believed that it would be more appropriate for it to undertake this responsibility in order to ensure the confidentiality of those who have come forward to it. See Rule 23, SCRC (giving the Court the authority to establish how notice may be sent).

The Diocese has represented to the Court that 20 individuals who may be class members were identified by it in a search of its files. Sixteen of these were located, and as to the other four, I find, based on Mr. Smith's affidavit, that reasonable efforts were used to locate those individuals and that their present whereabouts are unknown. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974). The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members and has asked the Court to approve the settlement with the Diocese's representation and stipulation as a condition of the approval.

Based upon the representations of the Diocese, its stipulation as stated herein, and Class Counsel's conditional consent, I believe that the concerns which the "INSTRUCTION" raised have been satisfied as to the civil action. As to any criminal conduct which may exist, I trust that the appropriate prosecutors take the proper course of action.

2. Objections to the Settlement

At the time of the hearing, three objections were filed. Subsequently, two of the objectors have withdrawn their objections. Matthew Creech, on behalf of attorney Johnny Parker, withdrew an objection on behalf of his client on the record at the March 9, 2007 Fairness Hearing on this matter at the Dorchester County Courthouse, St. George, South Carolina, and Walter Bilbro withdrew an objection on behalf of his client via document filed with the Dorchester County Clerk of Court on June 6, 2007. Therefore, the Court is left to rule only on the objections filed by John Does A through N. For the reasons set forth below, the objections are overruled.

A. Standing of John Does A through N

As an initial matter, plaintiffs challenge the ability of John Does A through N to make any claim as to the fairness or reasonableness of class structure or settlement because their objection asserts that they "conditionally opt-out" of the settlement. Plaintiffs argue that since these individuals are not parties to the litigation, they do not have standing to object to the definition of the class. The Fourth Circuit has addressed this issue in *Gould v. Alleco, Inc., et al.*, 883 F.2d 281 (4th Cir. 1989) *cert. denied* 493 U.S. 1058. In essence, the Court held that an individual who believes that his or her rights will be impacted by any stage of an action, prior to settlement, must seek a timely intervention into the action under Rule 24.

This identical reasoning has been adopted by the South Carolina Supreme Court. In *Ex Parte Condon*, the Supreme Court of South Carolina was confronted by the state Attorney General's attempt to challenge an award of attorneys fees arising from a class action lawsuit. 354 S.C. 634, 583 S.E.2d 430 (2003). Our Supreme Court adopted the analysis that the manner in which individuals who wish to assert their rights in a case is to move to intervene pursuant to SCRCP Rule 24 and, if they failed to take that action, they have no standing. *Id.* at 640, 433.

The Court finds this reasoning to John Doe A through N's "conditional opt-out" persuasive. The objectors cannot have it both way. Since it appears they intend to opt-out, I hold they do not having standing to raise these objections. Nevertheless, even if they did, I find their objections are without merit, and I will address those in course below.

B. Objections to class definitions

John Does A through N claim insufficiencies in the class definitions. The objection states that those individuals who do not fit into the definitions seek amendment of the definitions to fit them. As the above cases state, it is axiomatic that only those who are parties to the litigation may participate in it. The creation of a class makes those class members parties to the litigation. Those who do not fall within the definitions are not parties to the case. *Gould, supra*. Accordingly, unless those individuals have filed a timely motion to intervene to participate in the class drafting, they maintain their rights to proceed against the same defendants for the creations of a different class to include themselves and others similarly situated if they can meet Rule 23 requirements. Hence, none of their legal rights have been impaired and they are free to proceed on their own. *Id.* Those who do fit in the class and do not care for the definition of the class as defined may opt-out of the class and proceed on their own.

Nevertheless, the definitions as approved by the Court meet both the spirit of the issues joined in the litigation and the settled tort law of South Carolina.

The first objection is based on a reading by the objectors of the Consortium Class definition to exclude those parents or spouses whose child or spouse's individual claim had been adjudicated, settled, or otherwise resolved. For many reasons, this would have been a legitimate exclusion, not the least of which would have been the propriety of dealing with all claims at the same time.² However, when the class definition is read in the light in which the settling parties and the Court intended when the settlement was approved preliminarily, the objection is satisfied. The parties have submitted an addendum to the Court which stipulates that the definition is intended in the broader reading. This was the original intent of the settling parties, and any other reading must be attributed to draftsmanship.

The next ground for objection is that the classes exclude those whose claims have been adjudicated, settled, or otherwise resolved. The objectors would have the class definition rewritten so that those whose claims were unsuccessfully prosecuted under failed legal theories can be revived. However, to do so would have the traditional basis of tort rules, not to mention due process, turned upside down. *See generally In Re: "Agent Orange" Product Liability Litigation*, 611 F.Supp. 1396 (1985)(holding that traditional tort principles should be used in class action settlements involving traditional tort claims). Clearly the law allows a party only 'one bite of the apple' in litigation. "A final judgment on the merits in a prior action will preclude the parties and their privies under the doctrine of *res judicata* in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action."

²Recall that all claims under both classes are those which facially by definition have passed the applicable statute of limitations. Issues of proof and damages may arise in the delay between resolution of the two claims, notwithstanding their independent character.

Price v. Georgetown, 297 S.C. 185, 375 S.E.2d 355 (Ct. App. 1988). See also *Nunnery v. Brantley Construction Co., Inc.*, 289 S.C. 205, 345 S.E.2d 740 (Ct. App. 1986)(dismissal with prejudice has *res judicata* effect). South Carolina has also taken the same approach with cases which have been settled by the parties where there is the exchange of compensation for a release, absent some mistake not previously contemplated by the parties. *Smothers v. Richland Mem. Hosp.*, 326 S.C. 566, 493 S.E.2d 107 (Ct. App. 1997).³ Hence, any prior claims that have been adjudicated or settled are barred by law.⁴ Allowing those individuals to have another bite would be manifestly unfair to those class members who have not had their claims adjudicated and to the Defendants who have been discharged in one form or another from liability to that individual.

The objection next states that certain of the John Does are, “apparently excluded from the settlement because John Doe D previously wrote to the Diocese about the minor’s molestation and the Diocese refused to accept responsibility.” I see no such exclusion in the class definitions or settlement and this objection is overruled as being without merit.

Last, the suggested amendment requests that the Consortium Class definition have the phrase “and who suffered a loss of the abused individual’s consortium” removed from it. This phrase essentially requires some damage proximately caused. This qualification simply complies with recognized tort law and should easily be met by most members of the class. Any parent or spouse who makes any statement or showing of any loss is eligible as a consortium class member and for recovery. For example, a spouse who must pick up a child from school so her husband,

³Any claim such as mistake of fact is too individualized to be dealt with in this class action, though may be the basis for some other suit.

⁴John Doe L brought an action through objector’s counsel which was dismissed by consent order which stated, “John Doe v. The Diocese of Charleston and the Bishop of the Diocese of Charleston in his official capacity, No. 04-CP-10-3653, is properly dismissed with prejudice as a result of the Supreme Court decision in *Doe v. Crooks*.” Order of the Hon. J. C. Nicholson dated April 19, 2006. Apparently, this objection is intended to reverse counsel’s consent to the dismissal of this claim with prejudice.

the regular driver, can attend a psychiatric session has suffered some loss of consortium. A parent whose son had to go to a special summer camp because of bad behavior has lost the child's consortium. The objection is overruled.

C. Objection as to Matrix

Next, John Does A through N object to the claim distribution matrix on the basis that the type of abuse is "arbitrary" since the Courts have held that sexual abuse is "inherently injurious." In support of their contention, the objectors rely heavily on *Manufacturer and Merchants Mutual Ins. Co., Harvey*, 330 S.C. 152, 493 S.E.2d 22 (Ct. App. 1998). *Harvey* is an insurance declaratory judgment action based on an egregious set of facts involving grandparents abusing their grandchildren. Plaintiffs assert that the case does not stand for the propositions relied on by them and, instead, shows why the matrix developed by the settling parties is a fair and reasonable course. I agree with the plaintiffs

The *Harvey* Court was called upon to determine whether the act of sexual abuse on a child could be negligent for purpose of requiring the Harveys' homeowners carrier to defend and indemnify them. In holding the duties did not exist within the fact pattern *sub judice*, the Court found that sexual abuse requires intent. In so holding, the Court of Appeals stated, "We conclude that the effect of sexual abuse is so integral to the act that the intent to do the act is interchangeable with the intent to cause the resulting injury." *Harvey* at 161, 227. It went on to say that as of that opinion, 41 other states had reached the conclusion that "the intent to perform the act of molestation is sufficient to infer the intent to harm the child." *Id.* at FT 1.

The *Harvey* ruling is instructive on why the matrix based on the degree and type of abuse is sensible, fair and legally effective manner for the handling of individual claims. The *Harvey*

Court's analysis that "the effect of the sexual abuse is so integral to the act ... [in] caus[ing] the resulting injury," is an easy basis for upholding the degree of abuse matrix. *Harvey* recognizes that as the act worsens in degree, so does the harm. Correspondingly here, the use of the type of injury matrix found in the settlement will adequately place claimants into the proper place for a fair determination of the value of the claim.

Basing the claim value on the individual psychological damage alone would be difficult, if not impossible, to do. Psychological damages almost always have a degree of variance and uncertainty, not all of which can be tied directly to the acts of the agent or employee of the Diocese. South Carolina law recognizes the difficulty in proving emotional distress by requiring that it be accompanied by physical manifestations before it can be compensated, unless the conduct was intentional. *Ford v. Hudson*, 276 S.C. 157, 276 S.E.2d 761 (1981)(recognizing the tort of intentional infliction of emotional distress as the only cause where compensation for emotional distress requires a showing of physical manifestations).⁵ Accordingly, the use of psychological damages alone as an assessment is a far less equitable means of compensating the claims of all of the victims for the severity of the individual injuries each has suffered. I am comfortable that the matrix presented by the settling parties is a fair and reasonable method of adjudicating claims. I overrule this objection.

D. Compensation of Consortium Claims

Last, the John Doe A through N objectors state that the amount accorded for consortium damages is "out of all proportion" with the manner in which they claim juries handle such

⁵While it is clear that the individual priests or agents inflicted intentional harm, it does not necessarily follow that the Diocese, as their employer, would have the same type of liability in Court under South Carolina law. It is proper for the Court to consider the plaintiffs' ability to prove elements of a case in approving a settlement. See *In Re: Agent Orange Products Liability Litigation*, 818 F.2d 145, 174 (2nd Cir. 1987)

claims. In support of this contention, the objectors rely on the jury verdict in *Glover v. Port-Gaud School*, a Charleston County case in which a large jury verdict was rendered. Plaintiffs assert that the amount provided in the settlement for consortium claims is proportionate when considering the state of the law of consortium and the overall value of the claims. I agree.

Notwithstanding the *Glover* jury verdict, which never made it through the appellate process, there has been no change in the law as it was at that time: "As the South Carolina Supreme Court has made clear, a spouse is the only party who may bring a loss of consortium claim under S.C. Code § 15-75-20." *Kirkland v. Sam's East, Inc.*, 411 F.Supp. 2d 639 (2005). See also *Hughey v. Ausborn*, 249 S.C. 470, 154 S.E.2d 839 (1967); *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996). The law simply does not recognize a right of action of a parent to recover for the loss of consortium of a child. In my view, whether the *Glover* verdict would have survived an appeal is very doubtful.

Furthermore, the spousal claims, while directly recognized at law, are claims which have challenging damages issues. By definition, here the husbands or wives of the consortium claimants were sexually abused as children, hence, before they married the claimant. As a result, the claimant married his or her spouse in the condition in which they assert as a loss of creating consortium. And, of course, most if not all of these claims are well beyond the statute of limitations, which would serve as a complete bar to these claims. Last, any claimant who believes their individual claims will successfully exceed the damages amount provided for in the class claims structure has the right to opt-out and proceed on their own. I overrule this objection.

3. Approval of Settlement

Based on the arguments of all counsel at the Fairness Hearing and my own review of the terms and conditions of the settlement agreement, I believe that the settlement is fair, reasonable,

and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim, all of which should enable and encourage individuals to come forward and make the same. Accordingly, I enter judgment approving the settlement.

I direct that all provisions of the Settlement Agreement take effect upon the execution of this order. The claims period should run for a period of 120 days (or the end of the first business day thereafter) beginning on the 10th day after the execution of this order and the date of the close of the claims filing period must be published. Within ten (10) days of this Order, Class Counsel is to begin publication of notice that the claims period is open and that individuals have a right to opt-out of the settlement if they so choose. Class Counsel proposes a notice of the same in a form comparable to that attached hereto as Exhibit A, and I approve this notice. Class Counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*, *The State*, *The Augusta Chronicle*, *The Rock Hill Herald*, *Beaufort Gazette*, *Greenville News Spartanburg Herald*, *Orangeburg Times-Democrat*, *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for three (3) consecutive weeks during the notice period.

Class counsel and counsel for the Diocese are to provide the claims packet to any individual who has requested the same.

4. Forms for notice to the primary class and for use during the primary class claims process

The parties have proposed certain forms to be used in claims processing. The forms are attached hereto as Exhibits B through H. Class counsel proposes that these forms be provided to all individuals who are known to them to be interested in the class and to post these forms, for

availability, on the internet. The Court has reviewed the forms and believes them to be appropriate for use in the case and I approve the same.

5. Attorneys fees

In the Settlement and Arbitration Agreement, the parties agreed that the Court should, exercising its discretion, set attorney fees for class counsel in a range of no less than \$950,000.00 and no more than \$2.5 million. Defense counsel argued for the lower end of the fee range and asked the Court to take into consideration the charitable nature of the Diocese and that it settled the case rather than requiring a trial. Class Counsel requested the Court award them a fee of \$2.5 million. In support of their petition for an award of attorneys' fees, class counsel submitted a substantial record which included an affidavit from each attorney involved in the case, a statement of hours from each law firm the total of which exceeded 3,720 hours⁶, and an affidavit from Professor John Freeman regarding the reasonableness of the fee request and the beneficial public impact of the settlement. Class Counsel has worked on the case for 4 years; it has proceeded in Court for 2 years, with settlement negotiations lasting more than 15 months. The Court took its own notice of the arms-length advocacy of counsel for their respective clients in the case. The case was brought to a mediated resolution and it heard from the mediator, Marvin Infinger, regarding the negotiations between counsel.

"In determining a reasonable attorneys' fee, the Court should consider the following six factors: 1) the nature, extent, and difficulty of the case; 2) the time necessarily devoted to the case; 3) the professional standing of counsel; 4) the contingency of representation; 5) the

⁶ Although additional information was not submitted for work performed by Class Counsel after the March 9th Fairness Hearing, the Court notes that two status conferences were held in person, three were held by telephone, and one additional hearing was held which would provide additional hours.

beneficial results obtained; and 6) the customary legal fees for similar services.” *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998).

The Court’s review of the record before it, argument of counsel, and my own observations of the case compel me to award class counsel an attorneys’ fee in the amount of \$2.5 million dollars. In rendering this decision, I find that the matter before me is monumental in both its scope and result. Class Counsel have successfully obtained the creation of two classes of individuals, one consisting of individuals who have been sexually abused by Diocese employees and another consisting of parents and spouses of those individuals. But for the settlement, the claims of the individuals in the classes might already be barred by significant legal defenses, including the statute of limitations and charitable immunity. Class counsel has been able to succeed in this case where other lawyers, in identical cases, have failed; and, they accomplished these tasks against a respected and powerful adversary, the Catholic Diocese of Charleston.

The matter has taken four years to prosecute, and, at this point, the conclusion of the settlement has already consumed a year and a half. Counsel has provided the Court conservative proof of more than 3,700 hours of time spent prior to the Fairness Hearing, with additional time expended, and to be expended, on the case since that time and in carrying out the terms of the settlement. All of the counsel in this case are known to the Court to have had exemplary legal and professional success and this fact has not been contested.

Given the significant legal hurdles, such as the statute of limitations and charitable immunity, which were being asserted by the defendants, that fee arrangement is not out of proportion. Class Counsel’s prayer for a fee award of \$2.5 million is 20.8% of the gross settlement. This figure is on the lower range of acceptable fees found by the Supreme Court. *See Ex parte Condon, Littlejohn v. State*, 354 S.C. 634, 644, 583 S.E.2d 430, 435 (2003)(finding

that a contingency of between 20 and 30 percent of recovery was reasonable in a class action matter).

For the reasons above, I award Class Counsel \$2.5 million as attorneys' fees in this matter which shall be paid as set forth in the Settlement and Arbitration Agreement within ten days of the entry of this Order.

6. Costs

Prior to the March 9, 2007, hearing class counsel presented bills for costs in the amount of \$85,259.50 and requested reimbursement of these expenditures per the Settlement Agreement. In addition, they have requested reimbursement of an additional \$15,731.86 incurred since the March 9, 2007 hearing. These expenditures have not been challenged and my review determines them to be routine for this type of litigation and I approve the same for reimbursement.

Class Counsel has been directed to publish notice of the claims period and opt-out right. Since these expenses have been ordered by the Court, the bills for publication of the notices may be presented by Class Counsel directly to the escrow agent and paid by him per the Settlement Agreement.

7. Funding of Settlement Proceeds

Pursuant to paragraph 3(a) of the Settlement Agreement, the Diocese shall fund the initial \$4,540,000.00 upon the execution of this order.⁷

THEREFORE, IT IS ORDERED that the Settlement and Arbitration Agreement dated January 12, 2007 be approved as a final settlement between the parties and that the terms and conditions of the Settlement Agreement become an order of this Court, and that the claims

⁷ The Diocese previously paid \$460,000.00 to the class representatives for the settlement of their claims.

process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

IT IS FURTHER ORDERED that the forms proposed by the parties and attached hereto as Exhibits A through H be approved for use in the claims process; and

IT IS FURTHER ORDERED that class counsel be awarded the sum of \$2.5 million as attorneys' fees in this matter and that the escrow agent be authorized to pay the same pursuant to the terms of the Settlement Agreement; and

IT IS FURTHER ORDERED that the escrow agent be authorized to pay Class Counsel the sum of \$100,991.36 in litigation costs and to further make direct distributions for publication of notices required under this order as directed by the Settlement Agreement.

AND IT IS SO ORDERED!!!


The Honorable Diane S. Goodstein
Presiding Judge

This 30 day of July, 2007
At Orangeburg, South Carolina

Order on Matters Heard March 9
Exhibit A

**IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS NOTICE**

John Doe #53, et al. v. Diocese of Charleston, et al. Class Action Settlement

This action applies to 1) any person born on or before August 30, 1980; 2) who as a minor, was sexually abused; 3) at any time by agents or employees of the Diocese of Charleston; 4) or the parent or spouse of any such minor, 5) who have not previously had any similar claim adjudicated, resolved, or released.

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT; (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS; AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS.

SUMMARY OF YOUR RIGHTS AND CHOICES

<u>You May</u>		<u>Deadline</u>
STAY IN THE CLASS and possibly receive money from the Settlement	Stay in the Class. To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.	Postmarked or received by [Date to be Inserted]
EXCLUDE YOURSELF	Get out of the class. You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.	Postmarked or received by [Date to be Inserted]

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they may receive determined by an arbitrator. The arbitrator has complete discretion within the parameters set by the Settlement Agreement to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse, and the like. Claims will be generally classified into one of 4 groups based on the severity of the injury sustained. Members of the Consortium Class with *bona fide* claims will receive \$20,000.00. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

**IF YOU DO NOT FILE A CLAIM TIMELY OR YOU DO NOT OPT-OUT OF THE CLASS,
YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED AS TO MATTERS
COVERED BY THE CLASS ACTION.**

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

**Richter & Haller, LLC,
622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 diocesettlement@richterfirm.com
www.richterfirm.com**

ALL FORMS MUST BE EITHER POSTMARKED BY THE U.S. POSTAL SERVICE OR RECEIVE
BY CLASS COUNSEL ON OR BEFORE [Date to be Inserted].

Order on Matters Heard March 9
Exhibit B

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 1

**READ THIS DOCUMENT CAREFULLY AS
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS DOCUMENT.**

WHO IS ELIGIBLE TO PARTICIPATE IN THIS SETTLEMENT

You may participate in this settlement if:

1. You were born on or before August 30, 1980;
2. who, as a minor;
3. were sexually abused;
4. by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina); and
5. you have not previously had a similar claim fully heard by a court or settled.

You may also participate in this settlement if you are:

1. The spouse OR parent of
2. individuals born on or before August 30, 1998;
3. were sexually abused as a minor;
4. by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina);
5. and you have suffered the loss of the individual's services, society and companionship; and
6. have not previously had a similar claim fully heard by a court or settled.

"Sexual abuse" is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

At the end of this case, all legal rights of the individuals who fit into one of the above classes and who do not "opt-out" of the classes and settlement will be impacted by this settlement. In deciding how to proceed, you may contact Class Counsel or an attorney of your own choosing.

IF YOU ARE A MEMBER OF THE CLASS AND YOU DO NOT FILE A CLAIM WITHIN THE TIME PROVIDED OR YOU DO NOT OPT-OUT OF THE CLASS, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS COVERED BY THIS CLASS ACTION.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary

Page 2

SUMMARY OF YOUR RIGHTS AND CHOICES

You May

Deadline

STAY IN THE CLASS
and possibly receive
money from the
Settlement

Stay in the Class.
To possibly receive money under
the Settlement, you must complete
and return the Claim Form by the
deadline noted.

Postmarked or received
by [Date to be inserted]

EXCLUDE YOURSELF

Get out of the class.

Postmarked or received

You do not have to remain a member
of the class or participate in the Settle-
ment. To be excluded from the Settle-
ment, you must complete and return
the Opt-out Form by the deadline noted.
By Opting-out of the Settlement, you will
not receive any benefits from the Settle-
ment. If you fail to file the Opt-out Form
by the deadline, you will be considered
a member of the class.

[Date to be inserted]

HOW THE CLAIMS PROCESS WORKS

What follows is a basic summary of the claims process. To receive a full copy of the Settlement and Arbitration Agreement and its Addendum, contact Class Counsel, Richter & Haller, LLC, at 843-849-6000 or email disocesettlement@richterfirm.com.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 3

The classes are designed to include all individuals whose claims would normally be barred as a matter of law as a result of the statute of limitations. Whether the statute of limitations has lapsed on your claim is an individual determination which you should investigate with an attorney. However, even if for some reason your statute has not expired, you may still participate in the process if you meet all other requirements.

Those individuals who wish to participate in the claims process must submit a claims form to the office of Class Counsel. **The Claims Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

Those individuals who DO NOT WISH to participate in the claims process must submit an opt-out form to the office of Class Counsel. **The Opt-Out Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

All of the claims proceedings are confidential. Your claim will be given a fictitious name once it is received. No one who files a claim will have their name publicly disclosed. You will not have to appear in court.

All claims of members of one of the classes which are *bona fide* will receive some settlement funds. A *bona fide* claim is one in which there is some likelihood that the event(s) did occur with the Diocesan agent or employee (including priest) at the location and time period when the claimant alleges. If there is a dispute over whether a claim is *bona fide*, you will have a chance to prove your claim.

Once a claim is found to be *bona fide* it will be submitted to an arbitrator for a binding and final determination of damages. You do not have to pay for the arbitration. You will be able to present whatever evidence you wish in support of your injuries. You will not be questioned by a lawyer or other representative of the Diocese at the hearing on damages.

The arbitrator has sole and final determination on the amount of money you will receive. **By participating in this settlement process you agree to abide by whatever decision the arbitrator makes and waive any rights of appeal you may have.** The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse you sustained, the amount of time it went on, and the extent of the injuries you have suffered. Claims will be generally classified into the following groups for a determination of the amount of money you will receive:

1. Limited inappropriate touching on the victim: an amount between \$10,000.00 and \$18,500.00.
2. Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts an amount between \$20,000.00 and \$55,000.00.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary

Page 4

3. Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances: an amount between \$60,000.00 and \$125,000.00.
4. Egregious acts, such as sodomy, any act accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage: an amount between \$150,000.00 and \$200,000.00.
5. Members of the consortium class will receive \$20,000.00 for consortium damages.

In addition, you have the right to have a **free psychological examination** and two other free psychological sessions with a psychologist in Charleston. You may use this information in support of your claim. The report will not be provided to the Diocese and will be confidential.

Once the claim is *bona fide*, the Diocese is unable to provide any defenses to your claims, including the statute of limitations, immunity, or that it did not know of the events. However, once you have completed the claims process, all rights you may have against the Diocese arising from sexual abuse on you by an agent or employee of the Diocese will be gone.

**IF YOU DO NOT FILE A CLAIM TIMELY AND DO NOT OPT-OUT, YOUR RIGHTS
AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS
ARISING FROM THE CLASS.**

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

Richter & Haller, LLC,

622 Johnnie Dodds Blvd., Post Office Box 1089

Mt. Pleasant, SC 29465

Telephone to 843-849-6000. Email to diocesessettlement@richterfirm.com

Claims and Opt-out forms may also be obtained from
www.richterfirm.com

Order on Matters Heard March 9
Exhibit C

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR PRIMARY CLASS MEMBERS

This form is to be used by, "all individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity.

First, Middle and Last Name of Claimant: _____

Date of Birth: _____ Social Security Number: _____

Mailing Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

Cellphone Number: _____ Email Address: _____

For claims made on behalf of someone else

Name of Representative Making the Claim: _____

Relationship of Representative to Claimant: _____

Nature of the Representative Capacity: _____

Full name of parents: _____

Are either or both of your parents living or deceased? If so, state which one: _____

Name of spouse (if any): _____

Name of the abuser (if you claim multiple abuses, use a separate claims form): _____

Location(s) at which the abuse occurred: _____

Dates/ Time period during which the abuse occurred: _____

What was your relationship to the abuser, [i.e. priest/altar boy, coach/ basketball player]: _____

John Doe #53, et al. v. The Bishop of Charleston
CLAIM FORM FOR PRIMARY CLASS MEMBERS

Briefly state the details of the incident(s) of abuse complained of. You will have an opportunity to expand upon this at a later date. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

Briefly state any claimed injury or damages. You may attach any information relevant to damages you claim to this form. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

You are able to have a *free* session of psychological assessment and two other counseling *free* sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

_____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

Claimant

Date

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN **[Date to be inserted]** IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS

Order on Matters Heard March 9
Exhibit D

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

This form is to be used by, "The spouses and parents of all individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity.

First, Middle and Last Name of Claimant: _____

Date of Birth: _____ Social Security Number: _____

Mailing Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

Cellphone Number: _____ Email Address: _____

For each individual for whom you claim some relationship has been damaged, please provide the information below:

<u>Name</u>	<u>Address</u>	<u>Date of Birth</u>	<u>Relationship to You</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

John Doe #53, et al. v. The Bishop of Charleston
CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

For each individual above, please state, 1) the location(s) at which the abuse occurred; 2) dates/ time period during which the abuse occurred; and 3) the relationship of the individual to the abuser; [i.e. priest/altar boy; coach/ basketball player].

Please state the date or time period on which you learned of the alleged abuse described above.

Briefly state ways in which you believe you have lost the use of each of the above individual's services, society, and companionship.

You are able to have a *free* session of psychological assessment and two other counseling *free* sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

_____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

Claimant

Date

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN [Date to be inserted]. IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS.

Order on Matters Heard March 9
Exhibit E

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1636

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

Plaintiffs,)

vs.)

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)
Charleston, in his official capacity,)

Defendants.)

**DECLARATION OF OPT-OUT FROM
CLASS SETTLEMENT**

I do not wish to participate in, and hereby opt-out of, the class action settlement in the above case, and I reserve any and all rights which I may have against the defendants to this action. I understand that by submitting this form, I will be unable to receive any benefits from the settlement agreement after the claims period has expired and that if I wish to proceed at all, I will have to proceed in court with all issues subject to litigation.

Full Printed Name: _____ Signature: _____

Address: _____

City, State, Zip Code: _____

Date of Birth: _____

MAIL THIS FORM TO:

**Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465**

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN **[Date to be inserted]** IN ORDER FOR IT TO BE BINDING. OTHERWISE, YOU WILL BE INCLUDED IN THE CLASS AND YOUR RIGHT MAY BE FOREVER BARRED.

Order on Matters Heard March 9
Exhibit F

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636

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

Plaintiffs,)

vs.)

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)
Charleston, in his official capacity,)

Defendants.)

VOLUNTARY WAIVER OF APPEAL

I, _____, a claimant in the above matter, understand and agree that by participating in the class settlement process for this case approved by the court, I am expressly waiving any and all rights of appeal of any and all decisions of the arbitrator appointed in this matter, including decisions made on whether I am a member of one of the classes, whether my claim is *bona fide*, and as to any injuries I sustained and damages I am to receive.

Before making this decision, I have asked all questions I have regarding the settlement, the claims process, and my legal rights. I have had the opportunity to discuss this matter with an attorney of my own choosing.

Claimant

Date

Witness

Date

Order on Matters Heard March 9
Exhibit G

CLAIMANT'S GENERAL RELEASE

_____ ("the Claimant") for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ("the Diocese"); any present or former bishops, archbishops or cardinals of the Diocese, in both their individual and official capacity; any entities affiliated with the Diocese; and present or former priests, deacons, other clergy, brothers, nuns, agents, servants, officers, trustees, directors, supervisors, attorneys, employees, volunteers, insurers, predecessors, successors, assigns, subsidiaries and affiliates of the Diocese, including without limitation any such person accused of committing or negligently causing or permitting sexual abuse with respect to the Claimant or members of the Claimant's family (all of the foregoing hereinafter collectively referred to as the "Released Parties") of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit. With respect to any claims arising from or related to an act or acts of abuse which have formed the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other

persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as
of the day of , 200

Print Claimant's Name

Claimant's Signature

Witness

Witness

Order on Matters Heard March 9
Exhibit H

IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS NOTICE OF CLASS ACTION SETTLEMENT

John Doe #53, et al v. Diocese of Charleston, et al.

This action applies to 1) any person born before August 30, 1980; 2) who as a minor was sexually abused; 3) by an agent or employee of the Diocese of Charleston; 4) and whose individual claim has not been previously settled or otherwise resolved.

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT; (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS; AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS.

SUMMARY OF YOUR RIGHTS AND CHOICES

You May
STAY IN THE CLASS
and possibly receive
money from the
Settlement

Stay in the Class.
To possibly receive money under
the Settlement, you must complete
and return the appropriate Claim
Form by the deadline noted.

Deadline
Postmarked or received by
[Date to be inserted]

EXCLUDE YOURSELF

Get out of the class.
You do not have to remain a member
of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.

Postmarked or received by
[Date to be inserted]

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they will receive determined by an arbitrator. The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse. Claims will be generally classified into one of four groups based on the severity of the injury sustained. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

For a more detailed summary of your Rights, the Claims Process and your Obligations if you wish to participate click here:

Orange Form: Summary of Rights, Claims Process, and Obligations

ANY PERSON FITTING INTO EITHER CLASS DEFINITION WHO FAILS TO EITHER FILE A CLAIM FORM OR OPT-OUT BY THE COURT IMPOSED DEADLINE MAY HAVE THEIR RIGHTS AGAINST THE DIOCESE OF CHARLESTON FULLY BARRED BY LAW.

CLAIMS FORMS AND IMPORTANT DOCUMENTS

You may download all forms and documents from this website. Please read this portion carefully to ensure that your claim is properly filed. Please call class counsel if you have any question whatsoever:

Members of the Primary Class:

You may be a member of the Primary Class if you were born before August 30, 1980 and, as a minor, were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**:

Blue Form: Claim Form for Primary Class Members

AND

Green Form: Voluntary Waiver of Appeal

AND

White Form: Claimant's Release

Members of the Consortium Class:

You may be a member of the Consortium Class if you are/were the spouse and/or parent of an individual(s) who as minors were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**:

Yellow Form: Claim Form for Consortium Class Members

AND

Green Form: Voluntary Waiver of Appeal

AND

White Form: Claimant's Release

The Claimant's Release Form will be held by Class Counsel until you have received a check from the settlement fund. At that time, it will be provided to the Diocese of Charleston. If for some reason you do not receive a check from the settlement fund, it will be returned to you.

If you want to exclude yourself:

If do not wish to participate in the class action and settlement process and wish to proceed on your own, then you must complete and return or have postmarked by **[Date to be inserted]**:

Pink Form: Opt-out Form

PLEASE NOTE:

1. No one but the arbitrator selected under the Settlement and Arbitration Agreement can say with finality whether you are a member of either class;
2. Nothing on any form or on this website should be considered legal advice. If you have any questions about your rights or responsibilities, you should discuss the matter with counsel of your own choosing.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

Richter & Haller, LLC, 622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 (Telephone) * 843-881-1400 (Fax) * Diocesettlement@richterfirm.com

www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U.S. POSTAL SERVICE OR RECEIVED
BY CLASS COUNSEL ON OR BEFORE **[Date to be inserted]**.

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT C

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER,
JR., DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Order filed August 31, 2007, in C/A Nos.: 2006-CP-18-01310, 2006-
CP-18-01311, and 2006-CP-18-01636

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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

v.)

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)
Charleston, in his official capacity,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636

ORDER OF THE COURT

CERTIFIED COPY
2007 AUG 31 PM 5:05
Clerk of Court
DORCHESTER COUNTY

The Court having been advised, as evidenced by the writing attached hereto as Exhibit A,
that all pending motions, objections, rules to show cause, and any such related matters amongst
the parties in this class action proceeding have been resolved with prejudice, and that all appeal
rights of all "objectors" are waived, *AND to this extent acknowledged and approved* said agreement is hereby approved and made the Order of
this Court.

AND IT IS SO ORDERED!

Further, it is ordered that, as to any settlement funds in this matter, any restriction or
impediment to the disbursement of any such funds heretofore imposed by this Court are lifted,
removed, and extinguished. This class settlement shall immediately proceed as provided for in
the Settlement and Arbitration Agreement entered into on January 15, 2007 and that certain
Order of this Court in this matter dated July 30, 2007.

AND IT IS SO ORDERED!

189P 1 of 3
-1-

Furthermore, in the Court's Order of July 30, 2007 approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never resolved their potential claims; and (4) were entitled to receive *actual notice* of the proposed class settlement pursuant to the agreement of the parties and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members"). The Defendants have asked the Court to clarify how the settlement process will treat the Actual Notice Class Members. Accordingly, this Order clarifies and, where in conflict, supersedes the Court's Order of July 30, 2007.

Actual Notice Class Members shall have 120 days from receipt of actual notice of the class settlement to present their claims to an Arbitrator in the same manner as provided for in the Settlement and Arbitration Agreement. Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and shall be treated like any other class member who has failed to timely present a claim to the class settlement fund. Both the Arbitrator's fees and the claimant's recovery (if any) shall be paid by the Diocese, and not by the class settlement fund, because the settlement fund may already have been subject to a final accounting by the time such claims are processed.

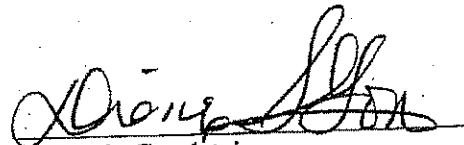
AND IT IS SO ORDERED!

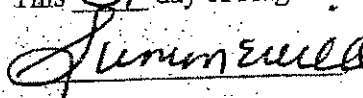
Furthermore, the Court has appointed Desa Ballard, Esq. as a non-testifying consultant in evaluating and addressing the issues before the Court in this matter, as all counsel was made aware of in a August 29, 2007 Order. Payment for Ms. Ballard's services shall be made from the

DM-2-PJ 2013

RICH000572

Class settlement fund within ten (10) days after the settlement funds are released from the Court's supervision.


Diane S. Goodstein
Presiding Judge

This 31 day of August 2007
 South Carolina

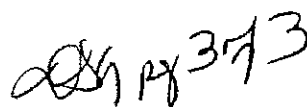
 373

EXHIBIT A

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

15 STATE STREET
P.O. BOX 591
CHARLESTON, SOUTH CAROLINA 29402

OFFICE (843) 853-4500
FAX (843) 722-1119
TOLL FREE 1-888-792-2456

August 30, 2007

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

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

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

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

Dear Larry and Gregg:

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

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

RICH000568

Record on Appeal - 1040

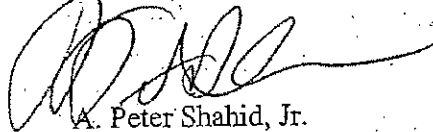
rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement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

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

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

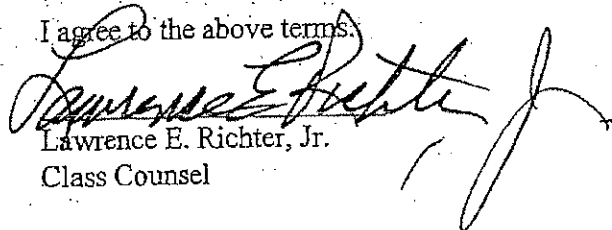
The \$1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the \$12 million pool of funds, the Diocese is still obligated to pay the \$1.375 million as stated above. Payment is expected sometime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

Sincerely,



A. Peter Shahid, Jr.

I agree to the above terms.



Lawrence E. Richter, Jr.
Class Counsel

I agree to the above terms.



Gregg Meyers

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT D

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Letter from Class Counsel to Class Action Court, March 10, 2008, in
C/A Nos.: 2006-CP-18-01310, 2006-CP-18-01311, and 2006-CP-18-01636

THE RICHTER FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW

622 JOHNNIE DODDS BOULEVARD
POST OFFICE DRAWER 1089
MT. PLEASANT, SOUTH CAROLINA 29465

LAWRENCE E. RICHTER, JR.
ALICE ANNE RICHTER
WILLIAM H. WARING, III
HARPER L. TODD*

TELEPHONE (843) 849-6000

FACSIMILE (843) 881-1400

* (Admitted only in GA)

March 10, 2008

VIA U.S. MAIL

The Honorable Diane S. Goodstein
Post Office Box 234
St. George, SC 29477

Re: *Doe, et al. v. The Bishop of Charleston, et al.*
2006-CP-18-1310
2006-CP-18-1311
2006-CP-18-1636

Dear Judge Goodstein:

Pursuant to paragraph 6(A) of the Settlement and Arbitration Agreement executed January 12, 2007, and approved by your Order dated July 30, 2007, I have attached a copy of the final accounting of disbursements submitted by W. Ellison Thomas, CPA. Pursuant to the same, Mr. Thomas has submitted these documents to class counsel, counsel for the Diocese, and to the arbitrator, Marvin D. Infinger.

Thank you very much for your consideration. As always, I remain

Very truly yours,



William H. Waring, III

Enclosure

cc: Albert P. Shahid, Jr., Esquire [via facsimile - 722-1119]
Marvin D. Infinger, Esquire [via facsimile - 722-2266]
David K. Haller, Esquire [via facsimile - 577-7288]
W. Ellison Thomas, CPA [via facsimile - 881-9008]

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007**

March 7, 2008

<u>Category</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
Class Counsel - Fees				
Richter & Haller, LLC	9/4/2007	Wire	\$ 2,500,000.00	Court Order
Class Counsel - Expenses				
Richter & Haller, LLC	9/4/2007	Wire	\$ 100,991.36	Court Order
The Richter Firm, LLC	1/8/2008	1002	\$ 8,245.15	Partial - Control No. 6
The Richter Firm, LLC	2/10/2008	1009	\$ 835.70	Control No. 5
The Richter Firm, LLC	2/10/2008	1010	\$ 2,052.71	Partial - Control No. 6
The Richter Firm, LLC	2/27/2008	1144	\$ 596.20	Control No. 47
Arbitrator				
Marvin Infinger, Esq.	2/27/2008	1139	\$ 29,541.69	Control No. 40
Marvin Infinger, Esq.	3/7/2008	1153	\$ 2,450.00	Control No. 51
Counseling				
Dr. L. Randolph Waid	1/24/2008	1005	\$ 10,425.00	8 - 12, 14 - 19, 21 - 23
Dr. L. Randolph Waid	2/10/2008	1012	\$ 5,250.00	Control No.s 24 - 30
Dr. L. Randolph Waid	2/20/2008	1135	\$ 1,875.00	Control No.s 32,33,34
Dr. L. Randolph Waid	2/27/2008	1137	\$ 1,875.00	Control Nos. 35 -38
Escrow Agent				
W. Ellison Thomas, CPA	1/8/2008	1003	\$ 2,635.00	Partial - Control No. 7
W. Ellison Thomas, CPA	1/8/2008	1004	\$ 5,657.50	Control No. 20
W. Ellison Thomas, CPA	2/10/2008	1011	\$ 2,555.22	Partial - Control No. 7
W. Ellison Thomas, CPA	2/10/2008	1013	\$ 2,247.50	Control No. 31
W. Ellison Thomas, CPA	3/7/2008	1154	\$ 8,544.44	Control No. 52
Other				
Desa Ballard, Esq.	11/27/2007	1001	\$ 2,966.93	Control No. 1
Bank Fees	1/31/2008		\$ 10.00	Wire Fee
Process Service, Inc.	2/10/2008	1006	\$ 75.00	Control No. 2
Conferencecall.com	2/10/2008	1007	\$ 35.66	Control No. 3
Palmetto Investigative, Inc.	2/10/2008	1008	\$ 1,549.00	Control No. 4
Conferencecall.com	2/27/2008	1138	\$ 14.42	Control No. 39
Clark & Associates, Inc.	2/27/2008	1140	\$ 3,228.50	Control No. 43
Process Service, Inc.	2/27/2008	1141	\$ 170.00	Control No. 44
Dr. John Roberts, MD	2/27/2007	1142	\$ 85.00	Control No. 45
Dr. Sally M. duffy Ph.D.	2/27/2008	1143	\$ 400.00	Control No. 46
Dr. Cathy Mintzer	2/27/2008	1145	\$ 500.00	Control No. 48
David K. Haller, Esq.	2/27/2008	1146	\$ 225.58	Control No. 49
Judy Kramer	3/6/2008	1147	\$ 63.20	Control No. 50
Total Non Claimant			<u>\$ 2,695,100.76</u>	

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007**

March 7, 2008

<u>Claimant</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
John Doe 53	*	*	\$ 160,000.00	Settlement Agreement
John Doe 66	*	*	\$ 100,000.00	Settlement Agreement
John Doe 66A	*	*	\$ 100,000.00	Settlement Agreement
John Doe 67	*	*	\$ 100,000.00	Settlement Agreement
Jane Doe A	10/23/2007	1	\$ 30,000.00	Settlement Agreement
Jane Doe B	10/23/2007	2	\$ 30,000.00	Settlement Agreement
Rachel Roe	10/23/2007	3	\$ 30,000.00	Settlement Agreement
The Richter Firm, LLC for DOE 501	2/15/2008	1014	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 546	2/15/2008	1015	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 502	2/15/2008	1016	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 540	2/15/2008	1017	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 541	2/15/2008	1018	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 503	2/15/2008	1019	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 504	2/15/2008	1020	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 505	2/15/2008	1021	\$ 10,000.00	Arbitration Order
The Richter Firm, LLC for DOE 506	2/15/2008	1022	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 507	2/15/2008	1023	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 551	2/15/2008	1024	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 556	2/15/2008	1025	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 508	2/15/2008	1026	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 554	2/15/2008	1027	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 555	2/15/2008	1028	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 509	2/15/2008	1029	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 510	2/15/2008	1030	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 511	2/15/2008	1031	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 512	2/15/2008	1032	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 513	2/15/2008	1033	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 550	2/15/2008	1034	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 549	2/15/2008	1035	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 537	2/15/2008	1036	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 533	2/15/2008	1037	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 532	2/15/2008	1038	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 538	2/15/2008	1039	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 552	2/15/2008	1040	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 531	2/15/2008	1041	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 543	2/15/2008	1042	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 544	2/15/2008	1043	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 545	2/15/2008	1044	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 514	2/15/2008	1045	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 515	2/15/2008	1046	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 534	2/15/2008	1047	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 539	2/15/2008	1048	\$ 20,000.00	Arbitration Order

* Escrow Agent did not pay these amounts. Paid by Diocese prior to Escrow Agent receiving funds.

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007**

March 7, 2008

<u>Claimant</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
The Richter Firm, LLC for DOE 516	2/15/2008	1049	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 517	2/15/2008	1050	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 518	2/15/2008	1051	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 519	2/15/2008	1052	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 547	2/15/2008	1053	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 520	2/15/2008	1054	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 521	2/15/2008	1055	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 522	2/15/2008	1056	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 523	2/15/2008	1057	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 524	2/15/2008	1058	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 525	2/15/2008	1059	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 548	2/15/2008	1060	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 535	2/15/2008	1061	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 536	2/15/2008	1062	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 526	2/15/2008	1063	\$ 10,000.00	Arbitration Order
The Richter Firm, LLC for DOE 527	2/15/2008	1064	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 553	2/15/2008	1065	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 528	2/15/2008	1066	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 529	2/15/2008	1067	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 542	2/15/2008	1068	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 530	2/15/2008	1069	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 602	2/15/2008	1070	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 605	2/15/2008	1071	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 606	2/15/2008	1072	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 608	2/15/2008	1073	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 609	2/15/2008	1074	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 610	2/15/2008	1075	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 621	2/15/2008	1076	\$ 20,000.00	Arbitration Order
Walter S. Ameika for DOE 614	2/15/2008	1077	\$ 20,000.00	Arbitration Order
Barr, Unger & McIntosh, LLC for DOE 623	2/15/2008	1078	\$ 20,000.00	Arbitration Order
Arthur E. White, Jr. for DOE 618	2/15/2008	1079	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 540	2/15/2008	1080	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 541	2/15/2008	1081	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 509	2/15/2008	1082	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 101	2/15/2008	1083	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 102	2/15/2008	1084	\$ 55,000.00	Arbitration Order
The Richter Firm, LLC for DOE 202	2/15/2008	1085	\$ 40,000.00	Arbitration Order
The Richter Firm, LLC for DOE 203	2/15/2008	1086	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 301	2/15/2008	1087	\$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE 302	2/15/2008	1088	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 303	2/15/2008	1089	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 308	2/15/2008	1090	\$ 40,000.00	Arbitration Order
The Richter Firm, LLC for DOE 304	2/15/2008	1091	\$ 60,000.00	Arbitration Order

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007**

March 7, 2008

<u>Claimant</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
The Richter Firm, LLC for DOE 305	2/15/2008	1092	\$ 200,000.00	Arbitration Order
The Richter Firm, LLC for DOE 307	2/15/2008	1093	\$ 60,000.00	Arbitration Order
The Richter Firm, LLC for DOE 306	2/15/2008	1094	\$ 55,000.00	Arbitration Order
The Richter Firm, LLC for DOE 401	2/15/2008	1095	\$ 150,000.00	Arbitration Order
The Richter Firm, LLC for DOE 402	2/15/2008	1096	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 403	2/15/2008	1097	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 404	2/15/2008	1098	\$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE 405	2/15/2008	1099	\$ 150,000.00	Arbitration Order
The Richter Firm, LLC for DOE 406	2/15/2008	1100	\$ 200,000.00	Arbitration Order
The Richter Firm, LLC for DOE 407	2/15/2008	1101	\$ 75,000.00	Arbitration Order
The Richter Firm, LLC for DOE 408	2/15/2008	1102	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 409	2/15/2008	1103	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 410	2/15/2008	1104	\$ 200,000.00	Arbitration Order
The Richter Firm, LLC for DOE 406	2/15/2008	1105	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 411	2/15/2008	1106	\$ 75,000.00	Arbitration Order
The Richter Firm, LLC for DOE 420	2/15/2008	1107	\$ 70,000.00	Arbitration Order
The Richter Firm, LLC for DOE 412	2/15/2008	1108	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 414	2/15/2008	1109	\$ 150,000.00	Arbitration Order
The Richter Firm, LLC for DOE 415	2/15/2008	1110	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 416	2/15/2008	1111	\$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE 616	2/15/2008	1112	\$ 125,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 603	2/15/2008	1113	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 604	2/15/2008	1114	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 607	2/15/2008	1115	\$ 200,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 611	2/15/2008	1116	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 612	2/15/2008	1117	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 613	2/15/2008	1118	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 620	2/15/2008	1119	\$ 70,000.00	Arbitration Order
Barr, Unger & McIntosh, LLC for DOE 615	2/15/2008	1120	\$ 200,000.00	Arbitration Order
Pro Se - Doe 601	2/15/2008	1121	\$ 200,000.00	Arbitration Order
Pro Se - Doe 619	2/15/2008	1128	\$ 315.00	Control No. 43
Pro Se - Doe 619	2/15/2008	1129	\$ 59,685.00	Arbitration Order
Pro Se - Doe 622	2/15/2008	1123	\$ 20,000.00	Arbitration Order
Pro Se - Doe 624	2/15/2008	1124	\$ 20,000.00	Arbitration Order
Pro Se - Doe 625	2/15/2008	1125	\$ 20,000.00	Arbitration Order
Pro Se - Doe 627	2/15/2008	1130	\$ 195.00	Control No. 42
Pro Se - Doe 627	2/15/2008	1131	\$ 149,805.00	Arbitration Order
The Richter Firm, LLC for DOE 628	2/20/2008	1134	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 413	2/27/2008	1136	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 418	3/6/2008	1151	\$ 40,193.87	Arbitration Order
David K. Haller, Esq. Escrow for DOE 418	3/6/2008	1152	\$ 159,806.13	Arbitration Order

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007**

March 7, 2008

<u>Claimant</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
The Richter Firm, LLC for DOE 419	3/6/2008	1149	\$ 40,143.24	Arbitration Order
David K. Haller, Esq. Escrow for DOE 419	3/6/2008	1150	\$ 159,856.76	Arbitration Order
Pro Se - Doe 650	3/6/2006	1148	\$ 20,000.00	Arbitration Order
Total Claimant			<u>\$ 7,615,000.00</u>	

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007**

March 7, 2008

Total Non Claimant	\$ 2,695,100.76
Total Settlement	\$ 12,000,000.00 (\$ 5 M & \$ 7 M)
Available for Claimants	\$ 9,304,899.24
Total Claimant	\$ 7,615,000.00
Amount Over (does not include interest income)	\$ 1,689,899.24

Cash Proof

Initial Pool of Funds	\$ 5,000,000.00
Second Pool of Funds	\$ 7,000,000.00
Spent to Date	\$ 10,310,100.76
Net	\$ 1,689,899.24
Add: Interest Income	
9/30/2007	\$ 398.43
10/31/2007	\$ 4,365.10
11/30/2007	\$ 3,428.21
12/31/2007	\$ 3,289.91
1/31/2008	\$ 3,114.12
2/29/2008	\$ 11,828.89
3/31/2008	\$ -
Cash in Bank	\$ 1,716,323.90

Arbitrator Awards Paid to date

\$ 7,065,000.00

3/7/08 - I approve this accounting of class settlement funds.

Mark D. O'Flynn

W. Ellis

EXHIBIT TO MEMORANDUM

3/7/2008
09:00

John Doe Class Action Settlement Account
General Ledger - Period Ending 3/07/08

Company: JOH
Page: 1

<u>Date</u>	<u>Mt</u>	<u>Reference</u>	<u>Account</u>	<u>Description</u>	<u>Current</u>	<u>Year-to-Date</u>
Beginning Balance			1000	Cash in Bank - BKSC		2,147,381.54*
3/6/08	3	1147	1000	Judy Kramer	-63.20	
3/6/08	3	1148	1000	Pro Se 650	-20,000.00	
3/6/08	3	1149	1000	The Richter Firm, LLC	-40,143.24	
3/6/08	3	1150	1000	David K. Haller, Esq.	-159,856.76	
3/6/08	3	1151	1000	The Richter Firm, LLC	-40,193.87	
3/6/08	3	1152	1000	David K. Haller, Esq.	-159,806.13	
3/7/08	3	1153	1000	Haynsworth Sinkler Boyd	-2,450.00	
3/7/08	3	1154	1000	W. Ellison Thomas, CPA	-8,544.44	
				Ending Balance =	-431,057.64*	1,716,323.90**

8 Transactions

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT E

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Order on Motion to Enforce Settlement, December 17, 2013, in
C/A Nos.: 2006-CP-18-01310, 2006-CP-18-01311, and 2006-CP-18-01636

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

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

Case Nos. 06-CP-18-1310
06-CP-18-1311
06-CP-18-1636

Plaintiffs,)

v.)

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)
Charleston, in his official capacity,)

Defendants.)

ORDER ON MOTION TO
ENFORCE SETTLEMENT

CERTIFIED COPY
2013 DEC 17 PM 1:30
Clerk of Court
DORCHESTER COUNTY

THIS MATTER came on for hearing on April 12, 2013 on Plaintiffs' Motion to Enforce Settlement. Specifically, this Court was asked to interpret the July 31, 2007, Order (hereinafter "Order") in these cases and determine whether the class action court, in creating the class pursuant to SCRCF Rule 23, intended that the class be comprised only of individuals residing in South Carolina during the claims period. Having reviewed the Order and proceedings, I determine the class action court did not intend such limitation.

SCRCF Rule 23 governs the procedures used in certifying class actions in South Carolina and subsequently carrying them out. The rule's scheme imposes on the class action court the duty to protect individual class members through a notice publication scheme sufficient to reach those the court believes are the intended beneficiaries of the settlement and/or orders of the court who fall within the class definition. Specifically, Rule 23(c) directs that settlements of class claims cannot be had without court approval and further requires that, "notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court

1/3 *as*

directs.” Rule 23(c), SCRPC. Rule 23(d) grants the class action court wide authority to, “impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended” and to “impose additional conditions to protect the interests of absent persons.” Rule 23(d)(2) and (3), SCRPC. The record before me illustrates the lengths to which the class action judge, The Honorable Diane S. Goodstein¹, went to ensure the protection of class members in this case. Judge Goodstein’s orders are the law of the case. *Cherry v. Myers Timber Co., Inc.*, 404 S.C. 596, 745 S.E.2d 405 (Ct. App. 2013).

The cardinal rule of interpreting documents is to discern the intent of the document by evaluating the document(s) as a whole. See *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 713 S.E.2d 278 (2011) (“In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose”); *Gardner v. Mazingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (Ct. App. 1987) (Grantor’s intent must be found from the four corners of a deed, giving the entire deed its fair reading).

Applying this rule, this Court finds that Judge Goodstein’s 2007 Order did not define a class comprised exclusively of South Carolina residents. The structure and language in the Order indicate the class included persons “born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released,” and their family members who suffered a loss of consortium as a result of the abuse. There was no express provision providing that the class was for in-state residents only. Furthermore, the class claimants to the settlement consisted of approximately one-quarter out-of-state residents. The

¹ Judge Goodstein, who was assigned this case as a complex matter, has recused herself. It came to the undersigned as Resident Judge for the First Judicial Circuit. The case was subsequently assigned by the Chief Justice of the South Carolina Supreme Court to The Honorable Ernest Kinard.

Court believes it would be unreasonable to infer an in state resident requirement without an express statement to that effect by the class action court. Therefore, the Court finds that the class action court intended the class to include victims of Diocesan abuse, as defined above, regardless of state of residence at the time of the claims period.

AND IT IS SO ORDERED!



Edgar W. Dickson, Presiding Judge

This 21st day of Nov., 2013.

Orangeburg, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2006CP1801310

CERTIFIED COPY

Jane #1 Doe

Jane #2 Doe

2013 DEC 17 PM 1:20

Bishop of charleston

Bishop of the diocese of
charl

Rachel Roe

John #53 Doe

John #66 Doe

John 66A Doe

John #67 Doe

Cheryl B. Adams
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Edgar Dickson

2153

12/16/2013

Circuit Court Judge

Judge Code

Date

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on ¹⁷12/16/2013, and a copy mailed first class or placed in the appropriate attorney's box on ¹⁷12/16/2013, to attorneys of record or to parties (when appearing pro se) as follows:

David K. Haller 115 River Landing Drive Suite 102
Charleston, SC 29492
John Sinclair III 115 River Landing Dr. Ste. 102
Charleston, SC 29492
Gregg E. Meyers 366 Jackson Street Suite 100 St Paul, MN
55101

Lionel S. Lofton 225 Seven Farms Dr. Ste. 109 Charleston,
SC 29492
Albert P. Shahid Jr. 89 Broad St. Charleston, SC 29401
David K. Haller 115 River Landing Drive Suite 102
Charleston, SC 29492
George J. Kefalos 46A State St. Charleston, SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter


Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT F

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Excerpt of Hearing Transcript, July 20, 2017, in C/A Nos.: 2010-CP-05520,
2010-CP-10-07233, 2012-CP-10-05559, 2013-CP-10-03733, 2013-CP-10-04175,
2013-CP-10-04176, 2015-CP-10-05486, and 2016-CP-10-016326

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

2010-CP-10-5520,7233
2012-CP-10-5559
2013-CP-10-3733,4175,4176
2015-CP-10-5486
2016-CP-10-1632

JOHN DOE 2 AND JANE DOE 4)
JOHN DOE 10, JANE DOE 11,)
JOHN DOE 193, FATHER DOE)
194, JOHN DOE 194, JOHN)
DOE 245, FATHER DOE 245,)
AND JOHN DOE 297,)

Plaintiffs,)

Transcript of Record

vs.)

July 20, 2017

THE BISHOP OF CHARLESTON,)
A CORPORATION SOLE,)
ROBERT GUGLIEMONE, THE)
BISHOP OF CHARLESTON, IN)
HIS OFFICIAL CAPACITY;)
REV. MONSINOR MARTIN)
LAUGHLIN, FORMER)
ADMINISTRATOR OF THE)
DIOCESE OF CHARLESTON,)
IN IS OFFICIAL CAPACITY;)
ROBERT J. BAKER, FORMER)
BISHOP OF CHARLESTON, IN)
HIS OFFICIAL CAPACITY;)
LAWRENCE E. RICHTER, JR.,)
DAVID K. HALLER, AND)
RICHTER AND HALLER, LLC.,)

Defendant.)

B E F O R E:

Honorable J.C. Nicholson, Jr.
Charleston County Courthouse
Charleston, South Carolina

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

Gregg E. Meyers, Esquire
Attorney for Plaintiff

James L. Bruner, Esquire
**Attorney for Defendant Richter
And Richter and Haller**

Richard S. Dukes, Jr., Esquire
**Attorney for Defendant Bishop of Charleston
And Diocese of Charleston**

Susan Taylor Wall, Esquire
Attorney for Defendant Haller

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

1 what's left from the settlement?

2 MR. DUKES: Yes, Your Honor.

3 THE COURT: If I remember correctly, right?

4 MR. DUKES: Yes, sir. That's the only thing left.

5 THE COURT: Okay.

6 MR. DUKES: And we filed a supplemental brief in support
7 of our conspiracy motion which we had filed before and then
8 the aiding and abetting breach of fiduciary duty motion is
9 new.

10 THE COURT: All right. Mr. Meyers, you had filed a
11 response, I assume to all of them, right?

12 MR. MEYERS: Yes, Your Honor. Although I do clarify that
13 the special damage in the conspiracy claim has been eliminated
14 during the course of all the proceedings as the law clarified.
15 So, we actually don't need to argue anything about conspiracy.
16 The predicate for those conspiracy claims is really covered in
17 the aiding and abetting claims, which are not in every case,
18 but the conspiracy claim doesn't need to be argued.

19 MR. BRUNER: Are you saying you're abandoning the
20 conspiracy claim?

21 MR. MEYERS: Yeah, I have to because the special damage
22 element is not present given the rulings that have happened
23 since I started these cases till today.

24 THE COURT: Okay.

25 MR. BRUNER: I don't think I need to argue that motion

1 then if you're abandoning the argument.

2 THE COURT: That's right. I think you're correct.

3 Mr. Meyers, where does that leave us at to get through
4 all of his motions on the conspiracy, right?

5 MR. MEYERS: Yes.

6 THE COURT: All eight of them?

7 MR. MEYERS: Yes.

8 THE COURT: All right. And he's got the motion on John
9 Doe 193 for summary judgment.

10 MR. MEYERS: Now, there are motions as to the -- all of
11 the cases having to do with other things other than
12 conspiracy.

13 THE COURT: Right. I understand.

14 MR. MEYERS: Mr. Bruner still needs to argue those.

15 MR. BRUNER: On 193, the only claim the Plaintiffs would
16 have left is for breach of fiduciary duty.

17 MR. DUKES: And aiding and abetting.

18 MR. BRUNER: Because -- what I'm talking about is to the
19 law. Judge Harrington threw out the claim for professional
20 negligence in 2014 and he has abandoned the claim for
21 conspiracy, so that leaves in 193 the claims for breach of
22 fiduciary duty as the only claim against the lawyer
23 defendants. Is that right?

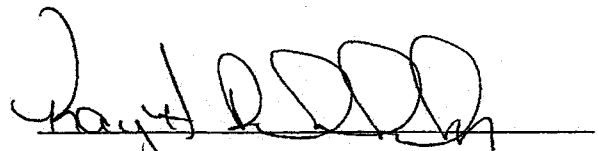
24 MR. MEYERS: That sounds right.

25 THE COURT: Okay. All right. You want to start with

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of John Doe, et al. versus The Bishop of Charleston, et al., held in the Court of Common Pleas for Charleston County, Charleston County Courthouse, Charleston, South Carolina, on July 20, 2017, taken by Dixie C. Eubank.

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



Kay H. Richardson

Official Court Reporter

November 27, 2017.

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT G

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Order of Supreme Court of South Carolina issued June 12, 2015 for
C/A Nos.: 2006-CP-18-01310, 2006-CP-18-01311, and 2006-CP-18-01636

The Supreme Court of South Carolina

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

Plaintiffs,

v.

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

Defendants.

Dorchester County
2006-CP-18-01310
2006-CP-18-01311
2006-CP-18-01636

ORDER

IT IS ORDERED that the Honorable J. C. Nicholson, Jr., retired Circuit Court Judge of the Tenth Judicial Circuit, be vested with exclusive jurisdiction to hear and dispose of the above case. Judge Nicholson shall decide all matters pertaining to this case, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled. Pursuant to this assignment, he is to have and exercise all powers and duties appertaining to a Circuit Judge of the First Judicial Circuit while presiding over this matter.

The previous order dated April 30, 2013 assigning this case to the late Honorable Ernest J. Kinard, Jr. is hereby rescinded.



Jean Hofer Toal
Chief Justice

June 12, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT H

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER,
JR., DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Order on Limited Collateral Review in
C/A Nos.: 2010-CP-10-05520, 2010-CP-10-07233,
2012-CP-10-05559, 2013-CP-10-03733, 2013-CP-10-04175, 2013-
CP-10-04176, 2015-CP-10-05486, and 2016-CP-10-01632.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN DOE 2 AND JANE DOE 4,

PLAINTIFFS,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY; REV. MONSIGNOR MARTIN
LAUGHLIN, FORMER ADMINISTRATOR OF
THE DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 10,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY; REV. MONSIGNOR MARTIN
LAUGHLIN, FORMER ADMINISTRATOR OF
THE DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JANE DOE 11,

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-5520

**ORDER ON LIMITED
COLLATERAL REVIEW**

FILED
2016 OCT 26 AM 9:58
JULIE J. HARRIS
CLERK OF COURT

CASE NO.: 2010-CP-10-7233

PLAINTIFF,

V.

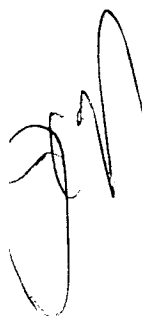
THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 193,

PLAINTIFF,

V.



THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2012-CP-10-5559

CASE NO.: 2013-CP-10-3733

FATHER DOE 194,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 194,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2013-CP-10-4175

CASE NO.: 2013-CP-10-4176

THIS MATTER CAME BEFORE THE COURT on the motion of Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, the “Lawyer Defendants”) to alter and amend the Court’s order of December 7, 2015, denying the Lawyer Defendants’ motion for summary judgment. Specifically, the Lawyer Defendants moved that the

Court conduct a limited collateral review of the underlying class action and determine whether that action is binding on the plaintiffs in these matters. The Court agrees that a limited collateral review is proper and therefore grants the motion to alter and amend to the extent that it requests such a review.

In the Complaints, Plaintiffs specifically allege that their causes of action against the Lawyer Defendants are only pertinent if they, as alleged absent class members in a prior class action, are precluded from pursuing claims against the Diocese Defendants. (*See, e.g.* -5520 Compl. ¶¶ 177, 196.) Thus, the Complaints, by their own terms, present a threshold question: Are Plaintiffs precluded from pursuing claims against the Diocese Defendants?

Our Supreme Court set forth the framework for deciding such a question in *Hospitality Management Associates v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004). There, the Court held that the trial court should conduct a “limited collateral review” of the prior class action to determine whether it binds the absent class members now trying to bring suit. *Id.* at 660, 591 S.E.2d at 619-20. That review consists of reviewing the record in the prior class action to determine: “(1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied.” *Id.* at 660, 591 S.E.2d at 619-20.

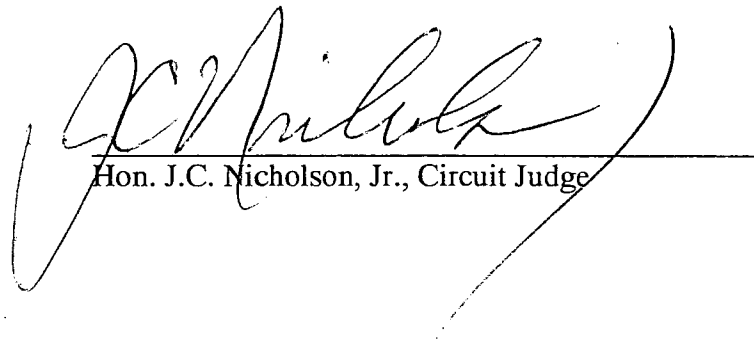
The Court has reviewed the record in the underlying class action and concludes that the class action court did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the Court substantially outside of the geographic territory of South Carolina.¹ The Court nonetheless recognizes that actual notice was provided to many class members and that notice of the class action was published by numerous media outlets

¹ The Court recognizes that some areas bordering South Carolina—such as Augusta, Georgia—did receive notice by publication. Nothing in this order is intended to suggest that the notice provided in such areas was in any way inadequate.

outside of South Carolina and that some class members received sufficient notice by those means. Therefore, the Court now concludes that the notice plan directed by the class action Court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived ²⁰⁰~~substantially~~ outside of the areas in which notice was published.

At this time, the Court has not reviewed—or been asked to review—whether any specific plaintiff in any of the pending cases received sufficient notice of the class action. Counsel may make such arguments as they deem appropriate in light of the conclusions of law set forth herein.

AND IT IS SO ORDERED.


Hon. J.C. Nicholson, Jr., Circuit Judge

October 25, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT I

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Amended Order on Limited Collateral Review in C/A Nos.: 2010-CP-10-05520,
2010-CP-10-07233, 2012-CP-10-05559, 2013-CP-10-03733, 2013-CP-10-04175,
2013-CP-10-04176, 2015-CP-10-05486, and 2016-CP-10-01632.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JOHN DOE 2 AND JANE DOE 4,
PLAINTIFFS,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY; REV. MONSIGNOR MARTIN
LAUGHLIN, FORMER ADMINISTRATOR OF
THE DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 10,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY; REV. MONSIGNOR MARTIN
LAUGHLIN, FORMER ADMINISTRATOR OF
THE DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-5520

**AMENDED ORDER ON LIMITED
COLLATERAL REVIEW**

FILED
2017 MAY -4 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT

CASE NO.: 2010-CP-10-7233

JANE DOE 11,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2012-CP-10-5559

JOHN DOE 193,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2013-CP-10-3733

FATHER DOE 194,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 194,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2013-CP-10-4175

CASE NO.: 2013-CP-10-4176

JOHN DOE 245 AND FATHER DOE 245,

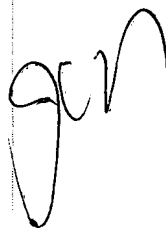
PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE DIOCESE
OF CHARLESTON, IN HIS OFFICIAL
CAPACITY; ROBERT J. BAKER, FORMER
BISHOP OF CHARLESTON, IN HIS OFFICIAL
CAPACITY; LAWRENCE E. RICHTER, JR.;
DAVID K. HALLER; RICHTER & HALLER,
LLC,

DEFENDANTS.

CASE NO.: 2015-CP-10-5486

 JOHN DOE 297,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT GUGLIEMONE,
THE BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; REV. MONSIGNOR
MARTIN LAUGHLIN, FORMER
ADMINISTRATOR OF THE DIOCESE OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
ROBERT J. BAKER, FORMER BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
LAWRENCE E. RICHTER, JR.; DAVID K.
HALLER; AND RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2016-CP-10-1632

THIS MATTER CAME BEFORE THE COURT on the motion of Defendants Lawrence
E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, the “Lawyer
Defendants”) to alter and amend the Court’s order of December 7, 2015, denying the Lawyer

Defendants' motion for summary judgment on motions to alter or amend the Court's Order on Limited Collateral Review entered on October 26, 2016 filed by Plaintiffs and the Diocese Defendants. Specifically, the Lawyer Defendants moved that the Court conduct a limited collateral review of the underlying class action and determine whether that action is binding on the plaintiffs in these matters. The Court agrees that a limited collateral review is proper and therefore grants the Lawyer Defendants' motion to alter and amend to the extent that it requests such a review.

In the Complaints, Plaintiffs specifically allege that their causes of action against the Lawyer Defendants are only pertinent if they, as alleged absent class members in a prior class action, are precluded from pursuing claims against the Diocese Defendants. (*See, e.g.* -5520 Compl. ¶¶ 177, 196.) Thus, the Complaints, by their own terms, present a threshold question: Are Plaintiffs precluded from pursuing claims against the Diocese Defendants?

Our Supreme Court set forth the framework for deciding such a question in *Hospitality Management Associates v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004). There, the Court held that the trial court should conduct a "limited collateral review" of the prior class action to determine whether it binds the absent class members now trying to bring suit. *Id.* at 660, 591 S.E.2d at 619-20. That review consists of reviewing the record in the prior class action to determine: "(1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied." *Id.* at 660, 591 S.E.2d at 619-20.

The Court has reviewed the record in the underlying class action and concludes that the class action court did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the court substantially outside of the geographic territory of South

Carolina.¹ The Court nonetheless recognizes that actual notice was provided to many class members and that notice of the class action was published by numerous media outlets outside of South Carolina and that some class members received sufficient notice by those means. Therefore, the Court now concludes that the notice plan directed by the class action court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived outside of the areas in which notice was published.

In addition, the Court concludes as to Plaintiff John Doe 193, who alleges that he lived in South Carolina but had a repressed memory at the time of class notice, that it would be inconsistent with due process to bind him to the class action settlement if he in fact had a repressed memory of sexual abuse at the time that notice was published. Therefore, if he can prove a repressed memory by a preponderance of the evidence, he will not be bound by the class action settlement. This Order does not address the merits of whether John Doe 193 in fact had a repressed memory as he has alleged.

At this time, the Court has not reviewed—or been asked to review—whether any specific plaintiff in any of the pending cases received sufficient notice of the class action. Counsel may make such arguments as they deem appropriate in light of the conclusions of law set forth herein.

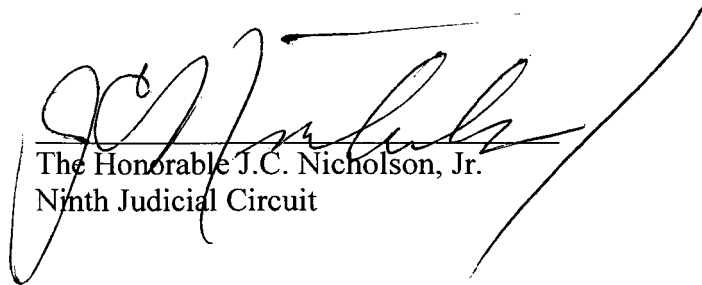
WHEREFORE, based on the pleadings, evidence, discovery materials to date, arguments of counsel and applicable law, the Court has conducted a limited collateral review as set forth above. The Court further grants Plaintiffs' motion to alter and amend to the extent that the Court has corrected the caption to include all *Doe* cases assigned to the Court and to the extent that the Court has clarified the treatment of John Doe 193. The Court denies the Diocese Defendants'

¹ The Court recognizes that some areas bordering South Carolina—such as Augusta, Georgia—did receive notice by publication. Nothing in this order is intended to suggest that the notice provided in such areas was in any way inadequate.

motion to alter or amend.

AND IT IS SO ORDERED.

May 3, 2017
Charleston, South Carolina



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

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT J

to

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION**

Order on Lawyer Defendants' Motions for Summary Judgment, August 11, 2017, in
2010-CP-10-05520, 2010-CP-10-07233, 2012-CP-10-05559, 2013-CP-10-03733,
2013-CP-10-04175, 2013-CP-10-04176, 2015-CP-10-05486, and 2016-CP-10-01632.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-5520; 2010-CP-10-7233; 2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176; 2015-CP-10-5486; 2016-CP-10-1632

John Doe, et al.
PLAINTIFF(S)

The Bishop of Charleston, a Corporation Sole, et al.
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

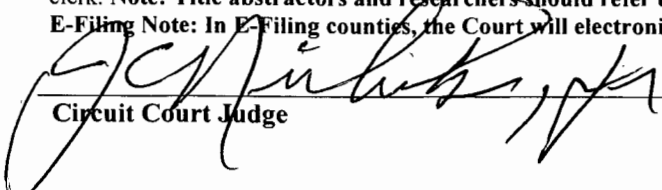
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

If applicable, describe the property, including tax map information and address, referenced in the order:

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117
Judge Code

8/8/17
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

John Doe 2 and Jane Doe 4,

Plaintiffs,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2010-CP-10-5520

**ORDER ON
LAWYER DEFENDANTS'
MOTIONS FOR
SUMMARY JUDGMENT**

John Doe 10,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2010-CP-10-7233

JULIE J. ARMSTRONG
CLERK OF COURT

2017 AUG 11 PM 2:39

FILED

JCN
Jane Doe 11,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2012-CP-10-5559

John Doe 193,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2013-CP-10-3733

Father Doe 194,) CASE NO.: 2013-CP-10-4175
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 194,) CASE NO.: 2013-CP-10-4176
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 245 and Father Doe 245,) CASE NO.: 2015-CP-10-5486
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 297,) CASE NO.: 2016-CP-10-1632
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

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

motion for summary judgment in each case on the same grounds. The Lawyer Defendants also filed separate motions for summary judgment on additional grounds against Jane Doe 4 (Case No. 2010-CP-10-5520) and John Doe 193 (Case No. 2013-CP-10-3733). This Order will address the omnibus motion in each case as well as the motions for summary judgment against Jane Doe 4 and John Doe 193.¹

BACKGROUND

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

gm
The Lawyer Defendants represented alleged victims of sexual abuse in class action lawsuits against the Diocese Defendants that were settled in 2007 (Case Nos. 2006-CP-18-13109, 1311 and 1636; “the Underlying Case”).² Seven of the Plaintiffs claim that they were members of the Primary Class³ and that the Lawyer Defendants committed legal malpractice while representing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Summary Judgment Standard

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

⁶ Case No. 2013-CP-10-3733.

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

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

II. The Lawyer Defendants' Motions

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

- A. the Court has determined that the Plaintiffs can sue the Diocese Defendants making their respective claims against the Lawyer Defendants "irrelevant";
- B. the Plaintiffs have no damages proximately caused by the Lawyer Defendants;
- C. no attorney-client relationship existed between the Lawyer Defendants and the Plaintiffs, who were unnamed class members; and
- D. the Lawyer Defendants did not breach a fiduciary duty to the Plaintiffs.

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

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

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

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

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

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

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

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

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

The Plaintiffs who did not settle with Diocese Defendants¹⁰ were subject to a motion for summary judgment filed by the Diocese Defendants and scheduled to be heard by the Court on

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

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

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

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

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

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

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

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

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

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

C. There was No Attorney-Client Relationship

1. The Majority Rule.

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

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

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

Ill. App. 3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. 1 (“prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients”); *Resnick v. Am. Dental Ass’n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) (“Without question the unnamed class members, once the class has been certified, are ‘represented by’ the class counsel.”); *Gillespie v. Scherr*, 987 S.W. 2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) (“[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members”).

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

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

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

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

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

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

2. *Premium Investment Corp. v. Green*

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

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

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

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

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

Id. at 470.

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

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

3. The Plaintiffs’ Testimony.

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

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

D. No Breach of Fiduciary Duty.

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

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

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

Id. at 470.

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

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

Id. (emphasis added).

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

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

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

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

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

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

John Doe #53, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1636, Complaint

¶ 41. Therefore, the complaints relevant to the Primary Class clearly limited the putative classes to individuals within the geographical boundaries of South Carolina. *See also Id.* ¶ 36 (“Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].”).

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

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

Jane Doe 1, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1310, Complaint

¶ 25. Later, that complaint alleged:

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

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

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

III. The Claims of Jane Doe 4:

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

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

IV. The Claims of John Doe 193.

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



V. The UTPA Claims.

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

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

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

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

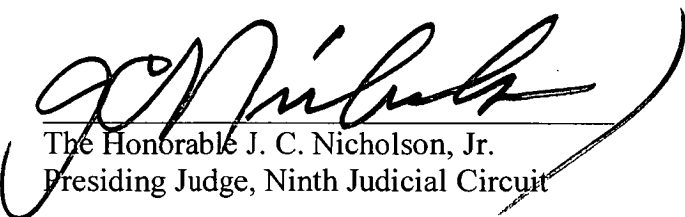
CONCLUSION

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

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

AND IT IS SO ORDERED.

Dated: 8/8/17
Charleston, SC


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

STATE OF SOUTH CAROLINA

In The Original Jurisdiction of the Supreme Court

Case No.: 2020-001415

John Doe 305, Julie McDonald and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents – Defendants

EXHIBIT K

to

JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, AND RICHTER AND HALLER, LLC
TO PETITION FOR ORIGINAL JURISDICTION

Excerpt of Transcript from March 9, 2007 Fairness Hearing

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
: CASE NOS. 2006-CP-18-1310,
COUNTY OF DORCHESTER) 1311, 1636

JOHN DOE 53, JOHN DOE) TRANSCRIPT OF RECORD
66, JOHN DOE 66A, JANE)
DOE 1 AND JANE DOE 2 AND) SETTLEMENT AGREEMENT
RACHEL ROE INDIVIDUALLY)
AND AS REPRESENTATIVES) March 9, 2007
OF A CLASS OF PEOPLE)
SIMILARLY SITUATED,) St. George, South Carolina
Plaintiffs,)

-versus-)

THE BISHOP OF CHARLESTON,)
A CORPORATION SOLE, AND)
THE BISHOP OF THE DIOCESE)
OF CHARLESTON, IN HIS)
OFFICIAL CAPACITY)
Defendants.)

B E F O R E:

The Honorable Diane S. Goodstein

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First Judicial Circuit

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Walter Bilbro, Esquire
Matthew Creech, Esquire
Marvin Infinger, Esquire
Lionel Lofton, Esquire
Jack Sinclair, Esquire
Glenn Churchill, Esquire

COURT'S EXHIBIT(S):

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Crimen Sollicitationis	157	

John Doe, et al v. The Bishop of Charleston, et al

1 just careful about getting permission for
2 what they choose to run.

3 THE COURT: All right.

4 MR. MEYERS: Your Honor, I do want to
5 start by acknowledging the positive
6 development by both the diocese and class
7 counsel in even bringing the resolution this
8 far. I do have concerns about it, but I
9 really want to commend both the diocese and
10 class counsel for generating what has brought
11 us here today. It's a good thing. It's a
12 good thing for the organization, it's a good
13 thing for the people they have served and the
14 interest they attempted to serve in the first
15 place.

16 Let me say the -- we filed four
17 objections. The opt in/opt out issue is
18 clarified and that one has gone away.

19 We had a concern about the class
20 definitions. One of those concerns has been
21 addressed, it was the unlinking of a parent's
22 claim and a child's claim. Because the way
23 the class definitions originally were
24 written, for a consortium claim to happen a
25 child's claim had to be unresolved. And as I

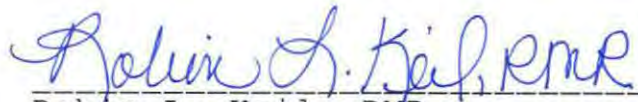
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 16th day of March 2007.



Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-_____
John Doe 305, Julie McDonald, and	)	
Richard McDonald,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	
Richter and Haller, LLC, and	)	
The Bishop of Charleston a corporation	)	
Sole,	)	
	)	
Defendants.	)	
	)	

Summons

TO: Lawrence E. Richter, Jr.
David K. Haller
Agent for Richter and Haller, LLC
Agent for The Bishop of Charleston, a Corporation Sole

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action. A file-stamped copy of the complaint is served upon you with this summons.

Your answer or other response to the complaint is to be served upon the attorney for the plaintiff at 217 Lucas Street F-1, Mt. Pleasant SC 29464, or served by email at attygm@gmail.com.

According to the South Carolina Rules of Civil Procedure, you are required to appear and defend yourself in this action by making and serving an answer to this complaint within thirty (30) days after the complaint is served upon you. The thirty days begin to run from the date after this summons and complaint are served upon you; the date the service is made is excluded.

If within that time you fail to appear and defend as you are required to do by the Rules of Civil Procedure, the Plaintiff in this action shall apply to the Court for the relief demanded in this Complaint and judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,



Gregg Meyers, SC Bar No. 9908
217 Lucas Street Box 10
Mt. Pleasant SC 29464
843-321589
attygm@gmail.com

Attorney for the Plaintiff

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

Complaint

Summary of the Action

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

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

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

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

- b. the extent to which class action settlements are permitted to be collusive,
 - c. the extent to which colluding parties to a class action are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,
 - d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
 - e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his colluding “adversary” at the expense of the class members class counsel purports to represent,
 - f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
 - g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
 - h. the extent to which class counsel may charge class members an unauthorized fee, and
 - i. the extent to which applicable legal standards may vary according to the persons involved.
4. The case arises from a collusive class action in which the class counsel defendants:
- a. colluded with their “adversary” to reach a class settlement;
 - b. colluded with their “adversary” to judge-shop so as to move oversight and approval of that class settlement away from judges not desired to a particular judge in another circuit that was desired;

- c. placed their own financial interests, and the interests of their “adversary,” ahead of the interests of the class they purported to represent;
- d. submitted (without objection) patently false information to the circuit court;
- e. withheld from the circuit court (with cooperation of the “adversary”) information that a contingency fee payment had been made that applied to nearly all of the time in records class counsel submitted in support of a fee request for work done on the class action;
- f. charged individual class members a fee no order authorized them to charge; and
- g. failed to make proper disclosures to class members about class counsel’s conflicts and the fees already paid to class counsel before charging class members that unauthorized fee.

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

Parties and Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nature of Wrongdoing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58. The Diocese does not treat absent class members who got no notice (such as John Doe 305) as represented to the shopped-for circuit judge in the July 2007 hearing.

59. For a fifth example of collusion, no post-award fairness hearing under SCRCP 23 has yet been held in the class action, nor (as noted above) has any final order been entered in the class action. That refusal was and is apparently a tactic by the colluding parties to evade appellate review.

60. A motion for a post-award fairness hearing was filed in 2016 by a class representative. That motion has been ignored.

61. For class counsel, that tactic has evaded any review under SCRCP 23 of their *actual performance* in effectuating the class settlement, as opposed to making that assessment on hypothetical performance. Attorney fees were awarded without any review of collusive

conduct, or failures by class counsel such as not making proper conflict disclosures to the classes including the McDonalds, or failing to securing in a written order the relief claimed for persons such as John Doe 305, or charging improper fees to class members such as the McDonalds (a fee of 20%), or withholding material information about the fee from the McDonalds, or submitting fraudulent information to the court as part of the fee claim, or all defendants withholding from the court that nearly all time claimed in the class action to support the fee claim had already been paid for by a contingent fee paid by the Diocese to class counsel in November 2006.

62. Conservatively estimated, it appears that the total of class counsel's unauthorized fees exceeds \$900,000, of which the improper fees charged the McDonalds are a part. In addition, the \$2.5 million fee awarded was based on substantial misrepresentations to the court. No accounting has ever been made of the actual fees charged and collected by class counsel.

63. Class counsel's fiduciary obligation to each alleged class members and to each judicially approved class member is a duty either imposed under SCRCP 23 or assumed, or both, as class counsel acknowledged that fiduciary duty on the record.

64. Under SCRCP 23 both class counsel and the court have a fiduciary obligation to protect the absent members of the class, an obligation unchanged by judge-shopping even if the circuit judge has agreed to be shopped-for by colluding parties to a class settlement, and even if all parties and a shopped-for judge has agreed to ignore their fiduciary obligation.

65. If those duties of either counsel or the circuit judge are variable based on the persons involved, that criteria should be articulated for the benefit of South Carolina bench and bar.

66. As a sixth example of the parties' collusion, between June 2006, when the mediated class settlement was reached and its handwritten outline laid out, and January 2007, when a typed version was submitted to the court for approval, two provisions were added to the agreement. Each served the financial interests of class counsel and the Diocese at the expense of class members.

67. First, on page 13, in paragraph 6B, the attorneys' fees for class counsel were to be paid first, before any claims were made, class members identified, or any class member compensated, explicitly making the fees the highest priority of the class settlement. Awards to class members were subordinated to that fee. Paragraph 6B provides:

In the event that the total due [to class claimants] exceeds the amounts provided for ... then each award shall be reduced on a *pro rata* [sic] of the net settlement fund.

68. As this provision reflects, class counsel negotiated for themselves a fixed fee while simultaneously negotiating for the classes they claimed to represent a variable recovery that would be reduced *pro rata* if claims against the class fund were insufficient to pay the fee and all claims. Class counsel's interest in an attorneys' fee was made the highest priority of the class settlement, explicitly placed above the recovery for class members.

69. Second, on page 14, in paragraph 6C, the parties agreed that once all fees, costs, and claims were paid, then any remaining funds "will be returned to the defendants," meaning the Diocese.

70. Through those two modifications, each of class counsel and the Diocese had a financial interest in limiting the number of class members who made claims.

71. By an order of January 23, 2007 the shopped-for judge preliminarily approved these provisions “subject to the objection period and Fairness Hearing as set out in this order.” (Page 1 of that order).

72. A fairness hearing to complete the preliminary approval process was set for March 9, 2007, (Page 8 of that order).

73. “[N]otice of the settlement” was to be published once a week for the six weeks between January 23 and March 9, 2007. (Page 8 of that order). But the approved notice did not describe any monetary recovery for the class. Nor did the notice describe the attorneys’ fee class counsel would seek at the March 9 hearing. Nor did it mention any of the conflicts of interest class counsel had as to claims for class members against his own Diocese. Nor did it mention any of the collusion associated with the class action.

74. A copy of the settlement could be obtained by making a written request of class counsel. The order required class counsel to file their fee request by February 14 but made no provision for obtaining that request. Any objections to that request had to be filed eight days later, by February 22, before the notice period had run. Potential class members were given eight days to discover there was a class action, obtain by mail from class counsel information about the class action, discover that no information was provided about class counsel’s fee request and make a separate request for that information, obtain that information, then prepare and file any written objections.

75. The notice was designed to limit class members’ ability to review the fee request.

76. Because notice of the class settlement was not even attempted in the state where John Doe 305 lives, and because relief claimed to have been obtained for him was not included in any written order in the class action, John Doe 305 has lost the benefit of the defenses the

Diocese waived in the class settlement. As John Doe 305 was sexually abused by Eugene Condon in 1974 and 1975, before charitable immunity was abolished, class counsel have breached duties owed to John Doe 305 and have damaged him by depriving him of those waived defenses. Their performance fell below the standard of care.

77. Class counsels' conduct also fell below the applicable standard of care as to the McDonalds: by charging unauthorized fees, by failing to make proper disclosures of conflicts, by failing to disclose fees already awarded, and (with cooperation of the Diocese), by submitting material false information to the court, fraudulently withholding material information from the court and withholding the same information from the McDonalds.

78. Specifically, before each of the McDonalds was charged a 20% fee not authorized by any order, neither of them was told, among other things:

- a. that the class action was collusive,
- b. that no order authorized the fee class counsel charged for individual claimant recoveries,
- c. that class counsel had already been awarded a \$2.5 million fee,
- d. that class counsel had been paid by the Diocese, but had not disclosed to the court, a contingency fee for individual cases of the class representatives. That was payment for nearly all of the time submitted in support of the court awarded fee,
- e. of class counsels' conflicts regarding the lifelong relationship with the Diocese and class counsels' functioning, even during the class action proceedings, as an official of the Diocese,

- f. of class counsel's friendships with Diocese personnel, potentially including persons who engaged in sexual abuse,
- g. that class counsel appeared at and participated in settlement discussions for persons who were not members of the class,
- h. that persons who opted out of the class had received more favorable settlement terms than did class members,
- i. that class counsel or his clients had contributed \$100,000.00 to funding the more favorable settlement terms for those who had opted out, or
- j. that with cooperation of the Diocese, class counsel had submitted blatantly false time and expense records to the court, which intentionally overstated time claims.

79. In late 2019 each of the McDonald plaintiffs learned for the first time of the information that class counsel had not disclosed.

80. As noted above, the McDonalds were each charged a 20% fee which no order authorized.

81. The fee charged class members and non-class members without court authorization and without proper disclosure is, upon information and belief, conservatively estimated to have been in excess of \$900,000.

82. As a matter of law, class counsel and class representatives hold in constructive trust funds distributed to them in the class action. Under *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984):

If the class representative or class counsel breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class.

83. Discovery will ascertain and account for the amounts charged by class counsel without court authorization. Accounting records of the class action reflect a \$2.5 million fee was paid to class counsel on September 4, 2007. No accounting record shows the separate contingent fee payment of \$145,000 made to class counsel by the Diocese on November 20, 2006. A document prepared by class counsel described that payment as the “initial settlement disbursement.” The check by which the payment was made appears at Attachment B.

84. The January 2007 “Settlement and Arbitration Agreement” states that as to the claims of class representatives identified as Johns Doe 53, 66, 66A, 67, Janes Doe A and B, and Rachel Roe, “It is understood and agreed that the claims of these claimants are released and these settlement funds [identified for each claimant] will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.” The class representatives had no interest in the settlement that applied to the class members.

85. Nor does any accounting show the unauthorized fees charged the McDonalds and other class members.

86. Class counsel also arranged, with cooperation of the Diocese, to be paid first, within ten days of the court’s orders concluding the preliminary approval, before any class members had an opportunity to make a claim, and before the recovery to the class was known.

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

McDonalds, by actually representing them.

88. This action has been brought within three years of John Doe 305 learning in November 2019 that class counsel had claimed they had obtained relief for even those absent class members who received no notice of the class action case, without actually securing in any written order that relief for John Doe 305, and within three years of learning that the Diocese defendants aided and abetted that breach of fiduciary duty towards him.

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

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

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

91. As noted above, under the holding of *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984), by operation of law any benefits from the class action are held by class counsel in trust for the class, including its absent members. Those benefits held in trust should be used to benefit the Plaintiff Doe 305, and to reimburse the McDonalds.

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

93. To gain court approval of the class settlement, the defendants made overtly false representations of fact to the shopped-for circuit judge, particularly in a hearing held July 13,

2007. The transcript for that hearing is unusual in that it has confusing page numbering, with multiple page numbers on each page. Using the numbers that correspond to a 33-page hearing transcript, among those false representations was that there was an “understanding” (on page 3) among all defendants in this action “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese defendants) outside of the class claim procedure. That “understanding” communicated to the shopped-for judge was never placed in any written order.

94. The discussion began concerning a specific group of individuals (called the “actual notice” group), a group of individuals who, according to files of the Diocese, had previously reported their abuse to the Diocese. Four (hearing page 8) or five (hearing pages 4 and 5) of “those particular folks” had not been located. The Diocese represented, without objection by class counsel (at page 3, emphasis added):

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

95. Then the discussion broadened to include all absent class members who got no notice. At page 12, counsel for the Diocese stated:

Judge, I view that responsibility as ongoing and so that we got to find the other four *and we’ve got to find anybody else* who has kind of, lack of a better word, comes out of the woodwork.

96. Class counsel, on page 14 of that same July 13, 2007 transcript, summarized to the court (emphasis added), that:

what the Diocese has come to is that if *anybody* is missed . . . the diocese *waives all the same defenses* that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards.

97. When the shopped-for judge confirmed the representation by repeating back to counsel, on page 22 of that same transcript, the court stated, emphasis added:

There is nothing more that the diocese could possibly do that I am aware of. I mean, at this point in time when the diocese obligates itself to do as it has been described, ***there is nothing more that they can possibly do as far as I can even imagine***, Mr. Shahid, truly. I mean, what they say is ***if you come forward in the future we will treat you just the same*** as we have treated these individuals and the relief is available for you. ***I know of nothing more that could be done***. So I certainly would approve that.

It is a tautology that the only way there was “nothing more” that could be done, particularly after the scope of notice had been reduced, was if all absent class members who got no notice would get the same class settlement benefits. Yet no written order secured that relief for persons such as John Doe 305, a breach of duty by class counsel to absent members of the class that can be mitigated only by enforcing the agreement pursuant to SCRCP 43(k) as to John Doe 305 and any other absent class member who got not notice.

98. To get a reduced scope of notice approved, the defendants intended in that July 13, 2007 hearing to create the false impression with the shopped-for judge that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend the same class relief to that victim. The discussion started in the context of the four or five unknown “actual notice” victims discussed at the beginning of the hearing, but the assurances to the court broadened so as to include all absent class members.

99. In making the false representation that they made no effort to embody in any court order, class counsel were operating in the interest of themselves and in the interest of the Diocese defendants, rather than in the interest of the absent members of the class such as John Doe 305, to whom class counsel owed, or had assumed, a fiduciary duty. Class counsel intended that the shopped-for judge would rely on the statement, and the shopped-for judge did

rely on the statement. However, when the shopped-for judge did not embody the “understanding” in any written order, none of the defendants requested that the shopped-for judge do so. That fell below the standard of care for class counsel, as aided and abetted by the Diocese.

100. Class counsel had alleged in Paragraph 36 of the John Doe 53 class action complaint filed in Charleston County on December 2, 2005, that the number of abuse victims “may exceed the hundreds.” In originally proposing nationwide notice, counsel were aware or should have been aware that many persons sexually abused in South Carolina had likely moved out of South Carolina and resided out of state.

101. Class counsel were aware, as they had alleged for the class that they and John Doe 53 represented, that the number of sexual abuse victims far exceeded the victims already known from the files of the Diocese. Class counsel were aware the Diocese had a history of concealing sexual abuse yet relied on the Diocese to search their own files for abuse victims. Class counsel were also aware that some abuse victims repressed memories of their childhood sexual abuse (or were incapacitated as a matter of law) and could reasonably be expected not to recall childhood abuse for various lengths of time or were unable to pursue their claims for other reasons.

102. In short, the “Primary class” of sexual abuse victims was known by class counsel, or should have been known by class counsel, to be large and to require widespread notice. The defendants deliberately misrepresented to the shopped-for judge that absent class members later disclosed would receive relief, when in fact those absent members would get no relief unless the agreement placed on the record in open court is enforced through this action.

The defendants have opposed relief for absent class members who got no notice and at present continue to oppose relief for absent class members who got no notice.

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

104. Page 4 of the July 30, 2007 order certifying the class states, “Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members.” In 2007 the defendants were aware that the written orders failed to require nationwide notice (as they have cooperated to omit that notice after it was originally proposed) and failed to secure the full relief for absent class members that had been made in those “representations and stipulations of the Diocese.”

105. The result of class counsels’ failure, which the Diocese aided and abetted, was to exclude John Doe 305 from any recovery for his sexual abuse and to deprive him of the benefit of the defenses that were waived in the class action settlement. Rather than protect the absent class members to whom they had assumed, and the law imposed, fiduciary duties, class counsel protected the interest of the Diocese defendants and class counsels’ own interest in their fee.

106. For the Diocese the benefit of the class action was its potential preclusive effect, the secondary objective class counsel sought for his Bishop and his Diocese, after class counsel’s primary objective in their fee. As explicitly stated in the class settlement agreement, and as noted above, class counsels’ fee was the highest priority of the class action settlement. The fee was fixed, and compelled a *pro rata* reduction of recovery to class members if “too many” abuse victims made claims. Failing to secure relief for absent class members who got no

notice served the purpose of avoiding having to implement the fee provision that compelled a *pro rata* reduction.

107. Correspondingly, not having “too many” class claimants also served the financial interest of the Diocese in that a reduced number of class claimants increased the chances that a residual class fund would remain after claims made and would be returned to the Diocese.

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

- a. Shopping for a judge and doing so by collaborating to file, and accept service of, a duplicate class action complaint for John Doe 53 and other illicit means of evading SCRCP 23;
- b. Making no objection to the complex case designation, even though the Supreme Court’s July 26, 2006 complex case order applied to cases that could not be settled and the class settlement had already been reached;
- c. Misrepresenting to the court that absent class members who got no notice would receive the same compensation as class members;
- d. Taking no position on whether the class should be certified;
- e. Acquiescing in class counsel failing to disclose to the class his life-long ties to and functions on behalf of the Diocese;
- f. Making no disclosure to the class of the superior settlement terms (compared to those for the class) for the individuals who were the class representatives,

- and whose settlement terms would apply (a) whether or not the class was approved, and (b) for fixed sums not dependent on an arbitration process;
- g. Making no disclosure to the court of the November 20, 2006 contingent fee payment to class counsel for individual cases of class representatives, or that the billing records relied on for the class action fee application was almost entirely (from 2003 through November 20, 2006) for time for which that contingency fee had already compensated class counsel;
 - h. Making no objection that the class representatives referred to in the 2006 version of the class settlement agreement had already been paid and whose claims were already settled in 2006 whether or not the class was later certified;
 - i. Making no objection that the claims of class representatives referred to in the 2007 version of the class settlement agreement had already been paid and their claims released whether or not the class was later certified, meaning the “class representatives” had no stake in the class settlement, and were not representative of either class;
 - j. Not disclosing to the class the superior settlement terms reached with the individuals who objected to the class settlement;
 - k. Not disclosing to the class that those superior settlement terms for objectors were funded in part by class counsel or class members paying \$100,000 from class counsel’s trust account;

- l. Not objecting when class counsel negotiated simultaneously a fixed fee for themselves and a variable recovery for the class, with the compensation for class members being subordinated to that fee;
- m. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range, saying nothing about the blatantly fraudulent time records of class counsel, not disclosing that a contingent fee had already been paid for the time spent on individual cases which formed the vast percentage of time claimed in the fee application (time from 2003 to November 20, 2006), and not disclosing that the class settlement was reached seven months after filing without a single motion having been argued or decided, or a single witness having been deposed;
- n. agreeing that no accounting records of the class fund should include the contingency fee payment to class counsel;
- o. agreeing to the fee being awarded before any member of the class member was even identified, had even submitted a claim, or had been compensated;
- p. Agreeing to ignore the South Carolina Supreme Court's March 2009 directive that the class action should be concluded in six months unless an extension was sought from that court;
- q. agreeing to seek no post-award fairness hearing under SCRCP 23 where the *actual* conduct of the class action, substantively and procedurally, and the *actual* recovery for the class members would be assessed;
- r. ignoring a 2016 motion by one of the class representatives for a post-award fairness hearing; that motion alleged that class counsel had "abandoned" the

class representative and the representation had terminated, and

s. seeking no final order in the class action so as to avoid all appellate review.

109. The defendants caused John Doe 305 special harm in the form of precluding him from making any claim against the Diocese for his sexual abuse, specifically changing the notice to deny him all chance to enjoy the benefits of a waived defense of statute of limitations and a waived defense of charitable immunity. The professional representation of the plaintiff by class counsel was inadequate and failed to meet the standard of care applicable to South Carolina attorneys, and was a breach aided and abetted by the Diocese.

110. The defendants caused the McDonald plaintiffs special harm in the form of a 20% fee which no order authorized, and without proper disclosures as alleged above, proper disclosures having been fraudulently concealed from them. The Diocese aided and abetted that breach by ignoring the Supreme Court's 2009 order and agreeing to omit any judicial review of class counsel's actual conduct.

**For a First Cause of Action:
Declaratory Relief**

111. Allegations above are incorporate into this cause of action as if fully stated.

112. This action seeks declaratory relief, pursuant to SCRCP 57 and S.C. Code § 15-53-10 et seq., to determine, among other things, under SCRCP 23:

- a. The conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench,
- b. the extent to which class action settlements are permitted to be collusive,
- c. the extent to which colluding parties are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,

- d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
- e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his “adversary” the Diocese at the expense of the class members class counsel purports to represent,
- f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
- g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
- h. the extent to which class counsel may charge an unauthorized fee to class members, and
- i. the extent to which applicable legal standards vary according to the persons involved.

113. Declaratory relief is requested, as described above as well as described below in the “relief sought.”

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

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

115. Pursuant to S.C. Code § 15-36-100(b), Attachment A to this complaint, and incorporated herein pursuant to SCRCP 10(c), is an affidavit of Michael Virzi specifying certain various negligent acts or omissions of class counsel, and the factual basis of the

negligent acts or omissions of class counsel. That affidavit was prepared for the Supreme Court as part of a petition for original jurisdiction and bears a Supreme Court caption.

116. Class counsel assumed, or by law had imposed, fiduciary duties to John Doe 305, as alleged above and as set forth in Mr. Virzi's affidavit.

117. Unless the agreement placed on the record by class counsel and the Diocese is fully enforced pursuant to SCRCP 43(k) to fully benefit John Doe 305, and to the extent not fully enforced, class counsel breached those duties to him, as alleged above. They eliminated any chance of John Doe 305 getting notice and failed to secure in a written order relief claimed to have been obtained, depriving him of the waived defenses available only in the class action and the relief available to him in the class action.

118. As to John Doe 305, class counsel were professionally negligent, and the Diocese defendants aided and abetted that breach of fiduciary duty, which damaged John Doe 305.

119. As to each of the McDonald plaintiffs, class counsel were professionally negligent in charging each of the McDonalds a fee which no order authorized, without proper disclosures, and in avoiding court review of class counsel's actual performance and actual charges to class members, as alleged above.

120. The Diocese aided and abetted the breach of duty by class counsel, as alleged above. They cooperated to conceal payments made to class counsel. They cooperated in having no accurate accounting of class funds and charges made by class counsel. They collaborated in misrepresentations to the court and in withholding pertinent information from the court. And they cooperated to ignore the Supreme Court, ignore a motion for a post-award fairness hearing

and agreed to seek no final order in the class action so as to keep class counsel's actual performance and actual charges to class members from being reviewed.

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

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

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

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

124. The Diocese defendants joined with class counsel in eliminating nationwide notice of the class settlement while also making false representations on the record to the shopped-for judge, supposedly protecting the interest of absent class members such as John Doe 305 that he would be afforded relief once he learned of the class action. Each defendant then failed to secure those representations in any written order.

125. As to the McDonalds, the Diocese aided and abetted class counsel's breaches of duty by, among other things, cooperating to ignore the 2009 Supreme Court order and the 2016 motion by a class representative, to seek no final order, to require no full accounting of the class funds and class counsel's actual performance and actual fees charges, and in concealing from the court the contingent fee payment made to class counsel for the class representatives.

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

the interests of abuse victims in the classes they chose to define both their own interest in an attorneys' fee and the interests of class counsel's own Bishop and Diocese.

127. The plaintiffs have each been damaged by the Diocese defendants aiding and abetting class counsels' breaches, and each plaintiff is entitled to actual and punitive damages as a result.

**For a Fourth Cause of Action:
Civil Conspiracy, Conversion, Accounting, Disgorgement
Against all defendants**

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

129. The defendants joined together in common action for the purpose of injuring the plaintiffs. The defendants collaborated in a collusive class action, judge-shopped for review of the class settlement, and agreed to a class settlement which prioritized the defendants' financial interests at the expense of class members. The defendants submitted false information to the court and withheld material information from the court.

130. As to John Doe 305, the defendants collaborated in reducing the notice program so as to deprive him of notice so he and all other class member who resided out of state could not participate in the waived defenses available in the class action or the relief available in the class action.

131. As to the McDonalds, the defendants collaborated in withholding material information from the court and the class members, submitting false information to the court, ignoring the 2009 order of the Supreme Court, ignoring the class representative's 2016 motion, seeking no final order in the class action and in making no proper accounting of the class settlement funds.

132. The defendants caused the plaintiffs special damage. John Doe 305 is required to

confront defenses otherwise waived, and the McDonalds were each charged a fee without authorization and without proper disclosures, which properly concluding the class action settlement by a post-award fairness hearing would disclose.

133. The common design among the defendants was to maximize their own financial interests, even at the expense of the persons in the classes, and regardless of the injuries done to the plaintiffs to whom they owed a fiduciary duty.

134. Class counsel made affirmative misrepresentations to the court and to class members, and wrongfully appropriated what is conservatively estimated to exceed \$900,000 from the class members, without regard to the improperly awarded fee. The Diocese collaborated in that process. Each collaborated to exclude eligible sexual abuse victims from making claims, class counsel acting so as to protect the Diocese at the expense of their class claimants. Funds for class members have been improperly drawn from the class fund and converted by class counsel to their own use.

135. The plaintiffs are entitled to actual and punitive damages against the defendants for the civil conspiracy; as well as an accounting of improper charges to class members and disgorgement of all funds improperly converted by class counsel.

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

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

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

138. At that time class counsel had pleaded a class action whose definition included John Doe 305. He was an intended beneficiary of that agreement with the Diocese.

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

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

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

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

Demand for Jury Trial

143. Plaintiffs demand a trial by jury.

Relief Sought

The plaintiffs seek the following relief:

144. For the court to declare the rights and obligations of the plaintiffs under SCRCP 23 and 57, as authorized by the Uniform Declaratory Judgments Act, S.C. Code §§ 15-53-10 et seq. to declare the “rights, status and other legal relations,” as put in S.C. Code § 15-53-20, and to construe “other writings constituting a contract,” as put in S.C. Code § 15-53-30, in the following respects under SCRCP 23:

- a. Is it proper for parties to reach a class settlement then collude to bypass SCRCP 23 approvals and judge-shop for purposes of moving a settled class action to another county for purposes of class settlement approval and oversight, thereby avoiding judges not desired and selecting a desired judge?
- b. Is it proper for the judge-shopping tactics to include (a) filing new class

action cases, (b) replicating in another circuit an existing and settled class action complaint and (c) accepting service of such new complaints?

- c. Is it proper for class counsel to refuse to notify class members of their substantial conflicts of interest?
- d. Is it proper for class counsel to enter an agreement to settle a class action which simultaneously, and explicitly, creates a fixed fee for class counsel, elevates that fee for class counsel above the interests of class members and makes class recovery subordinate *pro rata* to counsel's fixed fee?
- e. Does it breach class counsel's fiduciary duty to absent class members to accommodate an objection by his "adversary" to eliminate notice for all class members who reside out of state without providing relief to out of state class members?
- f. Is it proper for class counsel to have received a payment to resolve the claims of class representatives, and payment for a fee for that work, without any parties disclosing that fee payment to class members or to the court?
- g. Must a reviewing court examine time records submitted by class counsel in support of a fee award and reject, or at least inquire about, blatantly fraudulent submissions?
- h. Is it proper for class counsel and the Diocese fail to disclose that nearly all of the time submitted by class counsel in support of a fee award (all time between 2003 and November 20, 2006) had been paid for by a prior payment of \$145,000?
- i. Does class counsel breach their fiduciary duty to class members by charging a fee not authorized by any court order?
- j. To what extent does class counsel breach their fiduciary duty to class members by failing to disclose each of (a) substantial conflicts of interest with the Diocese and the shopped-for judge, (b) collusion in the class action, (c) the judge-shopping, (d) that no order authorized the fee charged the class member, (e) that a \$145,000 fee payment had already been made to class counsel, (f) that a \$2.5 million fee payment had already been made to class counsel, (g) that objectors to the class settlement got better settlement terms than class members, (h) that class counsel participated in discussions to obtain better settlement terms for objectors, and (i) that class counsel paid \$100,000 from his trust account to partially fund better settlement terms for objectors?
- k. Does class counsel breach their fiduciary duty to absent class members when they fail to secure in a written order the relief and waived defenses stated on

the record to have been obtained for absent class members who got no notice?

1. Should class counsel be required to disgorge to benefit the class members all improperly charged fees, including the \$2.5 million award and the unauthorized fee charged all class members?

145. Actual and punitive damages as provided by law,

146. An accounting of sums charged to class members such as the McDonalds without proper authorization and without proper disclosures, and of the residual class funds refunded to the Diocese,

147. Disgorgement for the benefit of the class of sums improperly charged each class member by class counsel, of the class funds refunded to the Diocese, and of all fees paid to class counsel based on misrepresentations and fraudulently withheld information;

148. Costs and disbursements of this action as provided in S.C. Code § 15-53-110;

149. Reasonable attorney fees; and for

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

Respectfully submitted,



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Attorney for the Plaintiffs

August 29, 2022

State of South Carolina
In The Original Jurisdiction Of The Supreme Court

Case No. 2020 _____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Affidavit of Michael J. Virzi

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

1. I am offering this affidavit, pursuant to S.C. Code Ann. § 15-36-100(b), as an expert witness on behalf of Plaintiffs to support their Complaint against Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Class Counsel") for professional negligence.
2. My qualifications to give expert testimony include the following:
 - A. I am a lawyer licensed to practice law in South Carolina, and my practice for the past seventeen years has focused exclusively on matters of legal malpractice, ethics, and lawyer discipline;
 - B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, I served a three-year term as Chair of the former from 2007 to 2010 and a two-year term as chair of the latter

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

- C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;
 - D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught Fundamentals of Law Practice and Professionalism; I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice, ethics, and lawyer discipline; I am an instructor for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;
 - E. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and
 - F. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this matter.
3. My opinion is based on review of the following documents:
- A. Petition for Original Jurisdiction in the above-captioned case;
 - B. Complaint in the above-captioned case;
 - C. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
 - D. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
 - E. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
 - F. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;
 - G. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636 (collectively hereinafter "the Consolidated Class Actions");

- H. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
- I. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
- J. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
- K. November 7, 2006, letter from A. Peter Shahid, Jr., to Lawrence E. Richter, Jr., regarding the Consolidated Class Actions;
- L. November 10, 2006, letter from Lawrence E. Richter, Jr., to Albert P. Shahid, Jr., regarding the Consolidated Class Actions;
- M. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in the Consolidated Class Actions;
- N. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in the Consolidated Class Actions;
- O. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in the Consolidated Class Actions with exhibits, including:
 - i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;
 - ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;
 - iii. Affidavit of Angela Pittard, with attached timesheets;
 - iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and
 - v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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- P. July 12, 2007, letter from Lawrence E. Richter, Jr., to The Honorable Diane S. Goodstein regarding the Consolidated Class Actions;
- Q. Transcript of July 13, 2007, hearing before The Honorable Diane S. Goodstein;
- R. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in the Consolidated Class Actions;
- S. Order Approving Settlement, dated and filed July 30, 2007, in the Consolidated Class Actions;
- T. Order of the Court, dated and filed August 31, 2007, in the Consolidated Class Actions;
- U. February 19, 2008, letter from Lawrence E. Richter, Jr., to Richard McDonald regarding "John Doe 538 vs. The Diocese of Charleston, et al." and enclosing a Settlement Statement;
- V. Order of the Supreme Court of South Carolina, dated March 19, 2009, in John Doe v. Lawrence E. Richter, Jr., et al.;
- W. Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, dated June 17, 2011, and filed June 27, 2011, in John Doe 2 and Jane Doe 4 vs. The Bishop of Charleston, et al., Case No. 10-CP-10-5520;
- X. Notice of Motion and Motion to Enforce Settlement, dated April 16, 2012, in the Consolidated Class Actions;
- Y. Transcript of Record before The Honorable Edgar W. Dickson, dated April 12, 2013, in the Consolidated Class Actions;
- Z. Order on Motion to Enforce Settlement, dated November 21, 2013, and filed on December 17, 2013, in the Consolidated Class Actions;
- AA. Transcript of Motions Hearing before The Honorable J.C. Nicholson, Jr., dated April 10, 2014, in Father Doe 194 vs. Bishop of Charleston, et al.;
- BB. Motion for Post-Award Fairness Hearing by Allen Sires, dated and filed on May 11, 2016, in 2006-CP-18-1310 and 2006-CP-18-1311;
- CC. Affidavit of Lawrence E. Richter, Jr., dated March 31, 2015, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176;

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

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

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

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

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

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

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

MSV

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

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

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

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

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

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



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

Further affiant sayeth naught.


Michael J. Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me
This am day of September, 2020


Notary Public

My Commission Expires : 10/18/2026

Attachment B

Look for yellow background on the front of this check, and the imageSafe® logo on back. If not present, do not cash.

DIOCESE OF CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42983

67-448/539 SC 2961

PAY TO THE ORDER OF Richley & Haller, LLC - Client Trust Accounts \$ 345,000.00

DATE 11-20-06

DIOCESE OF CHARLESTON 345,000.00 DOLLARS

Bank of America

FOR John Z. Banta
Mrs. Martha Langella

1104298311

GUARDIAN • SAFETY

Look for yellow background on the front of this check, and the imageSafe® logo on back. If not present, do not cash.

DIOCESE OF CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42982

67-448/539 SC 2961

PAY TO THE ORDER OF Richley & Haller, LLC \$ 145,000.00

DATE 11-20-06

DIOCESE OF CHARLESTON 145,000.00 DOLLARS

Bank of America

FOR John Z. Banta
Mrs. Martha Langella

1104298211

GUARDIAN • SAFETY

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NUMBER: 2:22-cv-02940-BHH

JOHN DOE 305, JULIE McDONALD,
and RICHARD McDONALD

Plaintiffs,

vs.

LAWRENCE E. RICHTER, JR., DAVID
K. HALLER, RICHTER & HALLER, LLC,
THE BISHOP OF CHARLESTON a
CORPORATION SOLE,

Defendants.

DEFENDANTS' NOTICE OF REMOVAL

YOU WILL PLEASE TAKE NOTICE that Defendants, Bishop of Charleston, a Corporation Sole, hereby invoke the removal jurisdiction of the United States District Court for the District of South Carolina pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446 based upon the following:

1. Plaintiff commenced this action by filing the Summons and Complaint with the Court of Common Pleas for Charleston County, State of South Carolina, on August 30, 2022. (Attached as **Exhibit A** are all Charleston Court of Common Pleas filings).

2. No Defendant has been served with the Summons and Complaint. *See Declaration of Richard Dukes, Exhibit B*

3. This action is currently pending in the Court of Common Pleas for Charleston County, State of South Carolina, located within the above-named Division of this Court. Because no defendant been served with the Complaint, the Notice of Removal is timely under 28 U.S.C. § 1446(b).

4. The Complaint is a civil action seeking recovery for damages based upon alleged legal malpractice and breach of fiduciary duty by Defendants Richter, Haller, and Richter & Haller and aiding and abetting breach of fiduciary duty by Defendants Bishop of Charleston, a Corporation Sole, and civil conspiracy by all defendants. Under these claims for relief, Plaintiff seeks actual, consequential, and punitive damages. Based upon the allegations contained in the Complaint, the amount in controversy exceeds \$75,000. The Corporation Sole denies that Plaintiff is entitled to any of the relief sought and does not waive any defenses with respect to any of Plaintiff's claims. However the amount in controversy is guided by accepting Plaintiff's allegations as true. *Dart Cherokee Basin Operating Co., LLC v. Owens* 135 S.Ct. 553 (2014). A defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. *Id.* at 554.

5. This Court has original jurisdiction based upon diversity of citizenship under 28 USC § 1332, and this action is removable pursuant to 28 U.S.C. § 1441(a). Venue properly lies in the District of South Carolina under 28 U.S.C. § 1391(a)(2) and 28 U.S.C. §95(a)(2). Plaintiffs allege they are residents of state other than South Carolina. (Complaint, ¶ 6). Defendants are alleged to be citizens and residents of South Carolina (Complaint, ¶¶ 11-13, 17-20). Thus complete diversity exists between the parties.

6. To support removal based on diversity jurisdiction, and where it is not facially evident from the Complaint, the Defendants bear the burden of proof that the amount in controversy exceeds the jurisdictional amount. 28 USC § 1446(c)(2)(B). Defendants do not concede the validity of Plaintiff's claims nor attempts to predict what Plaintiff will recover; the amount in controversy is determined by the amount demanded, not what will ultimately be recovered. *St. Paul Mercury Indem. Co. v. Red Cab Co.* 303 U.S. 283, 289-290 (1938).

7. In *Mattison v. Wal-Mart Stores, Inc.* 2011 U.S. Dist. LEXIS 11634, *4-6 (D.S.C. Feb. 4, 2011), this Court recently reviewed the showing required by a party seeking to remove a case to federal court, where no specific amount in controversy is alleged in the Complaint. The removing party must demonstrate that there is more than \$75,000 in controversy "to a reasonable probability". *Id.* at *4. Here, the nature of the unspecified damages, together with the prayer for punitive damages "make it virtually impossible to say that the claim is for less than the jurisdictional amount" *Woodward v. Newcourt Comm. Fin. Corp.*, 60 F. Supp. 2d 530, 532 (D.S.C. 1999).

8. Under 28 USC § 1441(b)(2), "A civil action otherwise removable solely on the basis of jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest ***properly joined and served*** as defendants is a citizen of the State in which the action is brought." 28 USC § 1441(b)(2)(emphasis added). However Section 1441(b)(2) does not apply because no defendant has been served with the Complaint in this action. *See Dukes declaration; Also Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699 (2d Cir. 2019); *Blankenship v. Napolitano*, 2019 U.S. Dist. Lexis 118731 (S.D. W.Va. July 17, 2019); *Teamsters Local 677 Health Servs. & Ins. Plan v. Friedmand*, 2019 U.S. Dist. Lexis 184186 (D.Md. October 23, 2019); and *Encompass Ins. Co. v. Stone Mansion Restaurant, Inc.*, 902 F.3d 147, 152-54 (3rd Cir. 2018)(holding removal not precluded where resident defendant had not been served); *LaRusso v. St. George's University School*, 747 F.3d 90, 97 (2d Cir. 2014)(nothing in Sections 1441 or 1446

require service upon a defendant before removal); *McCall v. Scott*, 239 F.3d 808, 813 n.2 (6th Cir. 2001)(“Where there is complete diversity of citizenship . . . inclusion of an unserved resident defendant in the action does not defeat removal”); *Zirkin v. Shandy Media, Inc.*, 2019 WL 626138, at *3 (C.D. Cal. Feb. 14, 2019); *Fisher v. Pelstring*, 2009 WL 10664813, at *204 (D.S.C. Sept. 29, 2009)(denying remand of a pre-service removal).

9. Because no defendant has been properly joined and served with the Complaint, the consent of other defendants is not required. 28 USC § 1446(b)(2)(A); *see also United Steel v. Shell Oil Co.*, 549 F.3d 1204, 1208 (9th Cir. 2008).

10. As required by 28 U.S.C. § 1446(d), written Notice of Removal is being given to all adverse parties and a copy of the Notice is being filed with the Clerk of the Common Pleas Court of Charleston County, South Carolina.

WHEREFORE, the Defendants, by counsel, give notice that the within civil action, previously pending in the Court of Common Pleas Court for Charleston County, South Carolina, has been removed to the United States District Court for District of South Carolina, Charleston Division.

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/Richard S. Dukes, Jr.
 Richard S. Dukes, Jr., Federal ID No.: 7340
 40 Calhoun Street, Suite 200 (29401)
 P.O. Box 22129
 Charleston, South Carolina 29413
 Telephone: (843) 576-2810
 Facsimile: (843) 577-1646
 Email: rdukes@turnerpadet.com

Carmelo B. Sammataro, Fed. ID # 9174
 Turner Padget Graham & Laney, P.A.
 Post Office Box 1473
 Columbia, SC 29202
 Phone: (803) 254-2200
SSammataro@TurnerPadget.com

September 1, 2022

ATTORNEYS FOR DEFENDANTS
 BISHOP OF CHARLESTON, A CORPORATION
 SOLE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-_____
John Doe 305, Julie McDonald, and	)	
Richard McDonald,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	
Richter and Haller, LLC, and	)	
The Bishop of Charleston a corporation	)	
Sole,	)	
	)	
Defendants.	)	
	)	

Summons

TO: Lawrence E. Richter, Jr.
David K. Haller
Agent for Richter and Haller, LLC
Agent for The Bishop of Charleston, a Corporation Sole

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action. A file-stamped copy of the complaint is served upon you with this summons.

Your answer or other response to the complaint is to be served upon the attorney for the plaintiff at 217 Lucas Street F-1, Mt. Pleasant SC 29464, or served by email at attygm@gmail.com.

According to the South Carolina Rules of Civil Procedure, you are required to appear and defend yourself in this action by making and serving an answer to this complaint within thirty (30) days after the complaint is served upon you. The thirty days begin to run from the date after this summons and complaint are served upon you; the date the service is made is excluded.

If within that time you fail to appear and defend as you are required to do by the Rules of Civil Procedure, the Plaintiff in this action shall apply to the Court for the relief demanded in this Complaint and judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Box 10
Mt. Pleasant SC 29464
843-321589
attygm@gmail.com

Attorney for the Plaintiff

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

Complaint

Summary of the Action

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

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

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

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

- b. the extent to which class action settlements are permitted to be collusive,
 - c. the extent to which colluding parties to a class action are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,
 - d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
 - e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his colluding “adversary” at the expense of the class members class counsel purports to represent,
 - f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
 - g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
 - h. the extent to which class counsel may charge class members an unauthorized fee, and
 - i. the extent to which applicable legal standards may vary according to the persons involved.
4. The case arises from a collusive class action in which the class counsel defendants:
- a. colluded with their “adversary” to reach a class settlement;
 - b. colluded with their “adversary” to judge-shop so as to move oversight and approval of that class settlement away from judges not desired to a particular judge in another circuit that was desired;

- c. placed their own financial interests, and the interests of their “adversary,” ahead of the interests of the class they purported to represent;
- d. submitted (without objection) patently false information to the circuit court;
- e. withheld from the circuit court (with cooperation of the “adversary”) information that a contingency fee payment had been made that applied to nearly all of the time in records class counsel submitted in support of a fee request for work done on the class action;
- f. charged individual class members a fee no order authorized them to charge; and
- g. failed to make proper disclosures to class members about class counsel’s conflicts and the fees already paid to class counsel before charging class members that unauthorized fee.

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

Parties and Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nature of Wrongdoing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58. The Diocese does not treat absent class members who got no notice (such as John Doe 305) as represented to the shopped-for circuit judge in the July 2007 hearing.

59. For a fifth example of collusion, no post-award fairness hearing under SCRCP 23 has yet been held in the class action, nor (as noted above) has any final order been entered in the class action. That refusal was and is apparently a tactic by the colluding parties to evade appellate review.

60. A motion for a post-award fairness hearing was filed in 2016 by a class representative. That motion has been ignored.

61. For class counsel, that tactic has evaded any review under SCRCP 23 of their *actual performance* in effectuating the class settlement, as opposed to making that assessment on hypothetical performance. Attorney fees were awarded without any review of collusive

conduct, or failures by class counsel such as not making proper conflict disclosures to the classes including the McDonalds, or failing to securing in a written order the relief claimed for persons such as John Doe 305, or charging improper fees to class members such as the McDonalds (a fee of 20%), or withholding material information about the fee from the McDonalds, or submitting fraudulent information to the court as part of the fee claim, or all defendants withholding from the court that nearly all time claimed in the class action to support the fee claim had already been paid for by a contingent fee paid by the Diocese to class counsel in November 2006.

62. Conservatively estimated, it appears that the total of class counsel's unauthorized fees exceeds \$900,000, of which the improper fees charged the McDonalds are a part. In addition, the \$2.5 million fee awarded was based on substantial misrepresentations to the court. No accounting has ever been made of the actual fees charged and collected by class counsel.

63. Class counsel's fiduciary obligation to each alleged class members and to each judicially approved class member is a duty either imposed under SCRCF 23 or assumed, or both, as class counsel acknowledged that fiduciary duty on the record.

64. Under SCRCF 23 both class counsel and the court have a fiduciary obligation to protect the absent members of the class, an obligation unchanged by judge-shopping even if the circuit judge has agreed to be shopped-for by colluding parties to a class settlement, and even if all parties and a shopped-for judge has agreed to ignore their fiduciary obligation.

65. If those duties of either counsel or the circuit judge are variable based on the persons involved, that criteria should be articulated for the benefit of South Carolina bench and bar.

66. As a sixth example of the parties' collusion, between June 2006, when the mediated class settlement was reached and its handwritten outline laid out, and January 2007, when a typed version was submitted to the court for approval, two provisions were added to the agreement. Each served the financial interests of class counsel and the Diocese at the expense of class members.

67. First, on page 13, in paragraph 6B, the attorneys' fees for class counsel were to be paid first, before any claims were made, class members identified, or any class member compensated, explicitly making the fees the highest priority of the class settlement. Awards to class members were subordinated to that fee. Paragraph 6B provides:

In the event that the total due [to class claimants] exceeds the amounts provided for ... then each award shall be reduced on a *pro rata* [sic] of the net settlement fund.

68. As this provision reflects, class counsel negotiated for themselves a fixed fee while simultaneously negotiating for the classes they claimed to represent a variable recovery that would be reduced *pro rata* if claims against the class fund were insufficient to pay the fee and all claims. Class counsel's interest in an attorneys' fee was made the highest priority of the class settlement, explicitly placed above the recovery for class members.

69. Second, on page 14, in paragraph 6C, the parties agreed that once all fees, costs, and claims were paid, then any remaining funds "will be returned to the defendants," meaning the Diocese.

70. Through those two modifications, each of class counsel and the Diocese had a financial interest in limiting the number of class members who made claims.

71. By an order of January 23, 2007 the shopped-for judge preliminarily approved these provisions “subject to the objection period and Fairness Hearing as set out in this order.” (Page 1 of that order).

72. A fairness hearing to complete the preliminary approval process was set for March 9, 2007, (Page 8 of that order).

73. “[N]otice of the settlement” was to be published once a week for the six weeks between January 23 and March 9, 2007. (Page 8 of that order). But the approved notice did not describe any monetary recovery for the class. Nor did the notice describe the attorneys’ fee class counsel would seek at the March 9 hearing. Nor did it mention any of the conflicts of interest class counsel had as to claims for class members against his own Diocese. Nor did it mention any of the collusion associated with the class action.

74. A copy of the settlement could be obtained by making a written request of class counsel. The order required class counsel to file their fee request by February 14 but made no provision for obtaining that request. Any objections to that request had to be filed eight days later, by February 22, before the notice period had run. Potential class members were given eight days to discover there was a class action, obtain by mail from class counsel information about the class action, discover that no information was provided about class counsel’s fee request and make a separate request for that information, obtain that information, then prepare and file any written objections.

75. The notice was designed to limit class members’ ability to review the fee request.

76. Because notice of the class settlement was not even attempted in the state where John Doe 305 lives, and because relief claimed to have been obtained for him was not included in any written order in the class action, John Doe 305 has lost the benefit of the defenses the

Diocese waived in the class settlement. As John Doe 305 was sexually abused by Eugene Condon in 1974 and 1975, before charitable immunity was abolished, class counsel have breached duties owed to John Doe 305 and have damaged him by depriving him of those waived defenses. Their performance fell below the standard of care.

77. Class counsels' conduct also fell below the applicable standard of care as to the McDonalds: by charging unauthorized fees, by failing to make proper disclosures of conflicts, by failing to disclose fees already awarded, and (with cooperation of the Diocese), by submitting material false information to the court, fraudulently withholding material information from the court and withholding the same information from the McDonalds.

78. Specifically, before each of the McDonalds was charged a 20% fee not authorized by any order, neither of them was told, among other things:

- a. that the class action was collusive,
- b. that no order authorized the fee class counsel charged for individual claimant recoveries,
- c. that class counsel had already been awarded a \$2.5 million fee,
- d. that class counsel had been paid by the Diocese, but had not disclosed to the court, a contingency fee for individual cases of the class representatives. That was payment for nearly all of the time submitted in support of the court awarded fee,
- e. of class counsels' conflicts regarding the lifelong relationship with the Diocese and class counsels' functioning, even during the class action proceedings, as an official of the Diocese,

- f. of class counsel's friendships with Diocese personnel, potentially including persons who engaged in sexual abuse,
- g. that class counsel appeared at and participated in settlement discussions for persons who were not members of the class,
- h. that persons who opted out of the class had received more favorable settlement terms than did class members,
- i. that class counsel or his clients had contributed \$100,000.00 to funding the more favorable settlement terms for those who had opted out, or
- j. that with cooperation of the Diocese, class counsel had submitted blatantly false time and expense records to the court, which intentionally overstated time claims.

79. In late 2019 each of the McDonald plaintiffs learned for the first time of the information that class counsel had not disclosed.

80. As noted above, the McDonalds were each charged a 20% fee which no order authorized.

81. The fee charged class members and non-class members without court authorization and without proper disclosure is, upon information and belief, conservatively estimated to have been in excess of \$900,000.

82. As a matter of law, class counsel and class representatives hold in constructive trust funds distributed to them in the class action. Under *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984):

If the class representative or class counsel breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class.

83. Discovery will ascertain and account for the amounts charged by class counsel without court authorization. Accounting records of the class action reflect a \$2.5 million fee was paid to class counsel on September 4, 2007. No accounting record shows the separate contingent fee payment of \$145,000 made to class counsel by the Diocese on November 20, 2006. A document prepared by class counsel described that payment as the “initial settlement disbursement.” The check by which the payment was made appears at Attachment B.

84. The January 2007 “Settlement and Arbitration Agreement” states that as to the claims of class representatives identified as Johns Doe 53, 66, 66A, 67, Janes Doe A and B, and Rachel Roe, “It is understood and agreed that the claims of these claimants are released and these settlement funds [identified for each claimant] will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.” The class representatives had no interest in the settlement that applied to the class members.

85. Nor does any accounting show the unauthorized fees charged the McDonalds and other class members.

86. Class counsel also arranged, with cooperation of the Diocese, to be paid first, within ten days of the court’s orders concluding the preliminary approval, before any class members had an opportunity to make a claim, and before the recovery to the class was known.

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

McDonalds, by actually representing them.

88. This action has been brought within three years of John Doe 305 learning in November 2019 that class counsel had claimed they had obtained relief for even those absent class members who received no notice of the class action case, without actually securing in any written order that relief for John Doe 305, and within three years of learning that the Diocese defendants aided and abetted that breach of fiduciary duty towards him.

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

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

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

91. As noted above, under the holding of *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984), by operation of law any benefits from the class action are held by class counsel in trust for the class, including its absent members. Those benefits held in trust should be used to benefit the Plaintiff Doe 305, and to reimburse the McDonalds.

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

93. To gain court approval of the class settlement, the defendants made overtly false representations of fact to the shopped-for circuit judge, particularly in a hearing held July 13,

2007. The transcript for that hearing is unusual in that it has confusing page numbering, with multiple page numbers on each page. Using the numbers that correspond to a 33-page hearing transcript, among those false representations was that there was an “understanding” (on page 3) among all defendants in this action “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese defendants) outside of the class claim procedure. That “understanding” communicated to the shopped-for judge was never placed in any written order.

94. The discussion began concerning a specific group of individuals (called the “actual notice” group), a group of individuals who, according to files of the Diocese, had previously reported their abuse to the Diocese. Four (hearing page 8) or five (hearing pages 4 and 5) of “those particular folks” had not been located. The Diocese represented, without objection by class counsel (at page 3, emphasis added):

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

95. Then the discussion broadened to include all absent class members who got no notice. At page 12, counsel for the Diocese stated:

Judge, I view that responsibility as ongoing and so that we got to find the other four *and we’ve got to find anybody else* who has kind of, lack of a better word, comes out of the woodwork.

96. Class counsel, on page 14 of that same July 13, 2007 transcript, summarized to the court (emphasis added), that:

what the Diocese has come to is that if *anybody* is missed . . . the diocese *waives all the same defenses* that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards.

97. When the shopped-for judge confirmed the representation by repeating back to counsel, on page 22 of that same transcript, the court stated, emphasis added:

There is nothing more that the diocese could possibly do that I am aware of. I mean, at this point in time when the diocese obligates itself to do as it has been described, ***there is nothing more that they can possibly do as far as I can even imagine***, Mr. Shahid, truly. I mean, what they say is ***if you come forward in the future we will treat you just the same*** as we have treated these individuals and the relief is available for you. ***I know of nothing more that could be done***. So I certainly would approve that.

It is a tautology that the only way there was “nothing more” that could be done, particularly after the scope of notice had been reduced, was if all absent class members who got no notice would get the same class settlement benefits. Yet no written order secured that relief for persons such as John Doe 305, a breach of duty by class counsel to absent members of the class that can be mitigated only by enforcing the agreement pursuant to SCRCP 43(k) as to John Doe 305 and any other absent class member who got not notice.

98. To get a reduced scope of notice approved, the defendants intended in that July 13, 2007 hearing to create the false impression with the shopped-for judge that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend the same class relief to that victim. The discussion started in the context of the four or five unknown “actual notice” victims discussed at the beginning of the hearing, but the assurances to the court broadened so as to include all absent class members.

99. In making the false representation that they made no effort to embody in any court order, class counsel were operating in the interest of themselves and in the interest of the Diocese defendants, rather than in the interest of the absent members of the class such as John Doe 305, to whom class counsel owed, or had assumed, a fiduciary duty. Class counsel intended that the shopped-for judge would rely on the statement, and the shopped-for judge did

rely on the statement. However, when the shopped-for judge did not embody the “understanding” in any written order, none of the defendants requested that the shopped-for judge do so. That fell below the standard of care for class counsel, as aided and abetted by the Diocese.

100. Class counsel had alleged in Paragraph 36 of the John Doe 53 class action complaint filed in Charleston County on December 2, 2005, that the number of abuse victims “may exceed the hundreds.” In originally proposing nationwide notice, counsel were aware or should have been aware that many persons sexually abused in South Carolina had likely moved out of South Carolina and resided out of state.

101. Class counsel were aware, as they had alleged for the class that they and John Doe 53 represented, that the number of sexual abuse victims far exceeded the victims already known from the files of the Diocese. Class counsel were aware the Diocese had a history of concealing sexual abuse yet relied on the Diocese to search their own files for abuse victims. Class counsel were also aware that some abuse victims repressed memories of their childhood sexual abuse (or were incapacitated as a matter of law) and could reasonably be expected not to recall childhood abuse for various lengths of time or were unable to pursue their claims for other reasons.

102. In short, the “Primary class” of sexual abuse victims was known by class counsel, or should have been known by class counsel, to be large and to require widespread notice. The defendants deliberately misrepresented to the shopped-for judge that absent class members later disclosed would receive relief, when in fact those absent members would get no relief unless the agreement placed on the record in open court is enforced through this action.

The defendants have opposed relief for absent class members who got no notice and at present continue to oppose relief for absent class members who got no notice.

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

104. Page 4 of the July 30, 2007 order certifying the class states, “Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members.” In 2007 the defendants were aware that the written orders failed to require nationwide notice (as they have cooperated to omit that notice after it was originally proposed) and failed to secure the full relief for absent class members that had been made in those “representations and stipulations of the Diocese.”

105. The result of class counsels’ failure, which the Diocese aided and abetted, was to exclude John Doe 305 from any recovery for his sexual abuse and to deprive him of the benefit of the defenses that were waived in the class action settlement. Rather than protect the absent class members to whom they had assumed, and the law imposed, fiduciary duties, class counsel protected the interest of the Diocese defendants and class counsels’ own interest in their fee.

106. For the Diocese the benefit of the class action was its potential preclusive effect, the secondary objective class counsel sought for his Bishop and his Diocese, after class counsel’s primary objective in their fee. As explicitly stated in the class settlement agreement, and as noted above, class counsels’ fee was the highest priority of the class action settlement. The fee was fixed, and compelled a *pro rata* reduction of recovery to class members if “too many” abuse victims made claims. Failing to secure relief for absent class members who got no

notice served the purpose of avoiding having to implement the fee provision that compelled a *pro rata* reduction.

107. Correspondingly, not having “too many” class claimants also served the financial interest of the Diocese in that a reduced number of class claimants increased the chances that a residual class fund would remain after claims made and would be returned to the Diocese.

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

- a. Shopping for a judge and doing so by collaborating to file, and accept service of, a duplicate class action complaint for John Doe 53 and other illicit means of evading SCRCP 23;
- b. Making no objection to the complex case designation, even though the Supreme Court’s July 26, 2006 complex case order applied to cases that could not be settled and the class settlement had already been reached;
- c. Misrepresenting to the court that absent class members who got no notice would receive the same compensation as class members;
- d. Taking no position on whether the class should be certified;
- e. Acquiescing in class counsel failing to disclose to the class his life-long ties to and functions on behalf of the Diocese;
- f. Making no disclosure to the class of the superior settlement terms (compared to those for the class) for the individuals who were the class representatives,

- and whose settlement terms would apply (a) whether or not the class was approved, and (b) for fixed sums not dependent on an arbitration process;
- g. Making no disclosure to the court of the November 20, 2006 contingent fee payment to class counsel for individual cases of class representatives, or that the billing records relied on for the class action fee application was almost entirely (from 2003 through November 20, 2006) for time for which that contingency fee had already compensated class counsel;
 - h. Making no objection that the class representatives referred to in the 2006 version of the class settlement agreement had already been paid and whose claims were already settled in 2006 whether or not the class was later certified;
 - i. Making no objection that the claims of class representatives referred to in the 2007 version of the class settlement agreement had already been paid and their claims released whether or not the class was later certified, meaning the “class representatives” had no stake in the class settlement, and were not representative of either class;
 - j. Not disclosing to the class the superior settlement terms reached with the individuals who objected to the class settlement;
 - k. Not disclosing to the class that those superior settlement terms for objectors were funded in part by class counsel or class members paying \$100,000 from class counsel’s trust account;

- l. Not objecting when class counsel negotiated simultaneously a fixed fee for themselves and a variable recovery for the class, with the compensation for class members being subordinated to that fee;
- m. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range, saying nothing about the blatantly fraudulent time records of class counsel, not disclosing that a contingent fee had already been paid for the time spent on individual cases which formed the vast percentage of time claimed in the fee application (time from 2003 to November 20, 2006), and not disclosing that the class settlement was reached seven months after filing without a single motion having been argued or decided, or a single witness having been deposed;
- n. agreeing that no accounting records of the class fund should include the contingency fee payment to class counsel;
- o. agreeing to the fee being awarded before any member of the class member was even identified, had even submitted a claim, or had been compensated;
- p. Agreeing to ignore the South Carolina Supreme Court's March 2009 directive that the class action should be concluded in six months unless an extension was sought from that court;
- q. agreeing to seek no post-award fairness hearing under SCRCP 23 where the *actual* conduct of the class action, substantively and procedurally, and the *actual* recovery for the class members would be assessed;
- r. ignoring a 2016 motion by one of the class representatives for a post-award fairness hearing; that motion alleged that class counsel had "abandoned" the

class representative and the representation had terminated, and

s. seeking no final order in the class action so as to avoid all appellate review.

109. The defendants caused John Doe 305 special harm in the form of precluding him from making any claim against the Diocese for his sexual abuse, specifically changing the notice to deny him all chance to enjoy the benefits of a waived defense of statute of limitations and a waived defense of charitable immunity. The professional representation of the plaintiff by class counsel was inadequate and failed to meet the standard of care applicable to South Carolina attorneys, and was a breach aided and abetted by the Diocese.

110. The defendants caused the McDonald plaintiffs special harm in the form of a 20% fee which no order authorized, and without proper disclosures as alleged above, proper disclosures having been fraudulently concealed from them. The Diocese aided and abetted that breach by ignoring the Supreme Court's 2009 order and agreeing to omit any judicial review of class counsel's actual conduct.

**For a First Cause of Action:
Declaratory Relief**

111. Allegations above are incorporate into this cause of action as if fully stated.

112. This action seeks declaratory relief, pursuant to SCRCP 57 and S.C. Code § 15-53-10 et seq., to determine, among other things, under SCRCP 23:

- a. The conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench,
- b. the extent to which class action settlements are permitted to be collusive,
- c. the extent to which colluding parties are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,

- d. the extent to which class counsel is permitted to manipulate SCRCF 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
- e. the extent to which class counsel is permitted to manipulate SCRCF 23 to serve the financial interests of his “adversary” the Diocese at the expense of the class members class counsel purports to represent,
- f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
- g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
- h. the extent to which class counsel may charge an unauthorized fee to class members, and
- i. the extent to which applicable legal standards vary according to the persons involved.

113. Declaratory relief is requested, as described above as well as described below in the “relief sought.”

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

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

115. Pursuant to S.C. Code § 15-36-100(b), Attachment A to this complaint, and incorporated herein pursuant to SCRCF 10(c), is an affidavit of Michael Virzi specifying certain various negligent acts or omissions of class counsel, and the factual basis of the

negligent acts or omissions of class counsel. That affidavit was prepared for the Supreme Court as part of a petition for original jurisdiction and bears a Supreme Court caption.

116. Class counsel assumed, or by law had imposed, fiduciary duties to John Doe 305, as alleged above and as set forth in Mr. Virzi's affidavit.

117. Unless the agreement placed on the record by class counsel and the Diocese is fully enforced pursuant to SCRCF 43(k) to fully benefit John Doe 305, and to the extent not fully enforced, class counsel breached those duties to him, as alleged above. They eliminated any chance of John Doe 305 getting notice and failed to secure in a written order relief claimed to have been obtained, depriving him of the waived defenses available only in the class action and the relief available to him in the class action.

118. As to John Doe 305, class counsel were professionally negligent, and the Diocese defendants aided and abetted that breach of fiduciary duty, which damaged John Doe 305.

119. As to each of the McDonald plaintiffs, class counsel were professionally negligent in charging each of the McDonalds a fee which no order authorized, without proper disclosures, and in avoiding court review of class counsel's actual performance and actual charges to class members, as alleged above.

120. The Diocese aided and abetted the breach of duty by class counsel, as alleged above. They cooperated to conceal payments made to class counsel. They cooperated in having no accurate accounting of class funds and charges made by class counsel. They collaborated in misrepresentations to the court and in withholding pertinent information from the court. And they cooperated to ignore the Supreme Court, ignore a motion for a post-award fairness hearing

and agreed to seek no final order in the class action so as to keep class counsel's actual performance and actual charges to class members from being reviewed.

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

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

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

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

124. The Diocese defendants joined with class counsel in eliminating nationwide notice of the class settlement while also making false representations on the record to the shopped-for judge, supposedly protecting the interest of absent class members such as John Doe 305 that he would be afforded relief once he learned of the class action. Each defendant then failed to secure those representations in any written order.

125. As to the McDonalds, the Diocese aided and abetted class counsel's breaches of duty by, among other things, cooperating to ignore the 2009 Supreme Court order and the 2016 motion by a class representative, to seek no final order, to require no full accounting of the class funds and class counsel's actual performance and actual fees charges, and in concealing from the court the contingent fee payment made to class counsel for the class representatives.

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

the interests of abuse victims in the classes they chose to define both their own interest in an attorneys' fee and the interests of class counsel's own Bishop and Diocese.

127. The plaintiffs have each been damaged by the Diocese defendants aiding and abetting class counsels' breaches, and each plaintiff is entitled to actual and punitive damages as a result.

**For a Fourth Cause of Action:
Civil Conspiracy, Conversion, Accounting, Disgorgement
Against all defendants**

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

129. The defendants joined together in common action for the purpose of injuring the plaintiffs. The defendants collaborated in a collusive class action, judge-shopped for review of the class settlement, and agreed to a class settlement which prioritized the defendants' financial interests at the expense of class members. The defendants submitted false information to the court and withheld material information from the court.

130. As to John Doe 305, the defendants collaborated in reducing the notice program so as to deprive him of notice so he and all other class member who resided out of state could not participate in the waived defenses available in the class action or the relief available in the class action.

131. As to the McDonalds, the defendants collaborated in withholding material information from the court and the class members, submitting false information to the court, ignoring the 2009 order of the Supreme Court, ignoring the class representative's 2016 motion, seeking no final order in the class action and in making no proper accounting of the class settlement funds.

132. The defendants caused the plaintiffs special damage. John Doe 305 is required to

confront defenses otherwise waived, and the McDonalds were each charged a fee without authorization and without proper disclosures, which properly concluding the class action settlement by a post-award fairness hearing would disclose.

133. The common design among the defendants was to maximize their own financial interests, even at the expense of the persons in the classes, and regardless of the injuries done to the plaintiffs to whom they owed a fiduciary duty.

134. Class counsel made affirmative misrepresentations to the court and to class members, and wrongfully appropriated what is conservatively estimated to exceed \$900,000 from the class members, without regard to the improperly awarded fee. The Diocese collaborated in that process. Each collaborated to exclude eligible sexual abuse victims from making claims, class counsel acting so as to protect the Diocese at the expense of their class claimants. Funds for class members have been improperly drawn from the class fund and converted by class counsel to their own use.

135. The plaintiffs are entitled to actual and punitive damages against the defendants for the civil conspiracy; as well as an accounting of improper charges to class members and disgorgement of all funds improperly converted by class counsel.

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

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

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

138. At that time class counsel had pleaded a class action whose definition included John Doe 305. He was an intended beneficiary of that agreement with the Diocese.

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

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

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

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

Demand for Jury Trial

143. Plaintiffs demand a trial by jury.

Relief Sought

The plaintiffs seek the following relief:

144. For the court to declare the rights and obligations of the plaintiffs under SCRCP 23 and 57, as authorized by the Uniform Declaratory Judgments Act, S.C. Code §§ 15-53-10 et seq. to declare the “rights, status and other legal relations,” as put in S.C. Code § 15-53-20, and to construe “other writings constituting a contract,” as put in S.C. Code § 15-53-30, in the following respects under SCRCP 23:

- a. Is it proper for parties to reach a class settlement then collude to bypass SCRCP 23 approvals and judge-shop for purposes of moving a settled class action to another county for purposes of class settlement approval and oversight, thereby avoiding judges not desired and selecting a desired judge?
- b. Is it proper for the judge-shopping tactics to include (a) filing new class

action cases, (b) replicating in another circuit an existing and settled class action complaint and (c) accepting service of such new complaints?

- c. Is it proper for class counsel to refuse to notify class members of their substantial conflicts of interest?
- d. Is it proper for class counsel to enter an agreement to settle a class action which simultaneously, and explicitly, creates a fixed fee for class counsel, elevates that fee for class counsel above the interests of class members and makes class recovery subordinate *pro rata* to counsel's fixed fee?
- e. Does it breach class counsel's fiduciary duty to absent class members to accommodate an objection by his "adversary" to eliminate notice for all class members who reside out of state without providing relief to out of state class members?
- f. Is it proper for class counsel to have received a payment to resolve the claims of class representatives, and payment for a fee for that work, without any parties disclosing that fee payment to class members or to the court?
- g. Must a reviewing court examine time records submitted by class counsel in support of a fee award and reject, or at least inquire about, blatantly fraudulent submissions?
- h. Is it proper for class counsel and the Diocese fail to disclose that nearly all of the time submitted by class counsel in support of a fee award (all time between 2003 and November 20, 2006) had been paid for by a prior payment of \$145,000?
- i. Does class counsel breach their fiduciary duty to class members by charging a fee not authorized by any court order?
- j. To what extent does class counsel breach their fiduciary duty to class members by failing to disclose each of (a) substantial conflicts of interest with the Diocese and the shopped-for judge, (b) collusion in the class action, (c) the judge-shopping, (d) that no order authorized the fee charged the class member, (e) that a \$145,000 fee payment had already been made to class counsel, (f) that a \$2.5 million fee payment had already been made to class counsel, (g) that objectors to the class settlement got better settlement terms than class members, (h) that class counsel participated in discussions to obtain better settlement terms for objectors, and (i) that class counsel paid \$100,000 from his trust account to partially fund better settlement terms for objectors?
- k. Does class counsel breach their fiduciary duty to absent class members when they fail to secure in a written order the relief and waived defenses stated on

the record to have been obtained for absent class members who got no notice?

1. Should class counsel be required to disgorge to benefit the class members all improperly charged fees, including the \$2.5 million award and the unauthorized fee charged all class members?

145. Actual and punitive damages as provided by law,

146. An accounting of sums charged to class members such as the McDonalds without proper authorization and without proper disclosures, and of the residual class funds refunded to the Diocese,

147. Disgorgement for the benefit of the class of sums improperly charged each class member by class counsel, of the class funds refunded to the Diocese, and of all fees paid to class counsel based on misrepresentations and fraudulently withheld information;

148. Costs and disbursements of this action as provided in S.C. Code § 15-53-110;

149. Reasonable attorney fees; and for

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

Respectfully submitted,



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

Attorney for the Plaintiffs

August 29, 2022

State of South Carolina
In The Original Jurisdiction Of The Supreme Court

Case No. 2020 _____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Affidavit of Michael J. Virzi

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

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

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

- A. I am a lawyer licensed to practice law in South Carolina, and my practice for the past seventeen years has focused exclusively on matters of legal malpractice, ethics, and lawyer discipline;
- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, I served a three-year term as Chair of the former from 2007 to 2010 and a two-year term as chair of the latter

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

- C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;
 - D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught Fundamentals of Law Practice and Professionalism; I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice, ethics, and lawyer discipline; I am an instructor for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;
 - E. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and
 - F. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this matter.
3. My opinion is based on review of the following documents:
- A. Petition for Original Jurisdiction in the above-captioned case;
 - B. Complaint in the above-captioned case;
 - C. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
 - D. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
 - E. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
 - F. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;
 - G. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636 (collectively hereinafter "the Consolidated Class Actions");

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- H. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
- I. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
- J. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
- K. November 7, 2006, letter from A. Peter Shahid, Jr., to Lawrence E. Richter, Jr., regarding the Consolidated Class Actions;
- L. November 10, 2006, letter from Lawrence E. Richter, Jr., to Albert P. Shahid, Jr., regarding the Consolidated Class Actions;
- M. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in the Consolidated Class Actions;
- N. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in the Consolidated Class Actions;
- O. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in the Consolidated Class Actions with exhibits, including:
 - i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;
 - ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;
 - iii. Affidavit of Angela Pittard, with attached timesheets;
 - iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and
 - v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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- P. July 12, 2007, letter from Lawrence E. Richter, Jr., to The Honorable Diane S. Goodstein regarding the Consolidated Class Actions;
- Q. Transcript of July 13, 2007, hearing before The Honorable Diane S. Goodstein;
- R. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in the Consolidated Class Actions;
- S. Order Approving Settlement, dated and filed July 30, 2007, in the Consolidated Class Actions;
- T. Order of the Court, dated and filed August 31, 2007, in the Consolidated Class Actions;
- U. February 19, 2008, letter from Lawrence E. Richter, Jr., to Richard McDonald regarding "John Doe 538 vs. The Diocese of Charleston, et al." and enclosing a Settlement Statement;
- V. Order of the Supreme Court of South Carolina, dated March 19, 2009, in John Doe v. Lawrence E. Richter, Jr., et al.;
- W. Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, dated June 17, 2011, and filed June 27, 2011, in John Doe 2 and Jane Doe 4 vs. The Bishop of Charleston, et al., Case No. 10-CP-10-5520;
- X. Notice of Motion and Motion to Enforce Settlement, dated April 16, 2012, in the Consolidated Class Actions;
- Y. Transcript of Record before The Honorable Edgar W. Dickson, dated April 12, 2013, in the Consolidated Class Actions;
- Z. Order on Motion to Enforce Settlement, dated November 21, 2013, and filed on December 17, 2013, in the Consolidated Class Actions;
- AA. Transcript of Motions Hearing before The Honorable J.C. Nicholson, Jr., dated April 10, 2014, in Father Doe 194 vs. Bishop of Charleston, et al.;
- BB. Motion for Post-Award Fairness Hearing by Allen Sires, dated and filed on May 11, 2016, in 2006-CP-18-1310 and 2006-CP-18-1311;
- CC. Affidavit of Lawrence E. Richter, Jr., dated March 31, 2015, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176;

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

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

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

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

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

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

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

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

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

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

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

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

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



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

Further affiant sayeth naught.


Michael J. Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me
This 2nd day of September, 2020


Notary Public

My Commission Expires : 10/18/2026

Look for yellow background on the front of this check, and the ImageSafe® logo on back. If not present, do not cash.

DIocese of CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42983

67-448/539 SC 2961

PAY TO THE ORDER OF Richden & Haller, LLC - Client Trust Accounts \$ 345,000.00

DATE 11-20-06

Bank of America

DIocese of CHARLESTON
CHARLESTON 345,000.00 DOLLARS

FOR John Z. Banta
Mrs. Martha Langfellow

⑈042983⑈

GUARDIAN • SAFETY

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DIocese of CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42982

67-448/539 SC 2961

PAY TO THE ORDER OF Richden & Haller, LLC \$ 145,000.00

DATE 11-20-06

Bank of America

DIocese of CHARLESTON
CHARLESTON 145,000.00 DOLLARS

FOR John Z. Banta
Mrs. Martha Langfellow

⑈042982⑈

GUARDIAN • SAFETY

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NUMBER: _____

JOHN DOE 305, JULIE McDONALD,
and RICHARD McDONALD

Plaintiffs,

vs.

LAWRENCE E. RICHTER, JR., DAVID
K. HALLER, RICHTER & HALLER, LLC,
THE BISHOP OF CHARLESTON a
CORPORATION SOLE,

Defendants.

DECLARATION OF RICHARD DUKES

I, Richard S. Dukes, declare as follows:

1. I am attorney at law licensed to practice in the State of South Carolina and before the United States District Court for the District of South Carolina. I am a shareholder in the law firm of Turner, Padgett, Graham, & Laney, P.A. and counsel of record for Defendants Bishop of Charleston, a Corporation Sole,. The matters set forth are within my personal knowledge, and if called upon as a witness I could and would testify competently as follows:

2. Attached as **Exhibit A** to the Diocese defendants' concurrently filed Notice of Removal is a true and correct copy of the Complaint that Plaintiffs John Doe 3045, Richard McDonald, and Julie McDonald filed on August 30, 2022 in this action against the Diocese in the Court of Common Pleas for Charleston County, South Carolina.

3. No defendants have been served with the Complaint or any other process, pleading, or order in this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this the 1st day of September, 2022, in Charleston, South Carolina.

s/Richard S. Dukes, Jr.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

Case No.: 2:22-cv-02940-BHH

**JOINT MOTION TO REMAND
OF LAWYER DEFENDANTS**

**TO: RICHARD S. DUKES, JR., ESQ., AND CARMELO B. SAMMATARO, ESQ.,
ATTORNEYS FOR THE BISHOP OF CHARLESTON**

YOU WILL PLEASE TAKE NOTICE that Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, “Lawyer Defendants”) will jointly move this Court for an order remand this suit to the South Carolina Court of Common Pleas for Charleston County pursuant to 28 U.S.C. § 1447. Removal of this case violates the Forum Defendant Rule and the *Rooker-Feldman* Doctrine. This motion shall be supported by an attached memorandum of law, pursuant to Local Civ. Rules 7.04 and 7.05 (D.S.C.).

[signature page to follow]

BRUNER POWELL WALL & MULLINS, LLC

s/ Chelsea J. Clark

Benjamin C. Bruner, Fed. ID No. 10625

Chelsea J. Clark, Fed. ID No. 12730

Post Office Box 61110 (29260)

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*Attorneys for Lawrence E. Richter, Jr. and
Richter & Haller, LLC*

September 16, 2022

Columbia, South Carolina

GORDON & REES LLP

s/ Susan Taylor Wall

Susan Taylor Wall, Fed. ID No. 4592

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(843) 714-2506

swall@grsm.com

Attorneys for David Haller

September 16, 2022

Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

Case No.: 2:22-cv-02940-BHH

**MEMORANDUM IN SUPPORT OF
LAWYER DEFENDANTS' JOINT
MOTION TO REMAND**

Defendants Lawrence E. Richter, Jr. ("Richter"), David K. Haller ("Haller"), and Richter & Haller, LLC (collectively, "Lawyer Defendants") submit this memorandum in support of their joint motion to remand this case to the Charleston County Court of Common Pleas.

PROCEDURAL BACKGROUND

This case is one in a long series of lawsuits brought by clients of attorney Gregg Meyers against class action counsel who obtained a landmark settlement for victims of sexual abuse allegedly committed by persons under the ambit of the Bishop of Charleston ("Bishop" or "Diocese"). In the first eight such cases, the Lawyer Defendants were granted summary judgment, which the South Carolina Court of Appeals affirmed *per curiam*.¹ During that appeal, Mr. Meyers filed two more cases against class counsel. In one of those cases, brought in 2019 by Mr. Meyers on behalf of Jane Doe 304, counsel for the Bishop filed a notice of removal with this Court.² The bases for removal in that case were very similar to the one currently before this Court. On January

¹ See *John Doe 2, et al. v. The Bishop of Charleston, a Corporation Sole, et al.*, Case No. 2017-001996 (unpublished opinion filed March 3, 2021 S.C. Ct. App.).

² See *Jane Doe 304 v. Lawrence E. Richter, Jr., et al.*, Case No. 2:19-cv-3409-RMG, ECF No. 1 (filed December 6, 2019 D.S.C.) (hereinafter, "Doe 304").

6, 2020, the Lawyer Defendants filed a joint motion for remand in the Doe 304 case. (Doe 304, ECF No. 5.) The Diocese consented to the remand, and the Court entered a text order granting remand on February 20, 2020. (Doe 304, ECF Nos. 10 & 11.) The Doe 304 case is now proceeding through the Court of Common Pleas for Charleston County, along with yet another, similar malpractice suit brought by attorney Meyers on behalf of Plaintiff Robert Chimento. Both cases have pending motions to dismiss filed by the Lawyer Defendants. Those two remaining malpractice cases have been assigned by the South Carolina Supreme Court to The Honorable J. Derham Cole for adjudication.

The instant case was initially filed in the Court of Common Pleas for Charleston County, like the other two pending there now, after the Plaintiffs' prior attempts to obtain relief were unsuccessful. Plaintiffs first filed a petition for original jurisdiction in the South Carolina Supreme Court. The Supreme Court denied that petition.³ On August 29, 2022, two of the instant Plaintiffs, Julie McDonald and Richard McDonald, filed a purported motion to intervene in the closed underlying class action from 2006.⁴ The next day, on August 30, 2022, Plaintiffs filed this suit in the Court of Common Pleas for Charleston County. All of the claims asserted in this case are governed by state law and do not implicate any federal questions. (See ECF No. 1-1, pp. 29–34 (asserting declaratory judgment; professional negligence and breach of fiduciary duty; aiding and abetting breach of fiduciary duty; civil conspiracy, conversion, accounting, and disgorgement; and breach of contract).) Two days after this action was filed, on September 1, 2022, the Bishop filed a notice of removal. (ECF No. 1.) At the time the notice was filed, none of the four defendants

³ See *John Doe 305, Julie McDonald, and Richard McDonald v. The Bishop of Charleston, a Corporation Solo, et al.*, Case No. 2020-001415 (order filed April 19, 2021 S.C. Sup. Ct.).

⁴ See *John Doe 53, et al. v. The Bishop of Charleston a corporation Sole, et al.*, Case No. 2006-CP-18-01310 (purported motion filed Aug. 29, 2022 S.C. Ct. of Common Pleas).

had been served. All of the defendants in this case are citizens of South Carolina. (*See* ECF No. 1-1, ¶¶ 11, 17–19.) Despite this total lack of diversity among the defendants, the notice of removal asserts diversity jurisdiction. (ECF No. 1, ¶ 5.) The Bishop asserts that because no defendants have been served, there is diversity. This assertion defies common sense and is contrary to the law.

STANDARD OF REVIEW

The process for removal of a suit from state to federal court on the basis of diversity jurisdiction is described in 28 U.S.C. § 1446. Diversity jurisdiction is generally conferred by 28 U.S.C. § 1332, which provides for original jurisdiction of the District Court where an action is between “citizens of different States.” *See* 28 U.S.C. § 1332(a)(1). A civil action may not be removed under Section 1332 jurisdiction “if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2). A party may file a motion to remand the case back to state court for a defect in the removal pursuant to 28 U.S.C. § 1447(c).

“The burden of establishing federal jurisdiction is placed upon the party seeking removal.” *Mulcahey v. Columbia Organic Chemicals Co.*, 29 F.3d 148, 151 (4th Cir. 1994) (citing *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97, 42 S.Ct. 35, 37 (1921)). The Fourth Circuit has found that Congress expressed a “clear intention to restrict removal and to resolve all doubts about the propriety of removal in favor of retained state court jurisdiction.” *Marshall v. Manville Sales Corp.*, 6 F.3d 229, 232 (4th Cir. 1993). Federal courts are obliged to construe removal jurisdiction strictly and remand to state court if there is any doubt because of the significant federalism concerns implicated. *See Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 816 (4th Cir. 2004) (quoting *Mulcahey*, at 151). Here, the burden of proof is on the Bishop of Charleston as the removing party

and any doubt as to the efficacy of the removal of a case on a diversity basis where all parties are from South Carolina must be construed in favor of remand.

ARGUMENT

In this case, the Bishop of Charleston is seeking to remove a state court case pleaded against only in-state defendants and containing only state law claims about an underlying state court case. Such a removal belies the law and common sense. In the first instance, the Bishop must show that there would be original diversity jurisdiction in this Court had the case been filed here. However, where all parties are citizens of this state, there cannot be diversity jurisdiction.

1. The Forum Defendant Rule prevents removal on diversity jurisdiction grounds.

Diversity jurisdiction arises from Section 1332 of Title 28, which allows for federal courts to hear cases between citizens of different States. *See* 28 U.S.C. § 1332(a)(1). This statutory section bears in mind that federal court obtain authority for their diversity jurisdiction from the United States Constitution, Article III, § 2. Courts construing Section 1332(a)(1) jurisdiction must, therefore, bear in mind the constitutional implications of the diversity requirement, along with the corollary policy that seeks to provide diverse citizens with an impartial federal forum. *See AmGuard Ins. Co. v. SG Patel & Sons II LLC*, 999 F.3d 238, 246 (4th Cir. 2021). The goals of diversity jurisdiction have led Congress to codify limitations on the exercise of jurisdiction at the behest of defendants through removal. Because of these limitations, defendants generally cannot remove a case where any of the defendant is a citizen of the State in which the action is brought. *See* 28 U.S.C. ¶ 1441(b)(2). This provision is known as the Forum Defendant Rule.

“‘[T]he forum defendant rule disallows federal removal premised on diversity in cases where the primary rationale for diversity jurisdiction—to protect defendants against presumed bias of local courts—is not a concern because at least one defendant is a citizen of the forum state.’”

See Finch v. U.S. Fid. & Guar. Co., Case No. 3:19-cv-01827, 2020 WL 2988944, at *2 (D.S.C. June 4, 2020) (Hendricks, J.) (quoting *Morris v. Nuzzo*, 718 F.3d 660, 665 (7th Cir. 2013)). The Rule provides that, a “civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2). “Separate and apart from the statute conferring diversity jurisdiction, . . . the forum-defendant rule confines removal based on diversity jurisdiction to instances where no defendant is a citizen of the forum state.” *Turtle Factory Bldg. Corp. v. McGrath Real Est. Holdings, LLC*, Case No. 2:20-cv-03099-RMG, 2021 WL 688697, at *2 (D.S.C. Jan. 28, 2021) (Gergel, J.) (citing *Phillips Constr. LLC v. Daniels Law Firm, PLLC*, 93 F. Supp. 3d 544, 548 (S.D. W. Va. 2015)).

In order for the Bishop’s “removal to not offend the forum defendant rule, it must demonstrate that no Defendant is a resident of South Carolina.” *See Finch* at *3 (citing 28 U.S.C. § 1441(b)(2)). There is no contention in this case that any defendant is a citizen of another state. In the *Finch* case, cited *supra*, only one in-state Defendant was sufficient to defeat diversity jurisdiction when the Forum Defendant Rule was applied. In this case, the Diocese’ location is inherent in its name, and the lawyer defendants all live and practice in South Carolina. There is no defendant who is not a citizen of this state. By definition, this case runs afoul of the Forum Defendant Rule at every turn. If every South Carolinian defendant were dismissed, there would be no defendants. Therefore, this case should be remanded to state court.

2. “Snap removal” is an improper attempt to shoehorn this case into federal court.

In this case, the Bishop is attempting a phenomenon known as “snap removal,” much as was attempted in the Jane Doe 304 case. That is, the Bishop filed the notice of removal prior to receiving service of process for purposes of avoiding normal procedural requirements. However,

a procedural ploy to avoid consideration of one or more in-state defendants cannot be of any utility where there is not a single diverse defendant in the whole case upon which to hang diversity jurisdiction. This conclusion is supported by case law, public policy, legislative intent, and common sense.

It is undisputed that none of the lawyer defendants in this case had been served when the Diocese removed this case two days after it was filed. In the notice of removal, the Diocese asserts that the Forum Defendant Rule “does not apply because no defendant has been served with the Complaint in this action.” (ECF No. 1, ¶ 8.) This argument is based upon an interpretation of the language of the Forum Defendant Rule, which provides, “A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2). That is, it is the Bishop’s contention that because no parties had been served, the “properly joined and served” portion of the sentence prevents the Forum Defendant Rule from applying.

Although some federal courts have found that even though there is an odd result, the literal text of the phrase in the statute supports allowing snap removal,⁵ other courts have more logically determined that snap removal is an inherently absurd phenomenon. That is, the “joined and served” language—introduced to prevent diversity-busting fraudulent joinder by a plaintiff—

⁵ The Diocese has cited some out-of-circuit authority supporting the allowance of snap removal techniques. (See ECF No. 1, ¶ 8.) It must be noted that none of the authority cited by the Bishop appears to address a situation where all of the defendants are in-state. See, e.g., *Blankenship v. Napolitano*, Case No. 2:19-cv-00236, 2019 WL 3226909, at *1 (S.D.W. Va. July 17, 2019) (“plaintiff filed a motion to remand, not disputing that the parties are totally diverse nor that the requisite amount in controversy is exceeded, but rather contending that removal is improper under the forum defendant rule”); *Teamsters Loc. 677 Health Servs. & Ins. Plan v. Friedman*, Case No. cv CCB-18-3868, 2019 WL 5423727, at *1 (D. Md. Oct. 23, 2019) (listing a number of other diverse defendants).

should not be interpreted to provide the absurd result of letting home-state defendants remove to federal court where they otherwise would have no basis for removal. *See Turtle Factory*, at *2; *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Pracs. & Prod. Liab. Litig.*, Case No. 2:14-mn-02502-RMG, 2016 WL 7338594, at *2 (D.S.C. Nov. 21, 2016) (both providing Judge Gergel’s survey of authority on this issue).

While the Fourth Circuit Court of Appeals has yet to expressly rule on snap removal, several District Courts in the Fourth Circuit have addressed it. Courts in Maryland and South Carolina have ruled that snap removal results from an absurd interpretation of the Forum Defendant Rule. *See e.g., Turtle Factory, supra; In re Lipitor, supra; Kirst on Behalf of Nominal Defendant Novavax, Inc. v. Erck*, Case No. CV TDC-22-0024, 2022 WL 2869742 (D. Md. July 21, 2022); *Teamsters Loc. 677 Health Servs. & Ins. Plan v. Friedman*, No. CV CCB-18-3868, 2019 WL 5423727 (D. Md. Oct. 23, 2019). On the other hand, some courts have allowed snap removal, including one in West Virginia. *See, e.g., Spigner v. Apple Hosp. REIT, Inc.*, Case No. 3:21CV758 (DJN), 2022 WL 1451397 (E.D. Va. Mar. 1, 2022); *Blankenship v. Napolitano*, Case No. 2:19-cv-00236, 2019 WL 3226909 (S.D.W. Va. July 17, 2019) (Copenhaver, J.).

Interestingly, although one judge in West Virginia has allowed snap removal where there was diversity among the parties, *see Blankenship, supra*, two other West Virginia district judges have rejected snap removal where—as here—there is a complete lack of diversity among the defendants. *See Active Res., Inc. v. Hagewood*, Case No. 2:22-cv-00172, 2022 WL 2346398, at *3 (S.D.W. Va. June 29, 2022) (Berger, J.) (snap removal “is clearly an absurdity where the only defendants are forum defendants”); *Phillips Constr., LLC v. Daniels L. Firm, PLLC*, 93 F. Supp. 3d 544, 556 (S.D.W. Va. 2015) (Johnston, J.) (“in cases involving only resident defendants, the forum-defendant rule bars resident defendants from removing an action pursuant to diversity

jurisdiction before effectuation of service”). The public policy and legislative history considered by the district courts illustrate the absurdity that results from allowing defendants like the Diocese to effectuate snap removal.

“One of the principal purposes of diversity jurisdiction was to give a citizen of one state access to an unbiased court to protect him from parochialism if he was forced into litigation in another state in which he was a stranger and of which his opponent was a citizen.” *Teamsters* at *2 (quoting *Ziady v. Curley*, 396 F.2d 873, 875 (4th Cir. 1968)) (internal punctuation omitted). There is some irony to be found in the local Catholic Diocese seeking to avoid parochialism, but that nonetheless appears to be the goal with its notice of removal. The original statutory allowance for removal based upon diversity jurisdiction was enacted in 1789. Judiciary Act of 1789 § 12, 1 Stat. 73, 79. It very clearly described a suit brought “against a citizen of another state.”

Sec. 12. *And be it further enacted*, That if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars . . . the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial into the next circuit court, to be held in the district where the suit is pending

Judiciary Act of 1789 § 12, 1 Stat. 73, 79. As of 1911, the law provided that “when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States” Judiciary Act of 1911 § 28, 36 Stat. 1087, 1094. This language allowed a savvy plaintiff to attempt to destroy the required full diversity by naming a resident defendant to destroy diversity.

This tactic led to the question of whether a resident defendant, not yet served, could prevent removal by a non-resident defendant. The United States Supreme Court confronted this scenario

in 1939 and construed the language of the 1911 Act. *See Pullman Co. v. Jenkins*, 305 U.S. 534, 538, 59 S. Ct. 347, 349 (1939) (quoting 28 U.S.C. § 71) (“The question then is whether the original complaint set forth a separable controversy between the plaintiffs and the Pullman Company, that is, a controversy ‘which is wholly between citizens of different States, and which can be fully determined as between them.’”). In the *Pullman* case, the Court was considering whether a removal by the non-resident defendant was justified when it occurred before a named resident defendant had been served.

In considering the issue of service of process as related to removal, the Court first applied joinder rules to determine whether the claims were separable, such that the District Court could retain jurisdiction. The Court determined that in cases where the claims against the resident defendants are non-separable, the fact that service of process upon the resident defendants had not yet occurred did not justify removal by the non-resident defendants. *Id.*, at 541, 59 S. Ct. at 350 (citing *Patchin v. Hunter*, C.C., 38 F. 51, 53; *Armstrong v. Kansas City Southern R. Co.*, 8 Cir., 192 F. 608, 615; *Hunt v. Pearce*, D.C., 271 F. page 502; *Del Fungo Giera v. Rockland Light & Power Co.*, D.C., 46 F.2d 552, 554; and *Hane v. Mid-Continent Corporation*, D.C., 47 F.2d 244, 246, 247). Specifically, the Supreme Court stated that “the non-resident defendant should not be permitted to seize an opportunity to remove the cause before service upon the resident co-defendant is effected.” *Id.*

The Court made this ruling despite the possibility that any given defendant “might never be served.” *See id.* at 540, 59 S. Ct. at 350. The ruling created a potential loophole for plaintiffs seeking to avoid diversity—naming a resident defendant but not bothering to serve them or prosecute the case against them. This allowed plaintiffs to keep out-of-state defendants in state court—so long as a case for fraudulent joinder could not be made. In an apparent effort to foreclose

this gamesmanship tactic by plaintiffs, Congress amended the statute to add the words “properly joined and served” in 1948. After this amendment the Forum Defendant Rule began to appear very much as it does today, “Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” Judiciary Act of 1948 § 1441(b), 62 Stat. 869, 938.

In a detailed review of the history of the removal statute, Section 1441, a district court in Georgia ascertained the following points.

[T]he legislative history does reveal three crucial points. First, from the inception of the removal statute, a forum defendant has never been allowed to remove a diversity action. Secondly, there is no indication that Congress intended to change this long-standing rule with the addition of the “joined and served” language in 1948. Lastly, there is no suggestion anywhere in the legislative history that Congress intended service upon a forum defendant to affect a forum defendant’s ability to remove an action.

Hawkins v. Cottrell, Inc., 785 F. Supp. 2d 1361, 1377 (N.D. Ga. 2011). The question presented by the addition of the “joined and served” language ends a gamesmanship tactic for plaintiffs only to provide a new gamesmanship tactic for defendants. To demonstrate the tactics at play, an article in “DRI For the Defense” states under the heading “Tips and Tricks for a Successful Snap Removal” that, “snap removals also are available for forum defendants just as much as non-forum defendants.” 63 NO. 6 DRI For Def. 54, 58. No one giving any credence to the context of the Forum Defendant Rule could reasonably reach that conclusion.

When considering this issue, Judge Richard Gergel quoted an Ohio district court order for the principle that snap removal ““tactics employed by defendants such as in the instant case turn Congressional intent on its head by allowing defendants to employ gamesmanship, specifically by rushing to remove a newly filed state court case before the plaintiff can perfect service on

anyone.”” *In re Lipitor* at *2 (quoting *Ethington v. Gen. Elec. Co.*, 575 F. Supp. 2d 855, 862 (N.D. Ohio 2008)).

Similarly Judge Berger in the Southern District of West Virginia outlined the absurdity that comes from focusing too closely on only the word “served” while ignoring its context.

Although the plain, unambiguous language of the forum defendant rule requires “properly joined and served defendants” its strict application to a scenario where the only potential defendants are residents of the forum state, but not “properly joined and served”, would create an untenable, illogical, and absurd result. In other words, ‘properly joined and served’ defendants, who are residents of the forum state, are precluded from invoking federal jurisdiction under the rule. A strict reading of the rule would, however, imply that forum defendants, who are not “properly joined and served” could defeat the application of the rule and invoke the court’s jurisdiction. This is clearly an absurdity where the only defendants are forum defendants.

Active Res. at *3. In reaching a similar conclusion, the Eleventh Circuit rejected the removing defendant’s arguments, stating that “Defendants’ purported right to be in federal court was based on a technicality; it was not at the core of what the removal statute protects.” *Goodwin v. Reynolds*, 757 F.3d 1216, 1222 (11th Cir. 2014). The Eleventh Circuit would not allow language that was introduced to stop procedural tricks of plaintiffs be used to establish procedural tricks of defendants. *Id.* at 1221.

When Judge Gergel again confronted this issue in 2021, he considered and found persuasive the reasoning that has been applied to disavow snap removal, ultimately returning to the guiding principle that any doubt should be resolved in favor of remand. He wrote, “Removal statutes are to be strictly construed and the removing party bears the burden of establishing the right to removal. Courts are clearly split as to this issue and the propriety of removal in this case is doubtful. As such, the Court weighs in favor of remanding to state court.” *Turtle Factory* at *3. While the Lawyer Defendants contend snap removal is improper here because all defendants

are residents of the forum state, the simple fact that courts disagree on this issue lends itself to remand. For these reasons, this case should be remanded.

3. The *Rooker-Feldman* Doctrine prevents review of the underlying state cases.

The series of lawsuits of which this case is part all seek to review and relitigate an underlying class action suit in the Court of Common Pleas for Dorchester County that was filed in 2006. (*See, e.g.*, ECF No. 1-1, ¶ 4, 6–10, 34, 36, 42, 46, 50, 53, and 59.) While the Lawyer Defendants, and indeed the Charleston County Court of Common Pleas, South Carolina Court of Appeals, and South Carolina Supreme Court, have all at some point considered and rejected the allegations made by Plaintiffs’ counsel, those allegations nonetheless illustrate that the goal of this suit is to collaterally attack the underlying class action suit. Plaintiffs accuse The Honorable Diane Schafer Goodstein of being “shopped-for” because she allegedly allowed collusion between class counsel and the Diocese counsel. (*See, e.g.*, ECF No. 1-1, ¶ 57.) These allegations are specious, but they are matters the South Carolina Supreme Court, and the courts under its purview, should address because they are all aimed at overturning or attacking the underlying class action settlement—all of which Judge Goodstein properly and capably oversaw fifteen years ago. With the Plaintiffs’ agenda in mind, the *Rooker-Feldman* doctrine acts to preclude review by the District Court of the underlying matters in this suit.

“The *Rooker–Feldman* doctrine provides that ‘a United States District Court has no authority to review final judgments of a state court in judicial proceedings.’” *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 198 (4th Cir. 2000) (citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923)). “*Rooker–Feldman* bars not only direct review of issues actually decided by the state court, but also consideration of those claims which

are ‘inextricably intertwined’ with state court decisions.” *Id.* (citing *Feldman* at 486–87; *Plyler v. Moore*, 129 F.2d 728, 731 (4th Cir. 1997)).

The doctrine recognizes that the United States Supreme Court is the only federal court with the ability to review state court decisions and that the original jurisdiction of the district courts does not include the review of state court cases. *See id.* at 198–99 (multiple citations omitted). The doctrine has been recognized by the Fourth Circuit not merely as a preference, but as jurisdictional. *Smalley v. Shapiro & Burson, LLP*, 526 F. App’x 231, 235 (4th Cir. 2013) (multiple citations omitted). “‘The controlling question in the *Rooker–Feldman* analysis is whether a party seeks the federal district court to review a state court decision and pass upon the merits of that state court decision, not whether the state court judgment is presently subject to reversal or modification.’” *Id.* at 235–35 (quoting *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 202 (4th Cir.1997)).

The Supreme Court has described the doctrine as applying to “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 1521–22, 161 L. Ed. 2d 454 (2005). Those are the very circumstances this case presents. Plaintiffs consider themselves to have been parties to the underlying class action who were allegedly harmed by the settlement and administration of that case. They seek a declaration adjudging the acts of the underlying class action judge, adjudging her approval of the notice plan, adjudging her approval of the settlement generally, adjudging the fees approved to be paid to class counsel, and indeed, they seek disgorgement of the disbursements made at that judge’s direction. (*See* ECF No. 1-1, ¶¶ 144–150.) Moreover, to make the findings and conclusions sought by Plaintiffs, the Court would

have to consider and reject the holding of the South Carolina Court of Appeals in its order of March 3, 2021. *See John Doe 2, et al. v. The Bishop of Charleston, a Corporation Sole, et al.*, Case No. 2017-001996 at *2 (unpublished opinion filed March 3, 2021 S.C. Ct. App.) (“We find the circuit court did not err in granting summary judgment to Counsel on Victims’ claims for professional negligence and breach of fiduciary duty.”).

In one Fifth Circuit case, the court determined that a collateral constitutional attack on a class action and settlement—which would require attacking the state court’s findings—violated *Rooker-Feldman*. *See Richard v. Hoechst Celanese Chem. Grp., Inc.*, 355 F.3d 345, 352 (5th Cir. 2003) (“findings that allow for certification are ‘inextricably intertwined’ with [the] constitutional challenge to the state’s compliance with due process requirements” and a “federal court cannot examine the due process deficiencies . . . without disturbing the underlying judgment”). In a Seventh Circuit case, the Court was faced with former class action plaintiffs who sued class counsel, much the same as in this case. Even though the Seventh Circuit found the underlying events questionable, and even though the Court was urged by amici to carve out an exception to the doctrine, the Court steadfastly applied *Rooker-Feldman*.

Even were we to accept the argument, it does not change the fact that lower federal courts cannot review decisions of the state court. Here, the state court approved the settlement, including the fees. The Supreme Court of Alabama or the United States Supreme Court could reverse the decision were either so inclined. The federal district court, on the other hand, cannot review the Alabama decision.

Kamilewicz v. Bank of Bos. Corp., 92 F.3d 506, 512 (7th Cir. 1996).

The Eighth Circuit reached a similar conclusion. Timeshare owners sought to attack a condemnation case wherein the state court certified a class and decided the rights of the parties. The Eighth Circuit found no jurisdiction pursuant to the *Rooker-Feldman* doctrine, noting that even a finding that the underlying judgment was void or that certain plaintiffs were not part of the

class would, in and of themselves, require the federal court to review the state court's decision. *See Snider v. City of Excelsior Springs, Mo.*, 154 F.3d 809, 812 (8th Cir. 1998).

Perhaps more persuasive than those cases is the order of Judge Weston Houck in this district involving similarly situated parties. In 2015, Judge Houck dismissed similar claims by Plaintiffs' counsel against the Lawyer Defendants, the Diocese, and the Diocese' attorney in the class action on the basis of the *Rooker-Feldman* doctrine. *See Doe I v. Diocese of Charleston*, Case No. CV 2:09-0955-CWH, 2015 WL 13762980 (D.S.C. Sept. 30, 2015). Judge Houck wrote, "Turning to the present case, the Court has closely reviewed the plaintiffs' amended complaint to determine the source of the plaintiffs' injuries, and has determined that all of the plaintiffs' alleged injuries flow from the State Court Class Action." *Doe I* at *7. Judge Houck found that it was an inexorable conclusion that the plaintiffs' action was barred by *Rooker-Feldman* because the claims of the plaintiffs were inextricably intertwined with the state court's certification and would require the district court to find that decisions made by the state court were erroneous. *Id.* at *8–9.

In this case, Plaintiffs' counsel is the same, the claims are very similar, and the claims are made about the same underlying case against the same defendants, with the exception of the Bishop's then-attorney, Mr. Shahid. The very same class action is at issue and then as now the *Rooker-Feldman* doctrine precludes this Court's review of the state suit and plaintiffs' claims about a "tentacular conspiracy." Indeed, the Diocese took the position in the *Doe I* case that the District Court was constrained by the *Rooker-Feldman* Doctrine and arguably cannot now disavow that position and assert that the Court does have jurisdiction after all. *See id.* at *4 (citing Diocese Defs.' Mem, in Supp. of Mot. to Dismiss 25, ECF No. 57-1) ("All of the defendants argue that this action should be dismissed . . . because the *Rooker-Feldman* doctrine deprives this Court of subject matter jurisdiction."); *see also Lowery v. Stovall*, 92 F.3d 219, 223 (4th Cir. 1996) (multiple

citations omitted) (“Judicial estoppel precludes a party from adopting a position that is inconsistent with a stance taken in prior litigation. The purpose of the doctrine is to prevent a party from playing fast and loose with the courts, and to protect the essential integrity of the judicial process.”).

4. An award of attorney’s fees and costs is appropriate in this case.

The removal statute allows a remand order to “require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c). Various factions have applied different standards of review to such an award, but the United States Supreme Court addressed the question in 2005 and determined that an abuse of discretion standard was most appropriate. *See Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 139, 126 S. Ct. 704, 710 (2005). However, the most stringent standard suggested to the Court required that the attempted removal be “frivolous, unreasonable, or without foundation.” *Id.* at 138–39, 126 S. Ct. at 710 (considering and rejecting standard suggested by Solicitor General); *see also Beaufort Cnty. Sch. Dist. v. United Nat. Ins. Co.*, 519 F. Supp. 2d 609, 617–18 (D.S.C. 2007) (Judge Duffy awarding fees against a removing insurance company under a “objectively reasonable” standard per *Martin*).

The Lawyer Defendants would submit that this case meets even the most stringent standard. The Diocese attempted this same “snap removal” procedure in the Jane Doe 304 case and when confronted with a motion for remand, did not even oppose it. (Doe 304 ECF No. 11 (text order of Judge Lydon stating, “Neither Defendants Bishop of Charleston, a Corporation Sole and Robert E. Guglielmone, Bishop of Charleston, nor Plaintiff responded in opposition to the motion to remand.”)). The Diocese cannot now argue that the lack of opposition was after being persuaded of the Lawyer Defendants’ position in the Doe 304 case because the Bishop has now replicated the same removal technique in this case. The gamesmanship removal in this case was done despite strong case law pointing out the absolute absurdity of trying to abuse the Forum

Defendant Rule to put a case with all in-state defendants in the federal courts. Moreover, the Diocese has previously argued that this Court lacks subject-matter jurisdiction under the *Rooker-Feldman* Doctrine and the Diocese won that motion. There is no factor that makes this case different from *Doe I* for purposes of the Doctrine. This leads to the conclusion that the Diocese is abusing this Court's good graces by taking whichever position is convenient at the time.

In this case, as the Diocese is likely to point out, if they respond, that the Lawyer Defendants had not even been served in this case and, for that reason, they were forced to appear solely for purpose of obtaining remand of this suit to state court where it was and is supposed to be. Given these facts, an award of fees and costs is appropriate, and the Lawyer Defendants request that the Court grant the same and request leave to file and serve Affidavits and supporting records supporting such an award following the Court's decision.

CONCLUSION

This case is a purely state matter. It has purely in-state defendants who cannot invoke federal jurisdiction under federal statutes and case law. This case properly belongs in the Charleston County Court of Common Pleas, where it will join the ten other nearly identical suits filed by Plaintiffs' counsel against the Lawyer Defendants. The South Carolina Supreme Court has assigned The Honorable J. Derham Cole to preside over the malpractice claims against the Lawyer Defendants not already decided by the South Carolina Court of Appeals and not taken up by the South Carolina Supreme Court. The Diocese' attempt to remove this case is futile and unreasonable. The Diocese' position that this Court has jurisdiction when is has argued exactly the opposite in the past is equally unreasonable. For these, reasons, the Lawyer Defendants jointly request an order remanding this suit to state court and awarding fees and costs to them for the resources expended in entering this motion.

Respectfully submitted,

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September 16, 2022
Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

Case No.: 2:22-cv-02940-BHH

**JOINT MOTION OF LAWYER
DEFENDANTS TO STAY ALL
DEADLINES**

Defendants Lawrence E. Richter, Jr. (“Richter”), David K. Haller (“Haller”), and Richter & Haller, LLC (collectively, “Lawyer Defendants”) move this Court for an order staying all deadlines, including responsive pleadings and discovery, until the Lawyer Defendants’ motion to remand this matter to state court is decided. This would prevent answers or motions to dismiss from being filed in both state and federal court in the event the case is remanded and would prevent further administration of discovery until the Court determines jurisdiction. This motion is made pursuant to Rule 6(b)(1), Fed. R. Civ. P. (allowing extension of deadlines); Rule 16(b)(1), Fed. R. Civ. P. (allowing local rules to create exception to scheduling order); Local Rule 12.01, D.S.C. (allowing motions for extensions of time to respond to a pleading); and Local Rule 16.00(C), D.S.C. (allowing the stay of deadlines and suspension of scheduling orders when there is a pending motion to remand). At this time no deadlines are pending other than the time for Defendants to answer or respond to the state court complaint. The Lawyer Defendants request that the Court extend that deadline until twenty-one (21) days after the Court rules on the motion to remand and enter a scheduling order thereafter. Counsel for the Lawyer Defendants consulted counsel for the Bishop and Plaintiffs regarding this motion but has not received consent.

Respectfully submitted,

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September 21, 2022
Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

Case No.: 2:22-cv-02940-BHH

NOTICE OF APPEARANCE

The undersigned, Benjamin C. Bruner, Esq., hereby notifies this honorable Court that he and co-counsel Chelsea Clark, Esq. are appearing for Defendant Lawrence E. Richter, Jr., and Richter & Haller, LLC, and request that mailed notices should be sent to Bruner, Powell, Wall & Mullins, LLC at P.O. Box 61110, Columbia, SC 29260.

Respectfully submitted,

BRUNER POWELL WALL & MULLINS, LLC

s/ Benjamin C. Bruner

Benjamin C. Bruner, Fed. ID No. 10625

Chelsea J. Clark, Fed. ID No. 12730

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*Attorneys for Lawrence E. Richter, Jr. and
Richter & Haller, LLC*

September 21, 2022
Columbia, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

Case No.: 2:22-cv-02940-BHH

**CONSENT MOTION FOR
SUBSTITUTION OF COUNSEL
AS TO DAVID K. HALLER**

Defendant David K. Haller (“Defendant”) moves for an order substituting his counsel. Defendant’s current counsel, Susan Taylor Wall of Gordon & Rees, LLP, is withdrawing and Defendant has engaged Benjamin C. Bruner and Chelsea J. Clark of Bruner, Powell, Wall & Mullins, LLC to substitute for Ms. Wall. Mr. Haller consents to the substitution and Mr. Bruner and Ms. Clark have entered an appearance in accordance with Local Rule 83.I.07(A) (D.S.C.)

Defendant Haller therefore requests that Susan Taylor Wall, Esquire, and her law firm, Gordon & Rees, LLP, be relieved as counsel of record for Defendant David K. Haller and that Benjamin C. Bruner., Esquire, and Chelsea J. Clark, Esquire, and their law firm, Bruner, Powell, Wall & Mullins, LLC, be substituted as counsel of record for Defendant. All future pleadings and notices should be directed to and served upon Benjamin C. Bruner, and Chelsea J. Clark as counsel of record for Defendant. Mr. Bruner and Ms. Clark will remain counsel of record for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC. A proposed order will be filed concurrently herewith.

[Signature Page to Follow]

WE JOINTLY MOVE AND CONSENT.

s/ Chelsea J. Clark

Benjamin C. Bruner, Fed. ID No. 10625

Chelsea J. Clark, Fed. ID No. 12730

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October 4, 2022

Columbia, South Carolina

s/ Susan Taylor Wall

Susan Taylor Wall, Fed. ID No. 4592

Gordon & Rees LLP

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October 4, 2022

Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

Case No.: 2:22-cv-02940-BHH

**CONSENT ORDER FOR
SUBSTITUTION OF COUNSEL
AS TO DAVID K. HALLER**

THIS MATTER comes before the Court upon the motion of Defendant David K. Haller (“Defendant”) to substitute his counsel. Defendant’s current counsel, Susan Taylor Wall of Gordon & Rees, LLP, is withdrawing and Defendant has engaged Benjamin C. Bruner and Chelsea J. Clark of Bruner, Powell, Wall & Mullins, LLC to substitute for Ms. Wall. Upon substitution, Attorney Bruner and Attorney Clark will represent Defendants Lawrence E. Richter, Jr., Richter & Haller, LLC, and David K. Haller.

IT IS THEREFORE ORDERED that Susan Taylor Wall, Esquire, and her law firm, Gordon & Rees, LLP, be relieved as counsel of record for Defendant David K. Haller and that Benjamin C. Bruner, Esquire, and Chelsea J. Clark, Esquire, and their law firm, Bruner, Powell, Wall & Mullins, LLC, be substituted as counsel of record for Defendant. All future pleadings and notices should be directed to and served upon Benjamin C. Bruner, and Chelsea J. Clark as counsel of record for Defendant.

[Signature Page to Follow]

WE JOINTLY MOVE AND CONSENT TO THIS ORDER.

s/ Chelsea J. Clark

Benjamin C. Bruner, Fed. ID No. 10625

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October 4, 2022

Columbia, South Carolina

s/ Susan Taylor Wall

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October 4, 2022

Charleston, South Carolina

IT IS SO ORDERED.

/s/

United States District Judge

October ____, 2022

Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

Case No.: 2:22-cv-02940-BHH

**REPLY OF LAWYER DEFENDANTS
TO RESPONSES OF PLAINTIFFS AND
THE BISHOP OF CHARLESTON TO
MOTION TO REMAND**

Defendants Lawrence E. Richter, Jr. (“Richter”), David K. Haller (“Haller”), and Richter & Haller, LLC (collectively, “Lawyer Defendants”) submit this reply memorandum in support of their joint motion to remand this case to the Charleston County Court of Common Pleas.

REPLY ARGUMENT

In response to the Lawyer Defendant’s motion to remand, Plaintiffs have averred some contextual facts. Namely, Plaintiffs acknowledge that The Bishop of Charleston (“Bishop” or “Diocese”) removed this case to federal court before Plaintiffs even had a file-stamped copy of their complaint. (*See* ECF No. 13, p. 1.) Additionally, Plaintiffs aver that there is diversity in this case. (*Id.*) The diversity exists because Plaintiffs are foreign while all the defendants are domestic. That is, every single defendant in this case is a Forum Defendant. To allow removal in this case is to turn the Forum Defendant Rule upon its head.

1. The Diocese’s interpretation of the Forum Defendant Rule embraces textual literalism at the expense of context, history, and common sense.

The Diocese urges a reading of 28 USC § 1441(b)(2) that is hyper-literalistic. That is, the Diocese urges a reading of the Forum Defendant Rule that focuses on the literal meaning of “joined

and served” to the exclusion of the rest of the sentence, the rest of the statute, the legislative history, the constitutional and jurisdictional history, and the general statutory framework of removal. The rules of statutory construction never compel courts to isolate provisions and construe them out of context to the detriment of logic and common sense.

Writing for the Court in 2015, Chief Justice John Roberts opined about the true meaning of the plain language framework.

If the statutory language is plain, we must enforce it according to its terms. But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme. **Our duty, after all, is to construe statutes, not isolated provisions.**

King v. Burwell, 576 U.S. 473, 486, 135 S. Ct. 2480, 2489 (2015) (multiple citations and internal punctuation omitted) (emphasis added). The interpretation of the phrase “joined and served” encouraged by the Bishop focuses in on the literal meaning of the text of, at most, three words. The interpretation does not put those words into the context of the sentence and ignores the remainder of the statute and its history completely. Using a phrase intended to prevent gamesmanship by plaintiffs to allow gamesmanship by defendants who use a docket monitoring system to find out they have been sued before the plaintiffs even have a file-stamped copy of the complaint creates an absurd result out of step with the obvious meaning of the complete Forum Defendant Rule.

In an article discussing the snap removal phenomenon, three law professors opine that the federal opinions that have thus far supported snap removal “depend[] upon an excessively literal textualist approach to application of civil litigation statutes and rules that downplays or even ignores legislative intent, statutory purpose, and the structure of federal litigation underlying two centuries of law regarding subject matter jurisdiction and removal.” Jeffrey W. Stempel, Thomas

O. Main, & David McClure, *Snap Removal: Concept; Cause; Cacophony; and Cure*, 72:3 Baylor Law Review 423, 429 (2020). The illogicality of snap removal—a loophole that defeats of the policy of the sentence it is in—causes law students to “squint a bit in disbelief” that the purpose of the statute can be so circumvented. *Id.* at 427.

The illogicality has not offended all the federal courts presented with this issue when the sticking point is a forum defendant yet to be served. After all, without that defendant, the other parties would be entitled to removal under the theory of avoiding the home state advantage of the plaintiff. However, the patent absurdity of allowing a case to be removed where there are **only** forum defendants must be considered in this case. There is not a single shred of judicial or legislative history that can provide any logical explanation, rational basis, or even plausible reason for the disparate treatment of defendant based solely on whether they can beat the process server to the courthouse.

The interpretation of the Diocese skips from hyper-literal textualism to the absence of legislative corrective action, but leaps over the statutory framework and centuries-old history of the removal statute. Judge Richard Gergel considered the meaning of the language and legislative intent of the Forum Defendant Rule, and not just three words within it, when he ruled in 2021 that snap removal was contrary to purpose of the Forum Defendant Rule. *See Turtle Factory Bldg. Corp. v. McGrath Real Est. Holdings, LLC*, No. 2:20-CV-03099-RMG, 2021 WL 688697, at *3 (D.S.C. Jan. 28, 2021). Judge Gergel reasoned that reading snap removal into the language of the Forum Defendant Rule created an absurd result because it is contrary to Congressional intent. *Id.* The Bishop may argue that legislative history cannot be reached because of the plain language rule, but the plain language rule still requires that the whole Forum Defendant Rule be read and not just the “joined and served” fragment. The intent of the rule is quite apparent when read as a

whole. *See* 28 U.S.C. § 1441(b)(2). Quite simply, forum defendants are not supposed to be able to invoke diversity jurisdiction upon removal. The Diocese is reading three words as allowing it to defeat the entire point of the whole sentence by removing a case that has **only forum defendants**. This is an absurdity.

The Fourth Circuit has previously noted that the “most fundamental guide to statutory construction” is “common sense.” *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 869 (4th Cir. 1989). In this case, the Bishop is asking the Court to abandon common sense and reason and take so close and literal a view of “joined and served” that the whole rest of the sentence and its meaning are lost. The Bishop is asking this Court to endorse a scenario that is literally the opposite of that envisioned by the Forum Defendant Rule. Rather than an outside defendant removing a case brought against them by a home-state plaintiff, this is a case with foreign plaintiffs and completely domestic defendants. Allowing removal pursuant to the Forum Defendant Rule, which excludes forum defendants, when there are only forum defendants in the case is simply an untenable result. *See Active Res., Inc. v. Hagewood*, No. 2:22-CV-00172, 2022 WL 2346398, at *4 (S.D.W. Va. June 29, 2022).

2. The *Rooker-Feldman* Doctrine applies to the state class action case which forms the basis for this case.

Plaintiffs’ claims in this case are predicated entirely on their dissatisfaction with the administration of the underlying class action suit from 2006 in the Court of Common Pleas for Dorchester County, South Carolina. The claims are predicated on supposed misconduct of class counsel, church counsel, and state court judges. The basis for Plaintiffs’ claims is the class action judge allowed collusion and malpractice to occur under her watch as the “shopped-for” judge who supervised the class action settlement. These are, of course, unsupported allegations that have, after years of litigation, gained no traction before circuit court judges, court of appeals judges, or

the justices of the state supreme court. Nonetheless, were Plaintiffs successful in prosecuting their claims, this Court would have to find that the class action court's actions were negligent, wrong, or even collusive. Review of a state court judge's decisions are precisely the scenario that the *Rooker-Feldman* Doctrine was crafted to prevent.

Plaintiffs seek declaratory judgment on the “conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench[.]” (ECF No. 1-1, ¶ 3.a & ¶ 112.a.) Such declaratory judgment requires, on its face, that this Court rule on the meaning of South Carolina Supreme Court orders and whether South Carolina state trial judges are complying with them. Plaintiffs allege the class action judge “was willing to be shopped-for and would facilitate the judge-shopping method for moving the class settlement” (ECF No. 1-1, ¶ 49.) Plaintiffs allege that a ruling about their allegations will “benefit” the “South Carolina bench and bar,” thus inherently asserting that a ruling in this case will provide guidance to South Carolina state judges about their duties in the administration of class action cases. (See ECF No. 1-1, ¶¶ 50, 65, ¶ 112.i.)

Plaintiffs appear to be seeking a “post-award fairness hearing” because, *inter alia*, class counsel received a fees award “without any review of collusive conduct, or failures by class counsel” (ECF No. 1-1, ¶¶ 59–61.) That allegation inherently seeks review of the class action judge's rulings, notwithstanding Plaintiffs' protests to the contrary in their response to the motion to remand. Indeed, Plaintiffs specifically request that class counsel disgorge attorney's fees awarded by the class action judge. (ECF No. 1-1, ¶ 144.i.) There is no doubt that Plaintiffs' claims would require this Court to review the orders and rulings of the class action judge. There is also

no doubt that such a review is the purview of the state court appellate system.¹ These issues are precisely the reason Judge Weston Houck applied the *Rooker-Feldman* Doctrine when he rejected an earlier attempt to bring one of the cases challenging the state court class action before the District Court. *See Doe I v. Diocese of Charleston*, Case No. CV 2:09-0955-CWH, 2015 WL 13762980 (D.S.C. Sept. 30, 2015).

The Bishop argues that the *Rooker-Feldman* Doctrine has been hemmed in over the years by further precedent. The Bishop cites to a recent Fourth Circuit opinion which addresses that precedent. *See Jonathan R. by Dixon v. Just.*, 41 F.4th 316, 339–41 (4th Cir. 2022). However, even in acknowledging that the Doctrine has its limitations, the court still enunciated a standard that would apply in this case. The Fourth Circuit no longer looks to limit jurisdiction when there are issues that were or could have been litigated before the state court, but jurisdiction is still limited when a plaintiff seeks redress for **an injury caused by a state court decision**. *Id.* (citing *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 718–19 (4th Cir. 2006)). That is, a plaintiff's claim is inextricably intertwined with the underlying state case when a plaintiff seeks review and rejection of the underlying state court order. *Id.* (citing *Thana v. Bd. of License Comm'rs for Charles Cnty.*, 827 F.3d 314, 320 (4th Cir. 2016)).

In this case, Plaintiffs not only seek review of the state court class action judge's decisions about the settlement and not only accuse her of being shopped-for and duped by class counsel, Plaintiffs also assert that she erred in awarding attorney's fees to class action counsel. Plaintiffs

¹ The state appellate court system has already considered many, if not all, of the claims made in this case in the context of eight other suits filed by clients of Mr. Meyers. Summary judgment was granted and then affirmed by the Court of Appeals. *See John Doe 2, et al. v. The Bishop of Charleston, a Corporation Sole, et al.*, Case No. 2017-001996 at *2 (unpublished opinion filed March 3, 2021 S.C. Ct. App.). This Court would need to construe and determine whether to apply those earlier orders in this case, which creates another layer of review of state court rulings.

wish this Court to disgorge **those fees** even though the class action judge not only awarded them, she confirmed the award over Mr. Meyers' express objections at the time of the class action settlement. (Order attached as **Exhibit A** at p. 5.) It cannot reasonably be argued that this case is not inextricably intertwined with the underlying class action and all the various cases Mr. Meyers has filed for his clients ever since. For this reason, the Court should hold that there is no jurisdiction over this case.

3. An award of fees is appropriate in this case.

In 2020, the Honorable Sherri A. Lydon remanded the Jane Doe 304 case after the Bishop removed the case and then did not oppose the Lawyer Defendant's motion to remand. *See Doe 304 v. Richter, et al.*, Case No. 2:19-cv-03409-SAL, ECF No. 11 (text order filed Feb. 20, 2020 D.S.C.). Judge Lydon relied in part on the orders of Judge Gergel, who has squarely rejected snap removal on two different occasions. The circumstances upon which the Bishop attempted removal in that case were substantially the same as this case—the same plaintiff's counsel, the same defendants, and the same snap removal gamesmanship of removing before service. In that case, the Bishop unquestionably wasted the time of counsel and this Court by removing on an objectively unreasonable basis and then consenting to remand.

In 2015, Judge Houck dismissed a very similar case to this one for lack of subject-matter jurisdiction under *Rooker-Feldman*. Key in that order, was that the Bishop filed a memorandum in support of dismissal under *Rooker-Feldman*. *Doe 1 v. Diocese of Charleston*, Case No. CV 2:09-0955-CWH, 2015 WL 13762980 at *4 (D.S.C. Sept. 30, 2015) (citing Diocese Defs.' Mem, in Supp. of Mot. to Dismiss 25, ECF No. 57-1) ("All of the defendants argue that this action should be dismissed . . . because the *Rooker-Feldman* doctrine deprives this Court of subject matter

jurisdiction.”). In this case, the Bishop is taking exactly the opposite position on materially similar facts with nearly identical parties and issues.

Furthermore, there is no precedent in this jurisdiction for the removal of a case with entirely forum defendants. The Diocese can argue that snap removal has been accepted in other parts of the country. But, to counsel’s knowledge, no judge in the Fourth Circuit has allowed snap removal where there are only home-state defendants. As discussed above, such a scenario is absurd and turns the Forum Defendant Rule upon its head.

The standard of review for a fees award under 28 U.S.C. § 1447(c) is abuse of discretion. *See Common Cause v. Lewis*, 956 F.3d 246, 252 (4th Cir. 2020) (citing *In re Lowe*, 102 F.3d 731, 733 n.2 (4th Cir. 1996)). While the statutory language is discretionary, courts have ruled that fees should only be awarded where the removing party “lacked an objectively reasonable basis for seeking removal.” *Id.* at 256 (quoting *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141, 126 S.Ct. 704 (2005)). However, there is also an exception to that general principle for “unusual circumstances.” *Id.*

In this case, the Lawyer Defendants contend that there is no objectively reasonable basis for removal under a diversity jurisdiction theory where all the defendants are forum defendants. Such a removal clearly violates the meaning of the Forum Defendant Rule and cuts against the principle that any doubt whatsoever must be decided in favor of remand. *See Mulcahey v. Columbia Organic Chemicals Co.*, 29 F.3d 148, 151 (4th Cir. 1994) (citations omitted). However, there are also patently unusual circumstances in this case. This is the third time this plaintiff’s attorney and these defendants have been before the District of South Carolina on specific allegations pertaining to the underlying 2006 class action in state court. Each time, the Bishop has taken a different position—presumably based on what most benefits the Diocese at the given time.

First, the Bishop asserted there was no subject-matter jurisdiction under *Rooker-Feldman*. Then, the Bishop asserted there was snap removal diversity jurisdiction, but, when confronted by a motion to remand, apparently changed his mind and consented to remand. Now, the Bishop asserts that there is jurisdiction despite *Rooker-Feldman* and has flipped back to asserting snap removal diversity jurisdiction for entirely forum defendants, which remains an objectively unreasonable position. For these reasons, the Lawyer Defendants request that the Court award fees and costs.

CONCLUSION

This case belongs in state court with the others challenging the decisions of the state court class action judge. This case concerns South Carolina state court actions and South Carolina defendants. Removal under these circumstances is unreasonable and contrary to the meaning and history of our federal jurisdictional statutes and case law. For these reasons, the Lawyer Defendants request that the Court remand this case back to the Court of Common Pleas for Charleston County.

Respectfully submitted,

BRUNER POWELL WALL & MULLINS, LLC

s/ Benjamin C. Bruner

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Attorneys for Lawrence E. Richter, Jr., David K.

Haller, and Richter & Haller, LLC

October 4, 2022

Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	CASES NO. 06-CP-18-1310
	)	06-CP-18-1311
	)	06-CP-18-1636
John Doe #53, et al., individually and as	)	
representatives of classes of people	)	
similarly situated,	)	
	)	
Plaintiffs,	)	Order
	)	
vs.	)	
	)	
The Bishop of Charleston, et al.,	)	
	)	
Defendants,	)	
_____	)	

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Clerk of Court
DORCHESTER COUNTY

This order resolves certain motions pending before the Court and heard January 29, 2009. It is also the purpose of this order to memorialize the reasoning articulated on the record and expound where appropriate on those motions heard and decided on January 29, 2009.

Motions were filed by the Diocese of Charleston, by and through its attorney, A. Peter Shahid, Jr. Motions were also filed by Johns Does B, C, D, H, J, K, L, and M; and Janes Doe G, I, and M, and the mother of John Doe J through their attorney Gregg Meyers. Those designated as John & Jane Doe, with the exception of John Doe "B", were the individuals on whose behalf settlement was entered into with the Diocese outside of the class action and its resolution. There was a motion filed by David Flowers on behalf of the South Carolina Victim Assistance Network to appear as amicus curiae.

Having heard the argument of counsel, the Court memorializes and determines as follows:

Motion to Recuse

Mr. Meyers filed a motion to recuse on September 24, 2008 alleging the following grounds:

- The Court has initiated an investigation of counsel for the plaintiff, which investigation may or may not be concluded;
- The Court has treated counsel's clients differently from other clients of other counsel when those clients were similarly situated; and
- Counsel has reported a series of irregularities, including patently false and fraudulent billing charges by other members of the bar, all of which were approved without objection by the Court and which are now the subject of independent and ongoing investigation.

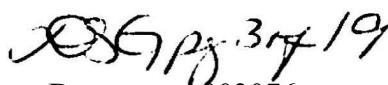
In order to "compel recusal, the alleged bias of the judge must be personal, as distinguished from judicial, in nature." United States v. Carmichael, 726 F.2d 158 (4th Cir. 1984). "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned." Canon 3(C)(1) of the Code of Judicial Conduct, Rule 501, SCACR. "It is not enough for a party to allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice." Christensen v. Mikell, 324 S.C. 70, 74, 476 S.E.2d 692, 694 (1996) (citing Lyvers v. Lyvers, 280 S.C. 361, 312 S.E.2d 590 (Ct.App. 1984)) (quotations omitted).

In Simpson v. Simpson, 377 S.C. 519, 660 S.E.2d 274 (Ct.App. 2008), the Court of Appeals discusses the duty to sit and decide matters assigned to the judge. The Court of Appeals cite numerous cases from both state and federal courts stating that a judge's duty to sit where not

disqualified is equally as strong as the duty not to sit where disqualified. Simpson v. Simpson, 377 S.C. 519, 526, 660 S.E.2d 274, 278 (Ct.App. 2008 (citing Barritt v. State, No. C'ACR06-1261, 2007 WL 2713593, at *6 (Ark. Ct.App. Sept. 19, 2007) ("When recusal is in issue, this court has held that a judge has a duty to sit on a case unless there is a valid reason to disqualify....") (internal citations omitted); In re Turney, 311 Md. 246, 533 A.2d 916, 920 (1987) ("Moreover, a judge's duty to sit where not disqualified is equally as strong as the duty not to sit where disqualified."); Adair v. State, 474 Mich. 1027, 709 N.W.2d 567, 579 (2006) ("[W]here the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited.") (internal quotations and citations omitted); Millen v. Eighth Judicial Dist. ex rel. County of Clark, 148 P.3d 694, 700 (Nev.2006) ("Thus, a judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge's disqualification."); Tennant v. Marion Health Care Found., Inc., 194 W.Va. 97, 459 S.E.2d 374, 385 (1995) ("Also important, however, is the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal.")).

The Court addressed these issues with counsel during the hearing. With regard to Mr. Meyers first ground the need for the Court's inquiry was to address concerns raised by class counsel whether those designated as John & Jane Doe were in fact individuals represented by Mr. Meyers. The Court communicated its request for information from Mr. Meyers and informed counsel of its intention to engage an expert to assist in the review. The Court gave counsel 10 days to object.¹ There was no objection raised and the Court concluded its review once Mr. Meyers provided basic information to the Court and the Court with the assistance of the Court appointed expert was satisfied that Mr. Meyers did indeed represent at least one client as

1. Order Appointing Court's Consultant, August 29, 2007.



claimed.²

Mr. Meyers further alleges that the Court has treated his clients differently from other clients of other counsel when those clients were similarly situated. First, Mr. Meyers's clients were in a procedurally different position as they were the only objectors as the time of the Court's Order of July 30, 2007. The two other objectors had withdrawn their objections.

Second, Mr. Meyers's clients stated an intention to "opt-out" of the class, therefore placing themselves in a different position than class members.

Third, Mr. Meyers claims that his client John Doe B was treated differently than Class Representatives because he was excluded by definition from the class. Counsel stated that John Doe B previously litigated his claim to conclusion in Charleston County against the Defendants and after refusing a \$75,000 settlement offer his case was dismissed with prejudice as a matter of law by the Court. The Diocese yet made an offer and paid John Doe B \$50,000 even after the case was dismissed. John Doe B then signed a Full and Final Release which released the Diocese from all further liability stemming from his claim.

Mr. Meyers's claims John Doe B was in the same position as class representatives, as persons whose claims were resolved prior to class certification, but his client was and is excluded by the class definition but class representatives were not. This position is without merit since John Doe B's case was settled even prior to the initiation of this class action lawsuit. John Doe B's case was dismissed with prejudice and after accepting a settlement, then signed a full and final release stemming from his claim against the Diocese. Class representatives received their awards before other claimants in consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues involved in

2. Mr. Meyers and Mr. Flowers have raised all these issues in an alternative forum which complaint was dismissed.

serving as class representative throughout litigation. The difference between the two positions is fairly remarkable. The class representatives were compensated once for their claim and John Doe B is seeking to be compensated twice for his claim. John Doe B seeks to be compensated a second time despite his having released the Diocese from his claims.

Finally, Mr. Meyers alleges that he has reported a series of irregularities, including patently false and fraudulent billing charges by other members of the bar, all of which were approved without objection by the Court and which are now the subject of independent and ongoing investigation. Mr. Meyers's position regarding the Court is meritless. First, Mr. Meyers raised his objection to class counsel's fees in his Rule 59(c) motion which was withdrawn in consideration of the \$1.375 million to be paid to him by the defendants. Secondly, clearly the Court's Order of July 30, 2007, unobjected to and unappealed from, articulated numerous considerations for the award of fees, only one of which was the 3,700 plus hours spent on the case. Of note is the Court's determination, *inter alia*, "... [b]ut for the settlement, the claims of the individuals in the class might already be barred by significant legal defenses, including the statute of limitations and charitable immunity. Class Counsel has been able to succeed in this case where other lawyers, in identical cases, have failed..." Order dated July 30, 2007. No one knows this more plainly than Mr. Meyers as he was one such counsel to lose his case(s) on this basis.

Mr. Meyers failed to establish actual bias or prejudice against his clients by the Court. For the foregoing stated reasons, the Court respectfully denied Mr. Meyers motion to recuse.

Motion to Dismiss

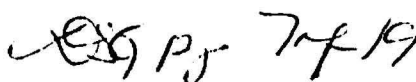
Mr. Meyers filed a Motion to Dismiss on September 24, 2008. After ruling on the Motion to Recuse at the hearing, the Court addressed the motion to dismiss. Mr. Meyers's motion to dismiss alleged that none of the parties he represents in the Civil Action No. 2008-CP-10-1274 are members in the class action styled Civil Action No. 2006-CP-18-1310, et. al. and that (1) pursuant to SCRCP 12(b)(2), the Court lacks subject matter jurisdiction over these non-parties; (2) pursuant to SCRCP 12(b)(3), venue is improper in Dorchester County for any proceeding related to the non-parties; (3) pursuant to SCRCP 12(b)(4), there is insufficient process to assert jurisdiction over any non-party; (4) pursuant to SCRCP 12(b)(5), there is insufficient service for the court to assert any jurisdiction over any plaintiff in Civil Action No. 2008-CP-10-1274. For the following reasons the Court denied the motion to dismiss. At the time Mr. Meyers filed his objections to the class settlement on behalf of Johns Doe B, C, D, H, J, K, L, M & Jane Does G, I, and M, he voluntarily submitted them to the jurisdiction of the Court. Subsequent to making a voluntary appearance for the purpose of objecting to the settlement and filing a Rule 59(c) motion on behalf of these individuals (except John Doe B) these individuals settled their objections to the class and resolved their Rule 59(c) motions. The settlement agreement was placed on the record in accordance with SCRCP 43(k). The August 30, 2007 settlement agreement that Mr. Meyers signed, on behalf of his client(s), was submitted to and incorporated by Order of this Court dated August 31, 2007. At no time did Mr. Meyers object to or appeal from this signed order of the Court approving the settlement. Clearly at the time he settled the objections and Rule 59(c) motion and the agreement was submitted to the Court for approval and incorporation Mr. Meyers as agent for his client(s) submitted them voluntarily to

the jurisdiction of the Court and to the venue of Dorchester County. The South Carolina Supreme Court has stated that "although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance." Stearns Bank National Association v Glenwood Falls, L.L.P., 373 S.C. 331, 337, 644 S.E.2d 793, 796 (2007). Based on the reasoning in Sterns, the Court has jurisdiction over Mr. Meyers's client(s).

Mr. Meyers further alleges in his motion to dismiss that pursuant to SCRCP 12(b)(6), there are no summons or complaints in this action which even purport to state a claim against any non-party. This ground is addressed in the Courts prior discussion regarding personal jurisdiction and in its discussion of enforcement of the settlement with Mr. Meyers's client(s) *infra*. Pursuant to SCRCP 12(b)(8), Mr. Meyers argues, there is a prior action involving these plaintiffs and the Diocese of Charleston, specifically action 2008-CP-10-1274 in Charleston County, alleging the Diocese breached a settlement agreement with these parties; and (7) pursuant to Simpson v Simpson, 660 S.E.2d. 274 (S.C. Ct. App. 2008), he argues that no proceeding in this action, including this motion to dismiss, can properly be ruled upon by Judge Goodstein.

The last ground has been addressed and dismissed in the motion to recuse. The Court will now address the remaining grounds.

Mr. Meyers states that pursuant to SCRCP 12(b)(8) the action, numbered 2008-CP-10-1274, which was filed in Charleston County alleging the Defendants breached the settlement agreement is a prior pending action. SCRCP 12(b)(8) prevents a party from filing another action between the same parties for the same claim when one action has already commenced.



Regarding the ground, there was no prior action in Charleston County. The suit in Dorchester County and the settlement with Mr. Meyers's clients (the subject of the Charleston action) was filed prior to the action in Charleston.

Based on the foregoing, Mr. Meyers's motion to dismiss is denied.

Motion to Enforce Settlement Agreement

Motion for Leave to Deposit Funds with the Court

Motion for Pre or Post-Judgment Interest

Motion for Sanctions

Motion to Enforce

The Defendants filed their Motion to Enforce Settlement Agreement and a Motion for Leave to Deposit Funds with the Court with the Dorchester Clerk of Court on July 25, 2008. Mr. Meyers orally moved on behalf of his client(s) to enforce the settlement and for interest at the January 29, 2009 hearing following denial of his motion to recuse and motion to dismiss. The Court heard both Mr. Meyers's and the Defendants' motions to enforce settlement.

The settlement agreement between Mr. Meyers's clients and the Defendants was adopted by this Court as part of the Court's Order on August 31, 2007. As part of the Court approved settlement, payment of one million and three hundred seventy five thousand dollars was to be paid to Mr. Meyers and was to occur after the payment of claims to the class members which was anticipated to be "sometime after January 1, 2008". The money was to be paid out of the remaining pool of \$12 million from the class settlement and if that was not sufficient, the Diocese was obligated to supplement the remaining \$1.375 million as agreed upon. On December 6, 2007, class counsel received and forwarded class claims to Defendants counsel.

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All class claims were presented to the arbitrator, Marvin Infinger, who entered the final class claims award on February 29, 2008. On March 3, 2008, the Defendants' wrote Mr. Meyers stating they would be able to pay the \$1.375 million after Mr. Infinger and Ellie Thomas, the accountant, had agreed upon the final disbursement of the settlement fund and the Defendants' had received a final accounting report and collected the surplus money from the original pool.

The Court was informed that on March 6, 2008, Mr. Meyers's on behalf of his client(s) filed a lawsuit in Charleston County to enforce the settlement agreement that arose out of the instant suit. The records reflect Mr. Meyers obtained an emergency temporary relief hearing in Charleston on March 7, 2008 before Judge Young, who denied his motion. The Defendants filed a Motion to Change Venue in the Charleston case from Charleston County to Dorchester County on April 1, 2008. Judge Few heard the motion to change venue on June 24, 2008 and denied the Defendants' motion but issued a stay of the case until related motions were filed and resolved in the Dorchester County (this instant) suit.

The Defendants' motion to enforce seeks the following relief: to allow the Defendant to deposit the \$1.375 million with the Dorchester Clerk of Court; to order Mr. Meyers's clients to execute full and final releases suitable to the Defendants and deliver them to the Defendants' attorney; to order Mr. Meyers's clients to dismiss the pending Charleston County case; and upon full and complete execution of the above order payment of funds to Mr. Meyers' and for sanctions against Mr. Meyers for willfully and purposefully usurping the proper jurisdiction of this court by seeking enforcement of the August 30, 2007 Agreement and August 31, 2007 Court Order in another court. The sanctions requested include a request for an award of Defendants' costs and attorney's fees incurred in defending this matter in Dorchester County and Charleston

County; and if the objectors refuse to comply, that the Court issue a Rule to Show Cause and then vacate the August 31, 2007 Order.

SCRCP 43(k) states “[n]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.” Rule 43(k). SCRCP, is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation. Ashcroft v. Palmetto Const. Group, 318 S.C. 492, 458 S.E.2d 533 (S.C. 1995). An agreement may be enforced when the existence and the terms of the agreement have been reduced to the form of a consent order or written stipulation signed by counsel and entered on the record, or made in open court and noted upon the record.

The proper procedure for enforcing a settlement agreement is to petition the approving trial court to interpret or enforce the agreement. See Kumas v. Third Generation, Inc., 324 S.C. 284, 289-90, 485 S.E.2d 626, 629 (Ct.App. 1995). “A trial court has inherent jurisdiction to enforce settlement agreements entered before it.” Id. “There can be no doubt but that the trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court.” Rock Smith Chevrolet, Inc. v Smith, 209 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct.App. 1992). Further, in the Order Designating Case Complex, dated October 10, 2006, the Court retained exclusive jurisdiction to hear the case from beginning to end.

Dorchester County is a proper venue for the Diocese’s motion to enforce settlement under SCRCP 43(k). The trial court has the inherent jurisdiction to enforce settlements entered into before that Court. Rock Smith Chevrolet, Inc., 209 S.C. at 93, 419 S.E.2d at 842.

Mr. Meyers argued that Defendants unilaterally arranged to turn the objectors agreement into an order and that the objectors had no part in filing the August 30, 2007 agreement with the Court, nor in requesting the Court enter an order incorporating it, and that was done solely by the Diocese and Class Counsel. This argument is without merit. Mr. Meyers's had filed a Rule 59(e) motion with the Court following the order approving class settlement. The settlement agreement reached between the Defendants and Mr. Meyers *inter alia* resolved the Rule 59(e). Under Rule 43(k) this agreement was one which affected pending litigation. It was appropriate for counsel to submit the agreement for the Court's approval and incorporation. The Court notes that the August 30, 2007 Order was unchallenged and unappealed from. In fact, Mr. Meyers now seeks to enforce the order, not abrogate its effectiveness. The Court granted the motions to enforce settlement at the conclusion of the hearing on January 29, 2009 since all elements of Rule 43(k) were satisfied. The mechanism for payment was set forth in the Courts order dated February 3, 2009.

During the January 29, 2009 hearing and following the Court's verbal ruling, parties argued their positions to the Court regarding escrowing payments and provision of releases. Pursuant to Court directive, Counsel met and agreed to the language of the releases to be provided to the defendants by Mr. Meyers's clients. The FDIC information regarding the insuring and safety of the money deposited with banks in the area was requested by the Court. Once a suitable bank was located, a proposed order was prepared by Mr. Meyers and Mr. Shahid to provide the necessary steps of transferring the money, the bank to escrow the money, the party to control that money, the acquiring of releases from Mr. Meyers clients, and the process to exchange the releases for the settlement funds. These actions occurred in relative quick fashion

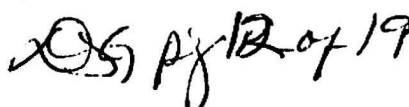
as the order signed by this Court was dated February 3, 2009. The Defendant Diocese deposited the funds on February 4, 2009. The releases were provided to the Dorchester County Clerk of Court on February 9, 2009 and they were sent to the Defendants with copies to Class Counsel. The 1.375 million dollars were transferred to Mr. Meyers on February 12, 2009 by the Dorchester County Clerk of Court.

The specific mechanism for enforcing the settlement is documented in this Court's February 3, 2009 Order.

Pre-Judgment Interest

Mr. Meyers requested pre and post judgment interest. "If pre-judgment interest is pled for in the complaint, it is allowed on obligations to pay money from the time the payment is demandable, either by agreement of the parties or by operation of law, if the sum is certain or capable for being reduced to certainty." Dixie Bell, Inc. v Redd, 376 S.C. 361, 368, 656 S.E.2d 765, 769 (Ct.App. 2007) (quoting Future Group, II v. Nationsback, 324 S.C. 89, 101, 478 S.E.2d 45, 50 (1996)). Mr. Meyers and his clients have not entered any pleading requesting this Court to award pre-judgment interest other than the oral motion. Further, all conditions precedent by Mr. Meyers's clients were not complete at the time pre-judgment interest was demanded during the January 29, 2009 hearing as Mr. Meyers had not provided releases to the Diocese acceptable to it and signed by his client(s). Until that time, the funds from the Diocese were not demandable and that condition precedent was unsatisfied.

Despite some overtures from each side to the other, the conditions precedent (e.g. the objectors providing suitable releases) was satisfied as a result of this Court's order of February 3, 2009. Because all conditions were satisfied at or very near to the time the money was paid,

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prejudgment interest is inappropriate and the request is denied.

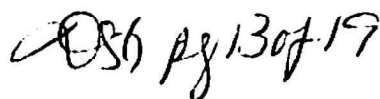
Post-Judgment Interest

Mr. Meyers moved for post-judgment interest at the January 29, 2009 hearing. Mr. Meyers's argued that post-judgment interest is mandated by statute rather than being discretionary relief. "South Carolina Code Ann. 34-31-20(B) (Supp.2003) states that ... judgments of courts enrolled or entered shall draw interest. [A] claimant is entitled to interest from the date of the rendition of the verdict, or post-judgment interest, as a matter of course." Hunting v. Elders, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct.App. 2004) (citing Calhoun v. Calhoun, 339 S.C. 96, 102, 529 S.E.2d 14, 18 (2000)).

All conditions precedent by the Diocese and class counsel were satisfied by April 28, 2008 when Mr. Richter, class counsel, returned \$100,000 to Mr. Shahid after the claims process was completed. At that time, per the Court Order dated August 31, 2007, Mr. Meyers would provide the Defendants' with releases in exchange for \$1.375 million paid out of the excess settlement funds and any additional monies required to satisfy that amount. On March 5, 2008, Mr. Meyers filed a new action in Charleston County involving these matters. Apparently there was much procedural activity associated with the Charleston case.

The Defendants' filed a Motion to Enforce Settlement and Motion for Leave to Deposit Funds into the Court on July 25, 2008. Mr. Meyers's Motion to Recuse and Motion to Dismiss were filed September 24, 2008 in Dorchester County.

It was not until Mr. Meyers's Motion to Recuse and Motion to Dismiss were denied on January 29, 2009, some nine months after the performance date by the Diocese and class counsel, did Mr. Meyers move to enforce the settlement under SCRCP 43(k). It is important to



remember although the Diocese and class counsel had performed by April 28, 2008. Mr. Meyers failed to provide acceptable releases until they were sent to the Court on February 9, 2009.

“Post-judgment interest is in the nature of a penalty.” Babb v. Rothrock, 310 S.C. 350, 354, 426 S.E.2d 789, 792 (1993) (citing Sears v. Fowler, 293 S.C. 43, 358 S.E.2d 574 (1987)). In order to receive benefit of a penalty, the non-violating party must comply correctly with the appropriate motions or steps. A party seeking post-judgment interest must have followed the prescribed steps to be awarded this penalty. A party who by their own hand creates a situation where they fail to make the correct motions cannot in the alternative request a penalty against the opposing party which their own actions helped to accrue.

Mr. Meyers failed to utilize the most efficient avenue for enforcing the settlement that was incorporated into this Courts Order dated August 31, 2007. The Defendants sought the most appropriate route for relief in this matter.

This Court finds that the Defendants were in no way at fault and did not fail to comply with the settlement agreement. The Defendants actions were not the cause of the delay. For the foregoing reasons, Mr. Meyers’s motion for post-judgment interest is denied.

Motion for Sanctions

The Defendants request sanctions for the Motion to Enforce Settlement Agreement for the cost of defending this action and responding to the frivolous pleadings filed by Mr. Meyers. Specifically, the Defendants request attorney’s fees and costs associated with filing memorandum, filing and arguing the Motion to Enforce Settlement Agreement and Deposit Funds with the Court, and defending the action filed in Charleston County that was improperly filed to enforce this Courts order of August 31, 2007.



This Court will not consider sanctions connected to the Charleston County case. A request for sanctions as they relate to the Charleston litigation must be brought in that case.

Under Rule 11(a), SCRPC, a party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. Ex Parte George W. Gregory, 378 S.C. 430, 663 S.E.2d 46 (2008); Runyon v Wright, 322 S.C. 15, 471 S.E.2d 160 (1996). The attorney's signature on the motion constitutes a certificate by him that he has read the motion and to the best of his knowledge, information, and belief there is good ground to support it. SCRPC 11(a).

The South Carolina Frivolous Civil Proceedings Sanctions Act provides for liability for attorney fees and costs of frivolous suits. South Carolina Code Ann. § 15-36-10(A)(4) provides the specific situations where sanctions may be appropriate. The first basis is for filing a frivolous motion if "a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;" "a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party;" or "a reasonable attorney presented with the same circumstances would believe the... motion ... is frivolous. ..." S.C. Code Ann. § 15-36-10(A)(4)(a)(ii)-(iv) (2008). The second basis is for "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts." S.C. Code Ann. § 15-36-10(A)(4)(b) (2008). Finally, "making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification,

or reversal of existing law.” S.C. Code Ann. § 15-36-10(A)(4)(c) (2008).

Regarding the matter of sanctions, given the attendant issues with the motions to enforce it is apparent that a hearing was necessary to bring the matter to conclusion. The granting of sanctions is a matter left to judicial discretion. Any delay in the resolution of these matters was a product of multiple impediments, some of which were as innocent as the vicissitudes of busy lawyers’ schedules. Therefore, with all these matters in mind, the Court denies not only pre and post judgment interest but the imposition of sanctions in this case.

Motion to Appear as Amicus Curiae

Mr. David Flowers, on behalf of the South Carolina Victim Assistance Network (SCVAN), petitioned the Court on June 23, 2008 to appear in this action as amicus curiae in order to point out to the Court numerous and serious problems with the purported resolution of this class action suit.

South Carolina Appellate Rule 213, Amicus Curiae Brief, governs the admissibility of amicus curiae. The rule states that briefs may be conditionally filed with a motion for leave to file which identifies the interest of the applicant and shall state the reasons why an amicus curiae brief is desirable. The Court then has the discretion to admit the brief and use it for guidance in the litigation.

There is only one reported case in South Carolina that addresses the admissibility of amicus curiae briefs in trial courts in this state. In Cook v S.C. Dept. of Hwy. and Public Transp., 309 S.C. 179, 420 S.E.2d 847 (1992), the trial court permitted the use of an amicus curiae brief by the South Carolina Budget and Control Board in a wrongful termination suit, but the Court pointed out that there was no evidence that “the trial judge even considered the amicus

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arguments in reconsidering his order.” Cook v S.C. Dept. of Hwy. and Public Transp., 309 S.C. 179, 184, 420 S.E.2d 847, 850 (1992). Cook stated that with regards to amicus curiae briefs that the “admission or exclusion of evidence at trial is addressed to the sound discretion of the trial judge.” Cook v S.C. Dept. of Hwy. and Public Transp., 309 S.C. 179, 184, 420 S.E.2d 847, 849-50 (1992) (citing Grand Strand Const. Co. v. Graves, 269 S.C. 594, 239 S.E.2d 81 (1977)).

The other South Carolina case is a 1974 Federal class action case that addressed an amicus curiae brief that was determined to be a motion to intervene by the United States as a party plaintiff. In Alexander v Hall, 64 F.R.D. 152 (D.S.C. 1974), while discussing amicus curiae participation in trial courts, “[a]n amicus curiae is not a party to the litigation...and therefore does not necessarily represent the views or interests of either party.” Alexander v Hall, 64 F.R.D. 152, 155 (D.S.C. 1974). “Since an amicus does not represent the parties but participates only for the benefit of the court, it is solely within the discretion of the court to determine the fact, extent, and manner of participation by the amicus.” Id. The amicus brief by the United States in Hall was ultimately determined to be a motion to intervene as party plaintiff in the action instead of only an amicus curiae brief for the case.

“An amicus curiae is not a party to the action and cannot assume the functions of a party. When amicus status is granted, the named parties should always remain in control, with the amicus merely responding to the issues presented by the parties. Although an amicus may provide supplementary assistance to existing counsel, an amicus curiae cannot assume management of the action as counsel, being without any control over it whatsoever. An amicus cannot initiate, create, extend, or enlarge issues, including constitutional issues. Courts will not consider issues raised by amici curiae which are not raised by the parties. Relief beyond that

which is sought by the parties cannot be requested by amicus curiae. Instead, an amicus curiae must take the case as he or she finds it, with the issues made by the parties. Motion practice by amici curiae is not permitted.” Thomas, Susan L., Powers and Functions of Amicus, CJS AMICUS § 14 (footnotes omitted); see Van Arsdale, Barbara J., Rights and Powers of Amicus Curiae, AMJUR AMICUS § 6.

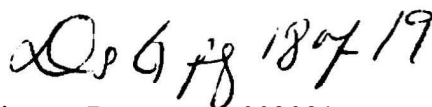
The Court notes the affirmative relief requested by the SCVAN amicus curiae brief. The brief submitted includes petitions to recuse the presiding judge, to appoint substitute class counsel, to require attorneys to self report themselves, and to dissolve the settlement reached with the class. It is abundantly clear from the Appellate Court Rules, state and federal case law, that the petition before this court does not resemble a typical amicus request. Rather, the motion appears to be an attempt to intervene as one considers its form and the affirmative relief it seeks. The pleading at issue attempts to do much more than advise the court on certain issues raised by the parties themselves.

Therefore, with regard to the petition to appear as amicus curiae submitted by SCVAN, the Court respectfully denies the motion for the above stated reasons.

THEREFORE, IT IS ORDERED that Mr. Meyers Motion to Recuse and Motion to Dismiss were and continue to be denied.

IT IS FURTHER ORDERED, that the Defendants’ Motion to Enforce Settlement Agreement and Motion Leave to Deposit Funds with the Court and Mr. Meyers Motions to Enforce Settlement Agreement are granted.

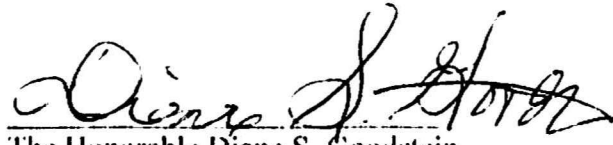
AND IT IS FURTHER ORDERED Mr. Meyers’s motion for pre and post judgment interest is denied.



AND IT IS FURTHER ORDERED the Defendants' Motion for Sanctions is denied.

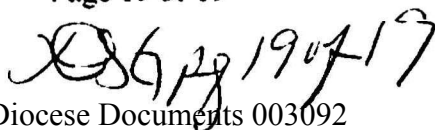
AND IT IS FURTHER ORDERED the Petition to Appear as Amicus Curiae by
SCVAN is denied.

AND IT IS SO ORDERED!



The Honorable Diane S. Goodstein
Circuit Court Judge

Date: March 23, 2009



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Case No.: 2:22-cv-02940-BHH

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

MOTION TO DISMISS ON BEHALF OF LAWYER DEFENDANTS

NOW COME Defendants Lawrence E. Richter, Jr. (“Richter”), David K. Haller (“Haller”), and Richter & Haller, LLC (collectively, “Lawyer Defendants”), who by and through their undersigned counsel move this Court for an Order dismissing the Complaint in this matter for failure to state facts sufficient to constitute a cause of action against the Lawyer Defendants pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, S.C. Code Ann. § 15-36-100, and upon the facts set forth below. The Lawyer Defendants submit this filing in an abundance of caution and subject to their Motion to Remand [Docket Entry No. 7] or the Motion to Stay All Deadlines [Docket Entry No. 8], which have not been decided. The Lawyer Defendants would show that to the extent this Court denies the Motion to Remand and retain jurisdiction, the claims against the Lawyer Defendants should be denied.

NATURE OF THE CASE

This action is the latest in a series of lawsuits that have been filed since 2009 against the Lawyer Defendants by attorney Gregg Meyers leveling baseless accusations of lying, stealing, and other misconduct by the Lawyer Defendants, the Diocese, and the presiding class action trial judge

in connection with a landmark \$12 Million settlement the Lawyer Defendants secured on behalf of victims of sexual abuse against The Bishop of Charleston, a Corporation Sole (the “Diocese”). After nearly a decade of litigation, the Honorable J.C. Nicholson, Jr. granted the Lawyer Defendants summary judgment on August 11, 2017 in the then-pending actions. (Order Granting Lawyer Defendants Summary Judgment, August 11, 2017, Exhibit A.) Judge Nicholson’s order was affirmed on appeal *per curiam*. During that appeal, Mr. Meyers filed two more identical actions against the Lawyer Defendants and the Diocese recycling the same allegations and causes of action. (See *Robert Chimento v. Lawrence E. Richter, Jr., et al.*, C/A No. 2018-CP-10-05802, and *Jane Doe 304 v. Lawrence E. Richter, Jr., et al.*, C/A No. 2019-CP-10-05892.) Mr. Meyers also filed a petition in the original jurisdiction of the Supreme Court of South Carolina on behalf of the Plaintiffs in this action, John Doe 305, Julie McDonald, and Richard McDonald. (Petition and supporting documents, Appellate Case 2020-001415, Exhibit B.) The supreme court denied that petition and appointed the Honorable J. Derham Cole to preside over the remaining two cases pending, *Chimento* and *Jane Doe 304*. (Order, April 19, 2021, Appellate Case 2020-001415, Exhibit C.) Currently, the Lawyer Defendants have motions to dismiss in those two cases pending before the Court of Common Pleas for Charleston County.

After the Plaintiffs’ petition was denied, Mr. Meyers subsequently filed this action in the Court of Common Pleas for Charleston County against the same parties, alleging the same causes of action and same breaches on behalf of the Plaintiffs, and seeking the same relief. Before the Lawyer Defendants were served and had an opportunity to move to dismiss the Plaintiffs’ complaint, the Diocese removed the case. Because the Court has not yet ruled on their Motion to Remand [Docket Entry No. 7] or their Motion to Stay All Deadlines [Docket Entry No. 8], and to avoid default, the Lawyer Defendants submit this motion.

FACTS

Plaintiffs alleges they are all residents and citizens of “a state other than South Carolina.” (ECF 1-1, ¶ 6.) They filed this case in Charleston County Court of Common Pleas against the Diocese Defendants and the Lawyer Defendants, all of whom are South Carolina citizens. (ECF 1-1, ¶¶ 11, 13, 17-19.) Plaintiffs alleges they were class members in the underlying 2007 South Carolina state court class action settlement that resolved sexual abuse claims against the Diocese (the “State Court Class Action”). (ECF 1-1, ¶¶ 7-9.) In the State Court Class Action, the Lawyer Defendants represented two classes of plaintiffs, abuse victims and family members. The parties in the State Court Class Action reached a pre-trial settlement. Pursuant to Rule 23, SCRCF, the Court of Common Pleas for the First Judicial Circuit reviewed the settlement and approved the settlement on a preliminary basis on January 19, 2007. The Court directed notice to the class, held multiple fairness hearings, and ultimately gave the settlement final approval on July 30, 2007.¹ Plaintiff John Doe 305, in the instant suit, alleges he did not participate in the settlement or make a claim against the Diocese for sexual abuse under the class action matrix. Plaintiffs Julie McDonald, and Richard McDonald allege they participated in the settlement, received an award from the settlement, but were wrongfully charged a fee by class counsel. Plaintiffs asserted the same allegations in their petition to the Supreme Court of South Carolina, which was denied. In this action, Plaintiff assert causes of action for (i) declaratory judgment, (ii) professional negligence against the Lawyer Defendants, (iii) aiding and abetting breach of fiduciary duty as to

¹ *John Doe #53, et al. v. The Bishop of Charleston, a Corporation Sole, et al.*, Case Nos. 06-CP-18-1310, 06-CP-18-1311, and 06-CP-18-1636, filed in the Court of Common Pleas for the First Judicial Circuit, Dorchester County, South Carolina. The Orders Approving Settlement in the State Court Class Action are in the record as Docket Entry Nos. 10-3 & 10-4.

the Diocese, (iv) civil conspiracy, conversion, accounting, and disgorgement against all defendants, and (v) breach of contract by John Doe 305 against the Diocese.

The Lawyer Defendants seek an order similar to the various orders other South Carolina courts have entered rejecting the allegations of a “collusive class action” and “judge-shopping” and dismissing the Plaintiffs’ complaint.

ARGUMENT

I. Plaintiffs Have Failed to State a Claim Upon Which Relief Can Be Granted

Plaintiffs’ claims against the Lawyer Defendants should be dismissed pursuant to Fed. R. Civ. P. 12(b) because the claims are based upon the same alleged duties and same theories that South Carolina trial and appellate courts have already rejected in approximately one dozen prior cases that Mr. Meyers has filed against the Lawyer Defendants since 2007. The order granting the Lawyer Defendants summary judgment, which was affirmed on appeal *per curiam*, demonstrates that South Carolina courts have squarely rejected the Plaintiffs’ position that the Defendants engaged in any wrongful conduct with the class action settlement; that the Lawyer Defendants owed, undertook, or breached some duty relating to the notice plan for the class settlement; that the Lawyer Defendants stole money from the class; or that the Lawyer Defendants, Diocese, and/or class action court “failed” to conduct a final review of the class action settlement. (Order Granting Lawyer Defendants Summary Judgment, August 11, 2017.) The Lawyer Defendants and Diocese submitted the settlement to the circuit court for review, approval, and administration pursuant to Rule 23, SCRCP.

The class action court conducted multiple fairness hearings before entering the final order approving the settlement. During those fairness hearings, Mr. Meyers appeared and raised

objections to the settlement. He alleged the court mistreated his clients² and the various other wrongful acts he continues to advance in this action, including that class counsel's fees were excessive and based on "fraudulent billings."³ The class action court heard those arguments, considered them, and rejected them.⁴ Since that time, Mr. Meyers has continued to advance the same arguments and theories on behalf of these Plaintiffs and at least ten others to the circuit court, court of appeals, and supreme court. All those courts have rejected the contrived theories of judge-shopping, collusive class action, and misconduct during the class action settlement.

The class action court approved the class settlement only after spending a considerable amount of time and resources to the matter, and only after conducting hours of hearings. Following that approval, the Defendants followed the class action court's orders. The Diocese funded the settlement, and validated claims were submitted to arbitration for valuation and award. Following the administration of all claims and payment of all awards pursuant to the arbitrator's determinations, class counsel provided the class action court with a "final accounting of disbursements" from a well-qualified and well-respected certified public accountant. (*See* Docket Entry Nos. 10-6.) There was no misconduct during the class action, on the part of the Lawyer Defendants or anyone else, and there certainly was no collusion, fraud, or malpractice. There was, however, a disgruntled attorney representing some objectors to the settlement. That attorney has embarked on a campaign against the Lawyer Defendants ever since. Now fifteen years and a dozen lawsuits later, his motive is clear.

The Plaintiffs' claims against the Lawyer Defendants are not grounded in the law or equity or any legal authority. Instead, they spring from malevolence and a personal vendetta. The causes

² Order, March 23, 2009, at 3-8 [Docket Entry No. 16-1].

³ *Ibid.*

⁴ *Ibid.*

of action the Plaintiffs allege have no more merit than those in the dozen or more prior proceedings on behalf of similarly-situated plaintiffs. This court should reject those claims for the same reasons every other court has rejected them. The Lawyer Defendants breached no duty owed to John Doe 305, in connection with the notice plan for the class action settlement or otherwise, nor did they charge unlawful fees from the class or from Julie McDonald and Richard McDonald.

In the event the Court denies the motion to remand and retains jurisdiction of this case, it should dismiss the complaint.

II. The Plaintiffs have Failed to Allege Facts Entitling Them to Declaratory Relief

Based upon the allegations in the complaint, the cause of action for a declaratory judgment should be dismissed because it seeks advisory opinions and fails to conform to the federal requirements.

Plaintiffs assert a claim for declaratory relief “pursuant to SCRCP 57 and the South Carolina Declaratory Judgment Act, S.C. Code § 15-53-10 et seq. (“SCJDA”), to determine, among other things, under SCRCP 23 the propriety of [various] actions of the defendants. . . .” (Compl. ¶ 3, Docket Entry No. 1-1.) Among the actions about which Plaintiffs seek a ruling are:

- a. the conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench,
- b. the extent to which class action settlements are permitted to be collusive,
- c. the extent to which colluding parties to a class action are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,
- d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
- e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his colluding “adversary” at the expense of the class members class counsel purports to represent,

- f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
- g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
- h. the extent to which class counsel may charge class members an unauthorized fee, and
- i. the extent to which applicable legal standards may vary according to the persons involved.

Id.

“Under the SCDJA, ‘the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment.’” *Clowney for Owens v. Hunt Valley Holdings, LLC*, No. 6:15-CV-03524-TMC, 2016 WL 11643616, at *3 (D.S.C. Apr. 13, 2016) (citing *Power v. McNair*, 177 S.E.2d 551, 552 (S.C. 1970)). The SCDJA “does not require the court to give a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when occasion might arise’, (citations omitted) or ‘license litigants to fish in judicial ponds for legal advice.” *West v. West*, 263 S.C. 146, 149, 208 S.E.2d 530, 532 (1974) (quoting *City of Columbia v. Sanders*, 231 S.C. 61, 97 S.E.2d 210 (1957)).

Here, Plaintiffs fail to show they are entitled to declaratory relief. The facts they plead show they are merely asking for an advisory opinion from this Court about various aspects of administering class action cases in state court. *Id.* This cause of action in particular underscores the need to remand this case to the Court of Common Pleas for Charleston County. In the event the case is not remanded, the Court should dismiss the cause of action for declaratory relief.

III. The Plaintiffs Failed to File the Required Expert Affidavit with the Complaint.

The claims against the Lawyer Defendants also should be dismissed based upon the Plaintiffs’ failure to satisfy the filing requirements in the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, et seq. “South Carolina Code § 15-36-

100(B) requires that plaintiffs in various malpractice suits, including legal malpractice actions, ‘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.’” *First Reliance Bank v. Romig*, No. 4:14-CV-00084-BHH, 2014 WL 5644602, at *7 (D.S.C. Nov. 4, 2014). “If a plaintiff fails to file the required affidavit, the defendant may seek dismissal of the complaint in a ‘motion to dismiss filed contemporaneously with its initial responsive pleading.’” *Id.* (quoting S.C. Code Ann. § 15–36–100(C)(1)). The complaint may also be dismissed if the defendant “alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective.” *Id.* (quoting S.C. Code Ann. § 15–36–100(E)).

The Plaintiffs did not engage and expert an obtain an affidavit for this complaint. Instead, they attached an affidavit of Michael Virzi dated September 9, 2020 that was prepared and signed in support of the Plaintiffs’ petition to the Supreme Court of South Carolina. The Plaintiffs’ failure to obtain an expert affidavit to support this complaint is fatal to their professional negligence claim.

IV. The Plaintiffs’ Claims are barred by Res Judicata.

“Under the doctrine of res judicata, or claim preclusion, ‘[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.’ ” *Providence Hall Assocs. Ltd. P’ship v. Wells Fargo Bank, N.A.*, 816 F.3d 273, 276 (4th Cir. 2016) (quoting *Pueschel v. United States*, 369 F.3d 345, 354 (4th Cir.2004)) “Three elements must be satisfied for res judicata to apply. ‘[T]here must be: (1) a final judgment on the merits in a prior suit; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of parties or their privies in the two suits.’” *Id.* See also *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (“Res judicata bars subsequent

actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.”)

Two years ago, Plaintiffs filed a petition in the original jurisdiction of the Supreme Court of South Carolina with a proposed complaint in which they alleged various acts of misconduct on behalf of the Lawyer Defendants, the Diocese, and the class action court in connection with the settlement of the underlying class action cases. The filings totaled one hundred one pages. In that petition and complaint, the Plaintiffs sought the same relief they seek here. After considering the petition for six months, the supreme court denied it. (Order Denying Petition, April 19, 2021.) Therefore, the Plaintiffs opted to present their claim to the supreme court, and the court denied it. The Plaintiffs are barred as a matter of law from now bringing the same claims for the same relief against the same defendants here.

CONCLUSION

For the reasons state above, the Lawyer Defendants would show if the Court denies the Motion to Remand and retains jurisdiction of this case, the Court should dismiss the complaint.

Respectfully submitted,

BRUNER POWELL WALL & MULLINS, LLC

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*Attorneys for Lawrence E. Richter, Jr., David K.
Haller, and Richter & Haller, LLC*

October 7, 2022

Columbia, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-5520; 2010-CP-10-7233; 2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176; 2015-CP-10-5486; 2016-CP-10-1632

John Doe, et al.
PLAINTIFF(S)

The Bishop of Charleston, a Corporation Sole, et al.
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

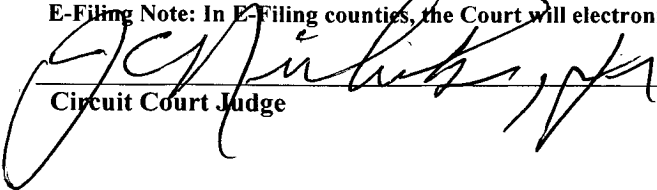
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

If applicable, describe the property, including tax map information and address, referenced in the order:

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117
Judge Code

8/8/17
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

John Doe 2 and Jane Doe 4,

Plaintiffs,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2010-CP-10-5520

**ORDER ON
LAWYER DEFENDANTS'
MOTIONS FOR
SUMMARY JUDGMENT**

John Doe 10,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2010-CP-10-7233

JULIE J. ARMSTRONG
CLERK OF COURT

2017 AUG 11 PM 2:39

FILED

Jane Doe 11,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2012-CP-10-5559

John Doe 193,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2013-CP-10-3733

Father Doe 194,) CASE NO.: 2013-CP-10-4175
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 194,) CASE NO.: 2013-CP-10-4176
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 245 and Father Doe 245,) CASE NO.: 2015-CP-10-5486
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 297,) CASE NO.: 2016-CP-10-1632
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

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

motion for summary judgment in each case on the same grounds. The Lawyer Defendants also filed separate motions for summary judgment on additional grounds against Jane Doe 4 (Case No. 2010-CP-10-5520) and John Doe 193 (Case No. 2013-CP-10-3733). This Order will address the omnibus motion in each case as well as the motions for summary judgment against Jane Doe 4 and John Doe 193.¹

BACKGROUND

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

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The Lawyer Defendants represented alleged victims of sexual abuse in class action lawsuits against the Diocese Defendants that were settled in 2007 (Case Nos. 2006-CP-18-13109, 1311 and 1636; “the Underlying Case”).² Seven of the Plaintiffs claim that they were members of the Primary Class³ and that the Lawyer Defendants committed legal malpractice while representing

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

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

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

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

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

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

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

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

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

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

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

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

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

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



I. Summary Judgment Standard

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

⁶ Case No. 2013-CP-10-3733.

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

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



II. The Lawyer Defendants' Motions

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

- A. the Court has determined that the Plaintiffs can sue the Diocese Defendants making their respective claims against the Lawyer Defendants "irrelevant";
- B. the Plaintiffs have no damages proximately caused by the Lawyer Defendants;
- C. no attorney-client relationship existed between the Lawyer Defendants and the Plaintiffs, who were unnamed class members; and
- D. the Lawyer Defendants did not breach a fiduciary duty to the Plaintiffs.

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

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

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

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

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

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

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

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

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

The Plaintiffs who did not settle with Diocese Defendants¹⁰ were subject to a motion for summary judgment filed by the Diocese Defendants and scheduled to be heard by the Court on

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

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

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

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

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

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

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

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

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

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

C. There was No Attorney-Client Relationship

1. The Majority Rule.

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

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

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

Ill. App. 3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. 1 (“prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients”); *Resnick v. Am. Dental Ass’n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) (“Without question the unnamed class members, once the class has been certified, are ‘represented by’ the class counsel.”); *Gillespie v. Scherr*, 987 S.W. 2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) (“[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members”).

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

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

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

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

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

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

2. *Premium Investment Corp. v. Green*

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

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

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

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

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

Id. at 470.

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

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

3. The Plaintiffs’ Testimony.

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

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

D. No Breach of Fiduciary Duty.

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

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

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

Id. at 470.

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

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

Id. (emphasis added).

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

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

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

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

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

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

John Doe #53, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1636, Complaint

¶ 41. Therefore, the complaints relevant to the Primary Class clearly limited the putative classes to individuals within the geographical boundaries of South Carolina. *See also Id.* ¶ 36 (“Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].”).

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

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

Jane Doe 1, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1310, Complaint

¶ 25. Later, that complaint alleged:

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

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

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

III. The Claims of Jane Doe 4:

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

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

IV. The Claims of John Doe 193.

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



V. The UTPA Claims.

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

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

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

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

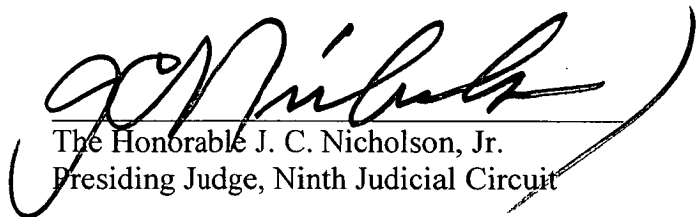
CONCLUSION

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

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

AND IT IS SO ORDERED.

Dated: 8/8/17
Charleston, SC


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

State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020-_____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Petition for Original Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) class members were never informed:

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

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

- (e) class counsel submitted patently false and fraudulent billing records in support of his fee application, which elicited neither reaction nor comment from either his supposed adversary or from the shopped-for judge, either initially or even after the objectors and others later brought the fraudulent entries specifically to the attention of the shopped-for judge;
- (f) as noted above, class counsel was paid a contingent fee for almost all of the time submitted as justification for a fee award in the class action, a payment never disclosed to the court;
- (g) class counsel was awarded a \$2.5 million fixed fee for a class settlement reached seven months after the class action was filed, before a single motion had been argued or decided in the case, before a single deposition had been taken in the case, before any class member had been even identified, let alone made a claim or been compensated, so before the value of claims were assessed (individually or collectively). That fee was paid prior to any notice to the class and prior to the claims period, making it impossible to evaluate the results for the class in assessing the fee, and impossible for any class members to object; and
- (h) The claims of class representatives were resolved before the class was approved. None of the representatives had any stake in the class settlement.

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

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

- (a) class counsel making claims for, and distributing class funds to, persons class counsel now claims were never in either of the two classes,
- (b) class counsel charging substantial fees (of over \$900,000) that were:
 - a. not authorized by any order,
 - b. charged without disclosing, to either class members or to those persons class counsel knew were not (they now claim) in the class, that class counsel had already been paid a \$2.5 million fee. A substantial part of that unauthorized fee was charged to, and paid by, persons class counsel now claims were not in either of the defined classes, which if true would mean those "clients" were persons class counsel did not represent, and which class counsel was not eligible to represent, and
- (c) If, contrary to what class counsel now claims, the settlement classes included persons who resided out of state, and those persons rightfully received class funds, then the fraud being perpetrated by class counsel is current, with class counsel maintaining in *Doe v. Bishop*, a position contrary to what they maintained in the class action, and were paid for maintaining in the class action. Class counsel now claims they owed no duty to absent members of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) circuit court orders which now conflict on significant matters related to the class definition, such as who is and is not in the settlement classes, which no circuit court can properly resolve since one circuit judge may not overrule another;
- (b) Substantial frauds upon the court in the underlying class action. One circuit judge found (with class counsel's urging) that roughly a quarter of those participating in the class settlement were residents of a state other than South Carolina. Another circuit judge found (with class counsel's urging) that residents of states other than South Carolina were not in either settlement class. Of course, if out of state residents were not within the settlement classes, then such persons were ineligible to receive any of the class funds distributed to them, were unable to make a *bona fide* claim to any class funds, could not have been represented by class counsel, and could not properly have been charged a fee by class counsel. That is one potential fraud.

- (c) As part of potential fraud one, class counsel submitted a substantial number of fraudulent claims on behalf of persons they now contend were not eligible for class funds, and
- (d) class counsel purported to represent persons they did not represent in that class counsel now contends a substantial number of class claimants were not in either settlement class, and
- (e) class counsel charged fees of persons they did not represent.
- (f) A second fraud is that class counsel charged what appears to be in excess of \$900,000 in fees not authorized by any order, over and above the \$2.5 million fee awarded by the court. The awarded fee was based on class counsel's misrepresentations of fact and fraudulent billing records, most of which time, even if it hadn't been fraudulently inflated, was based overwhelmingly on time for which class counsel had already been paid a contingency fee not disclosed to the shopped-for judge. A third fraud is that the payment of that contingent fee for work done for class representatives was not disclosed to the court, by either class counsel who received the payment or the Diocese which made the payment, yet the time was represented to have been uncompensated time for work on the class action. The class settlement was reached seven months after filing, with no motions decided and not a single deposition having been taken.
- (g) the parties and the shopped-for judge ignored both the Supreme Court's March 2009 directives to conclude the class action by September 2009 and to seek from the Court permission to extend that time beyond September 2009;
- (h) the parties continue to ignore the Court's directive to conclude the class action, which remains open;

- (i) no post-award fairness hearing has ever evaluated the actual distributions made to class members, or the actual fees charged by class counsel, or the fees charged in relation to the work performed on a settlement reached seven months after the class case began, or the misrepresentations of fact made by class counsel in pursuit of their fee, or the fantastical time records of class counsel, or none of the parties in the class disclosing that class counsel had been paid a contingency fee for individual cases which was later claimed to have been work done on the class action and which work constituted the vast majority of time in the billing records;
- (j) no post-award fairness hearing has ever evaluated the actual distributions made to the substantial number of persons that class counsel now claim they knew when class claims were submitted were neither their clients nor in either settlement class; all such claims, and the fees charged by class counsel on such claims each being a fraud upon the court and comprising substantial sums paid to recipients that class counsel had no authority to represent;
- (k) no evaluation has ever been made of class counsel retaining fees from their fraudulent conduct in the class action by class counsel's present fraud on the court contending, despite their conduct of the class action claims process, that no person who resides out of state is in either settlement class;
- (l) Extensive procedural irregularities and manipulations in the conduct of the class action case, including but not limited to:
 - 1. Class counsel having made no disclosure to the class about:
 - i. Class counsel's lifelong ties to the Diocese of Charleston and the positions of authority he held with the Diocese;

- ii. Class counsel having paid the Diocese of Charleston \$100,000 from class counsel's trust account as a contribution by himself or by his clients to fund superior settlement terms (compared to any class member) for those who objected to the class settlement;
- iii. That class representatives were compensated on terms different than were class members; were paid before class approval so had no stake in the class settlement; received known sums with no required arbitration process; were not required to surrender appeal rights to receive a settlement; and that a portion of their settlement compensation was paid to class counsel by a separate check as a contingency fee;
- iv. That class counsel charged additional fees (apparently in excess of \$900,000) not authorized by any order without disclosing to the persons charged that the court had already awarded class counsel, and they had already been paid, a \$2.5 million fee that included their work in the claims process;
- v. That class counsel's fee was for class litigation that began in December 2005 and ended in a mediated settlement in June 2006 without a single motion argued or decided or a single deposition having been taken;
- vi. That class counsel had been paid a contingency fee for individual cases which were cases later represented to be in the class action, work for which was included in the time records of the class action;

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

Respectfully submitted,



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State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020 _____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Complaint

Summary of the Action

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

Parties and Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

Original Jurisdiction

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

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

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

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

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

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

- a. circuit court orders now conflict about fundamental aspects of the class action, and “[o]ne Circuit Court Judge does not have the authority to set aside the order of another.” *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). Among other things, circuit court orders now conflict on the class definition, affecting the rights of these plaintiffs.
- b. The defendants simply ignored at the time, and continue to ignore, a March 2009 order from the South Carolina Supreme Court that the class action be concluded within six months. Apparently that order was ignored to avoid creating a final order that might enable appellate review.
- c. Although in 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, 754 SE2d 494 (S.C. 2014), which held that absent members of the class should be permitted to show why class counsels’ representation was inadequate, full discovery as to class counsels’ conduct in the class action, including the class notice program and the statute of limitations, has still not been permitted. In the trial court a stay was imposed on that discovery so as to prevent inquiry into class counsels’ conduct.

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

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

Plaintiff John Doe 305

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. class counsel paying their opponent from their firm's trust account \$100,000 to facilitate the class settlement by funding a settlement of terms superior to the class relief for those objectors who opted out of the class action;
- b. why that \$100,000 payment is not reflected in any accounting;
- c. class counsel having negotiated a fixed fee for themselves while simultaneously negotiating a variable recovery for the class, counsel's fee to take priority over the class recovery;
- d. class counsel moving for the fee to be approved and paid within ten days of preliminary class approval, before any class member had notice or the opportunity to file a claim, or before class members even knew about or could object to any aspect of the fee petition,
- e. whether class counsels' approved \$2.5 million fee was reasonable given the fraudulent factual misrepresentations made in the fee request, the blatantly fraudulent time records submitted (more on that below), class counsel having been already paid (and none of the parties disclosing to the court) a contingency fee for the individual cases of the class representatives that preceded the class approval, the time for which formed the overwhelming bulk of the time submitted as if it was work done for the class action; and the class settlement having been reached seven months after the class complaint was

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

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

- h. whether the blatantly fraudulent time records used by class counsel was proper support for the class action fee fraudulently claimed; a fraud far in excess of the false billing records on which this Court imposed a three year suspension of counsel in *In re Sloan*, Op. No. 27936 (S.C. January 22, 2020); unless, of course, a different standard applies to some lawyers as opposed to others;
- i. whether it was proper for class counsel to submit as work done on the class action time records for work done on individual cases, for which work class counsel had already been paid a contingency fee by the Diocese, but which payment no party disclosed;
- j. whether class counsel breached a duty to the class by (class counsel claimed) generating billing records not based on time but based on a computer program that did not record time but proposed a machine-generated “estimate” to bill for a given activity. For example, when class counsel duplicated the John Doe 53 class complaint for re-filing (as part of the judge-shopping scheme), class counsel made two changes to page 1 of that complaint for which a billing record for 30 hours was created. Yet the only work done was the word “Charleston” was changed to “Dorchester” and the Charleston County case number was deleted so as to provide a blank space to receive the Dorchester County case number, 2006-CP-18-1636. No other change was made for those 30 hours of worked claimed;
- k. whether the substantial fees charged to and collected by class counsel from class members were proper when they were not authorized by any order, were charged without proper disclosures to the individuals charged, and were

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

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

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

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

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

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

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

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

Plaintiffs Julie and Richard McDonald

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

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

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

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

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

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

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

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

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

All individuals born on or before August 30, 1980, who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Fraudulent claims by class counsel against the class fund
and fraudulent charges by class counsel to “clients”**

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

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

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

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

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

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

- a. The total fee charged by class counsel is unknown.
- b. The entire fee charged has never received independent judicial review.
- c. The \$2.5 million fee was reviewed by only the shopped-for judge, not by any independent court.
- d. The total fee charged has never been compared to the actual recovery for the class.

- e. On November 20, 2006, the Diocese wrote a check for \$145,000 to class counsel as a contingency fee payment for individual cases. That payment was not disclosed in the 2007 fee application.
- f. The billing records for those individual cases were then falsely submitted as part of the fee application as uncompensated time expended on the class action. The 2006 contingency fee payment was not disclosed by either class counsel or the Diocese to the court or to absent class members.
- g. The billing records in the class action fee application were inflated by patently fraudulent means (including many, many days with time in excess of 24 hours).
- h. The billing record was generated, according to class counsel, not based on actual time spent but by a computer program that inserted a time based on the activity descriptor, examples of which are wildly disconnected from actual time spent. One example of this is the 30 hours claimed to duplicate the John Doe 53 class complaint so it could be re-filed in Dorchester County as part of the venue- and judge-shopping plan. That filing duplicated, word for word, the existing class action case pending in Charleston County. The entire “work” required to replicate that case filing was to make two changes on page one of that complaint. (a) The county designation was changed from “Charleston” to “Dorchester,” and (b) the Charleston case number was replaced by a blank space to accommodate a Dorchester County case number. Those changes did not require 30 hours as class counsel “conservatively” claimed. Class counsel cannot identify the name of this supposed billing program that performed this

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

- i. In addition to having been paid (twice) for the time spent on the individual cases for the class representatives, the \$2.5 million fee specifically included, as the court ordered, “additional time expended, and to be expended . . . in carrying out the terms of the settlement,” Order of July 30, 2007 at 14. Yet class counsel charged additional fee for work already compensated by the fee awarded.
- j. In the seven months of “litigation” between the December 2005 filing of the class complaint and the 2006 mediated class settlement, not a single motion was argued or decided, and not a single witness was deposed.
- k. Time billed on “February 30th” of multiple years, either a reflection that the computer-generated time was entirely divorced from actual work done or a reflection that time was manually entered, contrary to class counsels’ claim, and
- l. Identical multiple time entries on, for example, the 30th of each month for “bookkeeping” (2 hours each month), “legal research” (three entries each month, each of 5 hours each month), and “oversight and review” (10 hours each month).

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

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

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

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

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

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

The Supreme Court Should Assert Original Jurisdiction

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

102. The 2007 class settlement was collusive. Among other acts of collusion were:
- a. The class settlement concept was proposed in an October 2005 meeting between class counsel Richter and his Bishop.
 - b. The class complaint was filed two months later, in Charleston County on December 2, 2005, alleging one class with John Doe 53 alleged as the class representative.
 - c. No motion was made at any time in the Charleston County case to certify the one class alleged.
 - d. Between that December 2005 filing and the June 2006 mediated class settlement, not a single motion was argued or decided. Each time motions were scheduled the parties requested a continuance.
 - e. According to class counsels' time records, not a single deposition was taken in the class case.
 - f. A class settlement was reached in June 2006. At that time, two individual cases and one class action case were the only pending cases, each in Charleston County.
 - g. After the June 2006 mediated class settlement was reached in the Charleston County class action, the Charleston County circuit court was not informed that a proposed class settlement had been reached, as SCRCP 23 requires.
 - h. After the class settlement was reached, no motion was made in Charleston County to certify the class or to approve the class settlement, as SCRCP 23 requires. Doing so might have caused independent judicial review, and the parties desired to avoid independent judicial review.

- i. After the June 2006 proposed class settlement was reached, the defendants in this action apparently decided they did not want any judge then assigned to Charleston County to review the propriety of the class action or to review the proposed class settlement.
- j. Instead, the defendants desired to choose the judge for those purposes. The judge the defendants desired was chosen for her long social and professional connection to class counsel. As she was not then assigned to Charleston but was assigned to another circuit, the parties agreed to judge-shop, which required them to change venue for review of the class action settlement.
- k. By August 12, 2006, the defendants had apparently discussed, and class counsel eventually submitted billing records that reflected they had prepared, a “consent order changing venue,” as the means to move the proposed class settlement away from Charleston County judges to the shopped-for judge in Dorchester County. That approach, which also did not comply with SCRCP 23, was abandoned. Instead, they accomplished their judge-shopping by other techniques, techniques which will be widely available to bench and bar if not addressed by this Court and rejected, including the following sequence of judge-shopping events:
 - 1. In June 2006, the class settlement was agreed to in mediation.
 - 2. In June and July 2006 no motion was filed to approve the proposed class settlement as required by SCRCP 23.
 - 3. On August 15, 2006, solely to judge-shop, class counsel filed two class complaints in Dorchester County, case numbers 06-CP-18-

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

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

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

12. ##The class complaint on behalf of John Doe 53 filed in Dorchester County is identical in substance to the class complaint filed on his behalf in Charleston County. They differ only in two respects on page 1: county name and case number.
13. As a result of its re-filing, the class complaint on behalf of John Doe 53 was then filed simultaneously in two different counties. As noted above, class counsels' billing records claimed it required 30 hours to make those two changes to page 1 of that complaint.
14. The purpose of that Dorchester County duplicative filing was to evade review of the class settlement by any judge then assigned to Charleston County and to arrange review by the shopped-for judge in Dorchester County.
15. On October 6, 2006 at 12:03 p.m. class counsel filed in Dorchester County a motion to "certify classes and for preliminary approval of class settlement." The motion was made in each of the three cases already settled before any of the cases was filed in Dorchester County. No comparable motion was filed in Charleston County, where the John Doe 53 class case had been filed, remained pending, and had been settled.

16. The Diocese defendants accepted service of the Dorchester County version of the John Doe 53 duplicate class complaint. No motion was made pursuant to SCRCP 12(b)(8) that there was a prior pending action. No effort was made to have the class settlement reviewed in Charleston County, where it was pending and had been settled.
17. On October 9, 2006 the shopped-for judge consolidated the Dorchester County class action cases and specified the collective caption to use for the class action cases. Part of that collective caption included the duplicated-in-Dorchester John Doe 53 complaint.
18. On October 10, 2006 the shopped-for judge invoked the July 26, 2006 order of the Supreme Court to designate the consolidated class actions as complex. At that time, among other things, complex case designation applied to cases that counsel represented they had been unable to settle. There was no provision for cases that had been settled.
19. The shopped-for judge then assigned to herself the complex case.
20. It is not known if the shopped-for judge was informed that the class cases had been settled four months before; that the parties had ignored SCRCP 23 in Charleston County; that the parties had decided to collaborate in judge-shopping; that the parties had chosen her as the judge to shop for; or that the parties had

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. that the class action settlement was collusive,
- b. that a \$100,000 payment was made from class counsel or his clients to facilitate the class action,
- c. the superior terms of settlement for those who opted out of the class (compared to the terms for the class), of which class counsel knew or should have known due to his involvement in negotiations,
- d. class counsels' life-long ties to the Diocese, including personal friendships with priests and bishops (any of whom might have been identified by a class member as a perpetrator of sexual abuse) and other officials, and his own official functioning for the Diocese prior to and during the class proceedings,
- e. class counsels' extensive ties to the shopped-for judge, disclosed to the Diocese but not to the class; the Diocese waived that conflict consistent with the collusive nature of the class action; class members were not informed;
- f. the court's award of a fee of \$2.5 million, to be paid within ten days and without notice to the class;
- g. class counsel being paid a contingent fee for the individual cases of class representatives, then submitting the billing records in those cases as part of the class fee request, without disclosing that the contingency fee had paid for that time;

- h. class counsel charging and taking additional fees which no order authorized, and/or
- i. class counsel charging a fee for persons known to class counsel (they now contend) to not have been in either class.

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

Fiduciary obligations of class counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- g. Making no disclosure to the court of the 2006 contingent fee payment to class counsel for individual cases, or that the billing records relied on for the class action fee application was almost entirely for time for which a contingency fee had already compensated class counsel,
- h. Making no objection that the class representatives referred to in the class settlement agreement had already been paid and whose claims were settled in 2006 whether or not the class was later certified; so the “class representatives” had no stake in the class settlement, and were not representative of the primary class,
- i. Making no motion to disclose to the class the superior settlement terms reached with the individuals who objected to the class settlement, or that those superior terms were funded in part by class counsel or class members,
- j. Making no objection to class counsel negotiating simultaneously a fixed fee for himself and a variable recovery for the class, with the compensation for class members being subordinated to that fee,
- k. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range, omitting that a contingent fee had already been paid for the time spent on individual cases which formed the vast percentage of time claimed in the fee application; and making no disclosure that the class settlement was reached seven months after filing, without a single motion having been argued or decided, or a single witness having been deposed,
- l. agreeing to make no objection to the fee being awarded before any member

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

- m. Making no objection to class counsels' blatantly fraudulent billing records,
- n. Making no objection to class counsel collecting more fee from class members than any order approved, and failing to disclose to the court the fee class counsel intended to, and did, take,
- o. Cooperating to induce the McDonalds, as out of state residents, to submit what class counsel now claims were fraudulent claims,
- p. Making no objection to class counsel charging each of the McDonalds a fee, despite knowing that each of them was an out of state resident,
- q. Agreeing to ignore the South Carolina Supreme Court's March 2009 directive that the class action should be concluded in six months or an extension of time sought from that court,
- r. agreeing to seek no post-award fairness hearing under SCRCF 23 where the actual conduct of the class action, substantively and procedurally, would be assessed, even after a motion for a post-award fairness hearing was requested in 2016 by one of the class representatives who alleged class counsels' representation of him had terminated as he had been "abandoned" by class counsel.

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

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

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

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

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

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

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

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

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

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

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

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

proper disclosures.

**For a First Cause of Action:
Declaratory Relief**

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

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

- a. The class definitions approved from the 2007 class action apply without geographic limit;
- b. Each plaintiff was within one of the settlement classes without regard to being a resident of a state other than South Carolina; alternatively, if the plaintiffs were each not in a class due to state of residence, then the plaintiffs are entitled to a declaratory judgment that class counsel submitted knowingly fraudulent claims for persons not within the class, and that class counsel, not the out of state claimants, should reimburse the class fund for the full amount of any such funds distributed improperly due to the breach of duty associated with class counsels' conduct;
- c. The defendants improperly manipulated class action procedure by, among other things, colluding so as to:
 1. After reaching a class settlement:
 - a. Making no motion in the existing class action for class certification and settlement approval,
 - b. engaging in judge-shopping as set out in detail above;
 - c. duplicating in a different county and different judicial

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

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

2. Class counsel paid \$100,000 from their trust account to the Diocese to fund better settlement terms for objectors and to induce the Diocese to complete the class action without disclosing that payment to the clients or to the class and not including that payment in any accounting of the class funds;
3. Class counsel submitted patently fraudulent billing and expense records to support the claim for fees and costs, including charges for events which never took place, charges well in excess of 24 hours in a day, and repeated charges and claims of costs without support.
4. Class counsel received, but no parties disclosed, a contingent fee payment for individual cases of the class representatives, the time for which formed the largest part of the fee application in the class action.
5. Failing to disclose to the class:
 - a. that class counsel had life-long ties to the defendants in the

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

- b. That class counsel paid \$100,000 from their trust account to induce the Diocese defendants to complete the class action, on better terms for objectors, as noted above;
 - c. That class representatives were compensated in 2006 on terms different than was the class, receiving known sums with no arbitration process and without having to surrender appeal rights before receiving their settlement, and were paid well before any class was certified;
 - d. That persons who objected to the class were compensated on better terms than any class member, receiving known sums, greater sums, with no arbitration process, without having to surrender appeal rights to receive their settlement, and without the limitations from the class “matrix” that minimized their sexual abuse. That better result for objectors was funded in part by class counsel or his clients, from class counsels’ trust account, with no disclosure to the class, no disclosure to the clients, and no accounting of the payment;
 - e. That class counsel was not authorized by any order to charge the additional fees charged to class members.
6. Ignoring the S.C. Supreme Court’s March 2009 order directing that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- e. that after the class settlement was reached, class counsel and the Diocese defendants had colluded through various improper manipulations to judge-shop for a pliable oversight of the class action in a different county and judicial circuit,
- f. that no court order authorized class counsel to charge any additional fee, and
- g. that in November 2006 class counsel was paid a contingent fee of \$145,000 for their work on individual claims of class representatives, then the time on those cases was fraudulently submitted for the class action fee as if that fee had not been paid. That time constituted the large majority of the time claimed to support the class action fee, and the contingency fee payment was not disclosed to the court or to the McDonalds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

not in either settlement class.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Demand for Jury Trial

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

Relief Sought

The plaintiffs seek the following relief:

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

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

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

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

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

- a. Issue a rule to show cause for each defendant to account for why each of them ignored the Supreme Court's 2009 directive and no extension was requested of the Court, an inquiry that should include a sworn statement from the shopped-for judge as to why she cooperated with the judge-shopping, and why she ignored the Supreme Court's 2009 order to conclude the class action;
- b. issue a rule to show cause why class counsel should not be removed from any responsibility for the class action as, under Rule 1.7 of the Rules of Professional Responsibility, class counsel has, among other things, present conflicts with various class members as well as conflicting duties to those clients and their own interests;
- c. issue an order appointing as class counsel an attorney with class action experience and who is completely independent of present class counsel and the shopped-for judge.

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

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

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

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

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

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

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

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

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

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

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

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

216. Costs and disbursements of this action;

217. Reasonable attorney fees; and for

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

Respectfully submitted,



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

Attorney for the Plaintiffs

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DIOCESE OF CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

PAY TO THE ORDER OF Richdy & Haller LLC - Client Trust Accounts \$ 345,000.00 DOLLARS

42983

67-448/539 SC 2961

DATE 11-20-06

Bank of America 

FOR John L. Banta
Margaret L. Banta

1104298311

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DIOCESE OF CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42982

PAY TO THE ORDER OF Richder & Haller, LLC

DATE 11-20-06 \$ 145,000.-

DIOCESE OF CHARLESTON
CHARLESTON

Bank of America 

FOR John L. Barber
Mrs. Martin Luther King Jr.

1104 298 211

87-448/539 SC 2961

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Date on back

RP

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

15 STATE STREET
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CHARLESTON, SOUTH CAROLINA 29402

OFFICE (843) 853-4500
FAX (843) 722-1119
TOLL FREE 1-888-792-2456

August 30, 2007

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

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

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

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

Dear Larry and Gregg:

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

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

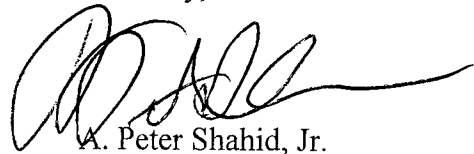
rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice.. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement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

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

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

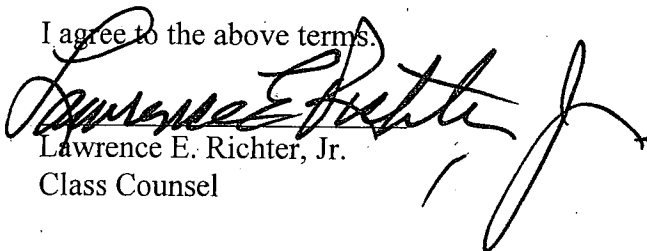
The \$1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the \$12 million pool of funds, the Diocese is still obligated to pay the \$1.375 million as stated above. Payment is expected sometime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

Sincerely,



A. Peter Shahid, Jr.

I agree to the above terms.



Lawrence E. Richter, Jr.
Class Counsel

I agree to the above terms.



Gregg Meyers

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

FIRST CITIZENS BANK AND TRUST COMPANY
MOUNT PLEASANT, SC 29464

67-148/532

NUMBER

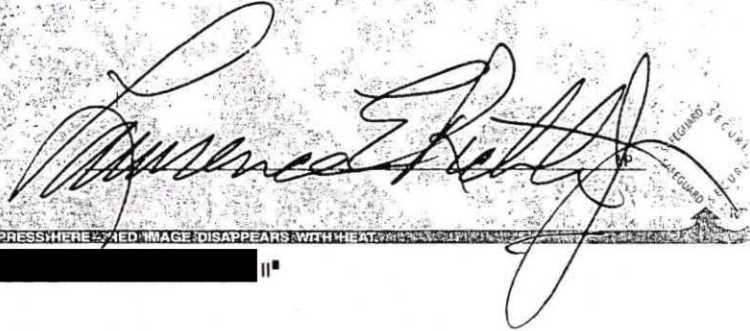
**** ONE HUNDRED THOUSAND & 0/100 DOLLARS

PAY
TO THE
ORDER OF

DATE
04/28/08

AMOUNT
\$ **100000.00

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



⑈002087⑈

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

NUMBER

2087

Vendor ID:

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

MEMO:

RE: DIOCESE OF CHARLESTON CASE
03CIV037

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

2087

Vendor ID:

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

MEMO:

RE: DIOCESE OF CHARLESTON CASE
03CIV037

State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020 _____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Affidavit of Michael J. Virzi

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

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

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

- A. I am a lawyer licensed to practice law in South Carolina, and my practice for the past seventeen years has focused exclusively on matters of legal malpractice, ethics, and lawyer discipline;
- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, I served a three-year term as Chair of the former from 2007 to 2010 and a two-year term as chair of the latter

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

- C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;
- D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught Fundamentals of Law Practice and Professionalism; I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice, ethics, and lawyer discipline; I am an instructor for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;
- E. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and
- F. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this matter.

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

- A. Petition for Original Jurisdiction in the above-captioned case;
- B. Complaint in the above-captioned case;
- C. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
- D. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
- E. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
- F. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;
- G. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636 (collectively hereinafter "the Consolidated Class Actions");

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- H. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
- I. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
- J. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
- K. November 7, 2006, letter from A. Peter Shahid, Jr., to Lawrence E. Richter, Jr., regarding the Consolidated Class Actions;
- L. November 10, 2006, letter from Lawrence E. Richter, Jr., to Albert P. Shahid, Jr., regarding the Consolidated Class Actions;
- M. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in the Consolidated Class Actions;
- N. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in the Consolidated Class Actions;
- O. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in the Consolidated Class Actions with exhibits, including:
 - i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;
 - ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;
 - iii. Affidavit of Angela Pittard, with attached timesheets;
 - iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and
 - v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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- P. July 12, 2007, letter from Lawrence E. Richter, Jr., to The Honorable Diane S. Goodstein regarding the Consolidated Class Actions;
- Q. Transcript of July 13, 2007, hearing before The Honorable Diane S. Goodstein;
- R. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in the Consolidated Class Actions;
- S. Order Approving Settlement, dated and filed July 30, 2007, in the Consolidated Class Actions;
- T. Order of the Court, dated and filed August 31, 2007, in the Consolidated Class Actions;
- U. February 19, 2008, letter from Lawrence E. Richter, Jr., to Richard McDonald regarding "John Doe 538 vs. The Diocese of Charleston, et al." and enclosing a Settlement Statement;
- V. Order of the Supreme Court of South Carolina, dated March 19, 2009, in John Doe v. Lawrence E. Richter, Jr., et al.;
- W. Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, dated June 17, 2011, and filed June 27, 2011, in John Doe 2 and Jane Doe 4 vs. The Bishop of Charleston, et al., Case No. 10-CP-10-5520;
- X. Notice of Motion and Motion to Enforce Settlement, dated April 16, 2012, in the Consolidated Class Actions;
- Y. Transcript of Record before The Honorable Edgar W. Dickson, dated April 12, 2013, in the Consolidated Class Actions;
- Z. Order on Motion to Enforce Settlement, dated November 21, 2013, and filed on December 17, 2013, in the Consolidated Class Actions;
- AA. Transcript of Motions Hearing before The Honorable J.C. Nicholson, Jr., dated April 10, 2014, in Father Doe 194 vs. Bishop of Charleston, et al.;
- BB. Motion for Post-Award Fairness Hearing by Allen Sires, dated and filed on May 11, 2016, in 2006-CP-18-1310 and 2006-CP-18-1311;
- CC. Affidavit of Lawrence E. Richter, Jr., dated March 31, 2015, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176;

MSV

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

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

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

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

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

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

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



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

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

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

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

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

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



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

Further affiant sayeth naught.


Michael J. Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me

This 9th day of September, 2020


Notary Public

My Commission Expires : 10/18/2026

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

Case No.: 2:22-cv-02940-RMG

**REPLY OF THE LAWYER
DEFENDANTS IN SUPPORT OF
THEIR MOTION TO DISMISS**

Defendants Lawrence E. Richter, Jr. (“Richter”), David K. Haller (“Haller”), and Richter & Haller, LLC (collectively, “Lawyer Defendants”) enter this reply to the response of Plaintiffs, ECF No. 27, to their motion to dismiss, ECF No. 21.¹ In their response, Plaintiffs merely reiterate the same baseless allegations that have been proffered and rejected many times before. The complaint in this case fails to state a plausible cause of action and is barred by *res judicata*. Therefore, the Lawyer Defendants seek dismissal of the complaint.

REPLY ARGUMENT

I. Plaintiffs’ claims cannot survive even under a Rule 12(b)(6) standard.

In the current era, courts no longer require strict code pleading, but rather compliance with Rule 8, Fed. R. Civ. P. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677–78, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965 (2007)). Nonetheless, a plaintiff’s complaint can still not survive on the mere possibility of liability but must provide allegations and conclusions specific enough to create a plausible claim for relief. *Id.* at 678, 129

¹ This motion to dismiss was filed in an abundance of caution while the Lawyer Defendants’ motion to remand and motion to stay remain pending.

S. Ct. at 1949. Because this plausibility standard is specific to each case, it requires the district court to “draw on its judicial experience and common sense.” *Id.* at 679, 129 S. Ct. at 1950 (citation omitted).

The allegations in this complaint bely common sense. In order for the complaint to state a claim, the Court must be willing to entertain the baseless idea that the Lawyer Defendants colluded with the Catholic Church with the willing participation of a sitting South Carolina Court of Common Pleas judge.² The Court must be willing to believe that, despite repeated, vociferous, and contemporaneous objections from Plaintiffs’ counsel and national press coverage of the case, the judge in question blatantly continued in a pattern of corruption. Further, the Court must be willing to entertain the idea that the conspiracy of Judge Goodstein, class counsel, and the Catholic Church was further ignored by every single state court with jurisdiction, including the Charleston County Court of Common Pleas, the South Carolina Court of Appeals, and the South Carolina Supreme Court, all of which have had multiple occasions over a period of more than a decade to review the allegations made by counsel for plaintiffs.

The complete lack of plausible claims is illustrated by Plaintiffs in footnote 4, wherein it states, the “S.C. Supreme Court has been informed (on multiple occasions) that its 2009 order was ignored [but] . . . [t]o date the Supreme Court has taken no action in response” (ECF No. 27, p. 7 n. 4.) The South Carolina Supreme Court has been given multiple opportunities to act upon the allegations of Plaintiffs’ counsel, including Plaintiffs’ recent petition for review in the original

² Indeed, the literal judicial experience of this Court in the past year shows that Attorney Richter sues the Catholic Church quite often and is therefore not likely conspiring with the Bishop or the Pope. *See, e.g., Mary Roe 1818 v. Bishop of Charleston . . .*, Case No. 2:21-cv-00020-RMG (D.S.C.); *Gary Nestler, et al. v. Bishop of Charleston . . .*, Case No. 2:21-cv-00613-RMG (D.S.C.); *John Doe 197 v. Bishop of Charleston . . .*, Case No. 2:22-cv-00816-DCN (D.S.C.).

jurisdiction of that court, but has rejected those opportunities at every turn. Plaintiffs' claims lack plausibility or merit and every court in the state appears to agree.

Plaintiffs attempt to recycle arguments about the duties of class counsel under state case law that predates the introduction of Rule 23, SCRPC, governing class actions.³ Arguments based on the two primary cases cited by Plaintiffs were considered by Judge J.C. Nicholson, who granted summary judgment to the Lawyer Defendants, and the South Carolina Court of Appeals, who affirmed Judge Nicholson's orders. *See Doe 2, et al. v. Bishop of Charleston, et al.*, Case No. 2017-001996, 2021 WL 815940 (S.C. Ct. App. filed Mar. 3, 2021).⁴ The opinion rejecting Plaintiffs' arguments was unpublished and is therefore not binding state law precedent. *See* Rule 268(d)(2), SCACR. Nonetheless, since nearly all factors are identical, the opinion is certainly eligible for application to this case under the doctrine of non-mutual collateral estoppel. *See Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554–55, 684 S.E.2d 779, 782 (Ct. App. 2009). This case involves the same defendants, same plaintiff's counsel, same underlying matter, and the same allegations and arguments. The specific argument on class counsel duties now raised by Plaintiffs was explicitly addressed and rejected in Judge Nicholson's summary judgment order, filed as ECF No. 21-1, beginning around page 12.⁵

³ Specifically, Plaintiffs' counsel relies upon *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (Ct. App. 1984).

⁴ Plaintiffs attempted to petition for a writ of certiorari, but the improperly submitted petition was not accepted for filing after both the Supreme Court and Court of Appeals refused to withdraw the remittitur.

⁵ To the extent that Plaintiffs object to the consideration of public court filings from matters recited in their complaint, the Lawyer Defendants note that there is an exception to principle that only the complaint is considered in a motion to dismiss. *See Anand v. Ocwen Loan Servicing, LLC*, 754 F.3d 195, 198 (4th Cir. 2014) (quoting *Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)) ("we may properly consider documents attached to a complaint or motion to dismiss 'so long as they are integral to the complaint and authentic'").

Plaintiffs' allegations in this case have been rejected many times before. There are many true things underlying this case—there was a groundbreaking class action settlement that disbursed \$12 million to alleged victims of sexual abuse and that settlement was approved by the class action court. All these matters of public record do not create plausible allegations supporting causes of action against the Lawyer Defendants. Merely calling something collusive or “shopped-for” does not provide a fact to support a claim. Plaintiffs ask this Court to ignore common sense and rational experience and believe that perfectly normal court filings amount to a cabal between the Pope, class counsel, and Judge Goodstein. All the civil courts of this state have had an opportunity to consider these allegations and all the civil courts of this state have rejected those claims. The Lawyer Defendants ask that this Court do the same.

II. Declaratory relief is not appropriate in this case.

Plaintiffs' counsel has long sought a judicial opinion on his claims about the proper administration of a class action case in South Carolina state court. Each and every time our state appellate courts have been given the opportunity to opine on these issues, no published opinion has been issued. By entering an unpublished opinion affirming Judge Nicholson on the eight consolidated cases brought by Plaintiffs' Counsel, the Court of Appeals made it clear that they felt no guidance to the bench and bar on the issue of Rule 23, SCRCP, is needed. Nonetheless, Plaintiffs are seeking an advisory opinion on the enforcement of state court orders, state judge appointments for class actions, the management of disbursements in state court, and the “applicable legal standards.” (*See* ECF No. 1-1, pp. 29–30, ¶ 112.)

Together, this amounts to a request for a law review article on class action administration in South Carolina state court. In the first instance, declaratory judgment cannot be obtained for advisory reasons, but must concern a real case or controversy, like any other matter before an

Article III court. *See Genesis Healthcare, Inc. v. Becerra*, 39 F.4th 253, 259 (4th Cir. 2022) (applying standing requirements to a question of advice upon an area of federal healthcare law); *see also West v. West*, 263 S.C. 146, 148, 208 S.E.2d 530, 532 (1974) (“The existence of an actual controversy is necessary in order to invoke the jurisdiction of the court for a declaratory judgment.”).

Plaintiffs have sought to alter the character of the relief sought by adding in another issue for judgment—whether the settlement in the class action complied with Rule 43(k), SCRCF. Once again, Plaintiffs seek legal advice and interpretation. Not only is such a request not in compliance with the jurisdictional requirements of declaratory judgment, it also asks this Court to opine on, or even create, state procedural law. This is a textbook reason for the District Court to decline to exercise any discretion in favor of undertaking a declaratory judgment. *See United Capitol Ins. Co. v. Kapiloff*, 155 F.3d 488, 493–94 (4th Cir. 1998) (addressing abstention facts such as overlapping issue of law that might create unnecessary entanglement between state and federal court).

Indeed, there are two pending state court cases brought by Plaintiffs’ counsel, now before Judge Cole, which contain very similar claims to those in this case. Any ruling on the merits of those cases would implicate the same legal issues Plaintiffs seek guidance on in this case. Under such circumstances, federal courts may abstain from exercising jurisdiction. *See Med. Mut. Ins. Co. of N. Carolina v. Littaua*, 35 F.4th 205, 208 (4th Cir. 2022) (quoting *VonRosenberg v. Lawrence*, 781 F.3d 731, 734 (4th Cir. 2015), as amended (Apr. 17, 2015)). Under these circumstances, the claim for declaratory judgment should be dismissed for failure to state cognizable claim or because it seeks guidance on state court procedure.

III. Plaintiffs have not complied with the “contemporaneous filing” requirement for an expert affidavit.

A claim for legal malpractice under South Carolina state law requires compliance with S.C. Code Ann. § 15-36-100(B), which requires the filing of an expert affidavit with a professional malpractice claim. This is referred to as the “contemporaneous filing requirement.” *See* S.C. Code Ann § 15-36-100(C)(1). Specifically, the statute requires the plaintiff to “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.* at § 15-36-100(B).

The instant suit was filed on August 30, 2022. The affidavit attached to the complaint was purportedly signed on September 9, 2020, nearly two years earlier. It appears that Plaintiffs are recycling the same affidavit presented to the South Carolina Supreme Court in their petition for original jurisdiction. The affidavit recycles much the same allegations oft-repeated by Michael Virzi, going back to at least to the affidavit he executed on December 10, 2008. (*See* Affidavit from Complaint in 2010-CP-10-05520 attached as **Exhibit A**.) Not only was the affidavit attached to the current complaint not drafted in conjunction with the instant suit, it simply repeats the same allegations that have been rejected by the South Carolina Court of Common Pleas, Court of Appeals, and Supreme Court. Plaintiffs failed to comply with the statutory filing requirements and fail to state a cause of action for legal malpractice.

IV. Plaintiffs’ claims are precluded by earlier litigation.

In this case Plaintiffs are bringing the same claims against Defendants that they presented in their petition for original jurisdiction of the South Carolina Supreme Court. Indeed, they are even using the same expert affidavit. Plaintiffs could have chosen to bring their claims in circuit court like other plaintiffs typically do. However, Plaintiffs believed their case to be of such

monumental importance that it should skip the typical procedure and go straight to the Supreme Court. Plaintiffs laid out all their grievances and the import of those grievances. After extensive briefing, the Supreme Court denied their petition. The choice to seek an extraordinary venue was Plaintiffs'. Now Plaintiffs want a second bite of the apple.

The application of *res judicata* to prior litigation requires three factors. “To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *RIM Assocs. v. Blackwell*, 359 S.C. 170, 182, 597 S.E.2d 152, 159 (Ct. App. 2004) (quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)). The denial of Plaintiffs’ petition was on the merits, not on an issue of procedure, which might engender a dismissal without prejudice. Nonetheless, Plaintiffs argue that a case regarding an inmate’s attempts to address irregularities with his sentence administration demonstrates that their petition is not preclusive. See *Carpenter v. S.C. Dep’t of Corr.*, 431 S.C. 512, 517, 848 S.E.2d 346, 349 (Ct. App. 2020). These cases are distinguishable in a number of ways.

Most critically, the argument for application of *res judicata* in the *Carpenter* case concerned the state’s argument to dismiss Carpenter’s appeal following a state court trial. During the pendency of the case, the inmate sought and was denied a writ of *habeas corpus* in the state Supreme Court. *Carpenter*, at 519, 848 S.E.2d at 349–50 (“Carpenter filed the present appeal. At the same time, he filed his petition for a writ of *habeas corpus* and a request to certify this appeal with the South Carolina Supreme Court.”) Carpenter was seeking relief in all possible avenues due to his active and ostensibly improper incarceration. The Court of Appeals reviewed his trial court case on the merits and sent it back to trial court for treatment as a post-conviction-relief case

without finding that a concurrent attempt to gain the Supreme Court's jurisdiction was preclusive. *See id.* at 526, 848 S.E.2d at 353.

Conversely, in a case where parties sought a writ of mandamus, the Supreme Court found that the writ case had a preclusive effect on a later damages case. The court found that the parties and the issues were the same with the only difference being the "remedy sought." *Plum Creek*, at 35, 512 S.E.2d at 109. "Where those underlying facts or subject matter of the mandamus proceeding and a subsequent proceeding are identical, and the other two elements exist, res judicata applies." *Id.* at 36, 512 S.E.2d at 109 (citing 50 C.J.S. *Judgment* § 749 (1997)). The reasons for this might be found in the public policy supporting *res judicata*—the need to bring litigation to an end, the prevention of vexatious litigation, the stability of court decisions, and the promotion of judicial economy. *See* 50 C.J.S. *Judgments* § 912. This case is nothing if not the continuation of vexatious litigation. Mr. Meyers' and his various clients have been filing suits against the Lawyer Defendants for twelve years now and show no signs of stopping despite summary judgment being granted and affirmed in eight of the cases. Plaintiffs have already had their day in court and their complaint should be dismissed.

[signature page to follow]

Respectfully submitted,

BRUNER POWELL WALL & MULLINS, LLC

s/ Chelsea J. Clark

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David K. Haller

November 8, 2022

Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)

COUNTY OF COUNTY OF RICHLAND)

AFFIDAVIT

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

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

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

- A. I am a lawyer licensed to practice law in South Carolina;
- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court and current Chairman of the South Carolina Bar Ethics Advisory Committee;
- C. I am a frequent CLE speaker and law school guest lecturer on the topic of lawyer ethics and have been selected as one of five instructors for the South Carolina Supreme Court's Ethics School; and
- D. Since leaving the Office of Disciplinary Counsel in 2006, my practice has focused almost exclusively on matters of lawyer ethics.

3. My opinion is based on the facts provided to me by Plaintiff's counsel and review of various documents. Included in my document review are the following:

- A. Complaint in the Original Jurisdiction of the Supreme Court, John Doe et al. v. Lawrence E. Richter, Jr., et al.;
- B. Affidavit of Gregg Meyers, dated June 18, 2008, and filed June 18, 2008, in John Doe C, et al. v. The Diocese of Charleston, et al., Case No. 08-CP-10-1274, and attachments including:
 - i. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

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Attachment B

000001

- ii. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
 - iii. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
 - iv. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
 - v. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
 - vi. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913; and
 - vii. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- C. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;
- D. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-____ (blank line in original);
- E. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- F. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636; and

- G. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636, and exhibits attached thereto including:
- i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;
 - ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;
 - iii. Affidavit of Angela Pittard, with attached timesheets;
 - iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and
 - v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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

5. Based on my experience, education, training, and knowledge of the standard of care for lawyers and on my review of the above-listed documents and my discussions with Plaintiffs' counsel, it is my opinion that, Lawrence E. Richter, Jr., Esquire, David K. Haller, Esquire, and Richter & Haller, LLC, (hereinafter "Defendants") engaged in negligent acts and omissions in their representation of Plaintiffs including the following:

- A. failure to provide competent representation;
- B. failure to act with reasonable diligence and promptness;
- C. failure to promptly inform clients of decisions and circumstances with respect to which the clients' informed consent is required;

- D. failure to reasonably consult with clients about the means by which the clients' objectives are to be accomplished;
- E. failure to keep clients reasonably informed about the status of matters;
- F. failure to explain matters to the extent reasonably necessary to permit clients to make informed decisions regarding the representation;
- G. attempting to charge and charging an unreasonable fee;
- H. representing clients when the representation involved a concurrent conflict of interest, without obtaining the informed consent of each client, confirmed in writing;
- I. failure to exercise independent professional judgment and render candid advice in representing clients;
- J. failure to expedite litigation consistent with the interests of clients;
- K. lack of candor toward a tribunal; and
- L. conduct prejudicial to the administration of justice.

6. In particular, it appears from the above-referenced documents that Defendants failed to inform clients of Richter's extensive personal relationship with an adverse party, the Diocese of Charleston, and Richter's continuing work on behalf of the Diocese during litigation in which Defendants' clients were adverse to the Diocese. It is apparent from Richter's own affidavit (identified in paragraph 3.F.ii above) that he has a lifelong, extensive personal relationship with the Diocese and many of its current and former constituents, in addition to being a constituent himself and continuing to perform official functions during the pendency of the client matter. This presents a conflict of interests, requiring Defendants to disclose the nature

and extent of the relationship to the clients, along with the risks of the representation and the reasonably available alternatives. Defendants apparently did not do so.

7. It further appears that Defendants engaged in acts and omissions that would be potentially disadvantageous to their own clients and advantageous to the Diocese, including:

- A. failing to promptly seek class certification in the Charleston County class action;
- B. executing Consent Orders of Dismissal in the Charleston County cases;
- C. reducing the extent of notice to class members contained in Defendants' Motion to Certify Classes;
- D. agreeing to reduce their clients' recovery but not Defendants' fees, if the claims exceeded the pool;
- E. failing to object to the Diocese having sole, unsupervised, unfettered discretion to discover potential class members from its own files;
- F. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review;
- G. expressly sacrificing clients' opportunity for post-claim review by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal or suit and that claimants, by participating in the claims process, expressly waive the right to appeal;
- H. participating in negotiations of the claims of several opted-out class members, resulting in an agreement that payment of such claims may come from the settlement pool available to class members;

- I. agreeing to contribute \$100,000 from either Defendants' fee or the settlement pool, toward a settlement between the Diocese and several opted-out class members.

It appears that Defendants engaged in these acts and omissions without first consulting or otherwise communicating with clients. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

8. It further appears that Defendants engaged in acts and omissions that would be potentially disadvantageous to their own clients and advantageous to Defendants, including simultaneously seeking a common fund recovery for class members and a fixed fee amount for Defendants. It appears that Defendants engaged in this conduct without first consulting with clients. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

9. It further appears that Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-class-representative clients, including agreeing to subject some clients to a damages matrix and claim scrutiny to which class representatives were not subjected, settling the claims of the class representatives prior to class certification and court approval of the class settlement, and expressly agreeing to settlement terms for the class representatives regardless of court approval of the class settlement. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

10. It further appears that Defendants sought an improper and unreasonable fee from the settlement pool and a payment structure that favored Defendants' own interest above those of their clients. Defendants' fee petition, affidavits and billing records overstate work performed and misrepresent the nature of the case. Defendants describe the case as hotly contested and aggressive, and the defense formidable and substantial, depicting a time-intensive case requiring the highest skills of the most competent counsel; yet the documents indicate contrary circumstances: little discovery (some paper requests from class counsel but no evidence of responses received nor of requests received from opposing counsel), no depositions, few motions, and after mediation no client disputes, few hearings, and no animosity or contention except on the issue of Defendants' collection of their fee. Defendants' billing records show 3385.5 total hours spent by lawyers and staff at Richter & Haller; however many of the time entries are clearly false in that they are nonsensical and/or impossible, including:

- A. each and every entry on all 68 pages of billing records is a round, even-hour increment or an entry of ".5" hours;
- B. countless round-number or .5-hour time entries at "12:00:00 AM"—including multiple tasks by the same person at the same time—while other entries indicate exact times;
- C. a 10-hour time entry for "Oversight and Review" by "LER" on the 30th day of each month for 3 and a half years, including the same 10-hour time entry for "Oversight and Review" by "LER" just nine days after the first activity in the case in July 2003;
- D. a 2-hour time entry for "Bookkeeping" on the 30th day of each month;

- E. a 3-hour time entry for "Photocopying / Monthly" at irregular intervals but always exactly 3 hours, including one such entry when no other work had been performed in the previous month;
- F. three 5-hour time entries (one each for "DKH," "LER," and "Clerk") for "Legal Research" on the 30th day of each month, including January 30, 2007, within 2 days of the end of the case (and after which no further time is recorded except 7 hours of faxing by "Staff" and 14 hours of emailing by "DKH" & "LER" over the next 2 days);
- G. time entries on days that do not exist: February 30, 2004, and February 30, 2005;
- H. a 16-month period, from September 2003 through December 2004, when only 5.5 hours of specific work is entered, yet 426 hours is entered in the same repeated, identical, rote entries of "Oversight and Review," "Bookkeeping," "Legal Research," and "Photocopying / Monthly" described hereinabove;
- I. 3 .5-hour time entries for drafting 3 Certificates of Service at the same time on the same day (this set of entries occurs multiple times);
- J. 12 *consecutive* 1-hour time entries by "LER" for work on 12 different documents, all at specific times beginning at "07:38:38 AM" on "10/26/06" but extending consecutively over a period of approximately 1 hour and 49 minutes ending at "09:27:30 AM," with many 1-hour entries within less than a minute of each other;

- K. numerous sets of entries similar to the 12 described in the immediately preceding subparagraph (J), such as 3 consecutive 1-hour time entries by “LER” for work on 2 documents, all at specific times beginning at “03:54:19 PM” but extending consecutively over a period of 1 minute and 13 seconds;
- L. entries of exactly 20 hours for drafting each discovery document;
- M. multiple instances of more than one 20-hour time entry for the same person (“DKH”) on the same day;
- N. 27.5 hours (in 55 increments of .5 each, all at “12:00:00 AM”) in one day by “DKH” for emailing to “David K. Haller”;
- O. 60 hours (10 by “LER” and 50 by “DKH”) for amending complaints that ultimately contained very little amendment, including one which apparently changed only the county in the caption and the date at the end;
- P. multiple instances of one person (“DKH” in some instances, “LER” in others) of billing more than 24 hours in a day;
- Q. 568.5 hours of entries appended to the end of the (otherwise chronological) timesheets, for dates ranging from 2004 through 2007, 500 hours of which is in whole multiples of 10 and expressed in date ranges rather than in dates and times, including 3 130-hour single entries by “DKH” for one- and two-week time periods in June and October 2006; and
- R. one of the above-referenced 130-hour single entries by “DKH” for the eight-day time period of October 4-11, 2006, during which period “DKH”

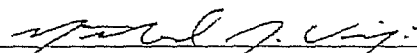
had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

Defendants stated to the court that the above entries were "by far conservative" estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus Defendants appear to have made false statements to a tribunal in support of a fixed fee that was unreasonable and put Defendants in a position potentially adverse to their own clients without taking appropriate steps to deal with the conflict of interests created thereby.

11. As a result, it is my opinion that Defendants' conduct fell below the standard of care, competence, diligence, and loyalty expected of lawyers.

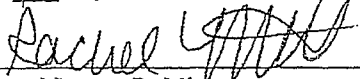
12. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the documents listed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

FURTHER AFFIANT SAYETH NOT.


Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 10th day of December, 2008


Notary Public My Commission Expires July 25, 2013
My Commission Expires : _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

Lawrence E. Richter, Jr., David K. Haller,)
Richter & Haller, LLC, The Bishop of)
Charleston a corporation sole,)

Defendants.)

Case No.: 2:22-cv-02940-BHH

**CONSENT MOTION FOR
SUBSTITUTION OF COUNSEL
AS TO DAVID K. HALLER**

Defendant David K. Haller (“Defendant”) moves for an order substituting his counsel. Defendant’s current counsel, Benjamin C. Bruner and Chelsea J. Clark of Bruner, Powell, Wall & Mullins, LLC, are withdrawing and Defendant has engaged John E. Cuttino of Gallivan, White & Boyd, PA to substitute for Mr. Bruner and Ms. Clark. Mr. Haller consents to the substitution and Mr. Cuttino has entered an appearance in accordance with Local Rule 83.I.07(A) (D.S.C.)

Defendant Haller therefore requests that Benjamin C. Bruner and Chelsea J. Clark and their law firm, Bruner, Powell, Wall & Mullins, LLC, be relieved as counsel of record for Defendant David K. Haller and that John E. Cuttino, and his law firm, Gallivan, White & Boyd, PA, be substituted as counsel of record for Defendant. All future pleadings and notices should be directed to and served upon John E. Cuttino as counsel of record for Defendant. Mr. Bruner and Ms. Clark will remain counsel of record for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC. A proposed order will be filed concurrently herewith.

[Signature Page to Follow]

WE JOINTLY MOVE AND CONSENT.

s/ John E. Cuttino

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November 23, 2022
Columbia, South Carolina

s/ Chelsea J. Clark

Benjamin C. Bruner, Fed. ID No. 10625
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November 23, 2022
Columbia, South Carolina