The State of South Carolina
In The Court of Appeals

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

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Sep 08 2026
SC Court of Appeals

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.

Record on Appeal
Volume Four of Eight

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
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.: 2022-CP-10-04031 **NOTICE OF MOTION AND MOTION TO DISMISS ON BEHALF OF DEFENDANTS LAWRENCE E. RICHTER, JR. AND RICHTER & HALLER, LLC**

TO: GREGG MEYERS, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC (collectively, "Richter"), by and through their undersigned counsel, will move before the Presiding Judge of the Ninth Judicial Circuit Court of Common Pleas at the Charleston County Judicial Center, 100 Broad Street, Charleston, South Carolina on the tenth (10th) day following service hereof, or as soon thereafter as counsel can be heard, for an Order dismissing the Complaint in this matter for failure to state facts sufficient to constitute a cause of action against Richter pursuant to Rules 3, 12(b)(2), and 12(b)(6), SCRCP, and S.C. Code Ann. §§ 15-3-20 and 15-36-100 for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

This action is the latest in a series of lawsuits that arises from a class action settlement in 2007. The Lawyer Defendants were class counsel in class action proceedings[1] brought on behalf

[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.

of victims of sexual abuse against The Bishop of Charleston a corporation sole ("the Diocese"). The class action court conducted multiple hearings on the proposed settlement to address issues related to fairness pursuant to Rule 23, SCRCP, as well as issues raised by objectors' and by the court itself. After resolving those issues, the class action court approve a $12 Million settlement in August 2007. The settlement terms established the settlement funds and allowed class members to submit their claims to an arbitrator to determine the appropriate award for each class member based on the nature and extent of the injuries sustained. The class members were free to proceed with the arbitration *pro se* or with counsel. Plaintiffs submitted their claims, received their award, and accepted the money in early 2008.

Since that time, Plaintiff's counsel has repeatedly filed lawsuits alleging various theories of misconduct by the Lawyer Defendants, by The Bishop of Charleston a corporation sole ("the Diocese"), and by the class action trial judge in connection with the landmark $12 Million settlement. After nearly a decade of litigating cases brought by Mr. Meyers, 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*. (Order Affirming Trial Court, **Exhibit B**.) The supreme court declined to hear the petition for certiorari. (Order of Supreme Court, **Exhibit C**.)

In this action, Plaintiffs levy similar allegations. They claim 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"). (Compl. ¶¶ 7-9.)

Plaintiffs Julie McDonald and Richard McDonald were present during the fairness hearing, and they allege they participated in the settlement. (Compl. ¶¶ 7-9.) A number of objections were made to the settlement, including objections Mr. Meyers filed on behalf of individuals identified

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as Does A through N. (Objections to Class Settlement, February 22, 2007, **Exhibit D**.) When the settlement was approved, Mr. Meyers also objected to the order approving the settlement. (Objections to Proposed Order, August 1, 2009, **Exhibit E**; and Motion to Alter or Amend, August 6, 2007, **Exhibit F**; Memorandum in Support of Motion to Alter or Amend, August 22, 2007, **Exhibit G**.)

The class settlement contemplated that class claimants would complete forms and submit claims to an arbitrator, who would decide the amount awarded to each claimant. (Motion to Certify Class and Approve Settlement, January 17, 2007, **Exhibit H**; Order Certifying Class and Giving Preliminary Approval to Settlement, January 19, 2007, **Exhibit I;** Order Approving Settlement, July 30, 2007, **Exhibit J**; Order of August 30, 2007; **Exhibit K**.) The McDonalds submitted their claims to the arbitrator, as contemplated by the settlement, and they received an award from the arbitrator. (Compl. ¶¶ 7-9.)

In October 2020, over twelve years after receiving their award, Plaintiffs filed a petition in the original jurisdiction of the supreme court complaining that class counsel had wrongfully charged them a fee for representation during the arbitration proceedings. (Petition and supporting documents, Appellate Case 2020-001415, **Exhibit L**.) The supreme court denied that petition and appointed the Honorable J. Derham Cole to preside over the two cases pending in the Charleston County Court of Common Pleas, *Chimento* and *Jane Doe 304*. (Orders of April 19 and June 15, 2021, Appellate Case 2020-001415, **Exhibit M**.)

Last year, over fourteen years after the claims were arbitrated, Plaintiffs filed their claims in two additional cases. First, they filed motions in the original class action cases requesting a "post award fairness hearing" for the purpose of litigating their claims that class counsel wrongfully charged them fees during the arbitration process. (McDonald Motions and Supporting Memoranda in Class Actions, **Exhibit N**.) The class action court rejected the arguments, too, and denied their motion.

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(Order of March 24, 2023, **Exhibit O**.) In its order, the class action court rejected the Plaintiffs' claims and specifically noted the class members' claims "were administered pursuant to the terms of the court-approved settlement through the court-appointed escrow agent and court-appointed arbitrator." *Id*. at 2. Furthermore, the class action court noted that the Plaintiffs were present and participated throughout the process of the class action settlement. *Id*. at 3-4 ("[T]he McDonalds . . . participated in the claims process and received their settlement proceeds.").

In addition to the motion in the underlying class actions, the Plaintiffs filed this action, in which they again claim class counsel wrongfully charged them a fee during the arbitration process. On that basis, they assert causes of action against the Lawyer Defendants for (i) declaratory judgment, (ii) professional negligence and breach of fiduciary duty, and (iii) civil conspiracy, conversion, accounting, and disgorgement.

After this lawsuit was filed, and before it was served on the Lawyer Defendants, the Diocese removed the case to federal court. The Plaintiffs never served the summons and complaint on the Lawyer Defendants. While the case was pending in the District Court, the Lawyer Defendants appeared, moved to remand, and moved to dismiss. On June 12, 2023, Judge Gergel granted the motion to remand. Following the remand, the Plaintiffs never served the summons and complaint on the Lawyer Defendants.

On August 30, 2023, Plaintiff's counsel communicated via e-mail with defense counsel that "a motion for default may be in order" as to the Lawyer Defendants because, according to Plaintiff's counsel, the Lawyer Defendants never responded to the complaint. (E-mail from Meyers, August 30, 2023, **Exhibit P**.) Plaintiff's counsel requested that counsel for the Lawyer Defendants "acknowledge on behalf of each of your clients [sic] acceptance of the attached originally filed summons and complaint."

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This motion is in response to that communication from Plaintiff's counsel. It is the Lawyer Defendants' position that upon remand from federal court, the pleadings filed in the District Court remain effective upon remand. It is further the Lawyer Defendants' position that if in fact Plaintiff's counsel is correct and all filings in the District Court are of no moment here following remand, then this court is without personal jurisdiction because the summons and complaint have yet to be served upon the Lawyer Defendants. It is contradictory for Plaintiffs to claim on the one hand that the Lawyer Defendants are in default while on the other requesting they accept service of the summons and complaint. Indeed, a party's time to respond to a complaint begins upon "the service of the complaint upon him." Rule 12(a), SCRCP. Therefore, the Lawyer Defendants submit this motion to dismiss asserting the same grounds as those stated in the motion that was filed while the case was pending in federal court, in addition to the new grounds raised by the communication from Plaintiff's counsel.

ARGUMENT

I. Plaintiff Has Never Served the Summons and Complaint on the Lawyer Defendants.

Based upon recent communications from Plaintiff's counsel threatening to move for entry of default, the Lawyer Defendants first move for dismissal on the grounds that the Plaintiffs have never served the summons and complaint as required by law. As a result, this action has not been "commenced" pursuant to Rule 3, SCRCP, and S.C. Code Ann. § 15-3-20, nor does this Court have personal jurisdiction.

It is rudimentary that the summons and complaint must be served for an action to be commenced and for the court to obtain personal jurisdiction over the defendants. *See* Rule 3(a), SCRCP; S.C. Code Ann. § 15-3-20; *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) ("A court generally obtains personal jurisdiction by the service of a summons."); *see also*

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Ex parte S.C. Dep't of Revenue, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002) (citing *State v. Sanders,* 118 S.C. 498, 502, 110 S.E. 808, 810 (1920) ("The purpose of the summons is to acquire jurisdiction of the person of the defendant....")). Additionally, Rule 3, SCRCP, provides,

> A civil action is commenced when the summons and complaint are filed with the clerk of court if:
>
> > (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
> >
> > (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days ***after filing***.

Rule 3(a), SCRCP (emphasis added). If a complaint is not served, then the civil action is not "commenced," nor does the circuit court have personal jurisdiction. Similarly, S.C. Code Ann. § 15-3-20 provides:

> (A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.
>
> (B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing.

The rules of statutory construction mandate that the Court apply the clear and ambiguous statutory language referring to "filing." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

According to the complaint, John Doe 305 discovered his claims in November 2019. (Compl. ¶¶ 10 & 88.) The McDonalds allege they discovered their claims in "late 2019." (Compl. ¶ 79.) Taking the allegations in the complaint as true, the three-year statute of limitations ran in late 2022. Therefore, Plaintiffs were required to serve the summons and complaint within 120

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days of the date of filing. That deadline has expired, too. To this day, the Plaintiffs have never served the summons and complaint as required by law. Consequently, this action has never been "commenced" with regard to the Lawyer Defendants, nor does the Court have personal jurisdiction over the Lawyer Defendants.

Therefore, if Plaintiff's counsel is correct that the Lawyer Defendants' motion to dismiss filed in federal court before the case was remanded is immaterial, then by force of logic the case must be dismissed because the Plaintiffs never served the summons and complaint.

II. Plaintiffs Have Failed to State a Claim Upon Which Relief Can Be Granted.

Plaintiffs' claims against the Lawyer Defendants should be dismissed pursuant to Rule 12(b), SCRCP. Those claims are based upon the same alleged duties and same theories that South Carolina trial and appellate courts have rejected in approximately one dozen prior cases which 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' theories (i) that the Defendants engaged in any wrongful conduct with the class action settlement; (ii) that the Lawyer Defendants owed, undertook, or breached some duty relating to the notice plan for the class settlement; (iii) that the Lawyer Defendants stole money from the class; or (iv) 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

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objections to the settlement. He alleged the court mistreated his clients[2] 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.

Prior to approving the class action settlement, the class action court dedicated a tremendous amount of time and resources to the matter. It conducted multiple fairness hearings, and even directed an investigation of its own. 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. (Letter to Judge Goodstein, March 10, 2008, Regarding Disbursements, **Exhibit Q**.) 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 objectors' attorney, who since that time has embarked on a campaign against the Lawyer Defendants that has lasted over fifteen years.

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

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[2] Order, March 23, 2009, at 3-8, **Exhibit R**.
[3] Ibid.
[4] Ibid.

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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 in this State has rejected them.

III. 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 state 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.) 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

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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*. The Court should dismiss the cause of action for declaratory relief.

IV. 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

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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.

V. 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.")

Three 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 over one hundred pages. In

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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, Exhibit M.)

Furthermore, the Plaintiffs presented the same claims to the class action court. In 2022, the McDonalds filed motions in the original class action case seeking to intervene and to join in another party's motion for the class action court to conduct a "post-award fairness hearing." The McDonalds claimed, among other things, that class counsel wrongfully charged them a fee. After conducting an extensive hearing on January 27, 2023, the class action court rejected the Plaintiff's arguments and closed the case. In its order, the class action court rejected the Plaintiffs' claim of unlawful fees charged by class counsel and specifically held the class members' claims "were administered pursuant to the terms of the court-approved settlement through the court-appointed escrow agent and court-appointed arbitrator." (Order of March 24, 2023, at 2, Exhibit O.) Furthermore, the court noted that the Plaintiffs participated throughout the process. *Id*. at 3-4.

Therefore, the Plaintiffs have presented their claims to two other courts, both of which rejected the claims on their merits. The Plaintiffs are barred as a matter of law from now bringing the same claims against the Lawyer Defendants here.

CONCLUSION

For the reasons stated above, the Court should grant this motion and dismiss the Lawyer Defendants from this action with prejudice.

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Respectfully submitted,

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September 1, 2023
Columbia, South Carolina

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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:

SC Diocese Documents 003074

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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

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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. CACR06-1261, 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.

SC Diocese Documents 003076

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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.

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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(e) 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.

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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(e) motion on behalf of these individuals (except John Doe B) these individuals the settled their objections to the class and resolved their Rule 59(e) 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(e) 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

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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, LLP, 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.

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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

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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.

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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

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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, 3009. 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

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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.

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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), SCRCP, 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. SCRCP 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,

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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 Budge 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

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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.

xQs 6 pg 18 of 19

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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

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EXHIBIT E

THE RICHTER FIRM, LLC
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* (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]

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

March 7, 2008

Category	Date	Check #		Amount	Description
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	Contol 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	1019	$	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	$	35.68	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			$	2,695,100.76	

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

March 7, 2008

Claimant	Date	Check #		Amount	Description
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 [redacted]	2/15/2008	1014	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1015	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1016	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1017	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1018	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1019	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1020	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1021	$	10,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1022	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1023	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1024	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1025	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1026	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1027	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1028	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1029	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1030	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1031	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1032	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1033	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1034	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1035	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1036	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1037	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1038	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1039	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1040	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1041	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1042	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1043	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1044	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1045	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1046	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	2/15/2008	1047	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE [redacted]	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.

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

March 7, 2008

Claimant	Date	Check #	Amount	Description
The Richter Firm, LLC for DOE	2/15/2008	1049	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1050	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1051	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1052	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1053	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1054	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1055	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1056	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1057	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1058	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1059	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1060	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1061	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1062	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1063	$ 10,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1064	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1065	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1066	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1067	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1068	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1069	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1070	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1071	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1072	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1073	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1074	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1075	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1076	$ 20,000.00	Arbitration Order
Walter S. Ameika for DOE	2/15/2008	1077	$ 20,000.00	Arbitration Order
Barr, Unger & McIntosh, LLC for DOE	2/15/2008	1078	$ 20,000.00	Arbitration Order
Arthur E. White, Jr. for DOE	2/15/2008	1079	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1080	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1081	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1082	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1083	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1084	$ 55,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1085	$ 40,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1086	$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1087	$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1088	$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1089	$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1090	$ 40,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1091	$ 60,000.00	Arbitration Order

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

March 7, 2008

Claimant	Date	Check #		Amount	Description
The Richter Firm, LLC for DOE	2/15/2008	1092	$	200,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1093	$	60,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1094	$	55,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1095	$	150,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1096	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1097	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1098	$	125,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1099	$	150,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1100	$	200,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1101	$	75,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1102	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1103	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1104	$	200,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1105	$	100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1106	$	75,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1107	$	70,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1108	$	100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1109	$	150,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1110	$	100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1111	$	125,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1112	$	125,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1113	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1114	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1115	$	200,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1116	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1117	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1118	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1119	$	70,000.00	Arbitration Order
Barr, Unger & McIntosh, LLC for DOE	2/15/2008	1120	$	200,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1121	$	200,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1128	$	315.00	Control No. 43
Pro Se - Doe	2/15/2008	1129	$	59,685.00	Arbitration Order
Pro Se - Doe	2/15/2008	1123	$	20,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1124	$	20,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1125	$	20,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1130	$	195.00	Control No. 42
Pro Se - Doe	2/15/2008	1131	$	149,805.00	Arbitration Order
The Richter Firm, LLC for DOE	2/20/2008	1134	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/27/2008	1136	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	3/6/2008	1151	$	40,193.87	Arbitration Order
David K. Haller, Esq. Escrow for DOE	3/6/2008	1152	$	159,806.13	Arbitration Order

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

March 7, 2008

Claimant	Date	Check #	Amount	Description
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	3/6/2008	1148	$ 20,000.00	Arbitration Order
Total Claimant			$ 7,815,000.00	

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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)
Avaliable 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.

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3/7/2008
09:00

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

Company: JOH
Page: 1

Date	Mt	Reference	Account	Description	Current	Year-to-Date
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

Ben Bruner

From: G Meyers <attygm@gmail.com>
Sent: Wednesday, August 30, 2023 11:38 PM
To: Ben Bruner; Chelsea Clark; jcuttino@gwblawfirm.com
Cc: Rich Dukes
Subject: 22-CP10-4031, Doe 305 et al v. Richter et al.
Attachments: 2022-08-30 - Summons and Complaint.pdf

Counsel:

Judge Gergel remanded this case to Circuit Court on June 12. Mr. Dukes has a motion to dismiss pending which was filed shortly after the remand.

No other party has made a responsive pleading, but all parties made an appearance in federal court in response to the removal motion.

A motion for default may be in order as to those parties who have made no responsive pleading to the Summons and Complaint.

If by email sent to me not later than September 4 you will acknowledge on behalf of each of your clients acceptance of the attached originally filed summons and complaint, I am glad to extend to October 4 your time to file a responsive pleading.

Mr. Dukes, of course, has made a responsive pleading so has no obligation to respond further at this time.

My present mailing address is 114 4th Ave NW, Byron MN 55920. That will be my mailing address for the foreseeable future.

Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

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ELECTRONICALLY FILED - 2023 Mar 24 12:28 PM - DORCHESTER - COMMON PLEAS - CASE#2006CP1801310
ELECTRONICALLY FILED - 2023 Sep 01 4:49 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE FIRST JUDICIAL CIRCUIT**
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,	)	**Case Nos.: 2006-CP-18-1310**
	)	**2006-CP-18-1311**
	)	**2006-CP-18-1636**
Plaintiffs,	)	
vs.	)	**ORDER**
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
Defendants.	)	

PROCEDURAL HISTORY

This matter has a long history and arises from a class action settlement approved pursuant to Rule 23, SCRCP in the Dorchester County Court of Common Pleas in 2007. On August 15, 2006, the first two of the three above-captioned class actions were commenced on behalf of victims who were allegedly sexually abused by members of the Catholic church in their capacity as agents of The Bishop of Charleston, a Corporation Sole ("the Diocese"). (Complaints filed in C/A Nos. 2006-CP-18-1310 and 2006-CP-18-1311.) The third suit was commenced on October 6, 2006. (Complaint filed in C/A No. 2006-CP-18-1636.) The cases were designated complex by order entered October 17, 2006.

On January 17, 2007, the plaintiffs moved for certification of the classes and for preliminary approval of the class settlement. The class action court granted that motion by order entered January 19, 2007. The class was represented by Lawrence E. Richter, Esquire and David

K. Haller, Esquire. As part of its order, the class action court required that class counsel submit its petition for attorneys' fees and costs by February 14, 2007, and scheduled a fairness hearing for March 9, 2007. The Honorable Diane Schafer Goodstein presided over the fairness hearing. Judge Goodstein heard arguments on class certification, approval of the proposed settlement, class counsel's fee petition, and objections. On July 30, 2007, the class action court entered an order approving the class action settlement and awarding class counsel the maximum fee of $2,500,000.00 and overruling the objections made on behalf of John Does A though N. That order approved the January 12, 2007 settlement agreement as an order of the court.

On August 1, 2007, the objectors filed an Objection to Proposed Order advancing fifteen different objections to the class action settlement. The objectors subsequently filed a motion to alter or amend the Order Approving Settlement and a supporting memorandum based on his objections to the settlement terms on August 7, 2007. The objectors claims were subsequently settled and the terms of that settlement were incorporated into an order the class action court entered August 31, 2007.

Following the final settlement approval and disposition of the objectors' Rule 59, SCRCP, motion, the Diocese funded the settlement. The claims of class members were administered pursuant to the terms of the court-approved settlement through the court-appointed escrow agent and court-appointed arbitrator. On March 10, 2008, following disbursements to the claimants, the class action court was provided a final accounting of the disbursements signed by the escrow agent. At that time, the claims and issues had been disposed of, and there was nothing more for the class action court to decide with regard to the claims of the class members. The litigation involving the class action claims was concluded. Filings continued under the class action caption and the court held a hearing on January 29, 2009 on the pending motions which included the objectors' motion

Record on Appeal - 1459

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ELECTRONICALLY FILED - 2023 Mar 24 12:28 PM - DORCHESTER - COMMON PLEAS - CASE#2006CP1801310
ELECTRONICALLY FILED - 2023 Sep 01 4:49 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

for recusal, the Diocese's motions to enforce settlement and for leave to deposit funds into court, the objectors' motion to dismiss the motions filed by the Diocese and a petition to appear as *amicus curiae*. By orders filed February 3, 2009 and March 23, 2009, the court denied the objectors' motions and the petition to appear as *amicus curiae*. For reasons unknown to this court, an order ending the litigation was never filed. The objectors appealed the March 23, 2009 order. The Supreme Court of South Carolina dismissed the appeal. By order filed January 24, 2013, Judge Goodstein recused herself from hearing any further matters related to this litigation.

On May 11, 2016, Allen Sires filed a motion *pro se* requesting a post-award fairness hearing. The motion was not scheduled for a hearing. On August 29, 2022, Julie and Richard McDonald filed a motion to intervene and sought to join Mr. Sires' motion for a post-award fairness hearing. By order of the South Carolina Supreme Court dated November 10, 2022, the undersigned was vested with exclusive jurisdiction to hear and dispose of this case.

On January 27, 2023, the parties appeared before the court to address the pending motions. Mr. Sires appeared *pro se*. Gregg Myers, Esquire appeared on behalf of Julie and Richard McDonald. Class counsel, David K. Haller, Esquire, appeared along with his personal attorneys, John C. Cuttino, Esquire and Benjamin C. Bruner, Esquire. The Defendants were represented by Richard S. Dukes, Jr. Esquire.

DISCUSSION

The motions filed by Mr. Sires and the McDonalds[1] urge this court to conduct a post-award fairness hearing. Mr. Sires and the McDonalds both participated in the claims process and received their settlement proceeds. Although various grievances were aired during the hearing, the principal

[1] The McDonalds also filed a simultaneous Motion to Intervene. Because the McDonalds were accepted as members of the class that is the subject of this litigation, the court finds and concludes that intervention pursuant to Rule 24, SCRCP is not necessary for the McDonalds to file their motion.

reason cited by Mr. Sires and the McDonalds for a post-award fairness hearing centers around fees charged by class counsel to individual class members upon resolution of the individual claims through the court approved claims process.[2]

It appears a thorough and complete fairness hearing was held by Judge Goodstein which addressed certain objections. An order was issued on July 30, 2007 formally approving the settlement. Judge Goodstein's order also made the parties' Settlement and Arbitration Agreement filed January 17, 2007 an order of the court. A series of motions followed Judge Goodstein's July 30, 2007 order which she addressed in a subsequent order filed March 23, 2009. An appeal of the March 23, 2009 order was dismissed by the South Carolina Supreme Court.

Neither Mr. Sires nor the McDonalds cite any authority for this court to hold a post-award fairness hearing. It is true that "[c]ourts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex Parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (1983). However, it is not the province of this court to create a right or remedy where one does not exist. Further, "[t]he doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." *S.C. Public Interest Foundation v. Wilson*, 437 S.C 334, 340, 878 S.E.2d 891, 894 (2022). The Settlement and Arbitration Agreement filed January 17, 2007 and Judge Goodstein's order filed July 30, 2007 were an unquestionable final determination of substantial rights of the class members. Finally, "[t]here is a long-standing rule in this State that one judge of the same court cannot overrule another." *Charleston County Dep't of Social Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307,

[2] Class counsel and the Defendant's assert that Mr. Sires and the McDonalds lack standing to be heard on their motion for a post-award fairness hearing. Because of the court's ruling with regard to the post-award fairness hearing, the court declines to rule on the issue of standing but notes the argument and its preservation for appellate purposes. *See, I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

Record on Appeal - 1461

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310 (1995). The relief sought by Mr. Sires and the McDonalds would require this court to re-examine the fairness of the settlement procedure and effectively overrule Judge Goodstein's order which finally determined the fairness of the settlement. This court is not inclined to do so. Because the July 30, 2007 Order Approving Settlement was a final determination of substantial rights of the class members, it is the law of the case. This court has no authority to set Judge Goodstein's order aside or conduct further proceeding with regard to the fairness of the settlement or claims process.

CONCLUSION

Based upon the foregoing, this court finds and concludes that the motions for a post-award fairness hearing should be and are hereby denied. Because the claims process for class members has concluded and there appearing to be no further matters for this court to address, the above captioned matter is hereby dismissed with prejudice.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the motions of Mr. Sires and the McDonalds are denied and this matter is hereby dismissed with prejudice.

IT IS SO ORDERED!

Record on Appeal - 1462

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Dorchester Common Pleas

Case Caption: Jane #1 Doe , plaintiff, et al VS Bishop of charleston , defendant, et al

Case Number: 2006CP1801310

Type: Order/Other

IT IS SO ORDERED.

Heath P. Taylor

Electronically signed on 2023-03-24 11:30:53 page 6 of 6

ELECTRONICALLY FILED - 2022 Sep 29 3:49 PM - DORCHESTER - COMMON PLEAS - CASE#2006CP1801310

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2006-CP-18-1310
		2006-CP-18-1311
		2006-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,

v.

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

Defendants.

Motion to Intervene

Pursuant to SCRCP 24, class members Julie McDonald and Richard McDonald move to intervene in this action to respond to and join the 2016 motion by class representative John Doe 66 for a post-award fairness hearing (which has never been heard) and to independently move for a post-award fairness hearing. According to the court's docket, no action has been taken to grant or deny the 2016 motion for post-award fairness shearing filed by John Doe 66, and no order has closed the case.

Grounds for intervention are that the McDonalds participated in the class action and obtained a recovery. Within three years of this motion the McDonalds discovered that class counsel breached duties to them by fraudulently concealing from them material information about class counsel's representation of the McDonalds and class counsel's breach of fiduciary duty to the McDonalds, set out more fully in the exhibit attached to this motion.

Pursuant to SCRCP 24(c), attached as an exhibit to this motion is a pleading setting forth the claim for which intervention is sought and information about what was fraudulently concealed from the McDonalds and from the court then reviewing the class action settlement.

Conclusion

The McDonalds should be permitted to intervene and the court should take up their motion for a post-award fairness hearing.

Respectfully submitted,

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Attorney for the Plaintiffs

August 29, 2022

ELECTRONICALLY FILED - 2022 Aug 29 3:49 PM - DORCHESTER - COMMON PLEAS - CASE#2018CP1804330

ELECTRONICALLY FILED - 2022 Sep 29 3:49 PM - DORCHESTER - COMMON PLEAS - CASE#2006CP1801310

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2006-CP-18-1310
		2006-CP-18-1311
		2006-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,

v.

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

Defendants.

Response to Join 2016 Motion by John Doe 66
For Post-Award Fairness Hearing and,
Pursuant to SCRCP 23(d) to Appoint New Counsel for the class

Class members Julie McDonald and Richard McDonald join the 2016 motion by class representative John Doe 66 for a post-award fairness hearing and move for such a hearing in their own regard, after a reasonable period for discovery.

This class action litigation has never been concluded, let alone properly concluded, despite a 2009 order of the South Carolina Supreme Court that should have concluded it in 2009. No review has yet been made by any court of the propriety of the conduct of class counsel in the class action and in implementing the class action settlement. Substantial evidence that class counsel breached their duties to the class has been discovered by the McDonald class members.

Class counsel is plainly conflicted in representing the best interest of the class. Not only does John Doe 66 allege that he is no longer being represented by class counsel and was

"abandoned" by class counsel, he alleges that class counsel charged fees not authorized by any court order, meaning in excess of the $2.5 million fee awarded by the court, and deliberately excluded class members, an excess fee allegation the McDonalds can confirm. The McDonalds join those allegations and can confirm that unauthorized fees were charged each of them..

As documents reflect, each of the McDonalds was charged by class counsel a 20% fee over and above the court-awarded fee for class counsel, and each was charged that fee without any disclosure that class counsel had already been awarded, and paid, both the $2.5 million fee awarded by the court and a contingent fee never disclosed to the court.

No order authorized the 20% additional fee charged the McDonalds.

Additionally, it is now known that class counsel and the Diocese cooperated to (a) judge-shop, to move class action approval from Charleston County judges to a Dorchester County judge with long social ties to class counsel, (b) made substantial misrepresentations of fact to gain class settlement approval, (c) proposed implementing the settlement so as to place class counsel's personal financial interests ahead of those of the class, (d) accelerated class counsel's fee award ahead of any benefits being paid to class members, and (e) withheld from the circuit court that the Diocese had already paid to class counsel (in November 2006) a contingent fee for class counsel's work on the individual cases encompassed within the class action for those later designated as class representatives.

The time records submitted to the circuit court to support class counsel's fee request were not only inherently fraudulent (with many days in excess of 24 hours) but were almost entirely fraudulent in that nearly all of the time submitted in support of the fee award had already been paid for by a contingency fee payment from the Diocese for the individual cases which led to the

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mediate class settlement in 2006. That payment was made by the Diocese on November 20, 2006, yet was never disclosed to the circuit court.

Among other things, a post-award fairness hearing should require class counsel to disclose all fees charged class members, to be assessed in light of the actual recovery by class members and the orders which governed class counsel's conduct. The total sum charged class members without any supporting order is conservatively estimated to exceed $900,000, without regard to the fraud accompanying the $2.5 million fee. Documents reflect that Julie McDonald, for example, was charged a fee of $4,000, representing 20% of the payment obtain for her through the class settlement, but no disclosures were made to her about class counsel's conflicts of interest, the collusion in the class action, or of the fees already paid to class counsel (either the contingent fee that had been paid of the court-awarded fee that had been paid).

Discovery will gather additional information about the breach of duties by class counsel and the fraud on the court. Among the proof we expect to be able to present in a post-award fairness hearing so the court may review, for the first time, the collusive conduct involved in moving the class settlement to a shopped-for judge, the misrepresentations made to get the class settlement approved, the misrepresentations made to get the fee approved, and the actual performance of class counsel in implementing the class settlement are the following facts that are now known:

1. The class action settlement (reached in June 2006) was collusive, having been reached seven months after the class action was originally filed (in December, 2005, in Charleston) without a single motion decided or a single deposition having been taken. Instead, it was the product of an October 2005 meeting in which class counsel proposed to his own Bishop a class action as a means of "obtaining universal peace"

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for the Diocese for sexual abuse claims, a secondary priority after the first priority of the class settlement: the fee obtained for class counsel. As opposed to a proper object of a class action: for class counsel to obtain a maximum recovery for sexual abuse victims. No class action has been filed prior to that meeting with the Bishop.

2. After the June 2006 class settlement was reached, the colluding parties ignored SCRCP 23 and judge-shopped so as to transfer class settlement approval away from Charleston County judges (where the class action case was pending and resolved) to move the class settlement oversight to a particular judge in Dorchester County, a judge with long personal and professional ties to class counsel. The shopping process is partially reflected in the public record.
3. That desired circuit judge agreed to be shopped-for by the parties to the collusive class settlement.
4. Reflecting the collusion of the class settlement, no publication to the class ever informed class members of (a) the collusive origin of the class action, (b) the collusive agreement to judge-shop to select the circuit judge willing to be shopped-for to oversee the class settlement, (c) class counsel's life-long ties to the Diocese, (d) class counsel's ongoing functions for and on behalf of the Diocese (even during the class action) as "Extraordinary minister" (the phrase used by class counsel), (e) class counsel's allegiance to, and deference to, the Bishop of the Diocese at the expense of the class they purported to represent, (f) the priority that class counsel's allegiance held over and above the interests of the class members, (g) that class counsel had already been paid a contingency fee for work done for the four individuals deemed class representatives in the 2006 class settlement, (h) that class counsel participated in

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a separate settlement process in which objectors to the class action got better settlement terms than did class members, or (i) that class counsel or his clients contributed $100,000 to fund those better settlement terms for objectors to the class action.

5. By order of October 17, 2006 the shopped-for judge designated the action as complex, and assigned the matter to herself.
6. Further reflecting the collusion of the class settlement, the class was never informed that (according to class counsel), between October 2006 and January 2007 the Bishop objected to giving nationwide notice to the class members who lived outside of South Carolina, saying (according to class counsel) that the proposed nationwide notice was "too expensive." The notice originally proposed was newspaper advertising once a week for six weeks nationally (via *USAToday*) and locally in newspapers in and around South Carolina. According to class counsel, when the Bishop objected to nationwide notice, class counsel accommodated his "adversary," at the expense of the out of state class members class counsel represented, by agreeing to eliminate notice that would run outside of South Carolina as originally proposed in the form of notice to be published each week over a six-week period in *USAToday*.
7. Eventually, after misrepresentations to the court by the Diocese and class counsel as to how class members who got no notice would be treated, the notice program was further reduced, by agreement, from publication over a six-week period to publication over a three-week period.
8. No notice to the class ever informed class members that class counsel deliberately disadvantaged class members to accommodate a request of class counsel's Bishop.

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9. Also reflecting the collusion of the class settlement, no notice to the class ever informed the class members of the conflict of interest represented by class counsel's ties to the shopped-for judge.

10. Class oversight and approval by the court was falsely implied to be an independent process when it was not.

11. By order signed January 19, 2007, the shopped-for judge ordered that the class settlement was "preliminarily approved, subject to the objection period and Fairness Hearing as set out in this order." The fairness hearing referred to in that order was held in March 2007, and additional orders in July and August 2007 concluded issues which arose from that March Fairness Hearing. After the August 2007 order the class action settlement was authorized to proceed, and a modified notice was published to the class.

12. In February 2007 class counsel submitted blatantly false and inflated records of time and expenses supposedly incurred in representing the class. In those records class counsel claimed many "workdays" on behalf of individuals later identified as class representatives which exceeded 24 hours and at times exceeded many multiples of 24 hours.

13. Reflecting the parties' collusion, the Diocese made no opposition to the blatant fraud in class counsel's time records.

14. Reflecting the judge-shopping process and the collusion of the parties, the shopped-for judge made no review of the blatant fraud within those time records, even after it was explicitly pointed out to her by proposed intervenors and objectors to the class action.

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15. Class counsel submitted an expert's affidavit that contained material false statements of fact.

16. Reflecting the parties' collusion, the Diocese made no objection to those material false statements of fact.

17. Reflecting the judge-shopping process and the collusion of the parties, the shopped-for judge made no review of the material false statements in the expert's affidavit, even after those false statements were explicitly pointed out to her by proposed intervenors and objectors to the class action.

18. The colluding parties fraudulently withheld from the shopped-for judge that in November 2006, more than three months before class counsel submitted a claim for fees in the class action, class counsel was paid by the Diocese (by check 42982 dated November 20, 2006) a contingent fee of $145,000, and a separate check (number 42983 on the same date) for $345,000. Those two checks represented the settlement of all claims brought by the four class representatives identified in the 2006 mediated class settlement. Class counsel referred to these payments as the "initial settlement disbursement," but they are not included in the accounting of the class action funds.

19. Neither of those payments was ever disclosed to the shopped-for judge overseeing the collusive class action, or the class members, even though the time spent on the claims for those four class representatives constituted the vast majority of the time submitted through the fraudulent time records for the class. In other words, the colluding parties never disclosed to the shopped-for judge (or the class) that nearly 100% of the time submitted in support of class counsel's fee request in the collusive class action was time for which class counsel had already been paid a contingent fee.

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20. No time by class counsel prior to November 21, 2006 was properly included in any fee award request.

21. A copy of each of the November 2006 checks is an attachment to this motion.

22. In other words, class counsel submitted a claim for fees for work done on the class action when (a) the time records submitted were inherently fraudulent and (b) was time for time for which class counsel had already been paid a contingency fee for work done on behalf of the four individuals who became class representatives for purposes of the class settlement.

23. Class counsel and the Diocese committed a fraud on the court and breached duties to the class members by failing to disclose that class counsel's fee request for $2.5 million was a near 100% replication of time for which counsel had already been paid through the contingent fee for the claims of four individuals identified in the class settlement as being class representatives.

24. No notice to the class ever informed the class of the February 2007 fee requested by class counsel. Instead, before any notice was sent, class members were given only an eight-day period during which they had to discover, without notice, (a) that a class action was pending, (b) that they might be in the class, (c) that a fee had been requested, (d) obtain from the clerk of court the documents associated with the fee request, (e) discover the collusion associated with both the class settlement and the fee request itself (despite its fraudulent concealment by class counsel), and (f) prepare and file with the court written objections to the fee request.

25. Similarly, after the fee was awarded, no notice to the class published the fee that had been awarded.

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26. As noted above, the fairness hearing associated with the court's preliminary approval order of January 19, 2007 was held in March, 2007.

27. Without comment from the Diocese about the blatantly fraudulent time records of class counsel, and without any disclosure of the contingent fee that had already paid for class counsel's time, the blatantly fraudulent time records were accepted by the shopped-for judge and class counsel was awarded a fee of $2.5 million.

28. That fee was paid to class counsel not after final distribution of funds to class members and a post-award review of class counsel's performance in implementing the court's orders. Instead, class counsel was paid first, in September 2007, before the notice period of the class action had even begun, before a single class member had been identified, before any class member had submitted a claim, and before any class member had been awarded relief.

29. Class counsel's highest and first priority for the class action was class counsel's fee and, as actually occurred, a multiple fee recovery.

30. Class counsel's second priority for the class action was class counsel achieving "lasting peace" to protect his Bishop and Diocese.

31. Class counsel's third priority for the class action was contributing $100,000 to help fund better settlement terms for those who objected to aspects of the class action, which is why class counsel provided no notice to the class which disclosed either class counsel's funding of those better settlement terms or the better terms themselves. Ach would have disclosed class counsel's breach of duty to the class.

32. Class counsel's fourth (or lower) priority was providing a recovery for class members.

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33. The shopped-for circuit judge failed to protect the class members from class counsel's use of the class action to serve class counsel's own interests rather than serving the interests of the class members.

34. In addition to the undisclosed $145,000 contingency fee and the fraudulently awarded $2.5 million fee, class counsel charged each of the McDonalds, and apparently every other class member represented by class counsel, an additional fee of 20%.

35. No order from the shopped-for judge authorized that additional fee.

36. The McDonalds were charged that unauthorized additional fee in February 2008. Only within the last three years have the McDonalds learned of the fraudulent concealment by class counsel of information that should have been disclosed to them in 2008.

37. Before charging that fee of the McDonalds, class counsel failed to disclose either (a) the $145,000 contingency fee that had already been paid in November 2006, (b) that the contingency fee paid for nearly all of the time class counsel then submitted for the court awarded fee, (c) that a $2.5 million fee had been awarded and had already paid to class counsel in September 2007, (d) that no order authorized an additional fee to be charged the McDonalds (or any other class member), (e) that class counsel and the Diocese had colluded in the class settlement, in judge-shopping, and in withholding the contingent fee payment information from the shopped-for judge, (f) that class counsel had substantial conflicts of interest due to his life-long and ongoing affiliation with, and his functioning on behalf of, the Diocese, or (g) that class counsel had contributed $100,000 to fund settlement terms for objectors better than class counsel achieved for class members.

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38. As a matter of law, class counsel holds in constructive trust for the class members all fees paid. "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." *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984). Class counsel breached fiduciary duties to the class members in obtaining an unjustified $2.5 million fee, in charging unauthorized additional fees, and in funding superior settlement terms for class action objectors.

39. As noted above, the unauthorized fee charged the McDonalds and other class members appears to exceed $900,000. All funds improperly awarded class counsel, whether from the fraudulently induced $2.5 million fee award or the unauthorized fees charged, should be identified and disgorged to benefit the class members, including out of state class members.

40. No notice to class members ever informed the class that persons who objected to the class settlement received settlement terms more favorable than the terms for class members.

41. No notice to class members ever informed the class that class counsel was present for, and participated in, discussions that led to objectors receiving settlement terms superior to those of the class members.

42. No notice to class members ever informed the class that class counsel or his class representative clients paid $100,000 towards funding the better terms received by persons who objected to the class settlement.

43. In March 2009 the South Carolina Supreme Court ordered the class action to be concluded by September 2009.

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44. That Supreme Court order was ignored by class counsel, by the Diocese, and by the shopped-for circuit judge. Ignoring that order was a breach of class counsel's duty to the class and the parties colluded in ignoring that order so as to insulate the class action from appellate review.

45. Either some special criteria apply that permits orders of the Supreme Court to be ignored under certain circumstances, in which case the bench and bar would benefit from knowing about each such criteria or circumstance; or alternatively, any post-award fairness hearing should require class counsel, the Diocese and the shopped-for judge to account for why the Supreme Court's order was ignored, as well as why no request for an extension of time was made to the Supreme Court, as the Supreme Court's March 2009 order required.

46. The McDonalds have learned less than three years ago of these breaches of duty by class counsel and others involved in the class action settlement.

A post-award fairness hearing should be conducted under authority of SCRCP 23. To date, a class representative's motion in 2016 for a post-award fairness hearing has been ignored by the clerk of court. It has never been scheduled for a hearing.

This motion joins that 2016 motion by one of the class representatives for a post-award fairness hearing to be scheduled after discovery is complete.

Under SCRCP 23, no class action should ever be resolved without a review of whether parties have colluded in a class settlement. No such review was done of the parties' collusion in this class action settlement. No class action should ever omit a post-award review of whether parties have colluded in a class settlement, or whether class counsel has implemented a class settlement consistent with the orders approving of and authorizing such a settlement. SCRCP

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23(d) authorizes the court to make appropriate orders "at any time" to "fairly and adequately protect" the class members.

Because this class action has never been concluded, because the collusion associated with it has been concealed, and because no such review of class counsel's conduct has ever occurred for this class settlement, there has been no way for class members such as the McDonalds to detect that the parties to the class settlement colluded in the settlement, or that class counsel has served their own financial interests above those of the settlement classes they undertook to represent, or that fraud has been committed by class counsel on the court and duties owed by c;ass counsel to the class were breached, or if any other aspect of Due Process has been denied.

No judge is presently assigned to the class action. To permit a period of discovery and to hold a post-award fairness hearing, a circuit judge must be appointed and assigned to the class action to replace the judge most recently assigned to the class action, who has retired.[1] New counsel should be appointed to represent the interests of the class members, as class counsel has extensive conflicts of interest with respect to the settlement classes and has committed a fraud upon the court and breached duties to class members. This motion seeks in part to mitigate the damage done by class counsel to the class they purported to represent.

For purposes of any post-award fairness hearing a new judge must be appointed by the Supreme Court. The circuit court clerk of court should provide a copy of this motion to the Supreme Court. As reflected in the footnote above, any new circuit judge appointed cannot be

[1] That now-retired judge had replaced other judges who, in turn, had been assigned the class action after the shopped-for judge recused herself from further proceedings in the class action in 2013. No reason was stated for the recusal. In case it does not go without saying, the shopped-for judge should not be appointed for this task, whether or not the unstated basis for the recusal remains present. Nor should present counsel for the McDonalds be considered for new counsel appointed for the class, as potential conflicts with the class could exist.

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the judge originally shopped-for as she recused herself from the class action in 2013. A new judge should be assigned.

Notice of this motion and the 2016 motion filed by John Doe 66 should be ordered to be provided by class counsel to each class member and each class member should be provided time to evaluate the pending motions and to participate in discovery. Only after those steps should a hearing be scheduled to assess that colluding parties in a class action committed a fraud on the court and breached duties to class members.

Discovery will seek to compel class counsel to disclose precisely the extent of the breach of duties to class members by compiling all unauthorized fees, any writings sent to the class or class members by which class counsel claims the classes were informed of any of (a) the $2.5 million in fees already paid class counsel, (b) the $100,000 contributed to fund better settlement terms for those who objected to the class settlement, (c) the $145,000 already paid to class counsel in 2006 for the time involved in the claims of four individuals including the class representative, (d) all time which was falsely submitted to the court in support of the $2.5 million fee request but which had already been paid for by the $145,000 payment in November 2006, (e) the judge-shopping associated with removing the class settlement from judicial oversight in Charleston County and moving that oversight to the shopped-for judge desired in Dorchester County, (f) the deliberate change to the notice program which disadvantaged out of state class members at the request of class counsel's Bishop, (g) paying the fee to class counsel before class counsel had implemented any part of the class settlement, (h) paying the fee to class counsel without any meaningful review of that fee request by any member of the class, and (i) all sums charged to individual class members.

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Pursuant to SCRCP 23(d), unauthorized or improperly awarded fees should be ordered disgorged to benefit the class members, including to benefit persons who reside out of state who were abandoned by collusive conduct of class counsel.

Conclusion

A new circuit judge should be appointed by the SC Supreme Court to be responsible for the class action and the pending motions. New counsel should be appointed to represent the interests of the class. This motion and the motion filed in 2016 by John Doe 66 should be sent to each person who participated in the class action.

After a reasonable period for discovery, a post-award fairness hearing should be scheduled under authority of SCRCP 23. The entire class action settlement should be reviewed. The monetary extent of class counsel's financial misconduct and breach of duty as to the classes should be ascertained, as should the collusion by class counsel and the Diocese in the class settlement, the fraud on the court associated with the class action, and the breaches of duty to the class perpetrated by class counsel and the extent of participation in those breaches by the Diocese. All funds resulting from any of the various breaches of duty should be disgorged to the court and disbursed to benefit members of the class, including persons who reside out of state. Other sanctions should be awarded as appropriate.

Respectfully submitted,

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Attorney for the McDonalds

August 28, 2022

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2006-CP-18-1310
		2006-CP-18-1311
		2006-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,	)	
v.	)	
The Bishop of Charleston a corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
Defendants.	)	

Offer of Proof With Attachments to Restore the Court's Record
And Memorandum in Support of Motions to Intervene
and For Post-Award Fairness Hearing

At the status conference held November 23, 2022 the court indicated that the clerk of court does not appear to have a complete file in this case, or even all of the orders. To provide the court basic documents that may be missing and also to explain more fully both why the McDonalds seek to intervene and why after the scheduled January 27, 2023 hearing a post-award fairness hearing should be scheduled, we attach, in chronological order, extensive attachments to this memorandum so the documents are both part of the record and are explained in context to orient the court.

The few attachments that are specific to the McDonalds are identified by letter labels, Exhibits A and B. Attachments to briefly explain the history of the case and to populate the court file are identified with number labels, starting with Attachment 01.

Class counsel claims that undersigned counsel's persistence concerning the issues from this class action stem from some vague and unsubstantiated personal motivation of undersigned counsel. That is entirely denied. We believe the court will see that genuine issues are present: of collusive conduct during the class action, of unprofessional conduct (such as judge-shopping, submitting patently fraudulent billing records, as well as withholding information from the court and clients), and of conflicts between class counsel and the class. Class counsel's interests were, and are, adverse to those of John Doe 66, the McDonalds, and to all other class members.

None of those issues has ever been addressed on the merits. They should be. Undersigned counsel's persistence is due entirely to various clients who continue to be adversely affected by the conduct of class counsel and the Diocese.

A Short History and Basic Facts of the Case, with Attachments for a Proffer

We proffer that we can prove the following narrative.

As reflected in Attachment 01, On May 12, 2005, a complaint was filed in Charleston County for John Doe 66 against the Diocese for his childhood sexual abuse. That complaint was amended in June 2005 (Att. 02). In August 2005 another complaint against the Diocese was brought on behalf of John Doe 66A. (Att. 03). Neither of those complaints made any class allegations.

In October 2005 the parties met ("we met with the Bishop," class counsel claimed, Att. 20, p. 23, ¶ 17) to explore a class settlement for "obtaining universal peace," as class counsel put it (Att. 04, October 2005 letter from class counsel). No class complaint was then pending. In December 2005 a class complaint was filed, naming John Doe 53 as class representative of "victims of priest sex abuse." (Att. 05, p. 1). No motion was filed for class certification.

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The parties met again in early January 2006 to further discuss a class settlement (Att. 06 January 2006 letter from class counsel).

The court has been told the class action was contentious and hard fought. Yet without a single motion having been heard[1] or a single deposition having been taken, and within seven months of filing the class action complaint, in June 2006 the parties reached a class settlement in mediation (Att. 07, redacted for public filing).

At that point, if not before, the collusive conduct began.

When the settlement was reached in June 2006, three cases were then pending, all in Charleston County, as noted above. The 2006 handwritten settlement, Att. 07, refers to each of those three cases at p. 1. No sexual abuse case by class counsel was pending in Dorchester County or anywhere else.

One term of the 2006 settlement was that the claims of four individuals to be designated as class representatives would be ended for $460,000 even if the class settlement was not approved (Att. 7 p. 3). More on that below.

SCRCP 23 requires any class settlement be approved by the court. Rather than submit the class settlement for approval, the parties agreed to judge-shop, so as to move the class settlement process away from judges in Charleston County to Judge Goodstein in Dorchester County.

The method of judge-shopping for the June 2006 class settlement chosen was to file in August 2006 in Dorchester County two new sex abuse class actions. Those cases (nos. 2006-CP-18-1310 and -1311) were filed in August 2006 (they are Atts. 08[2] and 09, respectively).

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[1] As the Charleston County public court docket reflects, each time the court scheduled motions for hearing the parties requested, and got, continuances.

[2] Counsel's copy of this pleading appears to be missing page 6. The court will recall that at the start of the recent status conference John Doe 66 reported that class counsel had sent him mail

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Reflecting agreement with this method of judge-shopping, the Diocese both accepted service (Att. 10) and filed no motion to dismiss due to a prior pending action under SCRCP 8.

Communications began with Judge Goodstein not later than August 21, 2006 (e.g., Att. 20 at p.66). Then the John Doe 53 class complaint (Att. 05), which had been pending in Charleston since December 2005, and which was part of the 2006 class settlement (Att. 07 at p. 1), and which was still pending in Charleston, was re-created, identical but for the county designation, and re-filed in October 2006 as a Dorchester County class action complaint (*compare*, Att. 05 with the identical-in-substance Dorchester County version at Att. 11). The same class action was pending in two counties. The same day the "cloned" John Doe 53 complaint was filed in Dorchester County, class counsel filed a motion to certify the classes and approve the class settlement (Att. 12). At p. 3, ¶ 3.a., that motion proposes the class be notified by nationwide publication via *USA Today*.[3] Again, the Diocese made no motion under SCRCP 8 even though the identical case was pending, and settled, in Charleston. To have done so would have defeated the purpose of shopping for Judge Goodstein.

On October 17, 2006, Judge Goodstein entered her first order, a consent order declaring the three cases complex, consolidating them, and assigning them to herself (Att. 13). The same day, class counsel wrote to the administrative judge in Charleston County (Judge Jefferson) to

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for John Doe 66A, so asked if Doe 66A was a family member or a relation of his, a question class counsel refused to answer. It is a fair question. In Att. 03 at p. 1, Doe 66A is described as an adult abuse victim. No connection to Doe 66 is alleged. In Att. 08 at p. 1, ¶ 2, the plaintiff Jane Doe 2 is alleged to be "the wife of John Doe #66," but in the order at Att. 19 at p.2 the plaintiff Jane Doe 2 is described as "the wife of John Doe 66A." There is no reason class counsel cannot clarify for John Doe 66 the confusion created by these public documents and class counsel's mailing to him a communication for John Doe 66A.

[3] As discussed below, the nationwide notice to the class via *USA Today* was later removed.

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submit "proposed consent orders to dismiss" without prejudice the three cases that had been filed in 2005 in Charleston and settled in 2006 (Att. 14). Judge Jefferson was told nothing about a class settlement having been reached or the proceedings that had begun in Dorchester County after the class settlement had been reached. Those orders were entered.

The process of shopping for Judge Goodstein was complete, and the parties thereafter have consistently misrepresented, as has already been misrepresented to Your Honor, that the class action cases began in 2006 in Dorchester County.[4]

On November 20, 2006, the Diocese sent two checks to class counsel (Att. 15), one for $345,000.00 (payable to the firm's trust account) and one for $145,000.00 (payable to the firm), to fulfill the mediation agreement (Att. 07 at p. 3) that claims of four individuals would be resolved even if the class settlement was not approved. Later, after the handwritten class settlement reached in the 2006 mediation (Att. 07) was typed up and submitted to the court in January 2007, the list of individuals whose claims were "released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court" (Att. 17, p. 12, ¶ 4), had increased (obviously, by agreement) from four to seven and the sum involved had increased from $460,000 to $550,000. *Id*.

Pertinent to these proceedings, the $145,000 fee payment to class counsel at Att. 15 was never disclosed to the court, a concealment obviously agreed to by the Diocese. Nor is that November 2006 payment included in the 2008 accounting of how the class funds were disbursed (Att. 28, p. 1). Nearly all of the time submitted in 2007 as part of the attorney fee claim made in the class action (Att. 20), was the time involved in the four individual cases settled as reflected in

[4] Knowing whether this judge-shopping method is acceptable is useful for bench and bar.

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the 2006 class settlement (Att. 07), for which the contingency fee payment had been made in 2006.

The 2007 motion submitting the typed version of the handwritten 2006 class settlement is Att. 16. The typed Agreement itself is Att. 17. We attach them separately for ease of discussion, and we begin with Att. 17, the typed settlement agreement rather than the motion to which it is attached.

In the fourth line from the top of page 2 of Att. 17 the three 2005 Charleston case numbers are listed explicitly as included in the class settlement. In paragraph 1 on p. 2 the two settlement classes are defined without geographic limitation. Meaning that neither the members of the "Primary Class" nor those of the "Consortium Class" was restricted to South Carolina residents. Each of the McDonalds resided out of state and were members of the "Consortium Class."

The 2007 Agreement (Att. 17) refers to the 2006 mediation (at p. 3), sets out an arbitration process to determine sums to abuse victim claimants (at p. 4) and stipulated a $20,000 payment for each of the "Consortium Class" members (at p. 5), such as the McDonalds. At p. 11, the agreement provided that "all costs associated with management of the class shall be paid from the settlement fund," which included costs incurred by class counsel.[5]

On pages 12-13 the agreement provided a type of "clear sailing" agreement, the Diocese agreeing to a range for court-awarded attorney's fees to class counsel if the class settlement was

[5] Nevertheless, class counsel charged the McDonalds costs, as Exhibits A and B reflect, and presumably every other class member.

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approved. That fee was to pay for the work done by "plaintiffs' counsel (past and future)" and "the work past and future and their role as class counsel."[6]

Added by the parties between the 2006 handwritten agreement and the January 2007 Agreement at Att. 17 was ¶ 6.B, starting at p. 13 of Att. 17, which elevated the attorney fee over the payments to class members. The provision made the fee to class counsel fixed (once it was determined) and the recovery to class members variable, to be reduced *pro rata* should the class members recover too much.[7] Also added by the parties was ¶ 6.C on p. 14, a reverter clause which returned to the Diocese any funds which remained after claims were paid. Each is an indicator of presumptive unfairness. E.g., *Briseno v. Henderson,* ____ *F.3d* ____, 2021 WL 2197968 (9th Cir. June 1, 2021); *Sylvester v. Cigna Corp.*, 369 F. Supp. 2d 34 (D. Me. 2005).

As noted above, the typed class settlement agreement was attached to an amended motion for class certification (Att. 16, the original 2006 motion being Att. 12). At page 2 of Att. 16, that 2007 motion claims the class action began in 2006 with "June 30, 2006" filings by John Doe 67, Jane Doe 1, Jane Doe 2 and Rachel Roe, affirmatively misstating the 2005 Charleston County filing history (Atts. 01, 02, 03, and 05), the 2006 mediated class settlement (Att. 07), and even the 2006 Dorchester County filings which, as the file-stamps on Atts. 08 and 09 show were filed August 15, 2006. The motion also claims, falsely (at p. 2), that Johns Doe 53, 66 and 66A "were subsequently added to the case," when in fact the cases for those Charleston plaintiffs were the first filed and were the basis of the 2006 class settlement. It is the Dorchester County cases that

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[6] Nevertheless, class counsel charged the McDonalds a 20% fee, as Exhibits A and B reflect, and presumably every other class member, collecting 10% for those claimants who had separate counsel..

[7] Whether class counsel may make the attorney fee the highest priority of a class action, and may do so at the expense of class claimants, is useful for bench and bar.

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were the ones "added." Persistently misrepresenting to the court how the class settlement came about is presumably to obscure the judge-shopping done after the 2006 settlement was reached with only Charleston County cases pending.

As noted above, the notice proposed in the amended motion (Att. 17 p. 3) omitted the nationwide notice originally proposed through *USA Today* (Att. 12 at p. 2).[8] Due to the reverter clause and the "fee priority" provision added to the class settlement between June 2006 and January 2007, each of class counsel and the Diocese had an economic interest in reducing the number of claimants. As Judge Dickson found, about one-quarter of the claimants were, like the McDonals, residents of a state other than South Carolina. (Att. 38 at p. 4).

At p. 3 the motion sought approval for a two-stage approval process for the class settlement, described as "conditional approval" and then a "final approval of the settlement after notice to the class." The post-award fairness hearing requested by John Doe 66 and by the McDonalds is not for purpose of again reviewing the class settlement structure but to review the conduct of class counsel in implementing the court's orders, particularly the fee charged by class counsel in light of the result *actually achieved* for class members and how the court's orders were *actually* implemented. No review of how class counsel implemented the orders issued concerning the class settlement, or the fees actually charged by class counsel, has been made. Only a review after a *full* accounting can determine if the court's orders were followed.[9]

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[8] During a 2014 hearing in a related matter, class counsel represented to the court that they will testify that the nationwide notice was removed at the request of the Bishop.

[9] Courts routinely use multiple hearings to consider the results actually achieved in approving class settlement as well as attorney fee requests. E.g., *Sylvester v. Cigna Corp.*, 369 F. Supp. 2d 34 (D. Me. 2005) (three fairness hearings held before the court rejected a proposed settlement due to clear sailing and reverter provisions); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998 (E.D. Cal. 2019) (class settlement after nine years of litigation preliminarily approved in 2018, then following notice to the class, objections and claims received, a final review in 2019 considered and approved disbursements and an attorney's fee in light of actual performance of

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As discussed below, it appears the McDonalds (and other class members) were charged a fee which no order authorized, and were charged that fee without the full and proper disclosures required.

On January 18, 2007 Judge Goodstein issued an order related to matters addressed in a December 20, 2006 status conference (Att. 18). We provide that order in case the clerk has failed to preserve it, but we believe it has no bearing on the issues now before the court.

On January 23, 2007 Judge Goodstein issued an order granting the motion to certify the classes: "the proposed settlement agreement is preliminarily approved *subject to the objection period and Fairness Hearing* as set out in this order" (Att. 19 at p. 1, emphasis added). As reflected in Att. 19 at p. 3 n. 2, the Diocese took no position on class certification. As preliminary approval was subject to the fairness hearing to be held, the January approval did not begin the claims process. The fairness hearing that was part of the preliminary approval process was set for March 9, 2007, and notice of that hearing was ordered to run once a week for six weeks. (Att. 19 at p. 8).

On February 14, 2007 class counsel filed a Petition for Attorneys Fees (Att. 20), claiming many days of work in excess of 24 hours, among other issues.[10] As noted above, the motion did

class counsel); *N.R. v. Raytheon Co.*, Civil Action 1:20-cv-10153-RGS (D. Mass. Sep. 21, 2022) (final fairness hearing set in 2023 after 2022 approval of notice and claims are processed so attorney fee request will be considered in light of actual class recovery); *1988 Tr. for Allen Children v. Banner Life Ins. Co.*, 28 F.4th 513, 523-24 (4th Cir. 2022) (February 2020 fairness hearing adjourned to allow an objector to do discovery, then resumed in May 2020).

[10] Some states disbar or suspend lawyers who submit bills of more than 24 hours in a day. E.g., *Lawyer Disciplinary Board v. Tyson*, No. 20-1027 (W.Va. November 3, 2022) (disbarred); *Lawyer Disciplinary Bd. v. Grindo*, 842 S.E.2d 683 (W. Va. 2020) (2 year suspension); *Iowa Supreme Court Attorney Disciplinary Bd. v. Meyer*, 944 N.W.2d 61 (Iowa 2020) (one year suspension); *Iowa Supreme Court Attorney Disciplinary Bd. v. Mathahs*, 918 N.W.2d 487 (Iowa 2018) (60 day suspension); *In re Disciplinary Proceedings Against Awen*, 211 Wis. 2d 172 (Wis. 1997) (90 day suspension); *Disciplinary Proceedings Against Kravat*, 193 Wis. 2d 152 (Wis.

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not disclose the November 2006 contingent fee payment even though nearly all time submitted was for work within the cases for which the contingent fee had been paid.

Once written objections had been received, class counsel on March 1, 2007 proposed certain modifications to the settlement agreement to accommodate certain of the objections (Att. 21).

The fairness hearing was held March 9, 2007. Judge Goodstein took under advisement the issues from the Fairness Hearing.

On July 13, 2007 Judge Goodstein issued two consent orders between class counsel and the Diocese: one related to a motion to compel (Att. 22), and another order disclosing her "long social history" and professional connections to class counsel (Att. 23). The class was never informed of either class counsel's lifelong conflicts of interest with the Diocese (including his functioning on behalf of the Diocese during the proceedings, and his many friendships with priests of the Diocese,[11] partially disclosed in Att. 20 at pp. 21 – 22, ¶¶ 14 - 15) or of the connections with Judge Goodstein.

On July 30, 2007, Judge Goodstein issued an order concerning the fairness hearing and the objections raised during that hearing (Att. 24, at p. 1). The court approved the settlement

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1995) (disbarred); *People v. Walker*, 832 P.2d 935 (Colo. 1992) (90 day suspension). Class counsel claims their billing program estimated "the entire time" on a given matter, rather than the time spent on a given day, an explanation contradicted by the time records themselves.

Whether South Carolina permits billing more than 24 hours in a day, or use of a program that bills more than 24 hours in a day or records time on invented dates such as "February 30," is useful for bench and bar.

[11] Class members might rightfully wanted to know if class counsel was friends with any of the 42 priests which were disclosed by the Diocese in 2019 as having been credibly accused of sexual misconduct. (https://www.postandcourier.com/news/diocese-of-charleston-releases-names-of-42-sc-priests-accused-of-sexual-misconduct/article_eb1ec7d0-525c-11e9-b7c6-a7c2ba4ed5bb.html, last visited December 5, 2022).

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(Att. 24 at pp. 11-12) and ordered a shortened notice period (reducing the six weeks requested in the motion to three weeks), to begin in ten days. (Att. 24 at p. 12). Nationwide notice was not ordered, nor was that change in the proposed notice program addressed.

Based on the inflated time records submitted, and without regard to the *actual* benefit obtained for the class, or the reverter clause in the settlement, or the *pro rata* reduction for claimant awards in deference to the fee, or of the change to delete nationwide notice, or the undisclosed conflicts of class counsel, the court awarded class counsel a $2.5 million fee. Consistent with the motion seeking the fee, the order stated it was for time expended as well as "with additional time expended, and to be expended, since that time and in carrying out the terms of the settlement." (Att. 24 at p. 14). The fees were to be paid in ten days (Att. 24 at p. 15), before notice was given to the class and before the claims process had even begun.[12]

Objectors moved the court alter or amend its order of July 30, 2007. Notice to the class and the claims process awaited disposition of that motion.

On August 30, 2007, objectors to the class settlement reached a separate settlement with the Diocese (Att. 25 at pp. 5 - 6), which class counsel agreed to partially fund.

On August 31, 2007 Judge Goodstein incorporated that agreement into an order and concluded the preliminary approval process that had begun with the January order (Att. 19). The August 31 order authorized the class settlement agreement to proceed with notice and the claims process. (Att. 25). Class counsel contends this order was "final approval." The McDonalds contend it was "the end of the beginning (to quote Churchill), the last step in the preliminary

[12] The fee was based on a $12 million benefit to the class, but that $12 million was never realized. As the 2008 accounting shows, the sum actually distributed to claimants (Att. 28 p. 6) was $7,615,000. The McDonalds and other class members were charged additional fees not authorized and not disclosed, which is among the reasons why *actual* implementation of the court's orders should be fully disclosed and reviewed.

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approval process that began with the January order (Tr. 19) subject to the Fairness Hearing held in March. But the McDonalds also contend that the label is meaningless, as the court "at all times, remains a fiduciary of the class," *Sharp Farms v. Speaks*, 917 F.3d 276, 293 (4th Cir. 2019), obligated to protect the class even from class counsel, if orders have not been faithfully implemented.

Among the things not disclosed to the McDonalds, or to the class, was that "Mr. Richter and/or his clients" (Att. 25 at p. 6) had agreed to contribute $100,000 to fund settlement terms reached with objectors to the class action.

On September 4, 2007, class counsel was paid the $2.5 million fee by wire. (Att. 28 at p. 2).

On September 10, 2007, Judge Goodstein filed an August 29 order *nunc pro tunc* appointing Desa Ballard as "a consultant and assistant to the judge," (Att. 26), tasked with investigating the undersigned counsel for his having represented objectors.

Nothing came of that investigation.

On October 28, 2007, Judge Goodstein signed a consent order authorizing the rate of hourly payment for Ellison Thomas, the CPA who served as escrow agent of the class fund, Ellison Thomas (Att. 27).

In December 2007 the period for class members to make claims ended.

In February 2008 the arbitrations for the class claimants and awards made by the arbiter. Apparently distributions were made, and funds reverted to the Diocese, without further court approval.

On March 10, 2008 the accounting at Att. 28 was submitted to Judge Goodstein, but was never acted upon. It was neither approved nor denied. The reverter clause appears not to have

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addressed the obligations under SCRCP 23(e). It is now known that the 2008 accounting is incomplete, inaccurate, and misleading. It does not show the additional 20% fees charged the McDonalds (or other class members) by class counsel, or the 10% fees charged by class counsel for those class members who engaged other lawyers. It does not show the contingency fee payment we now know was made by the Diocese in 2006 to class counsel. In that regard the accounting misrepresents the fee paid to class counsel. Nor were any of those payments or class counsel's conflicts disclosed to the McDonalds, as their previously filed statements reflect. These are among the reasons why the court should permit a period of focused discovery.

On April 28, 2008, class counsel paid $100,000.00 from the firm's trust account to the Diocese to help fund settlement with objectors to the class action (Att. 29, redacted). That payment also does not appear on the accounting for the class action, and it has not been disclosed if that payment was made and in what proportion by class counsel, or clients.

The Diocese failed to make payment as it had agreed in the separate settlement with the objectors, and an action was brought in Charleston County to enforce that agreement. The case was transferred to Judge Goodstein, even though objectors had opted out of the class and their agreement was with the Diocese. In February 2009 Judge Goodstein issued an order in that action (Att. 30).

On March 19, 2009 the South Carolina Supreme Court declined to assert its original jurisdiction in a related case brought over issues with the class action and ordered the class action be closed in six months (Att. 31). That order required that any extension to the six-month deadline to close the class action could be granted only by the Supreme Court.

On March 23, 2009, Judge Goodstein issued another order in the litigation that had been transferred to her from Charleston County and made part of the class action (Att. 32).

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On April 15, 2009, counsel then representing the Diocese sent to Judge Goodstein a consent order of dismissal for the class action that had been signed by class counsel and counsel for the Diocese (Att. 33). As with the 2008 accounting, Judge Goodstein took no action on that consent order of dismissal and the parties were content for her to take no action. By the September 2009 deadline set by the Supreme Court neither class counsel nor then-counsel for the Diocese sought an extension from the Supreme Court. The Supreme Court's deadline was simply ignored.

In April 2012 class counsel moved to enforce the class settlement and clarify the geographic scope of the class action (Att. 34).

On January 24, 2013 Judge Goodstein recused herself "from hearing any further matters" in the class action (Att. 35). No reason as stated.

On April 30, 2013, the Supreme Court assigned Judge Kinard to the class action (Att. 36).

As Judge Dickson explains in his order (Att. 38, p. 4, n. 1), class counsel's 2012 motion came to him as Resident Judge after Judge Goodstein recused herself. Despite the order assigning Judge Kinard to the class action, on June 17, 2013, Judge Dickson entered one order in the class action permitting certain information to be shared with an insurer (Att. 37), and entered another on December 17, 2013 (Att. 38), which found the class was not limited to only South Carolina residents, as class counsel argued. It does not appear Judge Kinard issued any order during his tenure.

In January 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, 754 S.E. 2d 494 (S.C. 2014), a related case concerning adequacy of class counsel's representation of out of

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state class members who had received no notice. The court remanded the case to permit further proceedings[13] but the circuit court would not permit the deposition of class counsel.

In an April 10, 2014 hearing before Judge Nicholson in a related case, class counsel represented to the court that their testimony will be that the reason nationwide notice was removed from the class action was because the Bishop objected to nationwide notice, a fact of significance not because the McDonalds got no notice but because the explanation is yet another example of collusive conduct.[14]

Judge Kinard passed away in May 2015. On June 12, 2015 the South Carolina Supreme Court appointed Judge Nicholson to the class action (Att. 39).

On May 11, 2016, John Doe 66 moved for a post-award fairness hearing, alleging issues about class counsel's conduct (Att. 40). That motion has never been scheduled, heard, or ruled upon.

In 2020, Judge Nicholson retired, having issued orders in a number of related cases but apparently no orders as to the class action.

In April 2021 the South Carolina Supreme Court assigned certain related cases to Judge Cole, but clarified that he was not assigned to the class action.

In August 2022 the McDonalds joined the Doe 66 motion for post-award fairness hearing and moved to intervene.

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[13] *Doe v. Bishop*,, 754 S.E.2d 494, 501 (S.C. 2014):

> 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.

[14] The Bishop disputed class counsel's claim. These and other transcripts can be made available, but at present it is the orders that govern this proceeding.

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On November 10, 2022 Your Honor was appointed by the South Carolina Supreme Court to "hear and dispose of" the class action.

The McDonalds contend that if permitted to intervene and perform limited discovery for a post-award fairness hearing that the record will show collusive conduct and improper conduct by class counsel, including improper charges to class members. As fiduciary of the class, the court is authorized at any time by SCRCP to issue orders to protect the class.

The McDonalds' Motion to Intervene.

How the orders in the class action were actually implemented by class counsel has never been reviewed. The McDonalds have moved to intervene and have joined the motion by John Doe 66 for a post-award fairness hearing so that such a review can finally occur.

Intervention is discretionary with the court. *Ex parte GEICO*, 644 S.E.2d 699, 701 (S.C. 2007) ("The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court.").

SCRCP 24 is to be liberally construed. *Berkeley Electric Coop. v. Mt. Pleasant*, 302 S.C. 186, 189 (S.C. 1990) ("We interpret the rules to permit liberal intervention . . . ."). To support intervention of right under SCRCP 24(a), a movant must show:

> (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant, 394 S.E.2d 712, 714 (S.C. 1990).

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1. Timeliness. John Doe 66 moved for a post-award fairness hearing in 2016 (Att. 40). His motion has never been scheduled, heard or ruled on. The McDonalds' motion is timely, and will assist the court in getting this never-closed case concluded while protecting the interests of the class given that class counsel's interests are, and have been, adverse to the class.

2. The interest related to the subject of the action. In the pending motion from John Doe 66 he alleges that he is a class representative, was abandoned by class counsel, is no longer represented by class counsel, and "It is my understanding that class counsel took more money than the court authorized him to take from victims of child spiritual/sexual abuse. No court has reviewed that allegation."

The misconduct allegations by the McDonalds are more specific than the general allegations of John Doe 66, although as the fiduciary of the class the court should consider all allegations in any post-award fairness hearing. The McDonalds participated in the class action and were each charged by class counsel a 20% fee and costs, as reflected in Exhibits A and B. No order authorized that fee charged to the McDonalds, and the existing orders allocated costs to be paid by the class fund, not by the McDonalds or any other claimant.

The March 2008 "accounting" (Att. 28) conceals unauthorized fees and costs charged to the McDonalds and other class members. Discovery should be permitted to discover those unauthorized charges so they can be refunded to the class members. The only fee Att. 28 shows as paid to class counsel is the $2,500,000.00 fee awarded by the court, paid September 4, 2007 by wire transfer. The accounting does not disclose, or account for in any way, any of (a) the 2006 contingency fee payment made by the Diocese to class counsel (Att. 15), or (b) the additional fees charged class members (such as the McDonalds) by class counsel that no order authorized (Exhbits A and B), or (c) the $100,000.00 paid by "Mr. Richter and/or his clients" (Att. 25 at p.

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6) to fund better settlement terms for persons who opted out of the class settlement (Att. 29). That 2008 accounting is incomplete and misleading in significant respects. No court has reviewed the way class funds were *actually* distributed.

Using the misleading 2008 accounting, and considering only the 20% additional fee class counsel charged the McDonalds and all other class members attributed to class counsel,[15] an unauthorized fee in excess of $1 million was collected by class counsel ($1,070,999.99 to be exact). Considering all undisclosed fees paid to or charged by class counsel, the total fee charged by class counsel appears to have been not less than 51% of the $7,615,000.00 distributed to class claimants. Limited discovery and a post-award fairness hearing can consider the evidence supporting these allegations and can refund the improperly charged fees to the class members improperly charged.

3. Consequences if intervention is denied. Without intervention by the McDonalds these claims as to the misconduct in the class action will never be considered, just as they have not been considered to date. If the McDonalds are not permitted to present the issues to the court in this context, where the court is a fiduciary of the class and SCRCP 23 authorizes the court to remedy any misconduct it finds, the claims cannot be reached for the class. Otherwise, if they cannot present these claims in this action then the McDonalds can bring only their individual claims for their being overcharged by class counsel and without proper disclosures.[16]

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[15] Meaning we ignore for the moment the additional 10% charged by class counsel for those class members represented by other counsel when they split the 20% unauthorized fee (an additional $142,000 in unauthorized fees to class counsel also not in the accounting), or the $145,000 contingency fee payment.

[16] Presently, the McDonalds are parties in a federal case before Judge Gergel with John Doe 305, an out of state resident who got no notice. The case alleges their individual claims for malpractice and breach of fiduciary duty against class counsel and other claims against the Diocese for aiding that breach. In this context, the McDonalds and Doe 66 raise issues common

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In *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984), the Court of Appeals held (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.

Under *Premium Investment*, by operation of law the benefits invoked by the allegations of the McDonalds and of John Doe 66 are held by class counsel in trust for the class. That trust continues as the case has never been ended. SCRCP 23(d)(2) and SCRCP 23(d)(3) each authorize the court to protect class members "at any time" by appropriate orders and the court has its own fiduciary obligations to protect the class, even from class counsel. The unauthorized fees charged class members by class counsel, a sum in excess of $1 million, should be refunded to each class member. The class funds distributed without any authorizing order from Judge Goodstein (or any other judge) should be ordered restored to benefit the class and the provisions of SCRCP 23(e) should be complied with as to the reverter clause.

No court has reviewed how class counsel implemented the orders for the class action settlement and how the residual funds of this never-closed class action complied or failed to comply with SCRCP 23(e). Before the McDonalds, class counsel concealed from the court the extra 20% attorney fee charged class members and the contingency fee payment the Diocese

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to all class members, which could at least partially mitigate their damage. The implications of the 2016 amendment to SCRCP 23(e), for example, which should apply to this never-closed class action as to the reverter clause and the residual fund the class settlement created, and the undisclosed fees for all class members cannot be addressed in any other context.

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made in 2006. Given the class representative's pending motion for a post-award fairness hearing, the best use of judicial economy is not separate suits by the more than 100 class members to address class counsel's improper and undisclosed charges made against class members but a post-award fairness hearing concerning the sums improperly charged and paid, all of which are held in trust as a matter of law. The court can review the conduct of class counsel and the Diocese and issue orders correcting any misconduct or errors in implementing the court's orders.

Class counsel has been more than amply rewarded with the court's $2.5 million fee award, given that class counsel's fee was based on patently fraudulent time records (Att. 20) and given that all parties concealed from the court the 2006 contingency fee payment to class counsel (Att. 15). "Additional" fees are not properly charged or properly earned. Both intervention and judicial review are warranted.

4. Inadequate representation without intervention. The McDonalds are not adequately represented by class counsel. Nor have they or any other class member been adequately represented by class counsel since not later than June 14, 2006, the latest date after which the collusive conduct began if it had not begun at the inception of this settlement class when class counsel met with the Bishop to discuss a class action settlement before the first class action was filed. Particularly when class counsel and the Diocese changed the settlement to provide (in January 2007) that class counsel's fee took priority over payments to class claimants (Att. 17, p. 13, ¶ 6B) (payments to class members to be reduced *pro rata* if funds are insufficient after the fees are paid).

The McDonalds possess documents (Exhibits A and B) which infer that every class member (other than those who the 2008 accounting reflects proceeded *pro se*) has the same interests adverse to class counsel. The inherent conflict means class counsel cannot possibly

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represent the class. As fiduciary of the class, the court should order that the class members be informed of the claims made by Doe 66 and the McDonalds, the fees improperly charged, the substantial conflicts of class counsel and his ties to the Diocese and friendships with any of the 42 priests who engaged in sexual misconduct. Nor can class counsel present class member claims in a post-award fairness hearing. Someone other than class counsel or counsel for the McDonalds should be appointed to represent the interests of the class.

Intervention under SCRCP 24(a) should be permitted.

Alternatively, intervention should be permitted under SCCP 24(b). Permissive intervention is authorized under SCRCP 24(b) when a timely application is made and "an applicant's claim or defense and the main action have a question of law or fact in common."

As set forth above, the McDonalds' request is timely. And there are multiple questions "of law or fact in common" with the way this class action was conducted and the issues raised in the pending motions by John Doe 66 and the McDonalds. The McDonalds' claims are both more specific, and more comprehensive, than those of John Doe 66 as to the misconduct of class counsel in the class action, and should be heard on the merits.

The motion to intervene should be granted. Once granted, the court should schedule a post award fairness hearing and provide a brief time for focused discovery including a full and accurate accounting, the deposition of class counsel as to the collusive conduct, the fraudulent information submitted to the court, the fees and payments not disclosed to the class, counsel's substantial conflicts of interest with the Diocese, and the information withheld from the court.

Conclusion

The motion to intervene should be granted at the hearing set for January 27, 2023. After it is granted, a short period of focused discovery should be permitted before the motion for post-

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award fairness hearing is heard so class counsel can be compelled to disclose to the class, among other things, the actual implementation of the court's orders, the actual disclosures they contend were made to class claimants, the actual fees charged by and paid to class counsel, the conflicts class counsel has with the Diocese and his friendships with priests, the actual time worked on the cases which comprised the class action, the time paid for by the contingency fee payment, the actual benefits paid to class claimants, and so that SCRCP 23(e) can be properly applied to the residual fund.

Certificate of Service

I certify that counsel in this action have been served via the court's efile system, and that Mr. Sires has been served by email, a method to which he had agreed, sent to allensires@icloud.com.

Respectfully submitted,

s/ Gregg Meyers

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2006-CP-18-1310
		2006-CP-18-1311
		2006-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,	)	
v.	)	
The Bishop of Charleston a corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
Defendants.	)	

Amended Offer of Proof With Attachments to Restore the Court's Record
And Memorandum in Support of Motions to Intervene
and For Post-Award Fairness Hearing

At the status conference held November 23, 2022 the court indicated that the clerk of court does not appear to have a complete file in this case, or even all of the orders. To provide the court basic documents that may be missing and also to explain more fully both why the McDonalds seek to intervene and why after the scheduled January 27, 2023 hearing a post-award fairness hearing should be scheduled, we attach, in chronological order, extensive attachments to this memorandum so the documents are both part of the record and are explained in context to orient the court.

The few attachments that are specific to the McDonalds are identified by letter labels, Exhibits A and B. Attachments to briefly explain the history of the case and to populate the court file are identified with number labels, starting with Attachment 01. All attachments referred to

were filed with the original memorandum in support, and are incorporated in this amended memorandum.

Class counsel claims that undersigned counsel's persistence concerning the issues from this class action stem from some vague and unsubstantiated personal motivation of undersigned counsel. That is entirely denied. We believe the court will see that genuine issues are present: of collusive conduct during the class action, of unprofessional conduct (such as judge-shopping, submitting patently fraudulent billing records, as well as withholding information from the court and clients), and of conflicts between class counsel and the class. Class counsel's interests were, and are, adverse to those of John Doe 66, the McDonalds, and to all other class members.

None of those issues has ever been addressed on the merits. They should be. Undersigned counsel's persistence is due entirely to various clients who continue to be adversely affected by the conduct of class counsel and the Diocese.

A Short History and Basic Facts of the Case, with Attachments for a Proffer

We proffer that we can prove the following narrative.

As reflected in Attachment 01, On May 12, 2005, a complaint was filed in Charleston County for John Doe 66 against the Diocese for his childhood sexual abuse. That complaint was amended in June 2005 (Att. 02). In August 2005 another complaint against the Diocese was brought on behalf of John Doe 66A. (Att. 03). Neither of those complaints made any class allegations.

In October 2005 the parties met ("we met with the Bishop," class counsel claimed, Att. 20, p. 23, ¶ 17) to explore a class settlement for "obtaining universal peace," as class counsel put it (Att. 04, October 2005 letter from class counsel). No class complaint was then pending. In

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December 2005 a class complaint was filed, naming John Doe 53 as class representative of "victims of priest sex abuse." (Att. 05, p. 1). No motion was filed for class certification.

The parties met again in early January 2006 to further discuss a class settlement (Att. 06 January 2006 letter from class counsel).

The court has been told the class action was contentious and hard fought. Yet without a single motion having been heard[1] or a single deposition having been taken, and within seven months of filing the class action complaint, in June 2006 the parties reached a class settlement in mediation (Att. 07, redacted for public filing).

At that point, if not before, the collusive conduct began.

When the settlement was reached in June 2006, three cases were then pending, all in Charleston County, as noted above. The 2006 handwritten settlement, Att. 07, refers to each of those three cases at p. 1. No sexual abuse case by class counsel was pending in Dorchester County or anywhere else.

One term of the 2006 settlement was that the claims of four individuals to be designated as class representatives would be ended for $460,000 even if the class settlement was not approved (Att. 7 p. 3). More on that below.

SCRCP 23 requires any class settlement be approved by the court. Rather than submit the class settlement for approval, the parties agreed to judge-shop, so as to move the class settlement process away from judges in Charleston County to Judge Goodstein in Dorchester County.

The method of judge-shopping chosen for the June 2006 class settlement was to file in August 2006 in Dorchester County two new sex abuse class actions. Those cases (nos. 2006-CP-

[1] As the Charleston County public court docket reflects, each time the court scheduled motions for hearing the parties requested, and got, continuances.

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18-1310 and -1311) were filed in August 2006 (they are Atts. 08[2] and 09, respectively). Reflecting agreement with this method of judge-shopping, the Diocese both accepted service (Att. 10) and filed no motion to dismiss due to a prior pending action under SCRCP 12(b)(8).

Communications began with Judge Goodstein not later than August 21, 2006 (e.g., Att. 20 at p.66). Then the John Doe 53 class complaint (Att. 05), which had been pending in Charleston since December 2005, and which was part of the 2006 class settlement (Att. 07 at p. 1), and which was still pending in Charleston, was re-created, identical but for the county designation, and re-filed in October 2006 as a Dorchester County class action complaint (*compare*, Att. 05 with the identical-in-substance Dorchester County version at Att. 11). As a result, the same class action was pending in two counties. The same day the "cloned" John Doe 53 complaint was filed in Dorchester County, class counsel filed a motion to certify the classes and approve the class settlement (Att. 12). At p. 3, ¶ 3.a., that motion proposes the class be notified by nationwide publication via *USA Today*.[3]

Again, the Diocese made no motion under SCRCP 12(b)(8) even though the identical case was pending, and settled, in Charleston. To have done so would have defeated the purpose of shopping for Judge Goodstein.

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[2] Counsel's copy of this pleading appears to be missing page 6. The court will recall that at the start of the recent status conference John Doe 66 reported that class counsel had sent him mail for John Doe 66A, so asked if Doe 66A was a family member or a relation of his, a question class counsel refused to answer. It is a fair question. In Att. 03 at p. 1, Doe 66A is described as an adult abuse victim. No connection to Doe 66 is alleged. In Att. 08 at p. 1, ¶ 2, the plaintiff Jane Doe 2 is alleged to be "the wife of John Doe #66," but in the order at Att. 19 at p.2 the plaintiff Jane Doe 2 is described as "the wife of John Doe 66A." There is no reason class counsel cannot clarify for John Doe 66 the confusion created by these public documents and class counsel's mailing to him a communication for John Doe 66A.

[3] As discussed below, the nationwide notice to the class via *USA Today* was later removed.

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On October 17, 2006, Judge Goodstein entered her first order, a consent order declaring the three cases complex, consolidating them, and assigning them to herself (Att. 13). The same day, class counsel wrote to the administrative judge in Charleston County (Judge Jefferson) to submit "proposed consent orders to dismiss" without prejudice the three cases that had been filed in 2005 in Charleston and settled in 2006 (Att. 14). Judge Jefferson was told nothing about a class settlement having been reached or the proceedings that had begun in Dorchester County after the class settlement had been reached. Those orders were entered.

The process of shopping for Judge Goodstein was complete, and the parties thereafter have consistently misrepresented, as has already been misrepresented to Your Honor, that the class action cases began in 2006 in Dorchester County.[4]

On November 20, 2006, the Diocese sent two checks to class counsel (Att. 15), one for $345,000.00 (payable to the firm's trust account) and one for $145,000.00 (payable to the firm), to fulfill the mediation agreement (Att. 07 at p. 3) that claims of four individuals would be resolved even if the class settlement was not approved. Later, after the handwritten class settlement reached in the 2006 mediation (Att. 07) was typed up and submitted to the court in January 2007, the list of individuals whose claims were "released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court" (Att. 17, p. 12, ¶ 4), had increased (obviously, by agreement) from four to seven and the sum involved had increased from $460,000 to $550,000. *Id*.

Pertinent to these proceedings, the $145,000 fee payment to class counsel at Att. 15 was never disclosed to the court, a concealment obviously agreed to by the Diocese. Nor is that

[4] Knowing whether this judge-shopping method is acceptable is useful for bench and bar.

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November 2006 payment included in the 2008 accounting of how the class funds were disbursed (Att. 28, p. 1). Nearly all of the time submitted in 2007 as part of the attorney fee claim made in the class action (Att. 20), was the time involved in the four individual cases settled as reflected in the 2006 class settlement (Att. 07), for which the contingency fee payment had been made in 2006.

The 2007 motion submitting the typed version of the handwritten 2006 class settlement is Att. 16. The typed Agreement itself is Att. 17. We attach them separately for ease of discussion, and we begin with Att. 17, the typed settlement agreement rather than the motion to which it is attached.

In the fourth line from the top of page 2 of Att. 17 the three 2005 Charleston case numbers are listed explicitly as included in the class settlement. In paragraph 1 on p. 2 the two settlement classes are defined without geographic limitation. Meaning that neither the members of the "Primary Class" nor those of the "Consortium Class" was restricted to South Carolina residents. Each of the McDonalds resided out of state and were members of the "Consortium Class."

The 2007 Agreement (Att. 17) refers to the 2006 mediation (at p. 3), sets out an arbitration process to determine sums to abuse victim claimants (at p. 4) and stipulated a $20,000 payment for each of the "Consortium Class" members (at p. 5), such as the McDonalds. At p. 11, the agreement provided that "all costs associated with management of the class shall be paid from the settlement fund," which included costs incurred by class counsel.[5]

[5] Nevertheless, class counsel charged costs to the McDonalds, as Exhibits A and B reflect, and presumably similarly charged every other class member.

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On pages 12-13 the agreement provided a type of "clear sailing" agreement, the Diocese agreeing to a range for court-awarded attorney's fees to class counsel if the class settlement was approved. That fee was to pay for the work done by "plaintiffs' counsel (past and future)" and "the work past and future and their role as class counsel."[6]

Added by the parties between the 2006 handwritten agreement and the January 2007 Agreement at Att. 17 was ¶ 6.B, starting at p. 13 of Att. 17, which elevated the attorney fee over the payments to class members. The provision made the fee to class counsel fixed (once it was determined) and the recovery to class members variable, to be reduced *pro rata* should the class members recover too much.[7] Also added by the parties was ¶ 6.C on p. 14, a reverter clause which returned to the Diocese any funds which remained after claims were paid. Each is an indicator of presumptive unfairness. E.g., *Briseno v. Henderson,* ____ *F.3d* ____, 2021 WL 2197968 (9th Cir. June 1, 2021); *Sylvester v. Cigna Corp.*, 369 F. Supp. 2d 34 (D. Me. 2005).

As noted above, the typed class settlement agreement was attached to an amended motion for class certification (Att. 16, the original 2006 motion being Att. 12). At page 2 of Att. 16, that 2007 motion claims the class action began in 2006 with "June 30, 2006" filings by John Doe 67, Jane Doe 1, Jane Doe 2 and Rachel Roe, affirmatively misstating the 2005 Charleston County filing history (Atts. 01, 02, 03, and 05), the 2006 mediated class settlement (Att. 07), and even the 2006 Dorchester County filings which, as the file-stamps on Atts. 08 and 09 show were filed August 15, 2006. The motion also claims, falsely (at p. 2), that Johns Doe 53, 66 and 66A "were

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[6] Nevertheless, class counsel charged a 20% fee of the McDonalds, as Exhibits A and B reflect, and presumably charged the same of every other class member, while collecting 10% for those claimants who had separate counsel..

[7] Whether class counsel may make the attorney fee the highest priority of a class action, and may do so at the expense of class claimants, is useful for bench and bar.

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subsequently added to the case," when in fact the cases for those Charleston plaintiffs were the first filed and were the basis of the 2006 class settlement. It is the Dorchester County cases that were the ones "added." Persistently misrepresenting to the court how the class settlement came about is presumably to obscure the judge-shopping done after the 2006 settlement was reached with only Charleston County cases pending.

As noted above, the notice proposed in the amended motion (Att. 17 p. 3) omitted the nationwide notice originally proposed through *USA Today* (Att. 12 at p. 2).[8] Due to the reverter clause and the "fee priority" provision added to the class settlement between June 2006 and January 2007, each of class counsel and the Diocese had an economic interest in reducing the number of claimants. As Judge Dickson found, about one-quarter of the claimants were, like the McDonalds, residents of a state other than South Carolina. (Att. 38 at p. 4).

At p. 3 the motion sought approval for a two-stage approval process for the class settlement, described as "conditional approval" and then a "final approval of the settlement after notice to the class." The post-award fairness hearing requested by John Doe 66 and by the McDonalds is not for purpose of again reviewing the class settlement structure but to review the conduct of class counsel in implementing the court's orders, particularly the fee charged by class counsel in light of the result *actually achieved* for class members and how the court's orders were *actually* implemented. No review of how class counsel implemented the orders issued concerning the class settlement, or the fees actually charged by class counsel, has been made. Only a review after a *full* accounting can determine if the court's orders were followed.[9]

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[8] During a 2014 hearing in a related matter, class counsel represented to the court that they will testify that the nationwide notice was removed at the request of the Bishop.

[9] Courts routinely use multiple hearings to consider the results actually achieved in approving class settlement as well as attorney fee requests. E.g., *Sylvester v. Cigna Corp.*, 369 F. Supp. 2d 34 (D. Me. 2005) (three fairness hearings held before the court rejected a proposed settlement

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As discussed below, it appears the McDonalds (and other class members) were charged a fee which no order authorized, and were charged that fee without the full and proper disclosures required.

On January 18, 2007 Judge Goodstein issued an order related to matters addressed in a December 20, 2006 status conference (Att. 18). We provide that order in case the clerk has failed to preserve it, but we believe it has no bearing on the issues now before the court.

On January 23, 2007 Judge Goodstein issued an order granting the motion to certify the classes: "the proposed settlement agreement is preliminarily approved *subject to the objection period and Fairness Hearing* as set out in this order" (Att. 19 at p. 1, emphasis added). As reflected in Att. 19 at p. 3 n. 2, the Diocese took no position on class certification. As preliminary approval was subject to the fairness hearing to be held, the January approval did not begin the claims process. The fairness hearing that was part of the preliminary approval process was set for March 9, 2007, and notice of that hearing was ordered to run once a week for six weeks. (Att. 19 at p. 8).

On February 14, 2007 class counsel filed a Petition for Attorneys Fees (Att. 20), claiming many days of work in excess of 24 hours, among other issues.[10] As noted above, the motion did

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due to clear sailing and reverter provisions); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998 (E.D. Cal. 2019) (class settlement after nine years of litigation preliminarily approved in 2018, then following notice to the class, objections and claims received, a final review in 2019 considered and approved disbursements and an attorney's fee in light of actual performance of class counsel); *N.R. v. Raytheon Co.*, Civil Action 1:20-cv-10153-RGS (D. Mass. Sep. 21, 2022) (final fairness hearing set in 2023 after 2022 approval of notice and claims are processed so attorney fee request will be considered in light of actual class recovery); *1988 Tr. for Allen Children v. Banner Life Ins. Co.*, 28 F.4th 513, 523-24 (4th Cir. 2022) (February 2020 fairness hearing adjourned to allow an objector to do discovery, then resumed in May 2020).

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[10] Some states disbar or suspend lawyers who submit bills of more than 24 hours in a day. E.g., *Lawyer Disciplinary Board v. Tyson*, No. 20-1027 (W.Va. November 3, 2022) (disbarred); *Lawyer Disciplinary Bd. v. Grindo*, 842 S.E.2d 683 (W. Va. 2020) (2 year suspension); *Iowa*

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not disclose the November 2006 contingent fee payment even though nearly all time submitted was for work within the cases for which the contingent fee had been paid.

Once written objections had been received, class counsel on March 1, 2007 proposed certain modifications to the settlement agreement to accommodate certain of the objections (Att. 21).

The fairness hearing was held March 9, 2007. Judge Goodstein took under advisement the issues from the Fairness Hearing.

On July 13, 2007 Judge Goodstein issued two consent orders between class counsel and the Diocese: one related to a motion to compel (Att. 22), and another order disclosing her "long social history" and professional connections to class counsel (Att. 23). The class was never informed of either class counsel's lifelong conflicts of interest with the Diocese (including his functioning on behalf of the Diocese during the proceedings, and his many friendships with priests of the Diocese,[11] partially disclosed in Att. 20 at pp. 21 – 22, ¶¶ 14 - 15) or of the connections with Judge Goodstein.

Supreme Court Attorney Disciplinary Bd. v. Meyer, 944 N.W.2d 61 (Iowa 2020) (one year suspension); *Iowa Supreme Court Attorney Disciplinary Bd. v. Mathahs*, 918 N.W.2d 487 (Iowa 2018) (60 day suspension); *In re Disciplinary Proceedings Against Awen*, 211 Wis. 2d 172 (Wis. 1997) (90 day suspension); *Disciplinary Proceedings Against Kravat*, 193 Wis. 2d 152 (Wis. 1995) (disbarred); *People v. Walker*, 832 P.2d 935 (Colo. 1992) (90 day suspension). Class counsel claims their billing program estimated "the entire time" on a given matter, rather than the time spent on a given day, an explanation contradicted by the time records themselves.

Whether South Carolina permits billing more than 24 hours in a day, or use of a program that bills more than 24 hours in a day or records time on invented dates such as "February 30," is useful for bench and bar.

[11] Class members might rightfully wanted to know if class counsel was friends with any of the 42 priests which were disclosed by the Diocese in 2019 as having been credibly accused of sexual misconduct. (https://www.postandcourier.com/news/diocese-of-charleston-releases-names-of-42-sc-priests-accused-of-sexual-misconduct/article_eb1ec7d0-525c-11e9-b7c6-a7c2ba4ed5bb.html, last visited December 5, 2022).

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On July 30, 2007, Judge Goodstein issued an order concerning the fairness hearing and the objections raised during that hearing (Att. 24, at p. 1). The court approved the settlement (Att. 24 at pp. 11-12) and ordered a shortened notice period (reducing the six weeks requested in the motion to three weeks), to begin in ten days. (Att. 24 at p. 12). Nationwide notice was not ordered, nor did the court address the changes to the proposed notice program (reducing both the time of notice and geographic reach of notice).

Based on the inflated time records submitted, and without regard to the *actual* benefit obtained for the class, or the reverter clause in the settlement, or the *pro rata* reduction for claimant awards in deference to the fee, or of the change to delete nationwide notice, or the undisclosed conflicts of class counsel, the court awarded class counsel a $2.5 million fee. Consistent with the motion seeking the fee, the order stated it was for time expended as well as "additional time expended, and to be expended, since that time and in carrying out the terms of the settlement." (Att. 24 at p. 14). The fees were to be paid in ten days (Att. 24 at p. 15), before notice was given to the class and before the claims process had even begun.[12]

Objectors moved the court to alter or amend its order of July 30, 2007. Notice to the class and the claims process awaited disposition of that motion.

On August 30, 2007, objectors to the class settlement reached a separate settlement with the Diocese (Att. 25 at pp. 5 - 6), which class counsel agreed to partially fund.

On August 31, 2007 Judge Goodstein incorporated that agreement into an order and concluded the preliminary approval process that had begun with the January order (Att. 19). The

[12] The fee was based on a $12 million benefit to the class, but that $12 million was never realized. As the 2008 accounting shows, the sum actually distributed to claimants (Att. 28 p. 6) was $7,615,000. The McDonalds and other class members were charged additional fees not authorized and not disclosed, which is among the reasons why *actual* implementation of the court's orders should be fully disclosed and reviewed.

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August 31 order authorized the class settlement agreement to proceed with notice and the claims process. (Att. 25). Class counsel contends this order is "final approval," as if court oversight then ends. The McDonalds contend the order was merely "the end of the beginning" (to quote Churchill), the last step in the preliminary approval process that began with the January order (Tr. 19) subject to the Fairness Hearing held in March. But the McDonalds also contend that the label is meaningless, as the court "at all times, remains a fiduciary of the class," *Sharp Farms v. Speaks*, 917 F.3d 276, 293 (4th Cir. 2019), obligated to protect the class, even from class counsel if orders have not been faithfully implemented.

Among the things not disclosed to the McDonalds, or to the class, was that "Mr. Richter and/or his clients" (Att. 25 at p. 6) had agreed to contribute $100,000 to fund settlement terms reached with objectors to the class action.

On September 4, 2007, class counsel was paid the $2.5 million fee by wire. (Att. 28 at p. 2).

On September 10, 2007, Judge Goodstein filed an August 29 order *nunc pro tunc* appointing Desa Ballard as "a consultant and assistant to the judge," (Att. 26), tasked with investigating the undersigned counsel for his having represented objectors.

Nothing came of that investigation.

On October 28, 2007, Judge Goodstein signed a consent order authorizing the rate of hourly payment for Ellison Thomas, the CPA who served as escrow agent of the class fund, Ellison Thomas (Att. 27).

In December 2007 the period for class members to make claims ended.

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In February 2008 the arbitrations took place for the class claimants and awards were made by the arbiter. Apparently, distributions were made, and residual funds reverted to the Diocese, without further court approval.

On March 10, 2008 the accounting at Att. 28 was submitted to Judge Goodstein, but was never acted upon. It was neither approved nor denied. In this long interim while waiting for final approval, SCRCP 23(e) has changed the obligations regarding the reverter clause, a change which has also never been considered.

It is now known that the 2008 accounting is incomplete, inaccurate, and misleading. It does not show the additional 20% fees charged the McDonalds (or other class members) by class counsel, or the 10% fees charged by class counsel for those class members who engaged other lawyers. It does not show the contingency fee payment we now know was made by the Diocese in 2006 to class counsel. In that regard the accounting misrepresents and understates the fee paid to class counsel. Nor were any of those payments or class counsel's conflicts disclosed to the McDonalds, as their previously filed statements reflect. Or to anyone else in the class. These are among the reasons why the court should permit a period of focused discovery.

On April 28, 2008, class counsel paid $100,000.00 from the firm's trust account to the Diocese to help fund settlement with objectors to the class action (Att. 29, redacted). That payment also does not appear on the accounting for the class action, and it has not been disclosed if that payment was made and in what proportion by class counsel, or clients.

The Diocese failed to make payment as it had agreed in the separate settlement with the objectors, and an action was brought in Charleston County to enforce that agreement. The case was transferred to Judge Goodstein, even though objectors had opted out of the class and their

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agreement with the Diocese was independent of the class action. In February 2009 Judge Goodstein issued an order in that action (Att. 30).

On March 19, 2009 the South Carolina Supreme Court declined to assert its original jurisdiction in a related case brought over issues with the class action and ordered the class action be closed in six months (Att. 31). That order required that any extension to the six-month deadline to close the class action could be granted only by the Supreme Court.

On March 23, 2009, Judge Goodstein issued another order in the related litigation that had been transferred to her from Charleston County and which had been made part of the class action (Att. 32).

On April 15, 2009, counsel then representing the Diocese sent to Judge Goodstein a consent order of dismissal for the class action that had been signed by class counsel and counsel for the Diocese (Att. 33). As with the 2008 accounting, Judge Goodstein took no action on that consent order of dismissal and the parties were content for her to take no action. By the September 2009 deadline set by the Supreme Court neither class counsel nor then-counsel for the Diocese sought an extension from the Supreme Court. The Supreme Court's deadline was simply ignored.

In April 2012 class counsel moved to enforce the class settlement and clarify the geographic scope of the class action (Att. 34).

On January 24, 2013 Judge Goodstein recused herself "from hearing any further matters" in the class action (Att. 35). No reason was stated.

On April 30, 2013, the Supreme Court assigned Judge Kinard to the class action (Att. 36).

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As Judge Dickson explains in his December 17, 2013 order (Att. 38, p. 4, n. 1), despite the order assigning Judge Kinard to the class action, class counsel's 2012 motion had come to Judge Dickson as Resident Judge after Judge Goodstein recused herself. On June 17, 2013, Judge Dickson entered an order in the class action permitting certain information to be shared with an insurer (Att. 37), and on December 17, 2013 entered another (Att. 38), which found the class was not limited to only South Carolina residents. It does not appear Judge Kinard issued any order during his tenure.

In January 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, 754 S.E. 2d 494 (S.C. 2014), a related case concerning adequacy of class counsel's representation of out of state class members who had received no notice. The court remanded the case to permit further proceedings[13] but the circuit court would not permit the deposition of class counsel.

As noted above, in an April 10, 2014 hearing before Judge Nicholson in a related case, class counsel represented to the court that their testimony will be that the reason nationwide notice was removed from the class action was because the Bishop objected to nationwide notice, a fact of significance not because the McDonalds got no notice but because the explanation is yet another example of collusive conduct.[14]

Judge Kinard passed away in May 2015. On June 12, 2015 the South Carolina Supreme Court appointed Judge Nicholson to the class action (Att. 39).

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[13] *Doe v. Bishop*,, 754 S.E.2d 494, 501 (S.C. 2014):

> 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.

[14] The Bishop disputed class counsel's claim. These and other transcripts can be made available, but it is the orders that govern this proceeding.

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On May 11, 2016, John Doe 66 moved for a post-award fairness hearing, alleging issues about class counsel's conduct (Att. 40). That motion has never been scheduled, heard, or ruled upon.

In 2020, Judge Nicholson retired, having issued orders in a number of related cases but apparently no orders as to the class action.

In April 2021 the South Carolina Supreme Court assigned certain related cases to Judge Cole, but clarified that he was not assigned to the class action.

In August 2022 the McDonalds joined the Doe 66 motion for post-award fairness hearing and moved to intervene.

On November 10, 2022 Your Honor was appointed by the South Carolina Supreme Court to "hear and dispose of" the class action.

The McDonalds contend that if permitted to intervene and perform limited discovery for a post-award fairness hearing that the record will show collusive conduct and improper conduct by class counsel, including improper charges to class members. As fiduciary of the class, the court is authorized at any time by SCRCP 23 to issue orders to protect the class.

The McDonalds' Motion to Intervene.

How the orders in the class action were actually implemented by class counsel has never been reviewed. The McDonalds have moved to intervene, and have joined the motion by John Doe 66 for a post-award fairness hearing so that such a review can finally occur.

Intervention is discretionary with the court. *Ex parte GEICO*, 644 S.E.2d 699, 701 (S.C. 2007) ("The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or

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intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court.").

SCRCP 24 is to be liberally construed. *Berkeley Electric Coop. v. Mt. Pleasant*, 302 S.C. 186, 189 (S.C. 1990) ("We interpret the rules to permit liberal intervention . . . ."). To support intervention of right under SCRCP 24(a), a movant must show:

> (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant, 394 S.E.2d 712, 714 (S.C. 1990).

1. Timeliness. John Doe 66 moved for a post-award fairness hearing in 2016 (Att. 40). His motion has never been scheduled, heard or ruled on. The McDonalds' motion is timely, and will assist the court in getting this never-closed case concluded while protecting the interests of the class given that class counsel's interests are, and for some time have been, adverse to the class.

2. The McDonalds' interest related to the subject of the action. In the pending motion from John Doe 66 he alleges that he is a class representative, was abandoned by class counsel, is no longer represented by class counsel, and "It is my understanding that class counsel took more money than the court authorized him to take from victims of child spiritual/sexual abuse. No court has reviewed that allegation."

The misconduct allegations by the McDonalds are more specific than the general allegations of John Doe 66, although as the fiduciary of the class the court should consider all allegations in any post-award fairness hearing. The McDonalds participated in the class action and were each charged by class counsel a 20% fee and costs, as reflected in Exhibits A and B.

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No order authorized that fee charged to the McDonalds, and the existing orders allocated costs to be paid by the class fund, not by the McDonalds or any other claimant.

The March 2008 "accounting" (Att. 28) conceals unauthorized fees and costs charged to the McDonalds and other class members. Discovery should be permitted to discover those unauthorized charges so they can be refunded to the class members. The only fee Att. 28 shows as paid to class counsel is the $2,500,000.00 fee awarded by the court, paid September 4, 2007 by wire transfer. The accounting does not disclose, or account for in any way, any of (a) the 2006 contingency fee payment made by the Diocese to class counsel (Att. 15), or (b) the additional fees charged class members (such as the McDonalds) by class counsel that no order authorized (Exhbits A and B), or (c) the $100,000.00 paid by "Mr. Richter and/or his clients" (Att. 25 at p. 6) to fund better settlement terms for persons who opted out of the class settlement (Att. 29). That 2008 accounting is incomplete and misleading in significant respects. No court has reviewed the way class funds were *actually* distributed.

Using the misleading 2008 accounting, and considering only the 20% additional fee class counsel charged the McDonalds and all other class members attributed to class counsel,[15] an unauthorized fee in excess of $1 million was collected by class counsel ($1,070,999.99 to be exact). Considering all undisclosed fees paid to or charged by class counsel, the total fee charged by class counsel appears to have been not less than 51% of the $7,615,000.00 distributed to class claimants. Limited discovery and a post-award fairness hearing can consider the evidence

[15] Meaning we ignore for the moment the additional 10% charged by class counsel for those class members represented by other counsel when they split the 20% unauthorized fee (an additional $142,000 in unauthorized fees to class counsel also not in the accounting), or the $145,000 contingency fee payment.

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supporting these allegations and can refund the improperly charged fees to the class members improperly charged.

3. Consequences if intervention is denied. Without intervention by the McDonalds these claims as to the misconduct in the class action will never be considered, just as they have not been considered to date. If the McDonalds are not permitted to present the issues to the court in this context, where the court is a fiduciary of the class and SCRCP 23 authorizes the court to remedy any misconduct it finds, the claims cannot be reached for the class. Otherwise, if they cannot present these claims in this action then the McDonalds can bring only their individual claims for their being overcharged by class counsel and without proper disclosures.[16]

In *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984), the Court of Appeals held (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.

Under *Premium Investment*, by operation of law the benefits invoked by the allegations of the McDonalds and of John Doe 66 are held by class counsel in trust for the class. That trust continues

[16] Presently, the McDonalds are parties in a federal case before Judge Gergel with John Doe 305, an out of state resident who got no notice. The case alleges their individual claims for malpractice and breach of fiduciary duty against class counsel and other claims against the Diocese for aiding that breach. In this context, the McDonalds and Doe 66 raise issues common to all class members, which could at least partially mitigate their damage. The implications of the 2016 amendment to SCRCP 23(e), for example, which should apply to this never-closed class action as to the reverter clause and the residual fund the class settlement created, and the undisclosed fees for all class members cannot be addressed in any other context.

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as the case has never been ended. SCRCP 23(d)(2) and SCRCP 23(d)(3) each authorize the court to protect class members "at any time" by appropriate orders and the court has its own fiduciary obligations to protect the class, even from class counsel. The unauthorized fees charged class members by class counsel, a sum in excess of $1 million, should be refunded to each class member. The class funds distributed without any authorizing order from Judge Goodstein (or any other judge) should be ordered restored to benefit the class and the provisions of SCRCP 23(e) should be complied with as to the reverter clause.

No court has reviewed how class counsel implemented the orders for the class action settlement and how the residual funds of this never-closed class action complied or failed to comply with SCRCP 23(e). Before the McDonalds, class counsel concealed from the court the extra 20% attorney fee charged class members and the contingency fee payment the Diocese made in 2006. Given the class representative's pending motion for a post-award fairness hearing, the best use of judicial economy is not separate suits by the more than 100 class members to address class counsel's improper and undisclosed charges made against class members but a post-award fairness hearing concerning the sums improperly charged and paid, all of which are held in trust as a matter of law. The court can review the conduct of class counsel and the Diocese and issue orders correcting any misconduct or errors in implementing the court's orders.

Class counsel has been more than amply rewarded with the court's $2.5 million fee award, given that class counsel's fee was based on patently fraudulent time records (Att. 20) and given that all parties concealed from the court the 2006 contingency fee payment to class counsel (Att. 15). "Additional" fees are not properly charged or properly earned. Both intervention and judicial review are warranted.

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4. Inadequate representation without intervention. The McDonalds are not adequately represented by class counsel. Nor have they or any other class member been adequately represented by class counsel since not later than June 14, 2006, the latest date after which the collusive conduct began if it had not begun at the inception of this settlement class when class counsel met with the Bishop to discuss a class action settlement before the first class action was filed. Particularly when class counsel and the Diocese changed the settlement to provide (in January 2007) that class counsel's fee took priority over payments to class claimants (Att. 17, p. 13, ¶ 6B) (payments to class members to be reduced *pro rata* if funds are insufficient after the fees are paid).

The McDonalds possess documents (Exhibits A and B) which infer that every class member (other than those who the 2008 accounting reflects proceeded *pro se*) has the same interests adverse to class counsel. The inherent conflict means class counsel cannot possibly represent the class. As fiduciary of the class, the court should order that the class members be informed of the claims made by Doe 66 and the McDonalds, the fees improperly charged, the substantial conflicts of class counsel and his ties to the Diocese and friendships with any of the 42 priests who engaged in sexual misconduct. Nor can class counsel present class member claims in a post-award fairness hearing. Someone other than class counsel or counsel for the McDonalds should be appointed to represent the interests of the class.

Intervention under SCRCP 24(a) should be permitted.

Alternatively, intervention should be permitted under SCCP 24(b). Permissive intervention is authorized under SCRCP 24(b) when a timely application is made and "an applicant's claim or defense and the main action have a question of law or fact in common."

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As set forth above, the McDonalds' request is timely. And there are multiple questions "of law or fact in common" with the way this class action was conducted and the issues raised in the pending motions by John Doe 66 and the McDonalds. The McDonalds' claims are both more specific, and more comprehensive, than those of John Doe 66 as to the misconduct of class counsel in the class action, and should be heard on the merits.

The motion to intervene should be granted. Once granted, the court should schedule a post award fairness hearing and provide a brief time for focused discovery including a full and accurate accounting, the deposition of class counsel as to the collusive conduct, the fraudulent information submitted to the court, the fees and payments not disclosed to the class, counsel's substantial conflicts of interest with the Diocese, and the information withheld from the court.

Conclusion

The motion to intervene should be granted at the hearing set for January 27, 2023. After it is granted, a short period of focused discovery should be permitted before the motion for post-award fairness hearing is heard so class counsel can be compelled to disclose to the class, among other things, the actual implementation of the court's orders, the actual disclosures they contend were made to class claimants, the actual fees charged by and paid to class counsel, the conflicts class counsel has with the Diocese and his friendships with priests, the actual time worked on the cases which comprised the class action, the time paid for by the contingency fee payment, the actual benefits paid to class claimants, and so the court can review the impact of the present SCRCP 23(e) as to the residual fund.

Respectfully submitted,

s/ Gregg Meyers

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Attorney for the McDonalds

Certificate of Service

I certify that counsel in this action have been served this document via the court's efile system, and that Mr. Sires has been served by his @icloud.com email, a method to which he had agreed.

s/ Gregg Meyers

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ELECTRONICALLY FILED - 2023 Sep 01 4:49 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

The Supreme Court of South Carolina

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

v.

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

Appellate Case No. 2020-001415

ORDER

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

_____ C.J.

_____ J.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina
April 19, 2021

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

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

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ELECTRONICALLY FILED - 2023 Sep 01 4:49 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

The Supreme Court of South Carolina

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

v.

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

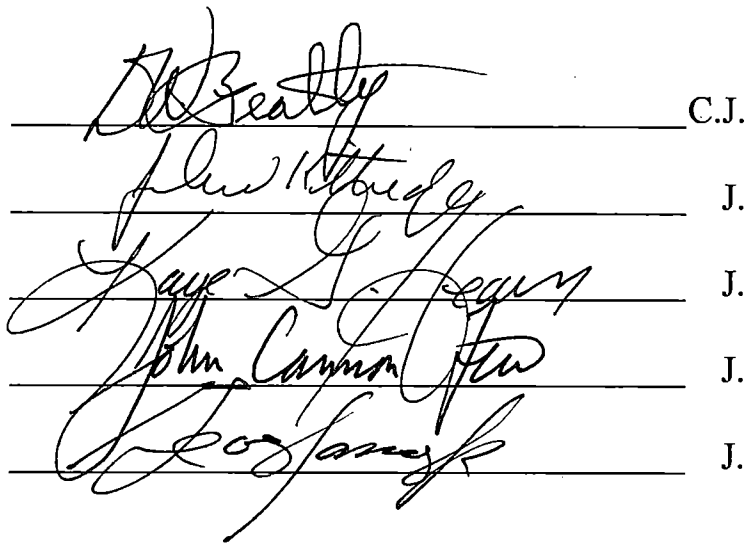
Appellate Case No. 2020-001415

ORDER

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

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

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



C.J.

J.

J.

J.

J.

Columbia, South Carolina
June 15, 2021

cc:
Gregg E. Meyers, Esquire
Lawrence E. Richter, Jr., Esquire
Richard S. Dukes, Jr., Esquire
R. Hawthorne Barrett, Esquire
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Henry Wilkins Frampton, IV, Esquire
The Honorable J. Derham Cole

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State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020-_____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Petition for Original Jurisdiction

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

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

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

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

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

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

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

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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-

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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

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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

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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.

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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

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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

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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.

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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

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

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

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

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

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

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

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

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

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

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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.

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(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;

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(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;

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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;

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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

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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)

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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

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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.

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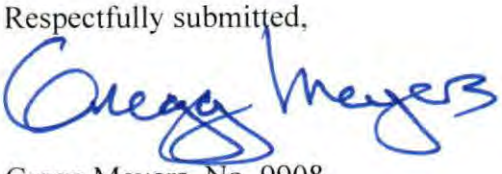
As to the never-ending class action, as noted above the Court should appoint new counsel to represent the class, and task the special referee for recommendations for concluding it after an appropriate post-award fairness hearing that for the first time independently and fully examines the issues in the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

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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.

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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.

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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."

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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*.

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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.

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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

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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

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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

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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.

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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.

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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.

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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

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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;

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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

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

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

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

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

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

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

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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.

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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')

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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

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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.

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

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

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

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

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

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

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

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

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

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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.

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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

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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.

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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.

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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.

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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-

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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

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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.

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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

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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.

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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.

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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

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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;

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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

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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):

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> 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"

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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.

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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

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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.

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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,

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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

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

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

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

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

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

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

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

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

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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.

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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,

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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.

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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

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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

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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.

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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;

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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.

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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

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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;

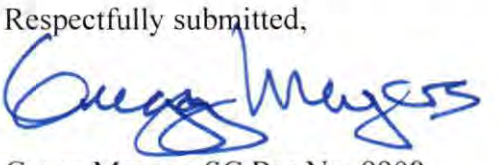
215. Actual and punitive damages in an amount to be determined by the finder of fact against the various defendants;

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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Attachment A

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DIOCESE OF CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42983

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller LLC - Client Trust Account DATE 11-20-06 $ 345,000.-

DIOCESE OF CHARLESTON 345000 0 CTS

Bank of America

DOLLARS

Security features are included. Details on back.

FOR

⑈042983⑈ [redacted]

MP

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DIOCESE OF CHARLESTON
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1662 INGRAM RD.
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42982

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller, LLC DATE 11-20-06 $ 145,000.-

DIOCESE OF CHARLESTON 145000 0 CTS

Bank of America

DOLLARS

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⑈042982⑈ [redacted]

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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

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August 30, 2007

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

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

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

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

Dear Larry and Gregg:

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

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

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

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

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

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

Sincerely,

A. Peter Shahid, Jr.

I agree to the above terms.

Lawrence E. Richter, Jr.
Class Counsel

I agree to the above terms.

Gregg Meyers

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

FIRST CITIZENS BANK AND TRUST COMPANY
MOUNT PLEASANT, SC 29464

67-148/532

2087
NUMBER

PAY TO THE ORDER OF

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

DATE 04/28/08

AMOUNT $ **100000.00

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

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. ... IMAGE DISAPPEARS WITH HEAT.

⑈002087⑈ ⑆[redacted]⑈

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

SF16001-1 REORDER FROM YOUR LOCAL SAFEGUARD DISTRIBUTOR. IF UNKNOWN, CALL 800-523-2422 HJC85T0010000 T04SF010462
SAFEGUARD LITHO USA SFSL1M - CKTS08111M

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ATTACHMENT C

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State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020_____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Affidavit of Michael J. Virzi

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

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

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

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

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

MJV

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.

MEV

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Further affiant sayeth naught.

Michael J. Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me
This 9th day of September, 2020

Natasha Brencher
Notary Public

My Commission Expires : 10/18/2026

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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

Proof of Service

I hereby affirm that I have served upon counsel for the defendant/respondent a copy of

Petition and Proposed Complaint

by causing a copy of the documents, with attachments, to be served on the defendants by delivery to Rich Dukes, counsel for The Bishop of Charleston, a Corporation Sole and Robert Guglielmone, Bishop of Charleston, who represented on October 22, 2020 that he was authorized to accept service on behalf of his clients,

and

by personal service on defendants

David K. Haller, at 604 Savannah Highway, Charleston SC 29407

Lawrence E. Richter, Jr., for himself and as agent for service of process for Richter and Haller, LLC, 622 Johnnie Dodds Blvd, Mt. Pleasant SC 29464

Each was served on October 21, 2020.

Gregg Meyers
217 Lucas Street Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

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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, v. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	**ORDER OF THE COURT**

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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 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!

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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

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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

Does 2 and 4 2010-CP-10-5520 01220

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EXHIBIT A

Does 2 and 4 2010-CP-10-5520 01221

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

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August 30, 2007

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

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

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

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

Dear Larry and Gregg:

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

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

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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

Does 2 and 4 2010-CP-10-5520 01223

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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 a class of people similarly situated,	)	
Plaintiffs,	)	
vs.	)	**ORDER APPROVING SETTLEMENT**
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
Defendants.	)	

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

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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

[1]One 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.

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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 & Jacquline*, 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, SCRCP (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 & Jacquline*, 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.

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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.

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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.

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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 re-written 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."

[2]Recall 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.

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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,

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[3]Any 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.

[4]John 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.

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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*

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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

[5]While 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)

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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,

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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;* Greenvllle *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

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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 hours[6], 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.

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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

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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.

Record on Appeal - 1655

RICH000741

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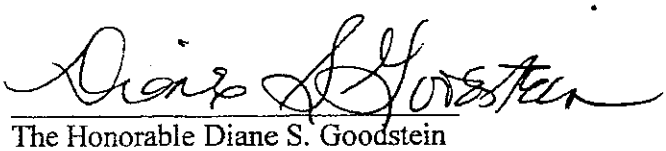
process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

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

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Order on Matters Heard March 9
Exhibit A

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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

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 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 diocesesettlement@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

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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.

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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.** 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.	**Postmarked or received [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 it Addendum, contact Class Counsel, Richter & Haller, LLC, at 843-849-6000 or email disocesesettlement@richterfirm.com.

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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.

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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 diocesesettlement@richterfirm.com

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

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Order on Matters Heard March 9
Exhibit C

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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]: _____

_____

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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

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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:

Name	Address	Date of Birth	Relationship to You

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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.

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Order on Matters Heard March 9
Exhibit E

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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

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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 a class of people similarly situated,	)	
Plaintiffs,	)	
vs.	)	**VOLUNTARY WAIVER OF APPEAL**
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
Defendants.	)	

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

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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

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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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Order on Matters Heard March 9
Exhibit H

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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		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 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 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.

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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) * Diocesesettlement@richterfirm.com

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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]**.

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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 SETLLEMENT

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 67[1] 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."

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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

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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.

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A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused[3] 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.

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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

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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

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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, SCRCP 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 SCRCP 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 SCRCP Rule 23. At this point, the court conducts a two-step process:

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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.

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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

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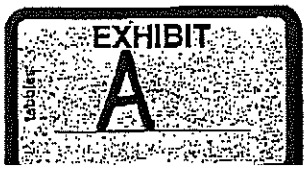
THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, CODE OF LAWS OF SOUTH CAROLINA (1976).

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 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.	**SETTLEMENT AND ARBITRATION AGREEMENT**

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 Representatives[1] 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 abused[2] 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.

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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:

Type of Alleged Abuse	Minimum Payment	Maximum Payment
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 or 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 12th 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

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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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2007 JAN 17 PM 3:29
CLERK OF COURT
DORCHESTER COUNTY

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

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.

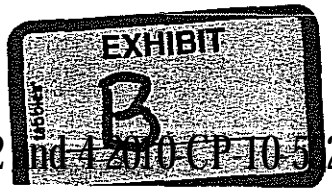
Plaintiffs John Doe #53, John Doe 66, John Doe 66A John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated brought these claims on behalf of themselves and others who with claims of sexual abuse in keeping with the class definitions, 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.



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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
diocesesettlement@richterfirm.com

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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

FILED RECORDED
2007 JAN 17 PM 3:25
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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

MOTION TO CERTIFY CLASSES AND FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

TO A PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court deems proper, for an order certifying plaintiffs classes of individuals with potential claims against the defendants giving initial approval of a settlement between the classes and the defendants, and directing the procedure for notice, objection, and final approval of the settlement reached herein A more specific statement of the relief requested is stated below

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1 Class Certification

On June 30, 2006,[1] plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actions against the defendants seeking damages arising from sexual abuse of John Doe 67 suffered at the hands of a priest under the control of the defendants while on the defendants' property Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives The John Doe plaintiffs are actual victims of sexual abuse The Jane Doe and Rachel Roe plaintiffs are spouses and a mother of the plaintiffs

This motion seeks to certify two classes of individuals John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class as follows

> 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")

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows

> 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")

Plaintiffs will provide the court such legal argument to support this motion as necessary

2 Approval of Settlements reached on behalf of the classes

The Class Representatives with class counsel and representatives of the defendants and their

---

[1]Other actions involving the same acts have been of record since at least May of 2005

counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire The principals of the Settlement have executed a Settlement and Arbitration Agreement is attached hereto as Exhibit A In sum, the defendants have agreed to make available a fund as set out in the Settlement and Arbitration Agreement by which individuals who are members of the classes may make a claim Mr Infinger, as Arbitrator, will determine the amount of any award due *bona fide* claims of members of the plaintiffs' classes The full claims process and payment schedule for claims is set forth in the Settlement and Arbitration Agreement

Plaintiffs' pray for an order pursuant to SCRCP Rule 23 providing conditional approval of the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below

3 **Notice to Class Members**

Plaintiffs pray for an order pursuant to SCRCP Rule 23 requiring notice of the class settlement, approval process, and claims process as follows

a **Notice** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit B 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*; 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,

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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 **Time** All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter

c **Fairness Hearing** A Fairness Hearing on final approval of this settlement will be heard by this court at a time and place convenient to it as soon after the conclusion of the notice time as possible

d **Notice of Settlement Approval and Duration of Claims Process** The claims process will begin ten days after the date on which the settlement is approved as fair The claims period shall end 120 days thereafter Notice of the date on which the claims period begins and ends and how an individual can make a claim and learn the details of the same shall be made in the same manner as set out paragraph (b) above

Plaintiffs will supplement this motion with such memorandum and record prior to the hearing on this motion as may be necessary

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WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court deems just, prudent, and proper

Respectfully submitted,

By _____

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
ATTORNEYS FOR PLAINTIFF

15th day of January, 2007

Mt Pleasant, South Carolina

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CASES NO. 06-CP-18-1310
06-CP-18-1311
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 Corpora tion Sole, and the Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

FILED-RECORDED
2007 AUG 22 AM 11:54
CLERK OF COURT
DORCHESTER COUNTY

Memorandum In Support of Motion to Alter or Amend

Counsel for class objectors has seen class counsel's contention that the Diocese is colluding with "parties who seek to disrupt the Settlement." This can be a reference only to the class members who have raised objections, but we would note for the Court's attention that at no time have the class members stating objections sought to "disrupt" the settlement. Class members stating objections have sought to expand the recovery for victims of sexual abuse, and nowhere in the pleadings is there a request that the court disapprove the settlement. The most we have requested are modifications that would result in greater recovery for victims of the sexual abuse, both the direct victims class and the consortium class, but do so without increasing the funds committed to the settlement by the Diocese.

As was apparent at the March 9 hearing, it is class counsel's style to make personal attacks, and we accept that reality without reciprocating it. We do not believe it advances a resolution of the merits to do so. Our concern has been the merits of the court's order, which we believe contains unnecessary problems for various individuals who are undisputedly included within the class definition, as even class counsel acknowledges in his pleading. The motion we have filed addresses those concerns.

Class counsels intensity, of course, likely derives from class members objecting to class counsel being paid a final attorney's fee *at this point*. It is regrettable, for example, that class counsel is so intense and so demanding on the issue of attorneys fees that it lends itself to, if not creates, the appearance that this case was brought to garner a large attorney fee with benefit to the class only an afterthought. That appearance could not exist but for the demand for payment of an attorney's fee that is far more than the class is likely to actually recover, and for immediate payment of that disproportionate fee, far ahead of the timetable for when class members will receive compensation.

As to the unsupported (and absurd) claim of collusion, note that the Diocese objects to the settlement being made a full $12 million to victims, demonstrating that the Diocese does not expect to ultimately pay out $12 million in this settlement, and class counsel objects to his fee being assessed based on the actual recovery to victims, demonstrating that class counsel also does not expect that $12 million, or anything close to it, will be disbursed to victims once claims are made. So it appears no counsel who negotiated the settlement believe that anything close to $12 million will actually be paid to victims, yet the recovery to the class is diminished by an attorney's fee predicated on a $12 million payout and the Diocese has received the public relations value of posturing as if it is paying as much as $12 million.

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These issues could have been avoided with a more prudent approach by class counsel to the attorney's fees issues.

Conclusion

Counsel are usually most helpful to the court when they calm down, analyze the issues, and advocate on the merits rather than by personal attack. Perhaps it is too much to hope for given the personalities involved in this action. The court's order has created far more issues than it needs to towards resolving the problems of this settlement. This brief memorandum addresses only one. Class objectors are attempting in their motion to alert the court to those unnecessary issues so they can be cured. Objectors are not trying to "disrupt the Settlement," but to keep it from being delayed by a trip through the appellate courts. The present order, if unchanged, makes an appeal inevitable when an appeal might be avoided.

Respectfully submitted,

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Attorney for putative class members

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Certificate of Service

I hereby certify that I have caused a copy of the enclosed

Memorandum in Support of Motion to Alter or Amend

by causing a copy of the document to be placed in the United States mail, first-class postage pre-paid, addressed to:

Richter & Haller, LLC
622 Johnnie Dodds Boulevard
PO Drawer 1089
Mt. Pleasant SC 29465

Peter Shahid
15 State Street
Charleston SC 29401

Lionel Lofton
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SHARON HAGAN
CLERK OF COURT
DORCHESTER COUNTY

Done August 20, 2007

Respectfully submitted,

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August 20, 2007

Clerk of Court
Dorchester County Court
PO Box 158
St. George SC 29477

Re: Filing in 2006-CP-18-1310 et al.

Dear Clerk of Court:

This case has been combined with 06-CP-18-1311 and 06-CP-18-1636. They are all part of a class action.

Enclosed please find a memorandum to be filed in each of these cases. It has been served on counsel involved. Please return one file-stamped copy to me in the envelope enclosed for that purpose.

Thank you very much.

Yours very truly,

Gregg Meyers

Enclosures:
Memorandum and certificate of service
SASE

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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, 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 Corpora tion Sole, and the Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

Motion to Alter or Amend

The order approving the class settlement is objected to in the following particulars, on behalf of a number of individuals who are putative members of the class, specifically on behalf of Johns Doe C, D, H, J, K, L, M and Janes Doe G, I, K, and N.

Issues are raised in the order they are presented.

1. Withdrawn Objections. The order states that two objectors withdrew their objections, but gives no reason why or what accommodations were made to cause that to happen. Since there now appear to be certain 'side deals,' or arrangements that have been made regarding other putative class members and their counsel, or with the class representatives, some of which contentions are now contested by class counsel, the order should do more than just

acknowledge that the objections have been withdrawn. The order should reflect an inquiry into the circumstances of those withdrawn objections so that other putative class members might be fully informed as to what they are getting into, or opting out of, should the settlement ever be approved.

2. Objections not withdrawn. A. The order errs in concluding that objectors lack standing. First, the objectors stated their objections as directed by the order providing for notice of the fairness hearing. To conclude that those who followed that order somehow lack standing to undertake the very tasks provided by that order is nonsensical. As the order states, page 6, "The creation of a class makes those class members parties to the litigation." Exhibit A provides "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." The order errs in providing different ways of opting out for only certain class members.

B. The original class proposal contained no statement as to whether it was an opt-in or an opt-out class. After that omission was noted by the objection, the class proposed was modified to state clearly that it was an opt-out class, and to provide for a method of opting out. Objectors who fall within the class cannot be said to have opted out prior to having an opportunity to review the court's disposition of the stated objections. Nor can some class members, namely those with the temerity to state objections, receive different treatment for opting out than other class members. The opt-out period remains available to class members, and these class members should be treated the same as other class members for opt-out purposes. *Gould v. Alleco* and *Condon v. South Carolina* do not hold differently, since both concerned objections from those not members of the class. It is nonsensical to require intervention by those already within the

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definition of the class. As the order states, page 6, "The creation of a class makes those class members parties to the litigation." By terms of the order, there is nothing into which class members can intervene: the class members are already part of the litigation unless they opt-out through the same opt-out process available to all other members of the class. Class members cannot legitimately be "punished" for stating objections, particularly well-founded objections such as the lack of any declaration that the class is an opt-out class,

C. The opt-out period having been just approved by the order, opting-out cannot be imposed on class members by eliminating their opportunity to consider the court's order. Putative class members cannot have their objections discarded or their rights affected by procedures not applicable to the entire class. No class member can opt-out prior to their being an opt-out period.

D. An opt-out period having been for the first time approved in the June 30 order, and since the notice of opt-out was conditioned on the substantial confusion of the class being clarified, the order errs in penalizing putative class members for asking the matter be clarified and for reserving their right to make that election. Objectors merely reserved their respective rights to opt-out, specifically reserving the right to re-evaluate that issue once the court ruled on the objections. No class member can properly have his opt-out rights eliminated.

E. The order concludes, at page 6, that the objections stated have no merit. Yet it is undeniable that the addendum altering the class definitions occurred after the objections noted the omissions cured by amending the class proposal. These post-objection modifications include the class being an opt-out class (previously unstated), the "unlinking" of consortium claims with the direct abuse claims (excluded by the class as originally defined), and an opt-out procedure (completely missing). None of those was modified prior to the stated objections, so while the

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addendum claims these omissions were inadvertent, they were cured only when objections noted their absence, so the order incorrectly refers to the objections as without merit.

3. Class definition. The order denies the request to modify the class to include persons whose claims had been resolved prior to class approval, page 7, but then uses a different standard in approving class representatives, each of whose claim is noted, page 15 note 7, as having already been resolved prior to the June 30 order. A double standard should not apply, and it is error to apply. Objectors should not be excluded from the class when the class representatives are permitted to be included despite having their claims resolved outside the class structure. More on that problem below, as it also raises questions about the representatives being eligible for being class representatives where their claims are (a) resolved and (b) adjudicated outside the process applicable to the class (mediation versus arbitration).

4. Page 8, footnote 3 of the order notes an action dismissed after the decision in Doe v Crooks. The order errs in interpreting the objection as attempting to reverse that action. The question the court has not considered or ruled on is whether a person who is included in a pending class action, hence is included in the class as a party to the class litigation, can properly be excluded from the class prior to the opt-out period. This question is wholly independent from the second pending question the court has not ruled on, which is whether the Diocese can exclude this potential class member, John Doe L, from the benefits of the class when the Diocese failed to disclose that the class action was pending at the time of Judge Nicholson's order. John Doe L's contention is that the Diocese cannot exclude a class member by either means. John Doe L is included within the class action by definition, and remains included regardless of the

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action taken by Judge Nicholson, and, independent of that point, the Diocese may not benefit by fraud in failing to disclose the class suit that was pending in April, 2006. The order rules on neither contention.

5. The order errs in its discussion on page 10 of *Ford v. Hutson*, misnamed in the order as Ford v. Hudson, and mis-cited as 276 S.E.2d 761 when the correct citation is 276 S.E.2d 776. *Ford* stands for the very opposite proposition claimed in the order. The order states that intentional infliction of emotional distress is "the only cause [of action] where compensation for emotional distress requires a showing of physical manifestations." Order at 10. In fact, *Ford v. Hutson* holds that where behavior was extreme and outrageous, neither physical contact nor physical manifestations were necessary:

> Although 'severe' emotional distress is usually manifested by 'shock, illness or other bodily harm,' such objective symptomatology is not an absolute prerequisite for recovery of damages for intentional ... infliction of emotional distress.

Ford v. Hutson, 276 S.E.2d 776, 778-779 (S.C. 1981), quoting with approval the Restatement (Second) of Torts, § 46, comment k. Indeed, *Ford* itself recognizes that emotional distress without physical impact was already recognized in South Carolina: "In Padgett v. Colonial Wholesale Distributing Co., 232 S.C. 593, 103 S.E.2d 265 (1958), we affirmed recovery of damages for shock, fright, and emotional upset despite the absence of any physical impact between the plaintiff and defendant." *Ford v. Hutson*, 276 SE.2d 776, 778 (S.C. 1981). Using a matrix restricted to gradations of physical touch to differentiate among those suffering psychological injury draws a distinction unrelated to the harm, and under South Carolina law is an arbitrary differentiation. Class member recovery should not be eared to an arbitrary matrix of physical touch but should be entitled to recovery based on the psychological injury, as is already

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permitted under South Carolina law.

That is for the direct injury category of class members. Consortium claimants have never been restricted by a matrix related to physical touch, having always been recognized as entitled to claims of "indirect emotional distress." Hubbard and Felix, South Carolina Law of Torts, 2d ed. (1997), at p. 43-44,. That history shows that a matrix of physical touch is an illogical means of sorting out categories of class members for recovery for psychological injury. Victims should share equally, and a distribution should be made of all allocated settlement funds. The operation of the matrix, even as modified, benefits only the Diocese in minimizing the proceeds paid to victims, and in permitting settlement funds to revert to the Diocese. If the settlement is treated as a $12 million settlement for purposes of calculating the class counsel's fee, then the court should order that all $12 million be paid to the victims.

6. The order errs at page 11 in discussing, and concluding, "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." Essentially, the court has concluded that consortium claimants are worth zero or very little, as they have no support in South Carolina law.

There are two problems with this conclusion. First, on what basis are direct injury class claimants (the "primary class") required to share a settlement pool with consortium claimants if the consortium claimants have no cognizable claim? The order claims too much in derogating the claims of consortium class members, and creates irretrievable conflict among the direct injury and consortium class members.

Second, and more fundamentally, this conclusion overlooks three hundred years of

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Common Law authority and a substantial number of South Carolina cases to the contrary. Again, to quote Hubbard and Felix, South Carolina Law of Torts, 2d ed. at page 571 (1997):

> There is no right of for children to sue for loss of parental consortium [citing Taylor v Medenica]. However, there is authority for allowing a parent to sue for loss of services (and perhaps companionship) of a child."

Citing, as that authority, in footnote 76, *Wright v. Colleton County School District*, 391 S.E2d 564 (S.C. 1990), *Tollerson v. Atlantic Coast Line R.R. Co.*, 198 S.E. 164 (S.C. 1936), and *Webb v. Southern Ry. Co.*, 88 S.E. 297 (S.C. 1915). *Webb* is summarized by Hubbard and Felix as "Defendant intentionally placed child in a dangerous work situation where he was injured." Hubbard and Felix, South Carolina Law of Torts, 2d ed. at page 571 n. 76 (1997). Pertinent to this pleading, the opinion states, at 88 S.E. 299:

> The mother was entitled to the services of her minor child. She was entitled to his companionship, and was entitled to place him at work with some one that she had confidence in, and put him to work in a business that was reasonably safe. The defendant persuaded him to leave this occupation, carried a minor beyond the state, and put him to work in a hazardous business without the consent of his mother. He was seriously injured, and the evidence is ample to sustain the verdict for actual and punitive damages. The defendant cannot send out agents acting within the scope of their authority to entice minors away from their parents without their consent and put them in a dangerous work and have them injured without paying damages.

But there are more South Carolina cases supporting claims by parents for injuries to children than are cited even by Hubbard and Felix. Claims by parents for injuries, both pecuniary and intangible, stemming from sexual misconduct with a child have long been recognized in South Carolina decisions, and such claims have been recognized at Common Law for over three hundred years. E.g., *Rumler v. Gantt*, 121 S.C. 117, 117, 113 S.E. 581, 581 (S.C. 1922) ("This action was brought for damages for loss of services of plaintiff's daughter and for shame, humiliation, and mental anguish caused by the defendant's seducing, debauching, and

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carnally knowing her."); *Villepigue v. Shuler*, 1849 WL 2667, 34 SCL 462, 3 Strob. 462 (S.C. 1849) ("This was an action on the case for seducing and getting with child the plaintiff's daughter."). The concept was most recently approved in *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*, 330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998), where insurance coverage was found to exist for a parent's claim when her children were sexually abused as a result of alleged negligence. There is no way to read *Harvey* without recognizing that a parent may make such a claim. There would be no insurance coverage for a claim which was not cognizable.

A parent's right to assert claims for their own injuries after their child is injured, including injuries from sexual assault, was recognized at Common Law as early as 1653. E.g., *United States v. Standard Oil*, 332 U.S. 301, 311-312 and n.17, 67 S.Ct. 1604, 1610 and n. 17 (1947) (tracing to 1653 the Common Law Right of "the parent's right to indemnity for loss of a child's services, including his action for a daughter's seduction.").[2] An example of such a claim at Common Law is *Tullidge v. Wade*, 95 Eng. Rep. 909, 909 (K.B. 1769) (upholding father's damage award for his daughter's seduction).

It is an ancient tradition, with Biblical roots. Deuteronomy 22: 28-29 (King James): "If a man find a damsel who is a virgin, who is not bethrothed, and lay hold on her, and lie with her, and they be found; then the man who lay with her shall give *unto the damsel's father* fifty

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[2] This is a direct, not a derivative, claim by the parents. E.g., *Stewart v. State Farm Mutual Automobile Ins Co.*, 341 S.C. 143, 156, 533 S.E.2d 597, 604 (Ct. App. 2000) ("Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative."); *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*,330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998) (finding insurance coverage for a parent's claim when children were sexually abused); *Berry v. Myrick*, 260 S.C. 68, ___, 194 S.E.2d 240, 242 (1973) ("loss of services or consortium is an immediate rather than a delayed consequence of the defendant's negligence or wrongful act causing physical injury to plaintiff's spouse, *child*, or employee . . .," *quoting,* 173 A.L.R. 755, When Statutes of limitations Begin to Run Against Action for Loss of Services or Consortium. Emphasis added.

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shekels of silver . . . ." (emphasis added). Blackstone describes the husband's right to make this claim for a child's "ravishment" as being a writ available to him, "in the same manner as the husband may have it, on account of the abduction of his wife." 3 Blackstone, Commentaries on the Laws of England Ch. 8, p. 141 (1979 facsimile edition of the First Edition of 1765-1769).

Nor is the claim unique to South Carolina, as Georgia, North Carolina, and Virginia, to name but a few, recognize the Common Law right of parents to recover intangible damages from sexual assault of their child. It was a typical claim at Common Law. E.g., *Kendrick v. McCrary*, 11 Ga. 603, 606 (1852) (permitting parent's claim for seduction of even an *adult* daughter living at home and damages for the intangible "atrocious invasion of his household peace"); *Abbott v. Hancock*, 31 S.E. 268, 269 (N.C. 1898) (permitting wife to maintain action for daughter's seduction); *Kinney v. Lauchenour*, 89 N.C. 365, 1883 WL 2531 (N.C. 1883) (permitting claim by step-father for seduction of step-daughter); *Briggs v. Evans*, 27 N.C. 16, 5 Ired. 16 (N.C. 1844) (authorizing damages for father's intangible "outraged feelings"); *White v. Campbell*, 54 Va. 573, 573-574 (1856) (authorizing damages for intangible loss of "the peace and happiness of the injured father."). One "A. Lincoln" successfully defended such a verdict in the Supreme Court of Illinois in 1842, representing the father of a seduced daughter. *Grable v. Margrave*, 4 Ill. 372, 1842 Ill. Lexis 9 (Ill. 1842). The appellate court upheld the intangible damage award to the father Lincoln represented.

The court errs and creates unnecessary conflict among classes of class members by this conclusion in the order that concludes that consortium claims have no legal foundation. The order's conclusion that the Glover verdict would "probably" not have survived appeal, thereby is to be discounted, engages the court in speculation, without acknowledging that those cases were certified as a class, survived a series of motions for summary judgment, as well as survived

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directed verdict motions at trial. The three hundred year Common Law history in support of such claims, which the order does not even address, bore heavily on those motions. The order appears to reflect that class counsel has brought a claim which does not satisfy SCRCP 11, which these objectors do not believe is the case, and creates an appearance that the parties are colluding to minimize recovery for victims.

The issue is actually pending before the South Carolina Supreme Court, and once that case is decided an adequacy objection by any direct injury class member objecting to the settlement will be ripe, regardless of the outcome of that appeal. If the appeal affirms the claim then the amount paid to consortium claimants will be subject to challenge from the rationale in the order for limiting the claims. If the appeal overturns the claim then the primary class members will object to sharing a settlement fund with persons who have no claim.

Finally, if class counsel is unaware of the legal support for the consortium claims for parents, the court should reconsider whether class counsel is "inadequate fairly to protect" the interests of the consortium class. SCRCP 23(d)(3). Alternatively, the court should reserve that issue pending the outcome of the appeal presently in the South Carolina Supreme Court.

7. Effect of Appeal. The order at pages 12 – 16 sets in motion time limits applicable to notice and claims, but makes no provision for the effect of an appeal from the court's order. No provisions should be put into effect until any appeal is resolved, including the fees provisions, to avoid having to later disgorge fees, from objections noted below. Until entry of final judgment, the court retains authority to redefine or de-certify a class. E.g., *In re Unisys Savings Plan Litigation*, 1997 WL 230789 (E.D. Pa. 1997):

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> even though a court enters a class certification order, "[u]nder Rule 23(c)(1), the court retains the authority to redefine or decertify the class until the entry of final judgment on the merits. This capacity renders all certification orders conditional until the entry of judgment." *In re Gen. Motors Corp. Pickup Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 792 n. 14 (3d Cir.), *cert. denied sub nom., General Motors Corp. v. French,* 116 S.Ct. 88 (1995).

Discovery of new facts, changes in parties (such as the class representatives), or changes in the substantive or procedural law may each require reconsideration of earlier orders about certification or how the class is defined. Id., citing *Manual for Complex Litigation, Third* at § 30.18 (1995).

8. Notice. The order errs in not providing for a nationwide notice. Objectors' counsel had been assured by class counsel that a nationwide notice provision would also be included, not simply notice through various state newspapers. Yet the order provides for notice only within South Carolina. Given the number of people who move across state lines, some national means of notice should be provided. The order errs in providing for only notice in South Carolina newspapers. Publication in either the USA Today or The New York Times would seem appropriate if the parties truly were interested in giving notice to potential class members.

9. The order has erred in awarding attorneys fees. A. Entry of final judgment has not occurred. The order approves fees for class counsel as if final judgment has been entered and class counsel has recovered $12 million for abuse victims. That conclusion is clearly erroneous, as no awards have yet been made for any class members other than the class representatives. Awarding fees based on the *potential* award to class members is not a proper basis for an attorney's fee award. Only the actual recovery for class members, not a theoretical recovery for

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the class, is a proper basis for assessing attorney's fees, and only after entry of final judgment is the fee issue properly addressed. SCRCP 54(d) and (e). SCRCP 23 does not provide for interim awards of attorneys fee.

B. Class recovery is not yet known. The order is premature in awarding fees before any victim has recovered an award The court should confront the fee award only when a class recovery is finished. Alternatively, the order may approve the attorney's fee at this point only by also ruling that the entire settlement fund of $12 million will be distributed to claimants, pro rata or per capita, once the claims process is concluded. Should that modification be accepted then counsel will have earned the fee as assessed by the court, and need not wait for class distribution to be paid. Otherwise, the calculation that the fee is 20.8% of the recovery for all victims is simply incorrect, and clearly erroneous in that it precedes any benefit to the class.

If the fund for the class is irrevocably $12 million, and will be distributed either per capita or pro rata after the claims period, this objection will be satisfied. If the "gross settlement" turns out to be less than $5 million, for example, then the fee calculation would have to be revised substantially, and counsel should not be restricted to 20.8% of the actual recovery to the class, a sum which could be quite modest. If the "gross settlement" turns out to be $2 million then counsel will have recovered more than 100% of the accumulated benefits to the class. $12 million is only the maximum amount that the Diocese might have to pay. The order provides, at page 15, that the Diocese is required to fund only an "initial" fund of $4,540,000. That may also prove to be the final fund, and only a portion of that $4.5 million fund may be distributed, given the caps on class member recoveries. Exhibit A states that members who remain in the class may "possibly" receive money from the settlement.

It is error to base an attorney's fee on a potential result rather than an actual result. The

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claims process should go forward and the fee calculated for approval after the benefit to the class is known, not on a hypothetical benefit that seems frankly to be remote. Again, unless the order is modified to provide for a pro rata or per capita distribution of what remains of the $12 million potential pool for recovery.

C. The order errs in providing for fees to be paid in ten days. Unless the order is revised to pay $12 million to all class members either pro rata or per capita at the conclusion of the claims process, no fees should be paid before all class members have been paid,.

D. The order errs in not setting forth if the fee is awarded on a contingency or lodestar scheme, or a hybrid.

10. The orders errs in authorizing or permitting class representatives to be paid before the class, and by different means. The order recites that class representatives have already been paid. Order at page 15, n. 7. To treat some class members outside of the class procedures raises issues about those persons being representative of the class, acting in the interest of the class, and acting so as to protect the class, and about whether claims of persons resolved prior to any claims process then satisfy the definition of a class member. It would seem those persons would become persons whose claims are resolved, and make them ineligible for class inclusion. It also suggests that the class representatives may have breached their duties to absent class members by being paid first, and through a different process (mediation) than applies to other class members (arbitration). New class representatives may need to be appointed, since the class representatives have no remaining claim.

Class representatives are often permitted to obtain a premium for conducting the litigation, and there is no objection to that concept. But the order does not disclose what the

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class representatives have already received beyond the general statement that they have collectively been already created a fund of $460,000. The order should indicate to other class members what each class representative was paid. And, as noted above, the class representatives should not be paid outside of the very claims process that all other class members must participate in, or by different criteria. Since that is a fait accompli, new class representatives should be named.

The order should also disclose if the class representatives have paid attorneys fees from their recovery, or if the attorney fee authorized includes class counsel's time or actions for individual clients rather than the class.

11. Psychological Assessment and Counseling. The order and exhibits do not indicate who does these assessments and/or counseling. The order should indicate that it may be with a therapist of the victim's or family member's choosing, to be reimbursed by the Diocese, not a therapist dictated by the Diocese.

12. Exhibit A. The order errs in including persons abused by their parents or spouses. As written, the class would include those persons abused by parents or spouses, which is probably not an intended claimant. The first sentence should be two sentences:

> 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 any agent or employee of the Diocese of Charleston; 4) who has not previously had any similar claim adjudicated, resolved, or released. The action also applies to 5) the parent or spouse of any such minor, 6) who has not previously had any similar claim adjudicated, resolved, or released.

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13. Exhibit B. The order errs in setting two different birth dates for claimants. The definition of the consortium class includes the spouses and parents of victims *who are not eligible to participate in the victims' class.* The primary class is defined as persons born before August 30, 1980, whereas spouses or parents who may participate are for those individuals born on or before August 30, 1998. This may be a typographic error, but the notice needs, above all, to be accurate. Documents to be sent to the class need to be prepared with care. The notice the court has approved needs clarified.

The definition of "sexual abuse" is obviously taken from a criminal statute. Many aspects of abuse do not neatly fit the legalistic definition, and many putative class members may not understand it. Notice to potential class members should be clear and readily understandable. If there is no way to avoid that definition, the notice should include "You should consult with a legal professional if you are uncertain about the meaning of 'sexual abuse' as applied to you or your spouse or child."

The order states that if there is a dispute about whether a claim is *bona fide*, the claimant will have a chance to prove their claim, but does not set forth a procedure on how that will occur, except to say on page 3 of Exhibit B that the arbitrator has sole and final determination of the sums to be awarded, and in Exhibit H that the arbitrator alone determines if a person is a member of the class. Page 3 of Exhibit B states that the claim proceedings are confidential. Page 4 of Exhibit 4 provides for psychological counsel which can be used in support of the claim but deprives the Diocese of that information. In order for claimants to make an informed decision on whether to participate in the class, the notice should include that information on each aspect, since to submit the question to the arbitrator requires a waiver of appeal, and it is not clear from the forms if the Diocese can raise objections if it does not receive

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al documents for claims.

The order errs in using a matrix of physical touch as the only means of separating subclasses of primary class members. Objections to the matrix are not restated here. The court's ruling to date is sufficient to submit those issues to an appellate court as a means of sorting out hard and fast subclasses of members of the primary class.

14. Exhibit C. The order errs in requiring Social Security Numbers for claimants, an unnecessary intrusion as a routine request. If it is needed to identify records or for another purpose, a provision can be made to that effect. The identity of their parents or spouses should be requested only if those persons have made a claim.

15. Exhibit D. Same concern as to Social Security Numbers.

The order and Exhibit errs in making no provision for parent claims if siblings have been molested. Does each parent get $20,000 for each of their children who have been abused, or is a parent who is unfortunate enough to have two or more of their children abused by their priest only entitled to the same amount as a parent who only had one child abused? Assuming, of course, it is conceded that a parent's claim is cognizable, which the order at present disputes, even while proposing to make payment to parents for such claims.

16. Exhibit F. The form includes a voluntary waiver of appeal rights prior to the victim knowing whether they are considered by the arbitrator to be a class member. It should preserve that right until that determination is made. If the arbitrator determines that a person is not a member of the class, that person should revert back to opt-out status as of the date the first

Record on Appeal - 1738

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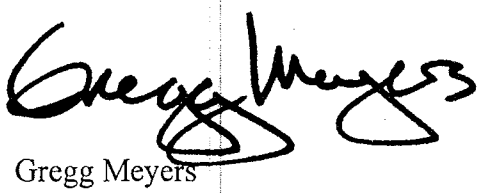
class suit was filed.

Conclusion

The order should be modified in the particulars as noted above. Objectors request notice of any order entered by the Court and proper notice of any hearings for these objections.

Respectfully submitted,



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Charleston, S.C. 29401
843-720-8714

Attorney for putative class members

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Certificate of Service

I hereby certify that I have caused a copy of the enclosed

Motion to Alter or Amend

by causing a copy of the document to be placed in the United States mail, first-class postage pre-paid, addressed to:

Richter & Haller, LLC
622 Johnnie Dodds Boulevard
PO Drawer 1089
Mt. Pleasant SC 29465

Peter Shahid
15 State Street
Charleston SC 29401

Lionel Lofton
PO Box 449
Charleston SC 29402

John Sinclaire and Glenn Churchill
PO Box 370
Charleston SC 29402

W. Ellison Thomas
109-A Simmons Street
Mt. Pleasant SC 29464

Done August 7, 2007

Respectfully submitted,

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CASES NO. 06-CP-18-1310
06-CP-18-1311
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.

FILED-RECORDED
2007 AUG -1 AM 11:55
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Objections to Proposed Order

The proposed order approving the class settlement is objected to in the following particulars, on behalf of a number of individuals who are putative members of the class., specifically on behalf of Johns Doe C, D, H, J, K, L, M and Janes Doe G, I, K, and N.

Issues are raised in the order they are presented in what is represented to counsel to be a proposed order.

1. Solicitor's Investigation. A. Since the court elected to have the First Circuit, rather than the Ninth Circuit, Solicitor investigate matters related to the document titled "INSTRUCTION," the order should reflect, or the Court should order, more steps than are reflected in the proposed order. As presently cast, the proposed order suggests only that the Solicitor made inquiry of the Diocese. Since the concern is that the Diocese has concealed

information, and the Code of Canon Law, the governing rules of the Church, call for a "secret archive," (See, e.g., Canons 489 --- "In the diocesan curia there is also to be a secret archive. . .,"), and 490, and the Church has a doctrines of "mental reservation" and "committed secrets" which affect truth-telling in response to questions, to protect putative class members the order should reflect more than an informal request for information of the entity suspected of active concealment. We presume more steps were taken, and the requests were formal or mandatory (such as a subpoena, sworn testimony, or sworn statements), so the order should either reflect those steps or the court should order such steps.

B. Since the Solicitor's investigation continues, provision should be made for final approval to be made only when it has been made to consist of meaningful investigative steps, and only when completed. Again, we assume the investigation has been meaningful, but those meaningful steps should be articulated in the order.

C. The proposed order includes a proposed finding that any concerns regarding the "INSTRUCTION" "have been satisfied as to the civil action." The finding should be that no victims have been identified despite adversarial investigative steps, assuming there have been such adversarial investigative steps.

2. Notice by the Diocese. The Diocese apparently contends it has given notice to all persons who might qualify to receive notice, yet it appears not all known class members have been notified, if that was the criteria applied to the notice.

3. Withdrawn Objections. The proposed order states that two objectors have withdrawn their objections, but gives no reason why or what accommodations were made to cause that to happen. Since there is now confusion about whether 'side deals' or arrangements have been made regarding other putative class members and their counsel, or with the class representatives,

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some of which contentions are now contested by class counsel, the proposed order should do more than just acknowledge that the objections have been withdrawn, the court should inquire about the circumstances of those withdrawals so that other putative class members might be fully informed as to what they are getting into or opting out of should the settlement ever be approved.

4. Objections not withdrawn. A. The proposed order discusses at some length objections filed on behalf of those consulting objecting counsel. As noted in the objections, the class as originally articulated failed to specify even the basic premise of whether it was an opt-in or an opt-out class. That was amended after the objections were filed, indicating it was an opt-out class. But there has been no opt-out period yet approved. Putative class members cannot have their objections discarded or their rights affected by procedures not applicable to the entire class. No class member can opt-out prior to their being an opt-out period. Since one has been specified since the objections were filed, and since the notice of opt-out was conditioned on the substantial confusion of the class being clarified, the proposed order errs in penalizing putative class members for asking the matter be clarified and for reserving their right to make that election, which was all the prior objection stated. It also specifically reserved the right to re-evaluate that issue once the court heard the objections. Whether those individuals plan to opt out in the future cannot properly affect their present status.

Also in spite of the Order's language referring to our objections as without merit, it is undeniable that the addendum altering the class definitions occurred after the objections.

B. Footnote 4 of the proposed Order discusses objector's counsel's case and indicates that certain class members are attempting to reverse consent to dismiss an earlier action. The proposed order is inaccurate. The class action was pending when the dismissal issue was raised, and the General Counsel of the Diocese made no disclosure of the action. Since that active

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concealment affected putative class members, it concealed a material fact. The proposed order errs in permitting the Diocese to benefit from deception, and sheds light on the investigative steps needed with this Diocese, as discussed above. In any event, a motion remains pending in Charleston County about that active concealment, and the proposed order should at minimum permit that motion to be heard and ruled on disposition of that motion to occur prior to any order being entered.

5. Objections as to Matrix. The proposed order affirms the matrix that was objected to, but even though a small modification was made to the matrix, objection is still made as to the matrix as a means of separating out what should be specified as subclasses of victims. Victims should share equally, and a distribution should be made of all allocated settlement funds. The operation of the matrix, even as modified, benefits only the Diocese in minimizing the proceeds paid to victims, and in permitting settlement funds to revert to the Diocese. If the settlement is treated as a $12 million settlement for purposes of calculating the class counsel's fee, then the court should order that all $12 million be paid to the victims.

6. Compensation of Consortium Claims. The proposed order errs in determining that consortium claims of parents are worth zero, and those of spouses worth little. If the order remains as it is, then any member of the direct victim class will be able to object to their own settlement fund being depleted for compensating individuals for claims the court finds legally non-cognizable. And if the court determines that the parents of victims DO have legally cognizable claims (an issue with a three hundred year history of Common Law support and which the South Carolina Supreme Court currently has under consideration in a case argued this Spring), then the adequacy objection is ripe, and the proposed order's conclusion that a past verdict would "probably" not have survived appeal, thereby is to be discounted, engages the

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court in speculation, without acknowledging that those cases were certified as a class, survived a series of motions for summary judgment, as well as survived directed verdict motions at trial. The three hundred year Common Law history in support of such claims, which the proposed order does not even address, bore heavily on those motions. The discussion makes the proposed order appear to reflect that class counsel has brought a claim which does not satisfy SCRCP 11, which these objectors do not believe is the case, and creates an appearance that the parties are colluding to minimize recovery for victims.

7. Notice. Notice should be posted in more than just South Carolina. Some national vehicle for notice should exist, to accommodate the reality that persons may move from the State. This is another aspect in which the proposed order appears to be designed to minimize the impact on the Diocese rather than to maximize the recovery for the victims. Publication in either the USA Today or The New York Times would seem appropriate if the parties truly were interested in giving notice to potential class members.

8. Attorneys Fees. A. As noted above, if class counsel has recovered $12 million for abuse victims then we applaud the attorney's fee award. But that is not what has occurred in the settlement, yet the proposed order presumes, incorrectly, that it has. The final order should either modify the settlement fund to make it an actual $12 million recovery for victims, or it should recast the discussion of the fee approval. Otherwise, the calculation that the fee is 20.8% of the recovery for all victims is simply incorrect.

B. Nor can counsel's fee be paid until the disbursemet is known to class members. If the fund for the class is irrevocably $12 million, and will be distributed either per capita or pro rata after the claims period, this objection will be satisfied. If the "gross settlement" turns out to be less than $5 million, then the fee calculation would have to be revised substantially.

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is only the maximum amount that the Diocese might have to pay. Basing a fee on a potential result rather than an actual result is error. The claims process should go forward and the fee calculated for approval after the benefit to the class is known, not hypothetical.

C. Hence, the ten day payment requirement is objected to, unless the $12 million is revised to be disbursed to all class members either pro rata or per capita. Nor should the fees be paid before all class members have been paid, and the order should discuss whether the fee is awarded on a contingency or lodestart scheme, or a hybrid.

9. Paying class representatives first. The proposed order claims that class representatives have already been paid. To treat some class members outside of the class procedures raises issues about those persons being representative of the class, acting in the interest of the class, and acting so as to protect the class, and about whether claims of persons resolved prior to any claims process then satisfy the definition of a class member. It would seem those persons would become persons whose claims are resolved, and make them ineligible for class inclusion. It also suggests that the class representatives may have breached their duties to absent class members by being paid first, and through a different process (mediation) than applies to other class members (arbitration).

Class representatives are often permitted to obtain a premium for conducting the litigation, and there is no objection to that concept. But the proposed order does not disclose what the class representatives have already received beyond the general statement that they have collectively been already paid $460,000. The proposed order should indicate to other class members what each class representative was paid. And, as noted above, the class representatives should not be paid outside of the very claims process that all other class members must participate in, or by different criteria.

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10. Provided Psychological Assessment and Counseling. The proposed order and exhibits do not indicate who does these assessments and/or counseling. If it is with a therapist of the victim's or family member's choosing, it needs to state that. If it is a therapist selected by the Diocese, it needs to state that too.

11. Exhibit A. As written, the class would include those persons abused by parents or spouses, which is probably not an intended claimant.

12. Exhibit B. The definition of the consortium class includes the spouses and parents of victims *who are not eligible to participate in the victims' class.* If this is inadvertent, it can be cleared up. If not, it suggests the settlement is designed not to maximize recovery for victims but to minimize payment by the Diocese.

The definition of "sexual abuse" is obviously taken from a criminal statute. Many aspects of abuse do not neatly fit the legalistic definition, and many putative class members may not understand it. Notice to potential class members should be clear and readily understandable.

The proposed order states that if there is a dispute about whether a claim is *bona fide*, the claimant will have a chance to prove their claim, but does not set forth a procedure on how that will occur. In order for claimants to make an informed decision on whether to participate in the class, the notice should include that information.

Objections to the matrix are not restated here.

13. Exhibit C. The proposed order requires Social Security Numbers for claimants, an unnecessary intrusion as a routine request. If it is needed to identify records or for another purpose, a provision can be made to that effect. The identity of their parents or spouses should be requested only if those persons made a claim.

14. Exhibit D. Same concern as to Social Security Numbers.

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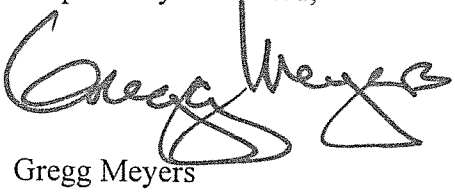
The proposed Exhibit makes no provision for parent claims if siblings have been molested. Does each parent get $20,000 for each of their children who have been abused, or is a parent who is unfortunate enough to have two or more of their children abused by their priest only entitled to the same amount as a parent who only had one child abused? Assuming, of course, it is conceded that a parent's claim is cognizable, which the proposed order at present disputes, even while proposing to make payment to parents.

15. Exhibit F. The proposed form includes a voluntary waiver of appeal rights prior to the victim knowing whether they are considered by the arbitrator to be a class member. It should preserve that right until that determination is made.

Objectors request notice of any order entered by the Court.

Respectfully submitted,



Gregg Meyers
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843-720-8714

Attorney for putative class members

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Certificate of Service

I hereby certify that I have caused a copy of the enclosed

Objections to Proposed Order

by causing a copy of the document to be placed in the United States mail, first-class postage pre-paid, addressed to:

Richter & Haller, LLC
622 Johnnie Dodds Boulevard
PO Drawer 1089
Mt. Pleasant SC 29465

Peter Shahid
15 State Street
Charleston SC 29401

Done July 30, 2007

Respectfully submitted,

Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

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Gregg Meyers
Attorney At Law

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Charleston South Carolina
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attygm@aol.com

July 30, 2007

Cheryl L. Graham
Clerk of Court for Dorchester County
101 Ridge Street
St. George, SC 29477

RE: John Doe #53 v. The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity, et al.
Case No.: 06-CP-18-1310
06-CP-18-1311
06-CP-18-1636

Dear Sir or Ma'am:

Enclosed is the original and one copy of Objections to Proposed Order to be filed. Once the same has been filed, I would appreciate your returning a filed stamped copy to me in the enclosed self-addressed, stamped envelope provided.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Jackie Lunsford
Assistant to Gregg Meyers

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CASES NO. 06-CP-18-1310
06-CP-18-1311
06-CP-18-1636

FILED-RECORDED
2007 FEB 22 PM 12:09
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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.

Objections to Class Settlement, Motion for Modification and Notice of Opt-Out

Although we commend the Diocese for trying to take some responsibility for the many families that have been affected by the practices of sexual abuse by Diocese agents and employees, various individuals potentially affected by this class action hereby object to the proposed class settlement. These individuals move, pursuant to SCRCP 23(d)(1), that the order be modified to resolve the objections, and conditionally provide notice that certain of the individuals either are not included in the class settlement or, if included, intend to opt-out of the class to pursue their own individual actions outside of the class settlement.

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The identities of the individuals are designated by pseudonyms to preserve the confidentiality for the directly affected abuse victims. They are:

1. Parent Jane Doe A, a parent of an minor sexually abused by two priests whose minor's claim has been resolved,
2. John Doe B, a former Catholic school student whose sexual abuse at school and other places was admitted by a teacher for the Diocese, but against whom the Diocese successfully asserted the statute of limitations to avoid taking any responsibility for his abuse,
3. John Doe C, a former Catholic orphanage student sexually abused by multiple agents and employees of the Diocese at the orphanage,
4. John Doe D, sexually abused as a child by a priest,
5. Parent John Doe E, the father of John Doe D,
6. Parent Jane Doe F, the mother of John Doe D,
7. Jane Doe G, a former Catholic school student sexually abused by a teacher,
8. Parent John Doe H, the father of Jane Doe G,
9. Parent Jane Doe I, the mother of Jane Doe G, and
10. John Doe J, sexually abused as a child by a priest,
11. Parent John Doe K, the father of a child sexually abused by a priest.
13. John Doe L, sexually abused as a child by a priest,
14. John Doe M, the father of John Doe L,
15. Jane Doe N, the mother of John Doe L.

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In the interests of these individuals and others similarly situated, the proposed class settlement has the following weaknesses, which should be addressed by modifications by the Court.

Objections to the Preliminary Approval Order

1. The order does not specify if the class is an opt-in class or an opt-out class, and no provision is made for opting out. The order is objected to because it does not state if these purported two classes are opt-in or an opt-out classes, and the order contains no procedures for a person to opt out so as to exclude himself or herself from the class settlement. SCRCP 23(d)(2) would seem to require an opt-in class, to the extent it speaks of providing "notice to the absent persons that they *may* come in and present claims and defenses *if they so desire*."

The structure of the claims process described at page 16 of the settlement agreement in part 8 also suggests it is an opt-in class, where a claim is released through participating in the claims process. Any order should clarify that the class is an opt-in class.

Alternatively, if the order purports to create an opt-out class, due process requires that the order also provide a means by which any person otherwise included in the classes have available a method for opting out of either class.

2. The class definitions. The class definitions are objected to. On page 4 of the January 19, 2007 order appear what purport to be (on page 3 of the order) the definition of two classes. In fact, the class definitions are not independent, and they state a single, linked class, when two

independent classes are appropriate.

Class A are those students (a) born before a certain time, (b) sexually abused as minors, (c) whose claims have not been previously resolved. Class B is not, but should be, parents of minors who were sexually abused. But as it is presently defined, Class B is limited to those parents of minors who are included in Class A. So a parent of a minor whose claim was resolved, such as Jane Doe A, is not within the parent class. There is no legitimate basis to distinguish between such a parent and the parents who are within the definition of class B, particularly when the parent discovered only recently that her child was sexually abused by either priest..

Similarly, as to John Doe B, a former Catholic school student whose teacher admitted sexually abusing him, the Diocese successfully avoided taking responsibility for his abuse by asserting the statute of limitations. He is excluded from the settlement solely because he had the temerity to ask the Diocese to take responsibility for his abuse, and challenged their refusal to do so. In the purported class settlement the Diocese has agreed, as it should, to reach beyond the statute of limitations for redress. But at the same time the Diocese seeks to exclude anyone whose claim was defeated by the same statute of limitations defense. The definition for class A should be modified to include minors whose prior claims resulted in no recovery.

Likewise, John Doe D, Parent John Doe E, and Parent Jane Doe F 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. His claim, hence his parents' claims, would be excluded by the present definition of classes A and B. The same exclusive rationale applies both to Jane Doe G and her father, John Doe H, and her mother, Jane

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Doe I, as well as to John Doe L and his parents John Doe M and Jane Doe N. They are presently all excluded from the definitions of classes A and B, whereas John Doe J and John Doe K are not excluded merely because no letter has been written about John Doe J's molestation by a priest.

The arbitrariness of the class definitions can be ameliorated by the definitions being changed by the court to:

A. All individuals born on or before August 30, 1980, who, as minors, were sexually abused[3] at any time by any agent or employee of the Diocese of Charleston who have not previously received compensation for any similar claim. (Hereinafter "the Primary Class").

B. The spouses and parents, of all individuals qualified pursuant to the Primary Class, who have not previously had received compensation for any similar claim (Hereinafter the "Consortium Class").

These revised definitions do three things. (1) They eliminate the arbitrary distinction between those victims who have had the audacity to previously ask the Diocese to be accountable for sexual abuse by its agents. (2) They eliminate the arbitrary distinction between parents whose minor's claims were and were not resolved. And (3) they eliminate from the Consortium Class definition the qualifier "and who suffered a loss of the abused individual's consortium."

In light of the holding in *Manufacturer and Merchants Mutual Ins. Co. v. Harvey*, 330 S.C. 152, 158, 493 S.E.2d 222, 226 (Ct. App), that sexual abuse of a child is "inherently injurious," as a matter of law it is not possible for a child to be sexually abused and not suffer injury. Consequently, it is not possible for a parent to have avoided suffering the loss of the child's consortium. The order should not reflect otherwise, and should be changed as noted above.

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[3] The definition in the order would remain unchanged.

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3. The arbitrary distinctions in the compensation matrix for minor victims. The settlement agreement includes, at pages 4 and 5, a compensation matrix for minor victims that is unduly arbitrary and is predicated on the false presumption that the harm of sexual abuse turns on the extent of the sexual battery. The ill conceived matrix is an astonishing concept for class counsel to propose. It would be just as coherent for the matrix to turn on how long the victim's hair was at the time of the abuse, or whether the perpetrator's hand were clean or needed washing at the time of the harmful or offensive touching. It is a meaningless and arbitrary rationale for the matrix.

Some harmful or offensive touching occurs in sexual abuse, of course, but using the extent of the touching as a distinction for different levels of compensation misses completely the nature of why sexual abuse is "inherently injurious," as *Harvey* concluded. It is *not* inherently injurious because the touch itself creates some lingering or lasting effect. What endures as the lasting problem from sexual abuse is not the physical intrusion on the victim but the psychological intrusion, which the order recognizes at 2 ("mostly psychological damages") that originates from a deeply personal touch coming from within an otherwise trusting relationship, such as a priest or a teacher. The compromises abuse creates for a child are psychological, not physical. The trauma for a child is to raise questions about what place is safe for the child if the church or school are not safe? What person should the child trust if the teacher or priest cannot be trusted? What authority figure should be respected if listening to the priest or teacher creates injury? The ongoing disruption that sexual abuse creates in a victim's life stems not from whether the touching was "limited" or "fondling" or "egregious," to use the terms from this

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matrix, but stems from the psychological conflicts created by the compromised trusting relationship.

Note that under this matrix no female, such as Jane Doe G, could under any circumstances be "seriously" molested by a female agent or employee of the Diocese. The matrix does not contemplate at all a female agent creating a problem by sexually abusing a female minor. If the injury from sexual abuse is "inherently injurious," a finding which *Harvey* compels, the ill-conceived matrix cannot be recognized without doing undue harm to minor victims and without violating *Harvey*.

Nor does the ill-conceived matrix recognize in any way the reality that in some instances, such as a minor sexually abused by multiple agents or employees of the Diocese, the increased seriousness from repeated compromises by trusted Diocese agents. For example, the child of parent Jane Doe A, and the minor John Doe C, were each repeatedly sexually abused by different Diocese agents. The matrix makes no accommodation whatever for repeated breaches of trust and confidence by multiple agents and employees of the Diocese, and yet multiple molestations create deeper conflicts of betrayal and trust.

The betrayal of the trusting relationship occurs with the first inappropriate contact, and is not more completely betrayed by a "more" inappropriate contact. Using a physical act matrix to distinguish psychological betrayals reflects a complete misunderstanding of sexual abuse, conflicts with the holding of *Harvey*, and serves poorly the interests of class members.

The order should be modified to create a uniform compensation for minor victims using the most significant category of the proposed matrix. All minor victims shared the serious breach of a trusting relationship, regardless of the precise physical manner in which the minor's

trust and confidence was breached. Alternatively, a separate award category should be created which treats all victims comparably but can add-on additional relief if the physical intrusion presented additional complications from the "inherently injurious" injury of sexual abuse.

4. Compensation for parents is out of all proportion to jury treatment of such claims. The settlement agreement accepts for parents and spouses a compromise amount out of all proportion to the treatment by juries of parent claims, a compromise apparently grounded on the false assumption that a parent's or spouse's claim for consortium injury is derivative of the minor's claim.

Consortium claims are direct, not derivative. E.g., *Stewart v. State Farm Mutual Automobile Ins Co.*, 341 S.C. 143, 156, 533 S.E.2d 597, 604 (Ct. App. 2000) ("Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative."); *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*,330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998) (finding insurance coverage for an alleged consortium injury to a parent when her children were sexually abused); *Berry v. Myrik*, 260 S.C. 68, ___, 194 S.E.2d 240, 242 (1973) ("loss of services or consortium is an immediate rather than a delayed consequence of the defendant's negligence or wrongful act causing physical injury to plaintiff's *spouse, child*, or employee . . .," *quoting*, 173 A.L.R. 755, When Statutes of limitations Begin to Run Against Action for Loss of Services or Consortium. Emphasis added.

The only known jury to rule on a parent's claim was the actual damage award of $15 million in *Glover v. Porter-Gaud School*, No. 98-CP-10-613, Verdict of October 26, 2000. That was an award for a parent's claim. Class counsel is aware of that award. For parent claims in

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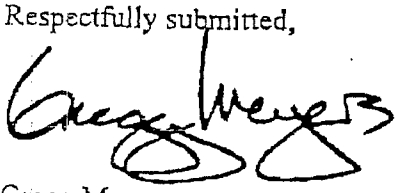
this settlement to be valued at $20,000 is out of all proportion to the proper value of the claims as assessed by a jury, and the class settlement should be disapproved as to parent claims unless and until a more appropriate compensation award can be made. There is no objection to the parent and spouse class recovering less than the minor class, but for parents and spouses to recover a cost-of-litigation amount is contrary to the known value of parent claims, particularly when parent and spouse claims often have far less complicated statute of limitations issues.

5. **Opting out.** Each of the individuals noted above reserves the right to, and provides this notice of, their right to opt-out of the proposed settlement. The decision may be re-evaluated once a ruling is made on these objections.

Conclusion

The Court should make clear that this is an opt-in class (or should provide a means for opting out), should refuse to give final approval of the class until the objections above are accommodated, and should redefine the classes in ways consistent with these objections.

Respectfully submitted,



Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

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Certificate of Service

I hereby certify that I have caused a copy of the enclosed

Objections to Class Settlement, Motion for Modification and Notice of Opt-Out

by causing a copy of the document to be placed in the United States mail, first-class postage pre-paid, addressed to:

Richter & Haller, LLC
622 Johnnie Dodds Boulevard
PO Drawer 1089
Mt. Pleasant SC 29465

FILED-RECORDED
2007 FEB 22 PM 12:09
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Done February 22, 2007

Respectfully submitted,

Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

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The Supreme Court of South Carolina

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

v.

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

Appellate Case No. 2021-000668

ORDER

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

_____ C.J.

_____ J.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina
August 6, 2021

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

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

v.

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

Appellate Case No. 2017-001996

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

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

AFFIRMED

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

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

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

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

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

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

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

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

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

AFFIRMED.

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

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FORM 4

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

FILED 2017 AUG 11 PM 2:41 CLERK OF COURT

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

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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

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

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

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

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

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 Class[3] and that the Lawyer Defendants committed legal malpractice while representing

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

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

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

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

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

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

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

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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*.

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

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

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

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

I. Summary Judgment Standard

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

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[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.

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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).

gcn

II. The Lawyer Defendants' Motions

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

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

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

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

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

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.")

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

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

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

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

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

C. There was No Attorney-Client Relationship

1. The Majority Rule.

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

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

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

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

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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), SCRCP, the heading specifies that there is no class action until the Court finds certain "Prerequisites".'[12] Only after class certification can the absent class members be bound to the outcome of the case.

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

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

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

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

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

2. *Premium Investment Corp. v. Green*

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

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

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

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

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

Id. at 470.

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

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

3. The Plaintiffs' Testimony.

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

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

D. No Breach of Fiduciary Duty.

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

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

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

Id. at 470.

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

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

Id. (emphasis added).

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

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

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

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

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

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

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

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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.

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III. The Claims of Jane Doe 4:

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

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

IV. The Claims of John Doe 193.

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

V. The UTPA Claims.

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

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

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

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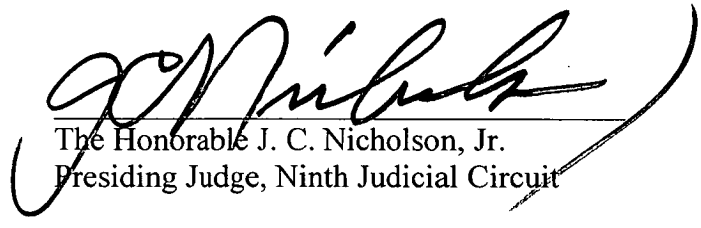
Doe v. Howe, 367 S.C. 432, 448 n.27, 626 S.E.2d 25, 33 (Ct. App. 2005). In this case, Plaintiffs' UTPA claims are based upon the same material facts and same loss. Therefore, I find the UTPA claims merge into Plaintiffs' other claims. Because the Lawyer Defendants are entitled to summary judgment on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

CONCLUSION

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

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

AND IT IS SO ORDERED.



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

Dated: 8/8/17
Charleston, SC

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IN THE STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 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.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2022-CP-10-04031 **MOTION TO DISMISS ON BEHALF OF DEFENDANT DAVID K. HALLER**

TO: GREG MEYERS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendant David K. Haller, through his undersigned counsel, hereby moves before the Presiding Judge of the Ninth Judicial Court of Common Pleas at the Charleston County Judicial Center, 100 Broad Street, Charleston, South Carolina on the tenth (10th) day following service hereof, or as soon thereafter as counsel can be heard, for an Order dismissing the Complaint in this action for failure to state facts sufficient to constitute a cause of action against him pursuant to SCRCP Rules 3, 12(b)(2)), and 12(b)(6), and S.C. Code Ann §§ 15-3-20 and 15-36-100.

The grounds for this Motion are the same as those set forth in the previously filed "Notice of Motion and Motion to Dismiss on Behalf of Defendants Lawrence E. Richter Jr. and Richter & Haller, LLC". This Defendant further joins and adopts that motion.

AND IT IS SO MOVED.

s/ John Edward Cuttino
John Edward Cuttino, SC Bar No. 1519
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Attorneys for Defendant David K. Haller

September 5, 2023
Columbia, South Carolina

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ELECTRONICALLY FILED - 2025 Oct 02 12:56 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-04031
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.	)	

Opposition to Motions to Dismiss[1]

When the South Carolina Supreme Court assigned Judge McMaster to hear these three related cases (the other two being 2018-CP-10-5802, for plaintiff Robert Chimento, and 2019-CP-10-5892, for plaintiff Jane Doe 304), the Supreme Court reiterated its 2021 order that the claims against the Diocese are to continue to be "held in abeyance." As a result, this memorandum concerns only the motions to dismiss by class counsel filed in this action on September 1, 2023 and September 5, 2023 (the September 5 filing is merely to join the September 1 motion). Opposing memoranda and materials have already been submitted in the Chimento and Jane Doe 304 cases, responding to both the motions to dismiss by class counsel and a motion for summary judgment by the Diocese.

[1] Generative AI drafted no portion of this filing, and counsel has verified each citation.

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As this proceeding is now limited to the motions to dismiss by class counsel, the court must accept the allegations of the complaints as true and "in the light most favorable to" the plaintiffs and "with every doubt resolved" in their favor.

> In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Id.* The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Plyler v. Burns,* 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Dismissal under Rule 12(b)(6) is improper if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory. *Doe,* 373 S.C. at 395, 645 S.E.2d at 247. Moreover, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Id.* at 395, 645 S.E.2d at 248. The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. *Ashley River Props. I, LLC v. Ashley River Props. II, LLC,* 374 S.C. 271, 278, 648 S.E.2d 295, 298 (Ct.App.2007).

Cap. City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009)

The nature of an attorney-client relationship is "highly fiduciary" and requires "a high degree of fidelity and good faith." *Weatherford v. Price,* 340 S.C. 572, 582, 532 S.E.2d 310, 315 (Ct. App. 2000) (quoting 7 Am.Jur.2d *Attorneys at Law* § 137 (1997). The McDonalds were actual clients of class counsel, as they participated in the class. They alleged class counsel charged them unauthorized fees and costs, charges never disclosed to the class action court, and that class counsel failed to inform them of both their conflicts of interest and of material information related to the fees and costs improperly charged them by class counsel.

Mr. Chimento, Jane Doe 304 and John Doe 305 were absent members of what the class settlement called the "primary class" of sexual abuse victims. Each alleges he or she resides out of state. As a matter of law, class counsel (as well as each class representative) assumes fiduciary duties to absent members upon pleading a class action, and by how they define each class, and once the class definition is approved. *Premium Investment Corp. v. Green*, 324 S.E.2d

72, 76 (S.C. App. 1984) ("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.") See, Complaint ¶ 87; *Tilley v. Pacesetter Corporation*, 585 S.E.2d 292, 302 (S.C. 2003) (class definition "a strategy choice" class counsel "has to live with."

As set out in detail in the plaintiffs' opposition memorandum to the motions in Chimento and Jane Doe 304, class counsel repeatedly acknowledged on the record that they represented absent members of the classes defined in the class settlement (Doe 305 Complaint ¶¶ 89 to 92). But even without their acknowledged assumed duty, that duty is imposed on class counsel as a matter of law.

These cases rest on the fiduciary duties owed, on one hand, to absent members of the class, and on the other hand, to actual class member clients. Class counsel is alleged to have breached those duties.

All motions to dismiss by the lawyer defendants should be denied in all three cases.

When a prior circuit judge granted a motion to dismiss a prior version of a case similar to this one, against the same class counsel, from the same class action, on behalf of other persons who resided out of state and who were absent members of the putative class (such as Doe 305, Complaint ¶¶ 6 to 8 and 10), and those plaintiffs, like John Doe 305, had received no notice of the class action because of class counsel having ***reduced*** the geographic scope of the proposed notice program from what they originally proposed, so as to make no attempt to give notice out

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of state (Complaint ¶ 76[2]), the South Carolina Supreme Court held, in reversing the dismissal and remanding the case, held:

> 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) (emphasis added).

As with Mr. Chimento and Jane Doe 304, John Doe 305 fits squarely within that direct precedent, alleging both lack of notice and inadequate representation (Doe 305 Complaint ¶¶ 1, 4, 6-8, 43 to 76, 88 to 110, 114 to 118, 120 to 121, 128 to 135). None of their claims against class counsel should not be dismissed.

By contrast, and even more egregiously, each of the McDonald plaintiffs alleges they were an actual class member (Complaint ¶ 9). Each of them participated in the class action as part of what the class settlement called the "consortium class." Their breach of duty claims against class counsel are fundamental breaches of a lawyer's fiduciary duties: they allege that proper disclosures were not made to them, on various matters including class counsel's conflicts; that class counsel had already been paid a $2.5 million fee; that no order authorized class counsel to charge the McDonalds at all (Complaint ¶¶ 78 to 81). As with all these plaintiffs, their claims are supported by an affidavit of Mr. Virzi, attached to each of the complaints.

The McDonalds allege (Complaint ¶ 9), as does John Doe 305 (Complaint ¶ 10), that each first learned of class counsel's misconduct within three years of filing. See, e.g., *True v. Monteith*, 327 S.C. 116, 489 S.E.2d 615 (1997) (legal malpractice action timely filed 20 years

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[2] Class counsel is obliged by Due Process to give "the best practicable" notice. *Hosp. Mgmt. Assocs., Inc. v. Shell Oil Co.,* 356 S.C. 644, 654, 591 S.E.2d 611, 616 (2004). Having abandoned the nationwide notice originally proposed is obviously not the "best practicable" notice.

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after counsel's failure to disclose conflict of interest to client). Their claims against class counsel (Complaint ¶¶ 1, 2, 6, 9, 26 to 45, 51 to 64, 77 to 85, 87, 110, 119, 121, 128 to 129, 131 to 135) should not be dismissed.

We address each of the arguments in class counsels' motions below.

1. Lack of service. We agree the summons and complaint were never served on class counsel. We disagree it is any basis for dismissal — because class counsel made a voluntary appearance after the Diocese removed the complaint case to federal court. That voluntary appearance was first made by ECF 8, the federal filing by class counsel that is Exhibit A to this memorandum. And, of course, class counsel also made a voluntary appearance in this action, through the motion to dismiss.

A voluntary appearance makes service unnecessary, as SCRCP 4(d) plainly states, as quoted by the Court of Appeals:

> 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. Rule 4(d) ("Voluntary appearance by defendant is equivalent to personal service.").

Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007), quoting SCRCP 4(d).

2. The contentions that the plaintiffs have failed to state a claim and are also not entitled to declaratory relief. Class counsel also argue that the plaintiffs have failed to state a claim, both generally and as to declaratory relief, contending (motion at p. 8) the claims "are not grounded in the law or equity or any legal standard." This argument, of course, pretends that they

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owe no fiduciary duties to clients or absent class members and that the directly contrary holding of *Doe v. Bishop*, 754 S.E.2d 494, 501 (S.C. 2014), does not exist.[3]

We agree that despite the holding in *Doe v. Bishop*, no circuit court has permitted full discovery on the claims of either class members or putative class members. (For example, no circuit court has yet permitted class counsel to be deposed, for reasons not explained). The Supreme Court's 2025 order prioritizing the claims against class counsel should permit full discovery.

Despite the holding in *Doe v. Bishop*, and contrary to the claims made by class counsel in their motion, no court has yet ruled, approvingly or disapprovingly, on the merits of the collusive misconduct alleged in the complaint, or the breaches of duty alleged in the complaint. In 2011 Judge Young denied motions to dismiss by class counsel in based on lack of notice in the class action as to out-of-state class members, as reflected in the orders at Exhibit B. That ruling, of course, preceded the 2014 ruling in *Doe v. Bishop*, which overturned an order that had dismissed the cases involved in that appeal.

In 2017 Judge Nicholson refused to consider any pertinent class action precedents or the collusive conduct, or the classes as defined by class counsel or approved by the court, in deciding that class counsel owed no duties to any of the out-of-state putative class member plaintiffs in those cases. That decision is contrary not only to controlling precedents as to class actions, but is also now contrary to what has, in the interim, become the law of the case in the class action: that

[3] This false pretense accompanies another false pretense class counsel argues, contrary to the class action complaint filed December 2, 2005 in Charleston County in civil action 2005-CP-10-4913, that the underlying class action began only in Dorchester County in 2006. That pretense is to avoid the overt judge-shopping that took place after the class settlement was reached in June 2006. When the class settlement agreement was reached, no case related to the class action was pending in Dorchester County.

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the class action settlement included out-of-state class members. See the April 30, 2024 filing in Mr. Chimento's case, 2018-CP-10-5802 and its attachment B, which is a 2013 order of Judge Dickson, in which Judge Dickson found that "Judge Goodstein's 2007 Order did not define a class comprised exclusively of South Carolina residents," and that "the class claimants to the settlement consisted of approximately one-quarter out-of-state residents." Now that it is the law of the case in the class action,[4] that exhibit in the 2024 filing for Mr. Chimento and Jane Doe 304 applies to all three actions before the court and helps clarify that the class action settlement included class members who resided out-of-state.

And in the 2021 ruling class counsel cites, the Court elected to rule not on the merits but instead relied on the way the earliest of the complaints about the class actions were phrased in the alternative as causes of action between the Diocese and class counsel. Those complaints were drafted before the full scope of the corruption and collusion among class counsel and the Diocese in the class action was known. For example, none of the payments the Diocese had made to class counsel but concealed from the court was known. Nor were the unauthorized charges class counsel assessed against class members but concealed from the court known, as each of those is not included in the accountings submitted to the court. Pertinent to this motion, there is no such language in any of these complaints.

The collusive history of the class action is alleged in some detail in the complaint (Complaint ¶¶ 23 to 110), but is also set forth in detail in the June 1, 2022 filings for Mr. Chimento and Jane Doe 304, a filing adopted here. In a nutshell, the class action was begun in

[4] A delay created when the defendants, as discussed below, refused to close the class action, alleged to have been done so as to prevent appellate review.

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2005 in Charleston County.[5] Class counsel has life-long ties to the Diocese (never disclosed to the class or to the McDonalds). In 2006, with no depositions having been taken and not a single motion having been heard, the parties agreed to a class settlement. Then they went judge-shopping, to move the case from Charleston County to a circuit judge in Dorchester County who had social and professional ties to class counsel, a process that took some months and which included the parties replicating, in the Dorchester County complaint in case 2006-CP-18-1636, the exact substance of the 2005 class complaint already filed, and already settled, in Charleston County (in case 2005-CP-10-4913). By January 2007, the defendants had agreed to revise the class settlement to (1) make class counsel's fee the highest priority of the class action, with class member recovery reduced *pro rata* if there were too many class claimants, and (2) to return to the Diocese any residual funds, giving each an incentive to not have too many class claimants. Then the defendants agreed to reduce the notice program for the class (consistent with the incentive to not have too many class claimants), and the defendants agreed to give no notice out of state, while telling the class action court that absent class members who got no notice would be treated as class members. As class counsel got no written order securing that relief, the representation is unenforceable and is not recognized by the Diocese. But it explains why the court raised no questions about the reduced notice program. Then the defendants agreed to pay the court-approved fee to class counsel before any class member had even been identified. Then they submitted to the court accountings which did not disclose either the other, contingent fee payments made by the Diocese to class counsel or any of the fee and costs charges made by class counsel to class members, such as the McDonalds, which no order authorized.

[5] Defendants' contention to the contrary is plainly false, as noted above in footnote 3.

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These things are detailed step by step with supporting documents in the Chimento and Jane Doe 304 joint filing made on June 1, 2022 and April 30, 2024 in those cases.

As to this action, John Doe 305 alleges being sexually abused by a priest named Eugene Condon, an agent or employee of the Diocese of Charleston[6] (and one of its more notorious pedophiles from that era). John Doe 305 is alleged to have been within the "primary class" as that class was defined in a class action alleged, on substantial grounds (as summarized above), to have been collusive (Complaint ¶¶ 6 – 8, 10, 26, 32). Not fewer than six examples of collusive conduct are detailed in the Complaint (¶¶ 32 to 76).

Since full discovery has never been permitted in any of the other cases, only in 2014 did class counsel reveal why they reduced the notice program for the class action from the nationwide notice originally proposed in 2006 (via *USA Today*, Complaint ¶¶ 51 to 54) to notice only in and around South Carolina. That decision omitted all notice to all out-of-state class members. John Doe 305 lives out-of-state (Complaint ¶ 6). In a 2014 hearing, class counsel explained on the record that the notice program was reduced *at the request of their adversary*, the Diocese.[7]

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[6] Complaint ¶ 8. The sworn declaration of John Doe 305 is Exhibit C to this memorandum. Declarations of the McDonald plaintiffs are Exhibits D and E to this memorandum. A declaration of Mr. Chimento, also abused by Eugene Condon, is applicable for his case and while filed in this proceeding for convenience, is adopted for his case and is Exhibit F. Those declarations provide basic facts for the court, although the motion to dismiss should not require them as the allegations of the complaints are assumed true. No declaration has yet been received from Jane Doe 304, who alleges abuse by a priest named Frederick Hopwood, another of the notorious pedophiles of the Diocese (Second amended Complaint for Jane Doe 304 at ¶ 1)

[7] This remarkable admission is in the transcript at Att. L filed June 1, 2022 in both the Chimento (2018-CP-10-5802) and Jane Doe 304 actions (2019-CP-10-5892). Class counsel represented to the court: "Our testimony will be that we proposed that [nationwide notice] to the Bishop and that the Bishop said, no, that's too expensive." So the geographic scope of the class action's notice program was reduced (Complaint ¶¶ 51 to 55). Class counsel blamed the Bishop for the reduced scope of notice, apparently oblivious to both (a) their own agreement to do so and (b)

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As noted above, in 2007 class counsel represented to the class action court that the Diocese had agreed to extend the benefits of the class action to those abuse victims who got no notice and who later made claims (Complaint ¶ 56 and set out in the Chimento and Doe 304 opposition memorandum), but class counsel failed to secure that relief in any written order (Complaint ¶ 57). As a result, John Doe 305 has been deprived of the benefits of the class action, joining Mr. Chimento and Jane Doe 304 in having lost the benefit of the defenses the Diocese waived only for the class action. *Doe v. Bishop*, 754 S.E.2d 494, 499 (S.C. 2014) (Diocese defenses not waived "as to future claimants.")

By contrast, the McDonald plaintiffs are actual class member clients of class counsel. They each actually participated in the class action (Complaint ¶ 9) as persons within what was defined as the "consortium class." Each was entitled to receive, and did receive, a sum certain payment. However, the McDonalds allege class counsel charged them, as class counsel apparently charged all class members, unauthorized fees and expenses (some $900,000 as to the entire class, Complaint ¶¶ 62, 134). None of the charges were authorized by any order in the class action, and those charges are not disclosed in any of the accountings submitted in the class action (Complaint ¶¶ 62, 77 to 85).

Accepting the allegations of the complaints as true, there is ample factual ground to support the allegations, and the motions to dismiss should be denied in all cases.

Declaratory relief. As to declaratory relief, class counsel contend the relief sought is advisory (motion at p. 10). We disagree.

> The decision to grant a declaratory judgment is a matter which rests in the sound discretion of the trial court and will not be disturbed absent a clear showing of **821

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the professional obligations they owed to the absent members of the classes they represented. The Bishop does not agree with the claim, but the admission by class counsel is pertinent to this motion.

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> abuse. *Ott v. Tindal,* 297 S.C. 395, 377 S.E.2d 303 (1989). Declaratory relief will ordinarily be refused where another remedy will be more effective or appropriate under the circumstances. *Bank of Augusta v. Satcher Motor Co., Inc.,* 249 S.C. 53, 152 S.E.2d 676 (1967).

Garris v. Governing Bd. of S.C. Reinsurance Facility, 319 S.C. 388, 390, 461 S.E.2d 819, 820–21 (1995). The declaratory relief is not in any fashion advisory. The declaratory relief requested relates directly to the abuses in the history of this class action. That history includes the judge-shopping, the "cloned" class complaint, and the defendants having ignored a direct order from the South Carolina Supreme Court. Full discovery on those claims should be permitted and those issues taken up by the court after a decision on the merits has been reached by a jury.

4. Expert affidavit. The defendants contend this action should be dismissed because (motion at 11) the affidavit of Mr. Virzi was first prepared for the plaintiffs when they sought review in the original jurisdiction of the Supreme Court. When that was denied, Mr. Virzi's affidavit was attached to the complaint filed in the circuit court.

The defendants' argument is frivolous. Mr. Virzi prepared his affidavit for these plaintiffs. That it was first filed in the Supreme Court does not render it somehow inadmissible, and the defendants cite no authority that it has become inadmissible. The defendants' position would require a new and separate expert affidavit for any amended complaint.

5. *Res judicata*. Finally, the defendants contend (motion at p. 11) that for two reasons the complaint should be dismissed due to *res judicata*. First, because the Supreme Court declined to hear this case in its original jurisdiction and remanded the case for further proceedings. Second, due to recent proceedings in the class action.

Original jurisdiction. The defendants contend that when the Supreme Court exercised its discretion and declined to accept this case in its original jurisdiction that it was somehow a final

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decision on the merits, which *res judicata* requires (see below). The defendants are simply wrong.

> We reject the State's argument that the supreme court's denial of Carpenter's petition for original jurisdiction and a writ of habeas action constitutes res judicata or has any other preclusive effect in this case. The denial order was not based on the merits. *See Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the *526 subject matter; and (3) *adjudication of the issue in the former suit.*" (emphasis added)).

Carpenter v. S.C. Dep't of Corr., 431 S.C. 512, 525–26, 848 S.E.2d 346, 353 (Ct. App. 2020)

The Supeme Court's brief 2021 order, attached for convenience as Exhibit G, appointed Judge Cole "to preside over the remainder of the proceedings below in this matter." If the defendants were correct, there would be no "proceedings below." The order would end the case. The Supreme Court's order merely declines to assert the Court's original jurisdiction, shifting the forum to the circuit court. See, SCACR 254.

Second, the defendants contend that "the Plaintiffs presented the same claims to the class action court." Motion at p. 12.

This argument is entirely frivolous as to John Doe 305. Due to the collusion of class counsel and the Diocese, and the breaches of duty by class counsel, John Doe 305 should have been but is not now and never was a part of the class action proceedings. The parties in the class action are not the same as in this action, and the class action proceedings can form no basis to dismiss his claims.

The argument is *nearly* as frivolous as to the McDonalds, and is not any basis for dismissal. *Res judicata* requires a "final judgment on the merits." It also requires identical parties. As noted above, the parties are not identical.

> The doctrine of *res judicata* is founded on the principle that the public interest requires an end to litigation and that no one should be twice sued for the same

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> cause of action. *Winthrop v. Mullins,* 211 S.C. 351, 45 S.E.2d 332 (1947); *Hayes v. Hayes,* 312 S.C. 141, 439 S.E.2d 305 (Ct.App.1993). Under the doctrine of *res judicata,* a final judgment on the merits in a prior action will preclude the parties and their privies from re-litigating any issues actually litigated or those that might have been litigated in the first action. *Griggs v. Griggs* 214 S.C. 177, 51 S.E.2d 622 (1949); *Foran v. USAA Casualty Ins. Co.,* 311 S.C. 189, 427 S.E.2d 918 (Ct.App.1993). The doctrine requires three essential elements: (1) the judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matter properly included in the first action. *Id.; Owenby v. Owens Corning Fiberglas,* 313 S.C. 181, 437 S.E.2d 130 (Ct.App.1993).

Town of Sullivan's Island v. Felger, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct. App. 1995). None of three "essential elements" for *res judicata* is met in this action.

No order was entered closing the class action case until 2023, and then only due to the McDonalds. That order is now on appeal. Whether and to what extent the class settlement was implemented by class counsel consistent with the court's orders has never been reviewed. It is alleged that it was ***not*** implemented as ordered (e.g., Complaint ¶¶ 59 to 65), which on motions to dismiss the court must accept as true. The McDonalds allege they were charged unauthorized fees and costs (Complaint ¶ 61). Yet those charges are not reflected in the accounting of the class action (Complaint ¶ 62). Other payments now known to have been made to class counsel by the Diocese (the checks attached to the complaint as exhibit B) are also not included in the accounting of the class action (Complaint ¶ 83).

As alleged in this complaint, that class counsel and the Diocese refused to close the class action is one of multiple aspects that reflect collusion in the class action (Complaint ¶¶ 59 to 65, 108, 125, 131). That refusal required the cooperation of the Diocese, and is alleged to have been done to evade appellate review (Complaint ¶ 37. See also Complaint ¶¶ 108, 125, 131). It is especially remarkable given that both class counsel and the Diocese were directly ordered by the South Carolina Supreme Court to close the class action by September, 2009 (or to move for more

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time to do so) (Complaint ¶¶ 37 to 42). Instead, the defendants chose to simply ignore the Supreme Court's order. Without an order concluding the class action, there could be no appellate review. SCACR 201.

As the complaint sets out (Complaint ¶¶ 59 to 65), in 2022 the McDonalds, who are class members but are not class representatives, discovered a 2016 motion that had been filed *pro se* in the class action by one of the class representatives, John Doe 66. His motion ***had been entirely ignored for six years*** (Complaint ¶ 60). The Doe 66 motion sought a post-award fairness hearing. Had that review been granted, it might have enabled the court to review whether class counsel *actually* had implemented the class settlement consistent with the court's orders or, as contended here, violated those orders and overcharged class members.

The McDonalds, of course, have a duty to mitigate their damages,[8] so in 2022 the McDonalds filed a memorandum in support of that 2016 motion. Judge Taylor was assigned to the never-closed class action. Judge Taylor heard argument on the motion and in 2023 decided — not on the merits, as the defendants propose and *res judicata* requires, but that Judge Taylor had no authority to review the orders of the class action, even to assess allegations that class counsel had acted improperly in charging the class members. His order is Exhibit H to this memorandum. As SCRCP 23 permits an order in a class action "at any time," that order has been appealed and the appeal is presently pending. Judge Taylor's order is not yet even a final order, which *res judicata* requires.

Nor is the order on the merits, as *res judicata* also requires. Judge Taylor's order in the class action is procedural, not on the merits.

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[8] E.g., *Crowley v. Harvey & Battey, P.A.*, 327 S.C. 68, 71, 488 S.E.2d 334, 335 (1997) (client has a duty to mitigate damages when attorney has been negligent).

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Note also that the McDonalds are class members, but neither of them is a class representative. In the class action they supported the motion brought *pro se* by a class representative. Their status in the class action is different than their status as plaintiffs in their own right in this action, and the class action court determined, we contend erroneously, that the class representative's motion could not support a post-award fairness hearing. So the McDonalds' claims on the merits have not been heard.

The motion to dismiss this case, and the motions to dismiss the related cases, should be denied. Here are the basic concepts which we contend support the allegations in each of the three cases.

Class counsel failed to fulfill the fiduciary and professional obligations class counsel assumed and owed as a matter of law to absent members of each class upon each of *alleging* a class action,[9] upon class *certification*,[10] and upon *actually representing* class members.[11] Class counsel failed to do a proper accounting, among other things concealing from the court payments to class counsel and unauthorized charges to class members by class counsel. Class counsel failed to get an order concluding the class action, ignoring a 2009 directive from the Supreme Court in the process. Not until 2023 was an order entered that concluded the class action that had begun in 2005. That order came about due only to the activity of the McDonalds joining the 2016 *pro se* motion by the class representative John Doe 66. That order is presently on appeal, so is

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[9] *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) ("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.") See, Complaint ¶ 87.

[10] *Tilley v. Pacesetter Corporation*, 585 S.E.2d 292, 302 (S.C. 2003) (class definition "a strategy choice" class counsel "has to live with."

[11] *Id.*

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not yet final. Nor was it a decision on the merits. Nor is John Doe 305 a party to that proceeding. There is no *res judicata* basis to dismiss this action.

The claims set out for each of Mr. Chimento, Jane Doe 304, and John Doe 305 are similar, and turn on the same legal principles. Each of those plaintiffs resides in a state other than South Carolina. Each of their cases is supported by an expert affidavit of Michael Virzi, setting out aspects where class counsel's performance breached the standard of care. This action also incorporates the filings (memorandum and attachments) on June 1, 2022 in the Chimento and Doe 304 cases, supplemented by the filings in those cases on April 30, 2024, after it became the law of the case in the class action that the class action was not limited to South Carolina residents. Those materials set out where class counsel at a number of points breached duties to absent members of the class, and to all plaintiffs, including the McDonalds, so as to place class counsel's own financial interests ahead of the interest of absent as well as present class members. Those various points include:

1. Between October 2006 and January 2007, when class counsel reduced the geographic scope of the notice to the class and agreed to restrict notice to only publications in and around South Carolina,

2. At a July 13, 2007 hearing, when class counsel and the Diocese misrepresented to the trial court that absent class members who got no notice and who later came forward would get the same relief as class members, but class counsel then secured that relief through no written order,

3. In 2009, when class counsel and the Diocese ignored a direct order of the South Carolina Supreme Court to conclude the class action in six months (so by September 2009), alleged to have been done to evade any appellate review,

4. By submitting to the class action court accountings which concealed the contingent fee payments made to class counsel by the Diocese, payments which compensated class counsel for nearly all of the time submitted in his fee petition, and

5. By submitting to the class action court accountings which concealed the unauthorized charges by class counsel to class members, such as the McDonalds.

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Conclusion

Perhaps judge-shopping and lawyers elevating their own interests at the expense of their class member clients is, in South Carolina, just what some lawyers get to do. But until the Supreme Court says that such conduct is permitted, none of these complaints should be dismissed, full discovery should be permitted, and the claims should proceed. In addition, the court should permit the plaintiffs to seek discovery from the Diocese as it relates to the claims against class counsel.

On this record, and on motions to dismiss, the 2006 class action settlement must be presumed to have been collusive and the motions to dismiss should be denied.

Respectfully submitted,

s/ Gregg Meyers

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Exhibit A

Voluntary appearance by class counsel

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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.

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Respectfully submitted,

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September 21, 2022
Charleston, South Carolina

Exhibit B

2011 ruling from Judge Young

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 10-CP-10-5520

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, a Corporation Sole; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, in his Official Capacity, REV. MONSIGNOR MARTIN LAUGHLIN, former Administrator of the Diocese of Charleston, in his Official Capacity; ROBERT J. BAKER, former Bishop of Charleston, in his Official Capacity; LAWRENCE E. RICHTER, JR., DAVID K. HALLER, and RICHTER AND HALLER, LLC.,

Defendants.

FILED
2011 JUN 27 PM 12: 30
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

Plaintiffs' Attorney:	Gregg Meyers
Defendants' Attorney:	A. Peter Shahid, Jr., for Diocese of Charleston Susan Taylor Wall, for David Haller James L. Bruner, for Lawrence E. Richter, Jr. and Richter and Haller, LLC
Date of Hearing:	March 31, 2011

INTRODUCTION

This lawsuit was filed on July 9, 2010, and alleges a number of alternative wrong-doings by the various Defendants. Each of the Defendants responded by filing motions to dismiss which this Court heard on March 31, 2011. For the following reasons, this Court finds the motions must be denied in part and granted in part.

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Res Judicata and the Class Action Settlement

The Plaintiffs' first cause of action alleges the Diocese knew or should have known that one of its priests was a pedophile who molested the Plaintiffs, and as a result, the Diocese was negligent and grossly negligent in supervising this priest. They also allege the Diocese was negligent and grossly negligent in failing to warn the Plaintiffs or their parents about this pedophile priest. They further allege the Diocese Defendants maintained a decades-long policy and practice of engaging in fraudulent concealment when their agents and employees were known to sexually abuse children.

The Diocese asks the Court to dismiss the negligence and gross negligence cause of action because it is barred by the doctrine of *res judicata*, collateral estoppel and the statute of limitations.

The *res judicata* argument arises out of a class action lawsuit filed in Dorchester County that was approved by Circuit Court Judge Diane Goodstein. The Defendants argue that the negligence and gross negligence claims of the Plaintiffs were encompassed in that class action lawsuit and are therefore barred as a matter of law. The factual background is extensively laid out in detail in the Complaint.

However, by way of background for this preliminary issue, it should be pointed out that the Plaintiffs alternatively allege the Diocese Defendants and the Attorney Defendants, after reaching a settlement, colluded to dismiss a class action lawsuit that had been filed in Charleston County, and re-filed the same class action lawsuit in Dorchester County in order to seek a more favorable settlement approval by a circuit court judge who was a long-time friend of Defendant Richter. Procedurally, the Plaintiffs want to be able to bring their negligence and gross negligence claims against the Diocese Defendants; however, if they are barred because of the *res*

judicata effect of the Dorchester County Class Action settlement (or any of the defenses the Diocese Defendants waived by agreeing to the Dorchester County Class Action settlement), then they seek to sue the Diocese Defendants and the Attorney Defendants for civil conspiracy, and the Attorney Defendants for various causes of actions they allege flow from the actions of the Attorney Defendants in their role as class action counsel.

Since all of the Defendants have raised the defense of *res judicata* as a bar to the various causes of actions brought in the current lawsuit, this Court must address this issue first.

This Court must give collateral recognition of the Dorchester County Class Action settlement if it can be shown that the Plaintiffs were afforded due process in that action; i.e., they were given reasonable notice of the class action settlement and class counsel adequately represented them. The South Carolina Supreme Court has held that it is appropriate for a court to conduct a limited collateral review of another court's class action settlement for the sole purpose of determining if procedural due process requirements were met as it pertains to the party seeking review. This limited review looks at two factors: (1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied. Hospitality Management Associates, Inc, v. Shell Oil Company, 356 S.C. 644, 591 S.E.2d 611 (2004).

Fundamentally, due process requires that absent class members be given notice. Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812, 105 S.Ct. 2965 (1985). The standard for notice is that it must be "the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Shutts, 472 U.S. at 812, 105 S.Ct. 2965 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15, 70 S.Ct. 652 (1950)).

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I have conducted a limited collateral review of the procedures used by the circuit court in the Dorchester County Class action and find the procedures were not designed to ensure notice to any potential class members living outside of the state of South Carolina who were not otherwise given actual notice of the class action and settlement.[1] The Plaintiffs allege that they live outside the state of South Carolina and they did not receive actual notice of the settlement under the guidelines set forth in the settlement order. The newspaper notices of the class action were only published in South Carolina newspapers (with the exception of the Augusta daily newspaper which is immediately adjacent to South Carolina and is distributed in an area of South Carolina not otherwise serviced by a daily newspaper). The Defendants had originally proposed national publication of the settlement in the *USA Today* newspaper to Judge Goodstein; however, they specifically withdrew their request to have this notice published outside of South Carolina in a publication of national distribution. This is clearly evidence that the class action was not designed to be a national settlement, but rather was a settlement intended to bind only South Carolina residents who did not otherwise receive actual notice. I find, therefore, that the constructive notice of the Dorchester County Class Action settlement attempted by the in-state newspaper publications was not reasonably calculated, under all the circumstances, to apprise these out-of-state Plaintiffs of the pendency of the action and afford them an opportunity to present their objections.

The Plaintiffs also argues that the following language from Judge Goodstein's order of July 30, 2007 should estop the Diocese Defendants from raising the *res judicata*; to wit:

> 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 as a later date and can show

1 Nothing herein should be considered as adjudicating the issue of whether in-state class members received adequate notice.

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> 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.

At first glance, this language certainly seems to support the Plaintiffs' position. However, at a hearing on August 9, 2007, Judge Goodstein was asked to clarify her intent of this language, and as a result she issued an Order on August 31, 2007 in which she stated that language was only intended to apply to potential class members who had *actually* contacted the Diocese at some point in the past with allegations of child sexual abuse and were therefore entitled to receive *actual notice* of the proposed class settlement. Therefore, I find the language in the July 27th Order would not have the estoppel effect advanced by the Plaintiffs.

Nevertheless, this does not affect this Court's finding that the class notice was not intended to reach non-South Carolina residents who had not otherwise received actual notice of the settlement.

Due process rights preclude any claimant who did not receive notice of the class action from being bound by any judgment rendered in it. See Hoiengs v. County of Adams, 245 Neb. 877, 516 N.W.2d 223 (1994). Therefore, the Court finds the Plaintiffs are not bound by the judgment of the Dorchester County Class Action and are free to pursue their claims of negligence and gross negligence, subject to the findings below.

Statute of Limitations and Negligence/Gross Negligence Causes of Action

Having found the Plaintiffs are not bound by the Dorchester County Class Action, the Diocese Defendants move to dismiss the negligence and gross negligence causes of action on the grounds the claims fall outside the applicable statute of limitations.

The Plaintiffs claims arise out of allegations of childhood sexual abuse that allegedly occurred between 1965 and 1971. Therefore, these claims are subject to the limitations period

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found in S.C. Code § 15-3-535 for actions arising prior to 2001, and S.C. Code § 15-3-555 for actions arising after 2001.

The facts plead in the Complaint allege Plaintiffs John Doe 2 and Jane Doe 4 would have been born at the latest in 1965. Consequently, the Plaintiffs would have turned 18 in 1983. Under § 15-3-535, the Plaintiffs would have had three years from the date of discovery of the tort to bring his or her claim. These Plaintiffs do not claim they were unaware of the alleged tort at the time it happened, between 1965 and 1971, or at any time after 1971. Giving each Plaintiff the benefit of the age of majority, three years after turning 18 in 1983, the statute would have been tolled until 1986, and three years after turning 21 would be 1989. None of these claims were brought by 1989.

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996); Bayle v. S.C. Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App.2001), cert. denied. In Dean, the Supreme Court stated:

> According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. Id. at 363, 364,468 S.E.2d at 647 (emphasis in original) (citations omitted); Young v. South Carolina Dept. of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App.1999) (stating the statute of limitations runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct).

Applying the tolling effect provided by § 15-3-555, each Plaintiff would be able to bring his or her claim within six years of turning 21 years old. Construing the facts alleged in the

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Complaint in the light most favorable to the Plaintiffs, each Plaintiff would have turned 21 no later than 1986. Therefore, at the very latest their claims were barred by the limitations period in 1992. The Plaintiffs fail to allege they were unaware of the sexual abuse allegedly committed against them, or unable to discover the causal relationship between any injuries and the alleged sexual abuse.

The Plaintiffs argue the Diocese Defendants should be bound by their waiver of statute of limitations defenses in the Dorchester County Class Action. That waiver was only for class members and this Court has found the Plaintiffs are not bound by that class action. Therefore, the Plaintiffs cannot avail themselves of a waiver which only applies to a class action they wish to avoid.

The Plaintiffs further argue fraudulent concealment should bar the Diocese Defendants from raising the statute of limitations defense. The claims in the Plaintiffs' fraudulent concealment cause of action and defense are rooted in a document dated from 1962 entitled "The Instruction." The Plaintiffs claim the Vatican instructed a certain degree of secrecy to all local dioceses (including the current Diocese Defendant) in this document, the execution of which led to the concealment that is the core of the Plaintiffs' Complaint. The underlying crux of the Plaintiffs' Complaint for fraudulent concealment, which allegedly gives them a right to a remedy, is that the Diocese Defendants concealed certain information at the direction of this 1962 document.

In order to succeed on a claim of fraudulent concealment, a plaintiff must plead facts indicating an "inducement for delay" in filing the lawsuit. Hedgepath v. American Telephone & Telegraph Co., 559 S.E.2d. 327, 338 (Ct. App. 2001). In order to successfully avoid the application of the statute of limitations on this theory that the Diocese Defendants are or had engaged in acts constituting "fraudulent concealment," the Plaintiffs must allege and establish the

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following:

> [A] defendant is estopped from benefitting from the statute of limitations as a defense because the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. The conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped the party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts. Kelly v. Logan. Jolley. & Smith. L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1,4 (Ct. App., 2009) (internal citations omitted).

The claim of fraudulent concealment fails to bar the application of the statute of limitations in this case because the Plaintiffs do not allege how the Diocese Defendants actions with regards to "The Instruction" caused the Plaintiffs to be unaware of the personal injuries they allege they suffered or of the name the alleged perpetrator. They do not allege any defect in memory or any other reason why they are unaware of their own personal injury. They do not allege that the Diocese Defendants ever made a misrepresentation or took any action that caused them to delay the filing of their lawsuit. Absent such allegations, the Plaintiffs cannot maintain a claim of fraudulent concealment in tolling the statute of limitations.[2]

Therefore, the Court finds the Plaintiffs' negligence and gross negligence claims are barred by the applicable statute of limitations and the Diocese Defendants motion to dismiss those causes of action must be granted.

UNFAIR TRADE PRACTICES ACT CLAIM

The Plaintiffs bring claims for damages alleging the Diocese violated the South Carolina Unfair and Deceptive Trade Practices Act, but fail to allege facts necessary to sustain an action under the UTPA. South Carolina's UTPA prohibits "[u]nfair methods of competition and unfair

2 For the same reasons, the cause of action for fraudulent concealment must fail and is hereby dismissed.

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or deceptive acts or practices in the conduct of any trade or commerce...." S.C. Code Ann.§39-5-20 (1985). Trade or commerce is defined as "the advertising, offering for sale, sale or distribution of any services and any property ... and any other ... thing of value...." S.C. Code Ann. § 39-5-10(b) (1985). See also Foggie v. CSX Transp., Inc., 313 S.C. 98, 24, 431 S.E.2d 587, 591 (1993).

In the current case, the acts alleged by the Plaintiffs for recovery are acts of sexual abuse. The Plaintiffs allege the Defendants are subject to a claim under the UTPA because, among other reasons, they "operate schools, for which tuition is charged," and "they provide services to the public and advertise services to the public." Our Supreme Court requires that the specific acts alleged are those of trade or commerce, not the general or unrelated conduct of a defendant that might or might not qualify as trade or commerce. The acts that form the basis of the Plaintiffs' Complaints are allegations of sexual abuse, *not* acts of trade or commerce.

CIVIL CONSPIRACY AND ALL DEFENDANTS

The Plaintiffs allege a multi-faceted civil conspiracy cause of action that the Defendants all conspired to commit fraud upon the court by settling the case filed in Charleston County and re-filing it in Dorchester County in anticipation of getting favorable rulings on class certification, settlement terms, and approval of attorneys' fees. I have reviewed the voluminous allegations set forth in support of this cause of action and find it meets the requirements of pleading a valid cause of action for civil conspiracy, in particular the requirement of alleging special damages insofar as the allegations complain the Defendants proposed class membership to include the Plaintiffs, then specifically requested the Court drop nationwide publication notice. The net result was that the Plaintiffs did not have the opportunity to participate in the class settlement nor exercise their right to opt-out, and as a result they are now unable to participate in the class action settlement, while at the same time are precluded from pursing their negligence and gross negligence claims against the Diocese Defendants because of the running of the applicable

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statute of limitations, which was waived by the Diocese in the Dorchester County Class Action with regards to participating class members. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore the Defendants' motion to dismiss this cause of action must be denied.

PROFESSIONAL NEGLIGENCE AND BREACH OF FIDICIARY DUTY

The Plaintiffs allege professional negligence and breach of fiduciary duty causes of action against the Attorney Defendants based upon the aforementioned facts set forth with great particularity in their Complaint. I have reviewed the voluminous allegations set forth in support of these causes of action and find they meet the requirements of pleading a valid cause of action for both. The particular duties owed and alleged to have been breach are supported by an affidavit of an expert as required by law. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore, the Attorney Defendants' motion to dismiss these causes of action must be denied.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the all of the Defendants' Motions to Dismiss on the grounds of *res judicata* are DENIED; and,
2. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross negligence because the actions are barred by the applicable statute of limitations is GRANTED; and
3. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross negligence because the actions are barred by the applicable statute of limitations is GRANTED; and

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4. That the Diocese Defendants' Motion to Dismiss the cause of action for fraudulent concealment because the actions are barred by the applicable statute of limitations is GRANTED; and

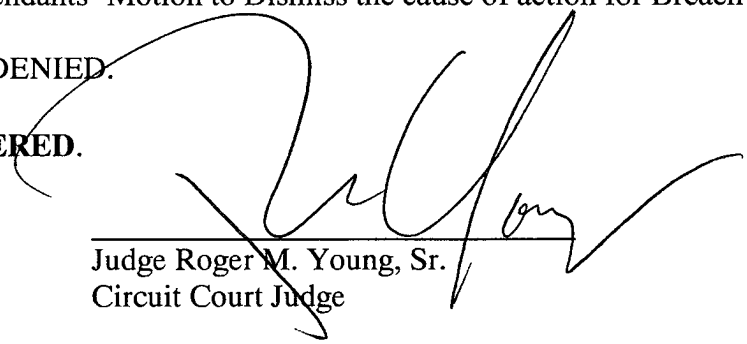
5. That the Diocese Defendants' Motion to Dismiss the cause of action for Unfair Trade Practices Act is GRANTED; and

6. That all of the Defendants' Motions to Dismiss the cause of action for Civil Conspiracy is DENIED; and

7. That the Attorney Defendants' Motion to Dismiss the cause of action for Professional Negligence is DENIED; and

8. That the Attorney Defendants' Motion to Dismiss the cause of action for Breach of Fiduciary Duty is DENIED.

AND IT IS SO ORDERED.



Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June 17, 2011

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 10-CP-10-5520

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, a Corporation Sole; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, in his Official Capacity, REV. MONSIGNOR MARTIN LAUGHLIN, former Administrator of the Diocese of Charleston, in his Official Capacity; ROBERT J. BAKER, former Bishop of Charleston, in his Official Capacity; LAWRENCE E. RICHTER, JR., DAVID K. HALLER, and RICHTER AND HALLER, LLC.,

Defendants.

FILED
2011 JUN 27 PM 12: 30
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER DENYING DEFENDANTS' MOTIONS FOR PROTECTIVE ORDERS PURSUANT TO SCRCP 26(C)

Plaintiffs' Attorney:	Gregg Meyers
Defendants' Attorney:	A. Peter Shahid, Jr., for Diocese of Charleston Susan Taylor Wall, for David Haller James L. Bruner, for Lawrence E. Richter, Jr. and Richter and Haller, LLC
Date of Hearing:	March 31, 2011

INTRODUCTION

This lawsuit was filed on July 9, 2010, and alleges a number of alternative wrong-doings by the various Defendants. Each of the Defendants responded by filing motions to dismiss which this Court heard on March 31, 2011, and which were ultimately denied in part and granted in part pursuant to the Order signed June 17, 2011.

While Defendants' Motions to Dismiss were pending, Plaintiffs served extensive discovery request on the various Defendants in the form of Admissions, Requests for Production of Documents and Interrogatories. Each Defendant filed a Motion for a Protective Order pursuant to Rule 26(C), SCRCP to stay all discovery pending disposition of Defendants' Motions to Dismiss, arguing that subjecting them to discovery prior to disposition of the motions would be unduly burdensome and expensive.

Now that this Court has disposed of Defendants' Motions to Dismiss, the pending Motions for Protection are DENIED and Defendants are ordered to respond to Plaintiffs' discovery requests pursuant to the applicable Rules of South Carolina Civil Procedure.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That Defendants' Motion for Protective Order filed on August 18, 2010 is DENIED; and,
2. That Defendant David K. Haller's Motion for Protective Order filed on August 24, 2010 is DENIED; and,
3. That Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC's Motion for Protective Order filed on November 5, 2010 is DENIED; and,
4. That the Diocese Defendants' Motion for Protective Order Re: Discovery Requests Served October 25, 2010 filed on January 18, 2011 is DENIED;

AND IT IS SO ORDERED.

Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June ~~17~~ 27, 2011

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. **2010-CP-10-5520**

John Doe 2 and Jane Doe 4 v **The Bishop of Charleston et al**

PLAINTIFF(S) DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit) Rule 43(k), SCRCP (Settled); ☐ Other ☐

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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.

FILED
2011 JUN 27 PM 12: 29
JULIE J. ARMSTRONG
CLERK OF COURT

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

Defendants Lawrence E. Rickter, Jr. and Richter & Haller, LLC's Motion for a Protective Order from court appearances in these matters for the period of May 9 through May 23, 2011 is DISMISSED as moot.

Dated at **Charleston,** South Carolina, this ~~17th~~ 27th day of **June**, 2011.

PRESIDING JUDGE

This judgment was entered on the day of , 20, and a copy mailed first class this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S) **ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

SCCA SCRCP Form 4 Revised 06/2008

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Exhibit D

Sworn Declaration of Julie McDonald

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State of Alabama)
)
County of Covington)

Sworn Declaration of Julie McDonald

1. I am Julie McDonald and it is my signature which appears below.

2. I am an adult citizen of Alabama.

3. I make this declaration from my own personal knowledge.

4. I make this sworn declaration pursuant to 28 U.S.C. § 1746, which I understand authorizes sworn declarations.

5. I made a claim in the class action involving the Diocese of Charleston.

6. In that claim I was represented by the lawyers Lawrence Richter and David Haller and their firm, Richter and Haller, LLC.

7. Paperwork I have from those lawyers reflects that they charged me a 20% fee.

8. I had no written agreement with those lawyers or their firm. I now understand that a contingent fee agreement is required to be in writing and signed by the client.

9. Until I was referred by another lawyer to Mr. Meyers, in December 2019, I was unaware of each of these facts:

    a. that Richter and Haller had conflicts with the Diocese of Charleston, and
    b. that before they charged me a 20% contingent fee that they had already been awarded by the court a $2.5 million fee, and
    c. that they had already been paid a contingent fee by the Diocese of Charleston, and,
    d. that they had not disclosed to the court the contingent fee payment from the Diocese of Charleston, and
    e. that none of the court orders in the class action authorized Richter and Haller to charge me an additional fee.

10. I would have liked to have known each of those things before approving any payment to Richter and Haller.

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11. I believe each of those facts should have been disclosed to me by each of Richter and Haller.

12. I believe I am owed a refund of the improper fee, as is every other person improperly charged.

13. I declare under penalty of perjury under the laws of the United States of American that the foregoing is true and correct.

Julie McDonald

Date: 3/24, 2025

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Exhibit E

Sworn Declaration of Richard McDonald

State of Massachusetts)
)
County of Bristol)

Sworn Declaration of Richard McDonald

1. I am Richard McDonald and it is my signature which appears below.

2. I am an adult citizen of Massachusetts.

3. I make this declaration from my own personal knowledge.

4. I make this sworn declaration pursuant to 28 U.S.C. § 1746, which I understand authorizes sworn declarations.

5. I made a claim in the class action involving the Diocese of Charleston.

6. In that claim I was represented by the lawyers Lawrence Richter and David Haller and their firm, Richter and Haller, LLC.

7. Paperwork I have from those lawyers reflects that they charged me a 20% fee.

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    b. that before they charged me a 20% contingent fee that they had already been awarded by the court a $2.5 million fee, and
    c. that they had already been paid a contingent fee by the Diocese of Charleston, and,
    d. that they had not disclosed to the court the contingent fee payment from the Diocese of Charleston, and
    e. that none of the court orders in the class action authorized Richter and Haller to charge me an additional fee.

10. I would have liked to have known each of those things before approving any payment to Richter and Haller.

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11. I believe each of those facts should have been disclosed to me by Richter and Haller.

12. I believe I am owed a refund of the improper fee, as is every other person improperly charged.

13. I declare under penalty of perjury under the laws of the United States of American that the foregoing is true and correct.

Richard McDonald

Date: 3/16/, 2025

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ELECTRONICALLY FILED - 2025 Oct 17 10:03 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
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.: 2022-CP-10-04031 **LAWYER DEFENDANTS' SUPPLEMENTAL BRIEF REGARDING PLAINTIFFS' FAILURE TO SERVE SUMMONS AND COMPLAINT AND LACK OF PERSONAL JURISDICTION**

Based upon the Court's request for additional briefing during the October 7, 2025 hearing in person in Charleston, South Carolina, Lawrence E. Richter, Jr., David K. Haller, Richter & Haller, LLC (collectively, "the Lawyer Defendants") submit the following brief in further support of their arguments for dismissal.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed this case on August 30, 2022. (Complaint, August 30, 2022.) They never served the Complaint on any defendant. (Declaration of Dukes, September 1, 2022, ¶ 3 ("No defendants have been served with the Complaint or any other process, pleading, or order in this case.") (filed with notice of removal); Pls.' Memo Opp. Mot. to Dismiss, October 2, 2025, at 5 ("We agree the summons and complaint were never served on class counsel.")). Two days later, The Bishop of Charleston a corporation sole ("the Diocese") removed the case to the United States District Court for the District of South Carolina (a "snap removal"). On September 16, 2022, the Lawyer Defendants filed a Motion to Remand. (Joint Motion to Remand of Lawyer Defs., September 16, 2022.) Five days later, the Lawyer Defendants filed a motion requesting that the

District Court stay "all deadlines, including responsive pleadings and discovery, until the Lawyer Defendants' motion to remand this matter to state court is decided." (Joint Motion of Lawyer Defs. To Stay All Deadlines, September 21, 2022.) On October 7, 2022, the Lawyer Defendants filed a motion to dismiss "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." (Motion to Dismiss on Behalf of Lawyer Defendants, October 7, 2022, at 1.)

On June 12, 2023, Judge Gergel granted the Motion to Remand. (Order and Opinion, C/A No. 2:22-cv-02940-RMG (June 12, 2023).) The following day, a certified copy of his Order was transmitted to and filed with in this action. (Certified Order and Opinion, C/A No. 2022-CP-10-4031 (June 13, 2023).) Following remand, Plaintiffs never served the summons and complaint on the Lawyer Defendants. (Pls.' Memo Opp. Mot. to Dismiss, October 2, 2025, at 5 ("We agree the summons and complaint were never served on class counsel.")). On September 1, 2023, Richter and Richter & Haller, LLC filed a motion to dismiss based upon lack of personal jurisdiction, among other grounds. That same day, Richter's counsel wrote Plaintiffs' counsel the following:

> I have had a chance to dig into this, and here is what I see. The summons and complaint were never served on the lawyer defendants. After the case was removed to federal court, we filed a motion to remand and a motion to dismiss.
>
> If it is in fact your position that now, after the case has been remanded to state court, the lawyer defendants are in default, then I ask you to provide me the date you believe their time to respond began to run. That should be easy enough to provide in short order.
>
> Respectfully, it is our position that if, as you contend, the filings in federal court are now of no moment, then the failure to serve the summons means the circuit court has no personal jurisdiction over the lawyer defendants. Moreover, the failure to serve the summons and complaint either within the three-year statute of limitations (which has expired according to the allegations in the complaint) or within 120 days of the date of filing as required by Rule 3, SCRCP, and by statute means the action has not been "commenced" with regard to the lawyer defendants. Based upon the issue you raise and the threat of default proceedings, we filed a motion to dismiss today that raises the failure to serve the summons as well as other issues raised in the motion filed in the District Court.

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> Because the summons was never served, I did not receive any email from the clerk, so I'm not sure what email you're referring to.
>
> With regard to a scheduling order, I have no problem accommodating Rich's plans this Fall. However, I'm not sure I can commit to anything until the motions to dismiss are heard.
>
> I look forward to hearing from you.

(E-Mail from Bruner to Meyers, September 1, 2023, Exhibit A.) Plaintiffs' counsel never responded to the e-mail or provided the date which he contended the Lawyer Defendants' time to respond began to run. On September 5, 2023, Haller filed a similar motion also raising defenses based on lack of personal jurisdiction.

DISCUSSION

The Plaintiffs' failure to serve the summons and complaint are fatal to their claims, notwithstanding the removal of the case to District Court and the filings are of no moment in the state court proceeding at bar.

I. The Law Requires Service of the Summons and Complaint

"The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend." *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 8–9, 753 S.E.2d 537, 541 (2014) (quoting *State v. Sanders,* 118 S.C. 498, 502–03, 110 S.E. 808, 810 (1920)). "Consistent with this purpose, parties are generally permitted to agree to particular methods of service or waiving service altogether." *Id.* (citing *Fin. Fed. Credit Inc. v. Brown,* 384 S.C. 555, 565, 683 S.E.2d 486, 491 (2009) ("[W]here service is accomplished in a manner consented to by the defendant, service of process is valid and a court has jurisdiction over the defendant for purposes of entering judgment."); *Myrtle Beach Lumber Co. v. Globe Int'l Corp.,* 281 S.C. 290, 292, 315 S.E.2d 142, 143 (Ct.App.1984) ("[A] defendant may waive personal service by consent or by designating an agent to receive service of process.")).

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Plaintiffs have conceded they never served the summons or complaint on the Lawyer Defendants. They argue instead that the Lawyer Defendants waived service by voluntarily appearing in the state court action. Under Rule 4(d), SCRCP, "Voluntary appearance by defendant is equivalent to personal service[.]" When determining whether a party has waived service of process, "courts decide on a case by case basis whether a defendant's act demonstrates an *intent to submit to the court's jurisdiction*." *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 338, 644 S.E.2d 793, 796 (2007) (emphasis added). A defendant demonstrating intent to submit to the state court's jurisdiction amounts to waiver of the right challenge personal jurisdiction, which requires some evidence the defendant voluntarily and intentionally abandoned that defense. *Trustgard Ins. Co. v. Full Logistics, Inc.*, 442 S.C. 485, 507, 900 S.E.2d 448, 459 (Ct. App. 2023) ("Objections to personal jurisdiction, unlike subject matter jurisdiction, are waived unless raised…A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Waiver requires a party to have known of a right and known that right was being abandoned.") (internal quotations and citations omitted).

Accordingly, to overcome their failure to serve the summons and complaint, the Plaintiffs must prove the Lawyer Defendants demonstrated an intent to submit to the jurisdiction of this Court and intentionally abandoned their right to challenge personal jurisdiction.

II. The Effect of Removal and Remand

When an action is filed in state court and then removed to District Court, the state court is divested of jurisdiction entirely. *Limehouse v. Hulsey*, 404 S.C. 93, 105, 744 S.E.2d 566, 573 (2013) ("Removal proceedings impact the jurisdiction of the state court in that removal of a state case to federal court 'divests' the state court of jurisdiction.") (internal quotation omitted). Once a case is removed, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C.A. § 1446 (LexisNexis, Lexis Advance through Public Law 119-36, approved September

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5, 2025). *See also Roman Catholic Archdiocese v. Acevedo-Feliciano*, 589, U.S. 57, 64, 140 S.Ct. 696, 700 (2020); and Wagstaffe, *Prac Guide: Fed. Civil Proc. Before Trial* § 8-XII. Consequently, the Circuit Court had no jurisdiction of this action from the date of removal (September 1, 2022) until the date of remand (June 13, 2023).

What effect, if any, the filings and activities in District Court have following remand is a matter of state law. Wagstaffe, *Prac Guide: Fed Civil Proc Before Trial* § 8-XII ("State law—both court made and statutory—will largely determine what effect actions taken in federal court—including appearances and filings—while the matter was still pending will have in state court.") (citing *Ayres v. Wiswall*, 112 U.S. 187, 190–191 (1884) ("It will be for the state court, when the case gets back there, to determine what shall be done with pleadings filed and testimony taken during the pendency of the suit in the other jurisdiction"); *Pellebon v. State ex rel. Bd. of Regents of Univ. of Oklahoma*, 358 P.3d 288, 292 (Okla. App. 2015) (noting after remand, "the issue of the viability and effect to be given to pleadings filed in federal court is left to the state courts"); *and Laguna Vill., Inc. v. Laborers' Internat. Union of N. Am.*, 35 Cal.3d 174, 180 (1983) (collecting state court cases giving effect to federal pleadings filed before remand)).

In South Carolina, our jurisprudence has established that filings and activities in the District Court have no affect at all following remand. In *Limehouse*, the plaintiff filed and served the complaint in state court, and the case was removed to District Court. *Limehouse* at 105, 744 S.E.2d at 573 (noting "the circuit court had subject matter jurisdiction over the defamation claims and acquired personal jurisdiction over the parties upon the filing and service of their pleadings."). The removal was challenged through a motion to remand, which the District Court granted. Following remand, the Circuit Court entered a default judgment when Hulsey failed to answer. It also denied a motion to vacate that judgment. On appeal, the Supreme Court reversed, holding that because the District Court never mailed a certified copy of its order to the Circuit Court, the

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case was never properly remanded pursuant to federal statute, and, therefore, the Circuit Court never resumed jurisdiction of the case, rendering its actions subsequent to the remand void. *Limehouse* at 109, 744 S.E.2d at 575 ("Because the absence of a certified order precluded jurisdiction from resuming in the state court, we hold the state court proceedings conducted after the federal court's entry of the remand order are void.").

In addition, the Court provided the Bench and Bar further guidance about post-remand procedural issues. *Id*. at 110, 744 S.E.2d at 575 ("Although this ruling would be dispositive of both appeals, we believe the bench and bar would benefit from a definitive ruling on certain remaining issues. Specifically, we address: (1) the computation of time for filing responsive pleadings following the state court's receipt of a certified remand order…."). In doing so, the Court wrote,

> As previously discussed, once the case was removed to federal court, the state court's jurisdiction was suspended or held in abeyance until the case was properly remanded. When the state court resumed jurisdiction, *it had a duty "to proceed as though no removal had been attempted."*

Id. at 112, 744 S.E.2d at 577 (quoting *State v. Columbia Ry., Gas & Elec. Co.*, 112 S.C. 528, 537, 100 S.E. 355, 357 (1919)) (emphasis added).

Therefore, South Carolina law gives no effect to the filings or actions in the District Court following remand. The Circuit Court is bound to proceed as though the Diocese never attempted to remove the action to federal court, rendering the motions and other activities before the District Court of no moment here.

III. Plaintiffs Have Failed to Prove Service on the Lawyer Defendants

Applying the *Limehouse* decision to this case, the Plaintiffs have failed to prove they obtained service. Consequently, the Court never obtained personal jurisdiction.

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As noted above, the Plaintiffs filed this action on August 30, 2022, and the Diocese removed it on September 1, 2022. In their complaint, the Plaintiffs allege John Doe 305 discovered his claims in November of 2019 and that the McDonalds discovered their claims in "late 2019." (Compl. ¶ 79 ("In late 2019 each of the McDonald plaintiffs learned for the first time of the information that class counsel had not disclosed."); ¶ 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.")). Absent the removal, the Plaintiffs were required to serve the Lawyer Defendants no later than December 28, 2022, or 120 days from the date of filing. *See* Rule 3(a), SCRCP (requiring service either within the statute of limitations or, alternatively, within 120 days of filing). Under *Limehouse*, the removal "tolled" the time for service from September 1, 2022 to June 13, 2023.

On June 13, 2023, when the case was remanded to the Circuit Court, the Court resumed jurisdiction and "had a duty to proceed as though no removal had been attempted." *Limehouse*, at 112, 744 S.E.2d at 577. If the Court had that duty, then the parties were bound to proceed in the same manner. Proceeding "as though no removal had been attempted" meant the filings and actions before the District Court, while the Circuit Court's jurisdiction was suspended, had no impact at all on this action. The Plaintiffs were required to either serve the summons and complaint on the Lawyer Defendants or show the Lawyer Defendants voluntarily appeared in the state court action.

Here, the Plaintiffs admit they never personally served the summons and complaint on the Lawyer Defendants. Instead, they argue the Lawyer Defendants voluntarily appeared and waived

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service based on two specific actions. First, they contend the Lawyer Defendants "made a voluntary appearance after the Diocese removed the complaint case to federal court" by virtue of the motion to dismiss filed in the District Court. (Pls.' Memo. Opp., October 2, 2025 at 5.) That argument, however, is contrary to the *Limehouse* decision, for it relies on actions which are to be disregarded as though the removal was never attempted. Indeed, the Lawyer Defendants filed that motion in an entirely different court while the Circuit Court's jurisdiction was suspended. A party cannot logically be deemed to have submitted to the jurisdiction of a state court when the state court had no such jurisdiction, and certainly not based upon a filing in an entirely different court. *See Limehouse* at 104, 744 S.E.2d at 572 ("Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.") (quoting 32A Am.Jur.2d. *Federal Courts* § 581 (2007)). *See also id*. (collecting cases).

Second, the Plaintiffs argue the Lawyer Defendants "made a voluntary appearance in this action, through the motion to dismiss." (Pls.' Memo. Opp., October 2, 2025, at 5.) That argument also falls short of proving a voluntary appearance because the Lawyer Defendants' motions to dismiss *assert* lack of personal jurisdiction as a defense based on lack of service; they do not waive it. When determining whether a party has waived service and voluntarily appeared, courts decide the matter "on a case by case basis" and focus on "whether a defendant's act demonstrates an intent to submit to the court's jurisdiction" or waiver of the right to challenge personal jurisdiction. *Stearns Bank*, 373 S.C. at 338, 644 S.E.2d at 796; *Trustgard*, 442 S.C. at 507, 900 S.E.2d at 459. The Plaintiffs cannot meet that burden of proof. Far from demonstrating an intent to submit to jurisdiction, the motions to dismiss *challenged* jurisdiction based upon lack of service. The very first argument for dismissal set forth in Richter's motion to dismiss is lack of personal jurisdiction based upon the Plaintiffs' failure to serve the summons and complaint. (Motion to Dismiss,

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September 1 at 5-7.) Haller's motion raised the same defense. (Motion to Dismiss, September 5, 2023 at 1.) Furthermore, Richter's counsel clearly laid out the challenge in the e-mail sent to Plaintiffs' counsel after the motion was filed. (E-mail to Meyers, September 1, 2023.) That e-mail stands in stark contrast to the facts in *Stearns Bank* in that Richter's counsel did not request an extension of time to respond and directly challenged jurisdiction based on lack of service. Under Rule 12, SCRCP, the Lawyer Defendants had the right to include lack of personal jurisdiction with other available defenses in their motion to dismiss to avoid waiving those defenses. Rule 12(b), SCRCP ("No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion."); Rule 12(g), SCRCP ("A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him."); Rule 12(h)(1), SCRCP ("A defense of lack of jurisdiction over the person…insufficiency of process, insufficiency of service of process…is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course."). Therefore, nothing in the motions to dismiss could reasonably be construed as the Lawyer Defendants demonstrating an intent to submit to jurisdiction or waiving their defenses to personal jurisdiction based on the failure to serve the summons and complaint. Indeed, the motions themselves prove the very opposite of what the Plaintiffs argue.

Despite these grounds having been raised over two years ago, the Plaintiffs never made any effort to serve the summons and complaint. The lack of service means the Court never obtained personal jurisdiction over the Lawyer Defendants. Furthermore, the statute of limitations has long since run on the Plaintiffs' claims, as has their 120 days under Rule 3(a), SCRCP. As a

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result, even with the tolling effect the removal had on this action, the Plaintiffs are barred from proceeding.

CONCLUSION

For the reasons stated above, the Plaintiffs failed to personally serve the Lawyer Defendants with the summons and complaint or, alternatively, to prove the Lawyer Defendants voluntarily appeared and waived service. Therefore, the Court never obtained personal jurisdiction, and it should grant the Lawyer Defendants' motion and dismiss them from this action accordingly.

BRUNER POWELL WALL & MULLINS, LLC

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GALLIVAN, WHITE & BOYD, PA

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Attorney for David K. Haller

October 17, 2025
Columbia, South Carolina

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From: Ben Bruner
To: G Meyers
Cc: Chelsea Clark; jcuttino@gwblawfirm.com; Rich Dukes
Subject: RE: 22-CP10-4031, Doe 305 et al v. Richter et al.
Date: Friday, September 1, 2023 7:54:46 PM

Gregg:

I have had a chance to dig into this, and here is what I see. The summons and complaint were never served on the lawyer defendants. After the case was removed to federal court, we filed a motion to remand and a motion to dismiss.

If it is in fact your position that now, after the case has been remanded to state court, the lawyer defendants are in default, then I ask you to provide me the date you believe their time to respond began to run. That should be easy enough to provide in short order.

Respectfully, it is our position that if, as you contend, the filings in federal court are now of no moment, then the failure to serve the summons means the circuit court has no personal jurisdiction over the lawyer defendants. Moreover, the failure to serve the summons and complaint either within the three-year statute of limitations (which has expired according to the allegations in the complaint) or within 120 days of the date of filing as required by Rule 3, SCRCP, and by statute means the action has not been "commenced" with regard to the lawyer defendants.

Based upon the issue you raise and the threat of default proceedings, we filed a motion to dismiss today that raises the failure to serve the summons as well as other issues raised in the motion filed in the District Court.

Because the summons was never served, I did not receive any email from the clerk, so I'm not sure what email you're referring to.

With regard to a scheduling order, I have no problem accommodating Rich's plans this Fall. However, I'm not sure I can commit to anything until the motions to dismiss are heard.

I look forward to hearing from you.

Sincerely,

Ben

Benjamin C. Bruner
BRUNER POWELL
BRUNER POWELL WALL & MULLINS, LLC
P.O. Box 61110
Columbia, SC 29260-1110

(P) 803.252.7693
www.BrunerPowell.com

From: G Meyers <attygm@gmail.com>
Sent: Thursday, August 31, 2023 9:39 AM
To: Ben Bruner <bbruner@brunerpowell.com>
Cc: Chelsea Clark <cclark@brunerpowell.com>; jcuttino@gwblawfirm.com; Rich Dukes <RDukes@turnerpadget.com>
Subject: Re: 22-CP10-4031, Doe 305 et al v. Richter et al.

Ben:

Thank you for your email.

I don't see an amended complaint filed in the federal stage of the case, so I think the original remains the operative, and the only, complaint.

I am sure you have seen the clerk's email this morning, just after yours, placing the case on the trial roster. So we perhaps ought to agree on a scheduling order, given the time in which we were in the federal court. I expect to serve discovery shortly.

The cases assigned to Judge Cole seem destined to go slowly, "expeditiously" having perhaps become a term of art defined in a way that is new to me. So I am reluctant to consent to consolidating these cases into that scheduling black hole, but a reasonable scheduling order would be agreeable.

Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

On Thu, Aug 31, 2023 at 6:10 AM Ben Bruner <bbruner@brunerpowell.com> wrote:

> Gregg,

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I was under the impression a response had been filed but I'll double check. If memory serves there was an amended complaint filed in the District Court. Which pleading is the operative one? I want to make sure we're on the same page about that.

Do you have any issue consolidating tires case with the other two pending before the Circuit Court?

Thanks,

Ben

Benjamin C. Bruner

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www.BrunerPowell.com

<!--[if !supportLineBreakNewLine]-->
<!--[endif]-->

On Aug 30, 2023, at 11:39 PM, G Meyers <attygm@gmail.com> wrote:

Counsel:

Judge Gergel remanded this case to Circuit Court on June 12. Mr. Dukes has a motion to dismiss pending which was filed shortly after the remand.

No other party has made a responsive pleading, but all parties made an appearance in federal court in response to the removal motion.

A motion for default may be in order as to those parties who have made no responsive pleading to the Summons and Complaint.

If by email sent to me not later than September 4 you will acknowledge on behalf of each of your clients acceptance of the attached originally filed summons and complaint, I am glad to extend to October 4 your time to file a responsive pleading.

Mr. Dukes, of course, has made a responsive pleading so has no obligation to respond further at this time.

My present mailing address is 114 4th Ave NW, Byron MN 55920. That will be my mailing address for the foreseeable

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future.

Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

<2022-08-30 - Summons and Complaint.pdf>

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-04031
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.	)	

Supplemental Memorandum on Jurisdiction[1]

At the October 7 hearing the court asked for a memorandum from each of the parties as to the court's personal jurisdiction for what this memorandum refers to as "the lawyer defendants," meaning defendants Richter, Haller and their firm. This is the plaintiffs' memorandum on jurisdiction.

Summary of this memorandum. The circuit court has jurisdiction over the lawyer defendants since the case was remanded from federal court. The lawyer defendants submitted to personal jurisdiction by making a voluntary appearance while the case was in federal court, after the Diocese removed it but before it was remanded. That voluntary appearance was by a motion that requested relief from the federal court, thereby waiving, as a matter of law, all objections to service, including any issue about a summons. When the federal court remanded the case back to

[1] Generative AI drafted no portion of this filing, and counsel has verified each citation.

state court, the case as remanded included the lawyer defendants as parties. In short, by their voluntary appearance the lawyer defendants made themselves parties to this action.

The lawyer defendants are parties to this action. After the South Carolina Supreme Court declined to exercise its original jurisdiction for this case it was filed in this court. That filing was August 30, 2022 (Summons and Complaint filed August 30, 2022 in this state court action, 2022-CP-10-04031). Two days later, the Diocese removed the case to the federal court (ECF 1 in federal court action 22-cv-02940, filed September 1, 2022). As removal requires, the Diocese attached to that notice of removal (as ECF 1-1 in federal court action, 22-cv-02940) the plaintiffs' Summons and Complaint from the state court.

The Federal Rules of Civil Procedure apply to actions removed from state court. Fed. R. Civ. P. 81(c) ("These rules apply to a civil action after it is removed from a state court.").

Twenty days after removal, the lawyer defendants chose to make a voluntary appearance in the federal court, doing so through a joint motion identified as ECF 8 in the federal court record (22-cv-02940, filed in federal court on September 21, 2022). A copy of that federal pleading, ECF 8, was attached to the plaintiffs' recent (October 2, 2025) filing in this court, and it is incorporated here.

In their federal court filing, ECF 8, the lawyer defendants sought relief from the federal court. Significant to the proceedings now before this court, that federal court motion by the lawyer defendants (ECF 8) did ***not*** include any grounds challenging personal jurisdiction.

Under the federal rules of civil procedure, objections to service and to process are waived if not included in a party's first motion. Fed. R. Civ. P. 12(g)(2) and (h)(2) (waiving, among other defenses, the Fed. R. Civ. P. 12(b) defenses of lack of personal jurisdiction, insufficient process, and insufficient service of process).

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The jurisdictional significance of a voluntary appearance, in both state court and federal court, both before and after each adopted Rules of Civil Procedure,[2] has always included that the party making a voluntary appearance waives all objections to personal jurisdiction. E.g., as to the federal courts before the Rules of Civil Procedure, *Knox v. Summers*, 3 Cranch 496, 7 U.S. 496 (1806) ("The court were unanimously of opinion, that the appearance by attorney cured all irregularity of process. The defendant, perhaps, might have appeared *in propria persona*, and directly pleaded in abatement. But having once appeared by attorney, he is precluded from taking advantage of the irregularity.") As to South Carolina before the Rules of Civil Procedure, e.g., *see*, *Gravely v. Gravely*, 20 S.C. 93, 103 (1882) ("[B]y answering to the merits, she [a resident of England] properly submitted herself to the jurisdiction of the court, and the matter stands as if she accepted service or authorized her attorney to do so for her.")

As noted above, under the federal rules of civil procedures, a voluntary appearance waives all objections as to personal jurisdiction, including all issues as to service. E.g., *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982) (objections to personal jurisdiction can be waived); *Constantine v. Rectors and Visitors of George Mason Univ.*, 411 F.3d 474, 480 (4th Cir. 2005) (citing Fed. R. Civ. P. 12(h), finding parties waive certain defenses, including "lack of personal jurisdiction," "insufficient process," and "insufficient service of process" by failing to raise these defenses in a motion under Fed. R. Civ. P. 12(b)); *Bekris v. Greek M/V Aristoteles*, 437 F.2d 219, 220 (4th Cir. 1971) (general appearance "undoubtedly constitutes a waiver of such personal defenses as inadequacy of service of process or lack of personal jurisdiction…"). ." See also, Fed. R. Civ. P. 12(g)(2), to the same effect.

[2] The federal rules were approved in 1937 and became effective in 1938; the state rules in 1985. *See*, Fed. R. Civ. P. 86 and SCRCP 86.

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Under the South Carolina Rules of Civil Procedure, a voluntary appearance also waives all objections to service, including any objections about lack of a summons.

> "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 Nat'l Ass'n v. Glenwood Falls, L.P.*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007) ("Voluntary appearance by [a] defendant is equivalent to personal service...." Rule 4(d), SCRCP. A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case." State v. Dudley, 354 S.C. 514, 542, 581 S.E.2d 171, 186 (Ct. App. 2003); *see Cheraw Motor Sales Co. v. Rainwater*, 125 S.C. 509, 513, 119 S.E.237, 239 (1923) ("The defendant filed his answer and tried his case on the affidavit in attachment, and thereby waived his right to his motion [to dismiss the proceedings because there was no summons and complaint served].").

Ex Parte Cannon, 385 S.C. 643, 657, 685 S.E.2d 814, 822 (Ct. App. 2009), and cases cited in *Cannon*.

South Carolina appellate courts have consistently found, both before and since the Rules of Civil Procedure were adopted, what SCRCP 4(d) states explicitly, "Voluntary appearance by defendant is equivalent to personal service,"[3] E.g., before the Rules were adopted:

> *e.g., Strickland v. Consolidated Energy Products Company*, 274 S.C. 554, 555, 265 S.E.2d 682, 683 (1980) ("A general appearance constitutes a voluntary submission to the jurisdiction of the court and waives any defects and irregularities in the service of process."); *Connell v. Connell*, 249 S.C. 162, 167, 153 S.E.2d 396, 398 (1967) ("a general appearance . . . waives any defect in the jurisdiction arising either from the want of service on the defendant or from a defect therein.").

Since the Rules were adopted:

> E.g., *White Oak Manor, Inc. v. Lexington Insurance Company*, 407 S.C. 1, 9, 753 S.E.2d 537, 541 (2014) (citing SCRCP 4(d), "Voluntary appearance by defendant is equivalent to personal service....").

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[3] This makes sense, as "[t]he purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend," *State v. Sanders,* 118 S.C. 498, 502–03, 110 S.E. 808, 810 (1920). The voluntary appearance satisfies that purpose entirely.

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This makes eminent sense, as "[t]he purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend," *State v. Sanders*, 118 S.C. 498, 502-03, 110 S.E. 808, 810 (1920).

A voluntary appearance entirely satisfies that personal jurisdictional purpose.

Conclusion

The court has jurisdiction of the lawyer defendants because they made a voluntary appearance in the federal court, thereby waiving all objections to personal jurisdiction. That waiver included all issues as to service and the summons, and the voluntary appearance satisfies the rationale of the summons. The state court consequently has had personal jurisdiction over the lawyer defendants since they made themselves party to the federal case before the remand order.

Respectfully submitted,

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-4031
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.	)	

Motion to Alter or Amend

As reflected by the Attachment, on November 7, the clerk of court, pursuant to SCRCP 77(d), entered judgment in this action. The court had issued a Form 4 ruling granting the motion to dismiss and indicating that by November 17 defense counsel was to propose a written order. By email, the defense requested, and the court approved, extending beyond those ten days the time for class counsel to submit a proposed written order.

The Form 4 order addressed only one of the various issues addressed by the plaintiffs.

SCRCP 6(b) authorizes a circuit court to extend certain deadlines, but excludes from that authority any change to Rule 59 deadlines. SCRCP 59 requires a motion to alter or amend a judgment "shall be served not later than 10 days after receipt of written notice of the entry of the order." The Supreme Court has held that the ten-day limit for serving a Rule 59(e) motion is an absolute deadline that binds the court as well as the parties; "the trial judge has only ten days from entry of judgment to alter or amend an earlier order on his own initiative." *Leviner v.*

Sonoco Prods. Co., 339 S.C. 492, 530 S.E.2d 127 (2000). See also, *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006), ("Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.")

Given the Supreme Court's interpretations of SCRCP 6(d) and 59, it appears that after November 17, that being the tenth day after the clerk entered judgment, the court will have jurisdiction only as to filings made by November 17 and will not otherwise have authority to modify the Form 4 order in this and the companion cases.

A party "*must* file [a Rule 59(e)] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review," *Elam v. S.C. Dept. of Trans.*, 361 S.C. 9, 24, 602 S.E. 2d 772, 780 (2004) (emphasis in original).

In an abundance of caution, the plaintiffs submit this motion pursuant to SCRCP 59(e) to address issues raised by not ruled on.

In this motion the lawyer defendants are referred to as class counsel, which refers to the underlying 2005 class action, 2006 class settlement, 2006 judge-shopping for class settlement oversight, and 2007 court approval of that settlement.

1. The court's Form 4 order granted the motion to dismiss "for lack of service pursuant to Rule 3 and Rule 4, SCRCP." The court did not rule on the undisputed procedural history of the defendants having accepted service by making an appearance during the time the action had been removed to federal court, before it was remanded. SCRCP 4(d) explicitly provides, "Voluntary appearance by defendant is equivalent to personal service." The court should make explicit the inherent rationale that federal remand somehow did not include the class counsel defendants who had voluntarily appeared after removal.

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2. The court's Form 4 order inherently accepts the allegations of the complaint as true, including the allegations that both as a matter of law *and as explicitly voluntarily assumed*, class counsel had duties to the absent members of the class such as John Doe 305. As a result, the court's order inherently conflicts with (a) the court's Form 4 order in the companion cases (which adopted Judge Nicholson's 2017 rationale of no duty as a matter of law to out of state class members, based on one part of the 2006 class complaints (not the classes as proposed or approved), (b) that the complaints in these actions allege duties voluntary assumed as well as those imposed by law, unlike the plaintiffs' complaints ruled upon by Judge Nicholson, and (c) that the McDonalds are alleged to have been actual class members, hence actual clients of class counsel, and (d) most significantly, that the law of the case in the class action now includes that the approved class settlement included in each class persons who resided out of state.[1]

3. As to John Doe 305, the court has implicitly accepted the allegations of duties owed to John Doe 305 but has not ruled on the various breaches of duty set out in Mr. Virzi's affidavit, including:

a. Class counsel having failed to disclose to the class their conflicts of interest, of: (1) lifelong ties to the Diocese, and (2) their continued functioning on behalf of the Diocese, before, during, and after the class action litigation,

b. Class counsel[2] having agreed to reduce the scope of the notice program from their original proposal for nationwide notice to only notice in and immediately

[1] The defendants having colluded to evade appellate review of the class action delayed for more than a decade that law of the case effect.

[2] With the agreement of the Diocese, but we acknowledge those claims are "held in abeyance" at present, by order of the Supreme Court.

around South Carolina, as well as their own contention that they did so at the request of their adversary,

c. Class counsel failing to protect absent class members by securing in a written order the relief they claimed to have obtained when they represented to the class action court (in a July 13, 2007 hearing) that class members who did get notice would be entitled to the same relief as as class members, including the waiver of defenses class members received,

d. Class counsel failing to obtain any post-award fairness hearing or other means for class members to seek post-claim review,

e. Class counsel having resolved the claims for class representatives independent of, and before, the process that applied to class members, and

f. Class counsel concealing from the court the payments made by the Diocese to class counsel, submitting plainly fraudulent time records in both hours of time declared (many days exceeding 24 hours) as well as submitting time for which class counsel had already been paid by the Diocese.

4. The McDonalds share with John Doe 305 these issues from the paragraph above: (3a, as to conflicts), (3d, as to no post-award review) and (3f, as to fee payments to class counsel disclosed to neither clients nor the court). Independent of those issues, the court should also rule as to the McDonalds on the following issues:

a. Class counsel's breach of duty to the McDonalds in charging the McDonalds a 20% fee, and costs, when (1) no order of the class action authorized such charges, and (2) class counsel had no contingency fee agreement with either of the McDonalds,

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b. Class counsel's breach of duty in failing to disclose to the McDonalds the fee already awarded to class counsel by the class action court,

The court confined its ruling to the service issue, so did not rule on the merits of the 12(b)(6) issues. To reach those issues, the court must now accept as a matter of law that the law of the case in the class action is that the two classes approved in the class action included out of state class members. So the court should determine if class counsel owed any duties to John Doe 305 in light of the law of the case in the class action that he was within the class pertinent to him.

Accepting the remaining allegations of the complaint as true, the factual context for addressing the issues on the merits is:

- the class action was collusive, as shown by each of the (at least six) ways detailed in the complaint;
- that in the mediation to reach the class settlement class counsel negotiated, simultaneously, a fixed fee for himself and a variable recovery for the classes;
- the parties engaged in judge-shopping after the class settlement was reached;
- the class settlement terms reached in mediation were changed to make class counsel's fee the priority of the class action;
- a provision was added to refund to the Diocese of any funds which remained after claims were made (what SCRCP now calls "residual funds");
- so as to not have "too many" class claims (thereby better protecting class counsel's fee and the chance of residual funds) the scope of notice was reduced to notice only in and immediately around South Carolina;

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- class counsel represented to the court, but did not secure by order, the relief that class members who did not get notice would get the same relief as class members, including the Diocese waiving its defenses, damaging John Doe 305;
- that the McDonalds (and other class members) were charged a contingency fee and costs which no order authorized, an overcharge of class members of some $900,000 that was never disclosed to the class action court;
- that class counsel failed to make proper disclosures to class members, as identified above;
- that class counsel or his clients contributed $100,000 to fund better terms for class members who opted-out of the class settlement;
- that class counsel and the Diocese did not disclose to the class action court certain payments made by the Diocese to class counsel;
- that class counsel submitted blatantly fraudulent time records to the class action court in support of the fee claim, which apparently were not reviewed by the class action court;
- that the colluding parties to the class action ignored the Supreme Court's 2009 order, neither closing the class action in six months nor returning to the Supreme Court for an extension of the Court's deadline, which it must be presumed was to avoid appellate review of the conduct of the class action;
- That the colluding parties to the class action ignored the 2016 motion filed by one of the class representatives, which sought review of alleged misconduct by class counsel.

The court should address how these facts bear on:

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- the request for declaratory relief in the first cause of action as to how class actions are conducted;
- the second cause of action, as to the constructive trust issues imposed as a matter of law on class counsel and the class representatives; as well as the fiduciary obligations owed to class members by class counsel and class representatives as described in ¶¶ 87 to 92 of the complaint; and
- The fourth cause of action, for civil conspiracy, accounting and disgorgement.[3]

The court implicitly denied, without ruling, the plaintiff's motion to submit additional interrogatories, filed December 7, 2023. Defense counsel represented at the hearing that the interrogatories had never been served, a representation from counsel we accepted at the hearing. However, defense counsel's representation is false, no doubt unintentionally. As reflected by the court's own file, the 57 interrogatories were served on defense counsel, attached to the motion to approve them, on December 7, 2023 (having been previously served on defense counsel, as the motion itself reflects). The court should reconsider its Form 4 order and address this motion explicitly.

Finally, the court should address the defense contention that Mr. Virzi's affidavit, which is attached to the complaint, should not be recognized in any way because it bears the caption of the same case when it was submitted to the Supreme Court in the petition for original jurisdiction. Which should be denied.

Conclusion

[3] As noted above, causes of action as to the Diocese are not addressed as they are held in abeyance by order of the Supreme Court.

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There is great utility for bench and bar for these issues being clarified for future class actions in South Carolina as well as for the class members at issue in this action.

Respectfully submitted,

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