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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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 Six of Eight

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Pleadings (Continued)

Pleadings in the Class Action (Continued)

Pleadings in Related Litigation

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 Withdrawn Objections.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 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 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

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 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

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 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.

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 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):

> 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

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 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 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.

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 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

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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Attorney for putative class members

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.

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.

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,

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

Attorney for putative class members

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
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 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,

PETITION TO APPEAR AS AMICUS CURIAE

NOW COMES THE SOUTH CAROLINA VICTIM ASSISTANCE NETWORK ("SCVAN"), by and through counsel, petitioning the Court 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 case brought allegedly on behalf of victims of sexual abuse by Catholic priests and other employees of the Diocese of Charleston.

The problems will be addressed herein, but preliminarily, the purpose of this petition is to bring to the attention of the Court, and hopefully the appellate courts of South Carolina, the grievous and offensive collusive nature of this settlement between the Bishop of Charleston; his general counsel Attorney Peter Shahid; some of the class counsel, particularly Attorney Lawrence Richter and his law firm; and possibly a Circuit Court judge.

In an effort to adequately advocate for the victims in this matter, SCVAN, with its long and rich history of fighting for crime victims across South Carolina intends to bring as much attention to this matter as possible in order to prevent these victims from being revictimized.

In support of this Petition, SCVAN would show the Court the following:

1. The South Carolina Victim Assistance Network, a 501(c)(3) organization, has been providing services and advocacy for victims of crime since 1984. It provides victim services, trains victim advocates, publicizes victim issues, and through its affiliate The South Carolina Crime Victim Legal Network provides direct *pro bono* representation to crime victims in criminal proceedings.
2. The Diocese of Charleston has a long and disturbing history of enabling and protecting pedophile priests in Charleston and other areas of South Carolina.
3. The Bishop Robert Baker who oversaw this collusive settlement has on at least one occasion sought to reinstate to active ministry a priest who admitted to sexually molesting a 10 year old girl.
4. The Bishop's general counsel Attorney Peter Shahid participated in that effort and sought comment from the victim's family as part of the Bishop's deliberative process.
5. The fact that a Catholic Bishop was entertaining the notion of placing a pedophile priest back into active ministry reveals that Bishop's intent to create opportunities for the pedophile priest to assault more children, in spite of his hollow public words which pretend to express sorrow for victims.
6. The Bishop's further words about justice for victims are clearly demonstrated to be false by this purported settlement which is among the worst of its kind in the United States of

America and was brought about by collusion between him, his general counsel, some of the class counsel, and potentially a Circuit Court judge.

7. Victims of sexual abuse have a difficult time trusting people. For that reason, it is imperative that they clearly understand the background of who is 'making deals' for them, and about potential personal (and professional) conflicts of interest of that person or persons. In his Affidavit in support of class counsel's request for a $2.5 million fee, that was to be paid before any claimant even got to file a claim, Attorney Lawrence Richter states the following:

> "My relationship with the Diocese of Charleston is lifelong. Since birth I have been a practicing catholic. My first twelve years of education was received in the catholic schools of Charleston. I am a graduate of Christ the King and Bishop England High School. My children are all Bishop England graduates. For many years I and my family have been active members of St. Mary's Church, and I have functioned in many capacities there including as Eucharistic Minister and Lector (positions now referred to as "Extraordinary Ministers"). I have many close ties and lifelong relationships in the catholic community and have enjoyed friendships with many priests and bishops of the diocese."

8. Mr. Richter offers this statement to the court after he has entered into the deal with his friend the Bishop, and after he has had the case transferred to a court of his choosing where he could receive approval of the deal pursuant to the scheme agreed upon by the parties.

9. During the course of this litigation, Richter has served in his official capacity as an Extraordinary Minister of the Diocese on at least one occasion, at a funeral.

10. Nowhere in any notice to any of the absent class members, or any other class members, is this information about Richter's close, deep and lifelong relationship to the supposed adverse party provided to the victims of sexual abuse perpetrated by priests and employees of the diocese, some of whom might have been friends of Mr. Richter. This constitutes a conflict of interest set forth in Rule 1.7 of the South Carolina Rules of Professional Conduct, and this information should have been provided to all class members prior to the time they were required to decide whether to participate in the deal that Richter had struck with his friend, the Bishop, but it was not.

11. It is axiomatic that a victim of sexual abuse should know that the person who purports to represent his or her interests is, in fact, an Extraordinary Minister of the very Diocese that is supposed to be the adversary in the litigation. This is especially true in light of the unusual and extremely questionable conduct in this case.

12. The billing records of The Richter Law Firm contain numerous questionable, and unethical, entries. These entries either were not adequately reviewed or were not reviewed at all by Judge Diane Goodstein when she approved the $2.5 million fee requested. Some examples of these entries include, but are not limited to, the following:

    - A single lawyer billing for more than 24 hours in a single day, always by Attorneys Larry Richter and his partner David Haller. This is done on numerous occasions, including numerous entries for 30 and 40 hours, and other entries of 51.5, 60, 80, and a whopping 92 hours in a single day!
    - The 92 hours in a day occurred on the day following one of the 80 hour entries.

- An attorney sending himself an e-mail 55 times in one night, and charging 0.5 hours for each transmission for a total of 22.5 hours, even though the e-mails were apparently sent simultaneously at midnight.
- An attorney billing 10 hours on the 30th of virtually every month for about three years for "Oversight and Review", including in 2004 and 2005, billing on February 30th, a day that does not exist on regular calendars.
- A great percentage of the hours used to justify the unreasonable $2.5 million fee predate the filing of the class action suit and were expended pursuing individual cases, and for which it is believed the lawyers may have already been compensated.
- No time entry for The Richter Law Firm is smaller than one half hour and all entries larger than a half hour are all in whole hour increments.
- A great deal of the time billed is to effectuate the inexplicable transfer of Charleston County cases to Dorchester County after they were settled in order for Judge Goodstein to handle the cases exclusively, to further the collusion being perpetrated on the court by the Bishop of Charleston, his general counsel Attorney Peter Shahid and The Richter Law Firm.

13. These cases were originally filed in Charleston County, where they belong. Two of the cases were filed in May and August of 2005. Attorney Richter says in his Affidavit in support of the $2.5 million fee that he first met with the Bishop about this matter in October 2005. Two months after that, a class action complaint was filed.
14. Six months later, in June 2006, all of these pending cases were settled by way of mediation, in Charleston.

15. As part of the deal, the parties agreed to move the cases out of Charleston County and Attorney Larry Richter was given the sole authority to choose the venue. He chose Dorchester County.

16. Judge Goodstein, who presides in Dorchester County, and her husband are personal friends of Attorney Larry Richter.

17. When challenged as to why the cases were in Dorchester County, Richter's only response was, "Have you ever tried to get a motion scheduled in Charleston County?" He apparently believed, or must have known, that his friend would schedule motions for him promptly, which she in fact did.

18. Nothing in the public record demonstrates that there was ever a delay or difficulty in getting motions heard in Charleston County when the cases were pending there. In fact, what the record shows is that class counsel failed to file motions that should have been filed and heard in the cases before they were transferred to Dorchester County as part of the deal between the lawyers.

19. Apparently as part of the deal, the parties then set about on a course of conduct to mislead the court in Charleston County and transfer the already settled cases to Dorchester County, where in one of her first official acts in the cases, instead of questioning why settled cases were being refiled in her court, Judge Goodstein signed an Order declaring the cases as complex and assigning exclusive jurisdiction of them to herself.

20. At no time while the cases were pending in Charleston County did class counsel seek designation of the cases as complex or certification of the class pursuant to Rule 23 SCRCP.

21. In effectuating the transfer of the cases, the lawyers filed cases in Dorchester County on behalf of the clients who had already settled their cases in Charleston County. Then, two months later, they provided Consent Orders of Dismissal to a Judge in Charleston County to dismiss the still pending Charleston County cases. There is nothing in the public record that indicates that the Bishop or the lawyers ever alerted the judge in Charleston County that the cases were settled OR that they had already been refiled in Dorchester County. There is also nothing in the public record that indicates that class counsel complied with Rule 23 SCRCP to show to the court how the rights and interests of the absent class members were not adversely affected by the dismissal of the cases.

22. This is interesting in light of time entries for The Richter Law Firm which show that a Consent Order to Change Venue was worked on but apparently never presented to a judge. These time entries were used, however, as part of the time submitted to justify the unreasonable $2.5 million fee.

23. Judge Goodstein tentatively approved the class settlement in January, 2007. She did so in spite of the fact that the class representatives were not proper representatives in that their claims were already settled, and they would not have to subject themselves to the arbitration process that all other class members were compelled to engage in after surrendering all rights of review and appeal. She merely put the court's imprimatur on the deal that had been struck between the Bishop, his lawyer and his Extraordinary Minister, Attorney Larry Richter, prior to the cases being moved from Charleston to her court, without any serious analysis or judicial oversight.

24. Notice that was provided to absent members was not adequate. Notice was published only in South Carolina papers, in spite of representations by class counsel that it would be

nationwide. Providing notice only to South Carolina residents ignores the reality, and the Bishop's own experience, that many victims of his priests' sexual deviancies move out of South Carolina. Judge Goodstein did not order any notice outside of South Carolina.

25. In fact, in the known record, there is not a single instance of Judge Goodstein taking issue with any aspect of the deal. Further, when significant errors and deficiencies were brought to her attention by way of proper objections to the deal, she responded by punishing the lawyer who filed them and his clients, even though the objections resulted in material and beneficial changes to the class.

26. In response to the material changes to the class settlement brought about by the objections, class counsel always responded that the deficiencies were 'scrivener's errors'.

27. The only time Judge Goodstein expressed any concern at all about the deal was when she ordered a solicitor to conduct an investigation regarding a document that was brought to her attention from the Diocese's files. It was an opportunity for her to utilize her judicial authority to insure that a fair and thorough investigation was conducted on behalf of the victims in this matter. In the end, however, she was satisfied when the solicitor reported back that he had spoken with someone in Massachusetts and with the general counsel of the Bishop, Attorney Peter Shahid, who as mentioned above had already been involved in trying to move a pedophile priest back into active ministry, and was to be transferred to another part of the country. Such a woefully inadequate investigation should not have been countenanced by this Judge. But, she apparently was satisfied and got the deal back on track.

28. It is not known at this time how many claimants entered into the arbitration process, or how much their total awards were, but the end result is very curious, and apparently the

Bishop, the lawyers, and the arbitrator, will say entirely coincidental. From a total potential pool of $12 million, the $2.5 million attorneys' fee and approximately $100,000 in costs was paid first. The Diocese entered into a separate agreement with some of the objectors' counsel (negotiated by the undersigned) to resolve their claims outside of the class action process for a total of $1.4 million.[1] So, the arbitrator, who mediated the original agreement, and who also mediated the side agreement with the objectors, knew that anything over $8 million total to the claimants would require the Bishop to go back to Rome for more money to pay the side agreement with the objectors. He knew this was an issue of great concern for the Bishop. At the end of the arbitration process, while the exact amount of awards is not known, it is "very close to the limit, very close" according to the arbitrator. It may be a coincidence, but it certainly is a convenient one for the Bishop, his lawyer and his Extraordinary Minister.

29. It is interesting that all activity has now come to a halt in this class action case even though it was 'days away' from conclusion in February and a final proposed Order was reportedly submitted to Judge Goodstein in March. Apparently the parties and Judge Goodstein are waiting for the unrelated objectors' case pending in Charleston County to be transferred to this court before concluding the class action. The Diocese and its lawyer have filed a motion to have that case transferred to this court, and Judge Goodstein has made inquiry as to why that case is not in her court.

[1] The Bishop and his lawyer have refused to abide by this settlement and have required these objectors to file litigation in Charleston County to enforce the settlement. That agreement specifically provides that the monies to fund that settlement are not part of the $12 million pool, but the Bishop did hope to use surplus funds from the $12 million in that case. So, it was in his interest to have the class claimants' total awards not exceed $8 million. Interestingly, the Bishop and his lawyer have filed a motion to have that case moved from Charleston County to Judge Goodstein's court in Dorchester County. That motion is currently pending. The undersigned is counsel of record in that case.

30. The rights of the class members, except for the class representatives, have been adversely impacted by this collusion between the Bishop, his lawyer and his Extraordinary Minister. Many victims who participated in the claims process were dissatisfied with the awards, but they had to relinquish any appeal or review rights before they could make a claim.

31. All of the above is clear evidence that something very disturbing is at the very heart of this 'deal'. An independent review of all of the above should be undertaken prior to any final orders being signed in this matter.

32. SCVAN does not seek to undo the financial compensation to the victims who have received it. Rather, it seeks to have the court determine a more reasonable fee for class counsel and to distribute the balance, once disgorged, to the victims on a *pro rata* basis, or to be used to compensate any additional victims who might come forward as a result of reasonable notice to absent members. Further, the Diocese should be compelled to pay the balance of the $12 million pool to the victims. Justice requires nothing less.

WHEREFORE, THE PETITIONER SCVAN seeks *amicus curiae* status with this court to further develop and point out serious problems with 'The Deal', and the handling of it by the judge who took exclusive jurisdiction of the case for her personal friend. At a minimum, the following should occur prior to Judge Goodstein signing any more Orders or taking ANY further action in this matter:

1. Judge Diane Goodstein should recuse herself from this matter immediately;
2. A different Circuit Court Judge should appoint substitute class counsel, or at least a guardian for the victims, to review all of the matters pointed out herein and take all appropriate steps to protect the interests of the victims who have been

adversely impacted by this collusive deal struck between the Bishop and his Extraordinary Minister;

3. Notice should be given nationwide about this deal so that all interested absent class members can participate if they choose to;
4. The victims who have already participated in this deal's arbitration process should be given actual notice of the irregularities set forth herein so they may seek legal counsel, other than the Bishop's Extraordinary Minister, to be advised about their rights;
5. The lawyers presently at or formerly at The Richter Law Firm, specifically Larry Richter and David Haller, should self report themselves to the Office of Disciplinary Counsel for their unethical billing practices and for collusion;
6. Attorney Peter Shahid should self report himself for turning a blind eye to the unethical billing practices of The Richter Law Firm, for failing to fulfill his mandatory reporting obligation under the Rules of Professional Conduct, and for collusion;
7. Judge Goodstein should self report herself to the Commission on Judicial Conduct, a panel of which she is a member;
8. The balance of the $12 million settlement pool should be paid into an escrow account free of the control of the Bishop, his Extraordinary Minister, or anyone else affiliated with this deal.;
9. Class counsel should disgorge all of the $2.5 million fee it received and it be placed into an escrow fund free of the control of the Bishop, his Extraordinary

Minister, or anyone else affiliated with this deal, until an independent analysis may be done and a more reasonable fee awarded;

10. The entire claims process should be subjected to an independent review, including the matrix which was utilized to determine compensation to the victims, which was the product of the collusion between the Bishop, his lawyer and his Extraordinary Minister;
11. The claims process should be reopened and notice given nationwide so other victims may learn of it and participate in a modified process if they so choose;
12. If any of the $2.5 million attorneys' fee is determined to be excessive, those funds should be distributed to the victims in the class on a *pro rata* basis;
13. Such other relief and participation as the court may grant to this *amicus*.

RESPECTFULLY SUBMITTED,

David Flowers

David Flowers, SC Bar # 15072
P.O. Box 8359
Greenville, SC 29604
864-421-0036

Attorney for Petitioner SCVAN

Date: June 19, 2008

State of South Carolina

In The Court of Common Pleas

RECORD
2016 MAY 11 PM 2:14
CHERYL ... COURT
CLERK ... COURT
DORCHESTER COUNTY

County of Dorchester
For The 1st Judicial Circuit

Case # ~~2005~~ 2006-cp-18-1310
Case # ~~2005~~ 2006-cp-18-1311

John Does' #66 #66a
Case# 2005-cp-10-2053 et al
V
Bishop of Charleston et al

Motion for Post-Award Fairness Hearing

I have sent a copy of this motion to both Dorchester County and Charleston County, for Judge Nicholson. I don't know where these cases belong now. Some cases from the class action have been assigned to Judge Nicholson . According to the Clerk of Court in Charleston County, said cases have not been consolidated.

I am the person identified as John Doe #66 (SEE ATTACHMENT)in the civil action filed in Charleston County as 2005-CP-10-2053. My name is listed in the mediation agreement that apparently became a class action in these cases, which remain open. I am a member of the class and a class representative, and was formerly represented by Mr. Lawrence Richter and his law firm, until they abandoned me. He is not representing me now.
The class action has not had a post-award fairness hearing. I did not know that until recently. The class action remains an open case.

In any post-award fairness hearing class counsels fee should be reviewed in regard of the actual class recovery as well as the orders approving his fee. It is my understanding that class council took more money than the court authorized him to take from victims of child spiritual/sexual abuse. No court has reviewed that allegation.

Class counsel stopped looking out for my best interest as a class member a long time ago. If needed the court should hire a trustee attorney, Desa Ballard, who appears to be familiar with the class action.
If not her then then someone else to advise the court and PROTECT the interests of the class. I am not a lawyer and can not accomplish that. I can only tell the

court that there has never been a post-award fairness hearing. It appears that the fees exceeded the $2.5 million approved by orders of the court. Any unauthorized monies should go to the class members as well as victims who did not get notice of the class action.
The amount of the attorney fees should also be viewed in light of actual benefit to the class members.

This review should also consider the number of victims deliberately excluded by Lawrence Richter and his firm.

CONCLUSION

A post-award fairness hearing should be made of the class action settlement and class counsels fee.

Respectfully submitted,

5-11-16

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create settlement class, subject to court approval of:
   ⓐ ACTUAL VICTIMS OF DIOCESE ABUSE
   ⓑ SPOUSAL &/or Parent claim deriving from victim abused

2. Class settlement FUND will be for $12,000,000 FUNDED AS FOLLOWS:
   ⓐ $5,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with $7,000,000 limits once the $5,000,000 Letter of Credit has been drawn down to $1,000,000.

3. DETAILS of claim process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

John Doe #66
v.
The bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
CASE NO.: 2005-CP-10-2053

John Doe #66A
v.
The bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
CASE NO.: 2005-CP-10-3293

John Doe #63
v.
The bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
CASE NO.: 2005-CP-10-4913

Settlement Agreement

See Terms attached on EXH. #1

2016 MAY 11 PM 2:14
CLERK OF COURT
DORCHESTER COUNTY

In a mediation conducted on this _______ day of ________________, 2006, the above named parties agreed to the following terms:

1. ______________________________ shall pay to ______________________ $__________;
2. Plaintiff/Respondent will execute a general release dismissing all claims on account of the matters raised in the above captioned lawsuit;
3. Plaintiff/ Respondent will cooperate in having a dismissal with prejudice entered by the court; and
4. The parties shall split the mediation fees ______________________________.

______________________	______________________
By: ______________________ (Print Name)	By: ______________________ (Print Name)
Its: ______________________	Its: ______________________
Dated: ______________	Dated: ______________

EXHIBIT "4"

(10)

4. Court shall be asked to approve attorneys' fees for class counsel at between $950,000 + $2.5 million, subject to Defendants obtaining credit to secure the obligation.

5. Mr. ________ * shall be paid ________

Mr. ________ * shall be paid ________

Mr. ________ * shall be paid ________

Mr. ________ * shall be paid ________

* COLLECTIVELY paid $460,000 to be divided among the 4 gentlemen above after accepted as agreed to.

6. If the Court fails to approve settlement class +/or provision of class settlement, the compromise settlement with the individuals in "5." above shall not be effected + shall proceed to settlement in the amounts set out in "5." above with appropriate general releases +/or dismissals with prejudice executed in favor of defendants.

~~[illegible]~~

P.08/09

(3)

7. These terms are in the form of an offer by Defendants & shall be acted upon with reasonable promptness by Plaintiffs/Claimants named in "5." above.

James Jeo[illegible], Attorney

June 14, 2006

ON BEHALF OF DEFENDANTS

Attorney for ~~and with~~ authority of the Diocese of Charleston.

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,

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for the Plaintiffs

August 29, 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
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 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"

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

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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,

Gregg Meyers

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Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for the McDonalds

August 28, 2022

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

42983

67-448/539 SC
2961

DATE 11-20-06

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

DIOCESE OF CHARLESTON 345,000 00 CTS DOLLARS

Security features are included. Details on back.

Bank of America

FOR

MP

042983 053904483 000729361010

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1662 INGRAM RD.
CHARLESTON, SC 29407

42982

67-448/539 SC
2961

DATE 11-20-06

PAY TO THE ORDER OF Richter & Haller, LLC $ 145,000.-

DIOCESE OF CHARLESTON 145,000 00 CTS DOLLARS

Security features are included. Details on back.

Bank of America

FOR

MP

042982 053904483 000729361010

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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 Jane Doe 4,

Plaintiffs,

v.

The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop Of Charleston, in his official 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.

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Judicial Estoppel
Unfair and Deceptive Trade Practices

Jury Trial Requested

FILED
2010 JUL -9 PM 2:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Complaint

For their complaint, the plaintiffs allege:

Parties and Jurisdiction

1. Plaintiffs are adult citizens and residents of a state other than South Carolina. Each was sexually molested as a child by a priest of the Diocese of Charleston, James W. McCarthy, when James McCarthy was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.

2. Pseudonyms are used for the plaintiffs due to the sexual abuse injury, which is the subject of this complaint. The defendants will be informed of the identity of the plaintiffs

upon their agreement to reciprocate in discovery and to maintain plaintiffs' identities as confidential in the public record.

3. James W. McCarthy was assigned by the defendants to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971. During his time at St. William, defendants knew, or should have known, that James McCarthy was sexually abusive to children.

4. The Bishop of Charleston, a Corporation Sole, is the entity that governs the activities of the various entities comprising the Catholic Church throughout South Carolina. It is referred to in this complaint as the Diocese. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. The Diocese operated St. William Parish, a Catholic Church in Ward, S.C., and although the acts associated with the abuse of the plaintiffs took place in and around Ward, S.C., in Saluda County, the acts of negligence and recklessness by others with the Diocese, in exposing the plaintiffs to the risk presented by James McCarthy, occurred in Charleston County. As a result, venue is proper in either Charleston County or Saluda County.

5. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County, South Carolina. He is sued in his official capacity, and is a party necessary for complete relief. All persons working for the Diocese are subordinate to the Bishop.

6. Prior to Bishop Guglielmone, from October 2007, to March 2009, the Diocese had no Bishop, and was administered under the Code of Canon Law by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina.

7. Prior to Administrator Laughlin, from July 1999 to August 2007, the Bishop was Robert J. Baker, presently a resident of, and citizen of, Alabama.

8. In this complaint, the Diocese, the Bishop defendants, and the Administrator are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

9. The Court has jurisdiction over the parties to this action.

10. The Court has jurisdiction over the subject matter of this action.

11. Venue of this action is proper in Charleston County.

12. John Doe 2 and Jane Doe 4 were each similarly situated as other individuals ostensibly within the definition of a class certified by a South Carolina court as part of a class action. However, by agreement among the defendants, the plaintiffs received no notice of the class action, thus had no opportunity to be heard or participate in the litigation, either in person or through counsel. By agreement among defendants, notice given in the class action was designed to be insufficient as to the plaintiffs, so as to permit the Diocese to later argue that the class action precluded any and all claims for abuse, by preventing the plaintiffs from either participating in the class action or being able to remove themselves from the class action by opting out. In being within the putative definition of the class as the defendants agreed to define the class, the plaintiffs, along with other members of that class who resided outside of South Carolina, ostensibly were formerly represented by, until in 2007 they was abandoned by, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC. Alternatively, and at minimum, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC assumed duties as to the plaintiffs by defining the class so as to ostensibly

include them. The defendants conspired against the plaintiffs to cause them special harm in the form of the effort to preclude them from making claims. The representation they were given in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

13. This action is not alleged as a class action. It involves as plaintiffs two persons who were, until they were each abandoned by their counsel, the Richter defendants, putative members of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court. But for the Richter defendants having breached their duties to plaintiffs by abandoning the plaintiffs, in agreement with and full complicity with the other defendants, the class action would ostensibly have included the plaintiffs. A number of other individuals have made similar allegations of having been excluded by design from the class action, and this complaint may be amended to state a class action.

14. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

15. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

16. Richter & Haller, LLC did business in Charleston County, South Carolina at all times pertinent to this complaint, and had its principal place of business in Charleston County.

17. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to as the "Richter defendants," as noted above in paragraph 13.

Nature of Wrongdoing

18. This complaint sets out various causes of action built around four different levels of disregard for others and corruption. First, the disregard by the Diocese defendants in operating a system which actively disregarded the risks to children and families for sexual assault of children by their priests and other employees, and which then actively, and fraudulently, concealed the abuse that happened and the dangers to children it solicited into danger. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy for the Catholic Church a layer of what was hoped would be protection from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese. Third, the corruption of particular lawyers who assumed a duty to act for sexual abuse victims, including the plaintiffs, but who then acted in a professionally negligent way, willfully and wantonly abandoning their clients so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese in exchange for their cooperation in trying to protect the Church from future cases, and from claims by these plaintiffs and other sexual abuse victims. The danger to the Diocese of future cases was that future cases might be brought by lawyers actually adverse to the Diocese, as opposed to the lawyers who entered into the collusive class agreement with them. Fourth, overt misrepresentations of fact by the Diocese defendants to the court, which approved the class action settlement.

19. So confident were the corrupt lawyers in their ability to manipulate the state court judge they had selected and maneuvered the cases before, and so confident were the corrupt lawyers in gaining the cooperation of the Diocese defendants and their supposed

adversary lawyers, that the corrupt lawyers, the Richter defendants, calculated they could submit even blatantly false and inflated time records to justify their large fee, and that no objection to them would be raised by the Diocese defendants. In exchange for their cooperation, the Diocese (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention any of the false time records submitted by the Richter defendants, (c) agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee, (d) agreed to make no objection to an unethical fixed fee for class counsel while, simultaneously, compensation to the class of victims was variable, (e) agreed to make no objection to the fee being awarded before to any class member claimant was identified, and before any class member claimant was paid, and (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law. In turn, the Diocese defendants overtly misrepresented to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement, and once the court relied on that representation the Diocese defendants ignored that they made the representation.

20. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the plaintiffs are regarded as being bound by the *res judicata* effect of the class action to which the Diocese was party. As alleged more fully below, plaintiffs ostensibly fall within a class defined in that action, but the notice given to the classes, by design, was changed by all defendants so as to exclude notice to the plaintiffs. As a practical matter, notice was revised so it would go only to a subset of the approved classes; those class members living in and immediately adjacent to South Carolina. The

change to the extent of the proposed notice was noted to the state court but ignored when notice was approved. All defendants cooperated together to better protect the Diocese by asking for only notice that would be insufficient to notify all members of the class.

21. The state court which approved the class may have provided for absent members of the class, but the Diocese contends the order does not mean what it says, and now argues it has no duty to absent members of the class that received no notice of the class settlement, to perpetuate the fraud the Diocese defendants intended to achieve through the class action and by cooperating with the Richter defendants.

22. Plaintiffs are absent members of a class who, by design among defendants, received no notice of the class action. As such, plaintiffs should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of their interests, because their representation by the Richter defendants was inadequate and fell below the applicable standard of care, and because the state court order appears to contemplate the insufficient notice by holding that the plaintiffs is not properly bound by any *res judicata* effect, as set forth more fully below.

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 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.

24. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No change is sought as to the class action. An interpretation is sought as to the preclusive effect of the class action as applied to the plaintiffs.

For a First Cause of Action:
Negligence and Gross Negligence by Diocese Defendants

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

26. The defendant Diocese employed James McCarthy as a priest.

27. In his capacity as priest, James McCarthy was placed by the Diocese defendants in a position of trust and confidence, and had access to the plaintiffs and other children. In that capacity, James McCarthy sexually molested the plaintiffs and other children.

28. Prior to plaintiffs being molested, the Diocese defendants became aware that James McCarthy was dangerous to children. The Diocese defendants moved James McCarthy from place to place within the Diocese, and thereby facilitated his access to young people whom he could molest.

29. Alternatively, the Diocese defendants operated various schools, activities, and churches that were intended to attract children and families. The Diocese defendants encouraged people, including plaintiffs, to use their facilities, and to attend the various activities and functions offered on its premises. In making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably

foreseeable dangers, by representing nothing to the contrary to the public. The Diocese defendants particularly owed a duty to the plaintiffs, who were minors, and their parents, a greater degree of care because as children the plaintiffs were unable to fully appreciate risks and danger. The Diocese defendants represented to its invitees and their parents or guardians, including the plaintiffs, that its facilities and its priests were safe, and that persons would be would be protected form harm when using its facilities and when interacting with its personnel.

30. After he was moved to Ward, S.C., James McCarthy molested the plaintiffs.

31. The Diocese defendants negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy. Moving him without proper warning to children and their parents was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, plaintiffs were sexually abused by James McCarthy.

32. The Diocese defendants were negligent in failing to warn the plaintiffs or their parents about James McCarthy. The Bishop performed that duty in a grossly negligent manner.

33. The Diocese defendants knew or should have known that James McCarthy was a pedophile. Despite that knowledge, the Diocese defendants, including Bishop Guglielmone, Bishop Baker, and Rev. Monsignor Laughlin, made no effort, or no competent effort, to ascertain how many children James McCarthy had molested, and no effort, or no competent effort, to locate victims of James McCarthy. If the Diocese did make such an effort, it assumed the duty but performed it negligently. Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

34. The Dioceses defendants' failure to do so was negligent, and grossly negligent on behalf of the presiding Bishop from the time of the plaintiffs' abuse to the present, including the gross negligence by Bishop Guglielmone, Bishop Baker, Rev. Monsignor Laughlin, and the Bishops who preceded them.

35. As a result of the negligence and gross negligence by the Diocese defendants in failing to either prevent abuse or identify abuse victims by its agent or employee James McCarthy, the problems for the plaintiffs were first caused, and then exacerbated by the delay.

36. As set forth more fully below, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants. The most recent act of fraudulent concealment by the Diocese defendants was in 2009. This action is brought within three years of that most recent act of concealment and fraudulent conduct by the Diocese defendants.

37. The plaintiffs are entitled to actual and punitive damages as a result of the negligence of the Diocese defendants, and gross negligence of Bishops Guglielmone and Baker, and Administrator Rev. Monsignor Laughlin, in failing to perform a proper review for McCarthy's victims, or in performing that duty in a negligent manner.

For a Second Cause of Action:
Fraudulent Concealment by Diocese Defendants

38. Allegations above are incorporated into this cause of action as if fully set forth.

39. The Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children.

40. The Diocese defendants had a duty to discover and to disclose to plaintiffs or their parents their knowledge that James McCarthy had a sexual interest in children. That duty arises from (a) the preexisting fiduciary relationship between the plaintiffs and the Diocese defendants, which relationship the Diocese solicited; (b) from the parents of the plaintiffs having expressly reposed a trust and confidence in the Diocese defendants so as to entrust the plaintiffs to James McCarthy, which placed the plaintiffs in a vulnerable position with James McCarthy. That position of trust and confidence was implicit from those circumstances of plaintiffs being entrusted to James McCarthy, as well as from the nature of the dealings between the plaintiffs, their parents, and the Diocese defendants, who promoted that the plaintiffs' parents should leave the plaintiffs in the care and custody of James McCarthy, (c) from the essential nature of the Diocese defendants and their inducement to the plaintiffs' parent to have the plaintiffs participate in activities with James McCarthy as being beneficial to the plaintiffs, or at least not harmful to them, (d) from the secrecy provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese to discover, but then to maintain secrecy about, "other persons solicited" by any person such as James McCarthy, who commits the "unspeakable crime" of sexually abusing a child, and (e) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the Diocese defendants designation, grossly negligently), during 2005 - 2010, to locate victims such as the plaintiffs.

41. The plaintiffs were sexually abused by James McCarthy after 1962.

42. Concerning each of (a) the undisclosed dangers James McCarthy represented to the plaintiffs, and (b) assisting to repair the damage done to the plaintiffs by James McCarthy, the Diocese defendants were obligated to the plaintiffs to engage with them or their parents on their behalf in perfect good faith and with full disclosure.

43. Instead of disclosure, the Diocese defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including James McCarthy. In its own operations, the Diocese required secrecy and concealment, and it has enlisted its agents and employees to further conceal its knowledge of abuse so as to limit its exposure for the Diocese defendants being held responsible for sexual abuse of children.

44. Specifically, the Diocese defendants created, as embodied in the Code of Canon law, which required it, an archive (Canon 486), accessible only by the Bishop and chancellor (Canon 487). Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia (Canon 488). Canon 489 requires that a Secret Archive also be created. In it "documents are to be kept secret" and "protected most securely." Canon 489, Section 2 states: "Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained." Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490). The bishop is authorized to include in the secret archive any matter which can be regarded as scandalous.

45. Matters related to agents and employees of the Diocese sexually abusing children, including James McCarthy's sexual abuse of children including plaintiffs when they were children, were regarded as scandalous, and were maintained in the Secret Archive.

46. In 1962 the Diocese defendants expanded on the secrecy required concerning sexual abuse, publishing an "Instruction" which was to be stored in the Secret Archive. Instruction, page 1. In the instruction, matters involving priests who "solicit or provoke" (p. 1 ¶ 1) a penitent "toward impure and obscene matters" (p. 1 ¶ 1), "which is also silence" (¶ 11) and deemed "a secret of the Holy Office" (p. 3 ¶ 11), "under the penalty of excommunication" (p. 3 ¶ 11). The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." (p. 4 ¶ 12. See also, p. 5 ¶ 23 and p. 6 ¶ 28).

47. Plaintiffs each fit within the "penitent" referred to in the Instruction.

48. The 1962 Instruction states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." P. 15, ¶ 71. It is also defined as "any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex." P. 16, ¶ 73.

49. James McCarthy was, and John Doe 2 is, male. Jane Doe 4 is female. Thus, the conduct by James McCarthy to the plaintiff John Doe 2 qualifies under the 1962 Instruction as "the worst crime."

50. Among other things, the 1962 Instruction directs the Diocese defendants to assume the duty of locating "other persons solicited by the same confessor" (p. 7 ¶ 29), in this instance, other persons solicited by James McCarthy. The Instruction at p. 9 ¶ 37 also refers to an "Instruction of the Holy Office, February 20, 1867," in directing the

manner of interrogation for persons with information about solicitations or those solicited.

51. The Diocese defendants assumed the duty to locate victims ascribed to it by the 1962 Instruction, but performed that duty in a grossly negligent manner. The Diocese defendants failed to locate either plaintiff, failed to locate many other abuse victims, and made no competent inquiry to locate them. The Diocese defendants purposefully avoided making the type of inquiry that would have elicited discovery of the plaintiffs.

52. The 1962 Instruction was approved by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 Instruction.

53. In the Appendix to the 1962 Instruction are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the plaintiffs. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff," according to page 17 of the 1962 Instruction.

54. "Whatever type of pretext" overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the 1962 Instruction for complying with civil authority.

55. Unless the Pope himself has specifically approved otherwise, secrecy was, until this complaint, to have been maintained not only by the plaintiffs, but also by every member of the Diocese defendants, and by even witnesses to sexual abuse. That secrecy is to be made despite any law, court order, or oath to which would otherwise require

disclosure. Under the 1962 Instruction, the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese defendants can all be expected to be obedient to the 1962 Instruction, to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese defendants have, to date, done so.

56. The call for secrecy in the 1962 Instruction and in the Code of Canon law constitutes spoliation of evidence, as well as fraudulent concealment.

57. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the defendants as to James McCarthy's sexual abuse of the plaintiffs. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of the plaintiffs, or to ascertain that the plaintiffs were victims of the abuse by James McCarthy.

58. As courts began to require the Diocese, despite its commitment to secrecy and deception, to be accountable for sexual abuse, the Diocese had to reach a new level of deception and manipulation to limit the damage to the Diocese from its having to take responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its history of abuse and concealment. The Diocese engaged with other defendants to conspire to do so, as set forth below. The acts of conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages

from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse. The conspiracy cause of action concerns deliberate exclusion from the class, so hinges on the proper interpretation of the orders in the class action, and whether the actions of the Richter defendants constituted merely greed, fraud, and self-interest, as opposed to professional negligence, in excluding from the class action, by design, the plaintiffs and many others who were within the class definition. If there was professional negligence, then the acts of professional negligence predominate, and the damages from the exclusion are properly paid by the Richter defendants. If the actions do not rise to professional negligence, and the Richter defendants and Diocese defendants were merely corrupt, then the damages for the exclusion are properly shared among all defendants for their conspiratorial actions in excluding the plaintiffs by design. And if the plaintiffs are not precluded from their claims against the Diocese by the *res judicata* effect of the class action, and the Richter defendants were merely corrupt, then the plaintiffs require no relief for either professional negligence or conspiracy.

59. This cause of action presumes that the plaintiffs are not precluded in making this claim by any prior litigation brought against the Diocese, for lack of due process in those proceedings, lack of competent representation sufficient to bind these plaintiffs, the collusive nature of the class settlement, or because the terms of the class action order do not apply to them.

60. The plaintiffs are entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and

thus failing to perform a proper review for McCarthy's victims, including the plaintiffs, or in performing that duty in a negligent manner.

For a Third Cause of Action:
Civil Conspiracy by All Defendants

61. Allegations above, other than ¶ 57, are incorporated as if fully stated. This cause of action presumes the class action order is interpreted to bind the plaintiffs to its *res judicata* effect, despite insufficient due process and for which (by design) they got no notice, so presumes the plaintiffs are properly precluded from bringing claims against the Diocese related to sexual abuse, and presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

62. Defendants have conspired with others to injure the plaintiffs, and those actions have caused special damage to the plaintiffs.

63. The defendants have acted in numerous ways, which reflect the joint assent with minds of other persons to injure the plaintiffs, and have taken overt acts to pursue the common design to injure the plaintiffs.

64. Some actions that have been taken have been legal; other actions were legal but violated professional standards in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the plaintiffs by making sure they and all other out of state putative class members could not participate in the state court class action and could be prevented from bringing their own action. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the plaintiffs' one-time lawyers, the Richter defendants, agreed to act against the plaintiffs'

interests, and to collaborate instead to act against the plaintiffs' interest and in the interest of the Diocese.

65. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, plaintiffs' one-time lawyers, the Richer defendants, agreed to abandon the plaintiffs, quietly dropping their request to give nationwide notice to class members such as them, even though they had defined class action classes so as to ostensibly include them and had proposed nationwide notice. The notice designed not to reach the class as defined, and designed to exclude the plaintiffs, breached a duty to the plaintiffs assumed by the Richter defendants, either from an attorney-client relationship or a fiduciary duty assumed when bringing the class action and defining it as they chose to do.

66. The Richter defendants elected to abandon their out of state putative class member clients, and dropped their request for nationwide notice to their out of state class members, so as to prevent the plaintiffs, and others similarly situated, from finding out about the class action and from making claims against the class fund. In the class allegations, joinder was said to be impracticable because the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36 and in the identical John Doe #53 Complaint redundantly filed in 06-CP-18-1636.

67. If "too many" of those hundreds of victims participated in the class action, the Richter defendants would jeopardize the large fee the Diocese had agreed to enable them to get, and the Diocese might not get the ostensible protection from future suits it was colluding to try to obtain at the lowest possible cost.

68. For the Richter defendants, both their fee, and the interests of the Diocese, were more important than the interests of their absent putative class member clients.

69. In exchange for the Richter defendants abandoning the plaintiffs and all of their other putative class member clients living outside of South Carolina, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which used to support the fee request by the Richter defendants, (e) agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to counsel before any class member's claim was known or the class was even identified, (g) acquiesced in the unethical conduct of abandoning all out of state class members by agreeing to give them no notice of the class resolution, and (h) agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the class action, to a state court judge known to have extensive social and professional ties to the Richter defendants, in the aspiration that a more pliable oversight would be received for the class settlement.

70. The Diocese defendants undertook a duty to the plaintiffs to identify abuse victims such as plaintiffs and negotiated, in June, 2006, a class resolution to what was

referred to as "spousal &/or parent claims deriving from victims abused," in the Charleston Mediated Settlement agreement at ¶ 1. At that time no class of "spousal &/or parent claims" had been certified or even alleged. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County. In disobeying SCRCP 23 in Charleston County, and in judge-shopping in Dorchester County, the defendants violated judicial norms and rules. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which duplicated an existing Charleston County complaint alleging a class, resulting in the identical case pending simultaneously in circuit court in both Charleston County and Dorchester County. That was done as the means of judge shopping. The Diocese defendants also agreed to remain silent so as to enable the Richter defendants to submit false information to the court.

Details of the Conspiracy

71. In 2003, the Richter defendants were associated by one or more lawyers to assist in representing a victim of sexual abuse in a claim to be asserted against, *inter alia*, The Diocese of Charleston.

72. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the remainder of 2003 and all of 2004.

73. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The*

Bishop of Charleston, et al., 05-CP-10-2053. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

74. That John Doe 66 complaint made no class action allegations.

75. In August 2005, the Richter defendants filed another individual action in the Charleston County Court of Common Pleas, styled *John Doe #66A v. The Bishop of Charleston, et al., 05-CP-10-3293.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

76. The John Doe 66A complaint made no class action allegations.

77. In October 2005, the Richter defendants met personally with then Bishop Baker.

78. As a result of that meeting, in December, 2005, the Richter defendants filed a class action complaint in the Charleston County Court of Common Pleas, styled *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

79. In February 2009 the Diocese defendants published to the public through their press spokesman the lie that the Charleston County John Doe 53 complaint was one of three individual cases filed in Charleston, as opposed to it being a complaint which alleged a class action. The representation that it was an individual suit was a lie in furtherance of the routine and consistent practice by the Diocese defendants to engage in fraudulent concealment of sexual abuse matters, and to further the agreement among defendants to cause harm to the plaintiffs.

80. Rule 23(d)(1) SCRCP requires "as soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained."

81. From December 2005 until June 2006, the Richter defendants made no effort to seek class certification for the class they had alleged in the December class action complaint in Charleston County, nor did any other defendants. In that time the public records show there were no motion hearings held, in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, and sent out hearing notices, the parties collaborated to ask that the motions be continued rather than heard.

82. In June 2006, the defendants met in a mediation conference. At that time, no class action had been certified, and no class was alleged for spouses or parents of sexual abuse victims.

83. At that conference, which took place over two days, the parties purported to settle all claims of all class members in two classes, as the classes were defined by the 2006 agreement of the parties.

84. Ostensibly included in the classes as defined in the mediation were each of the plaintiffs. By defining the classes so as to ostensibly include each of the plaintiffs, and by purporting to settle their claims, the Richter defendants assumed professional obligations to them, including fiduciary duties towards them, and created a constructive attorney-client relationship, if not an actual attorney-client relationship with each plaintiff.

85. The agreement reached in that mediation is attached to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the plaintiffs.

86. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 mediation of the Charleston cases.

87. The typewritten document was approved by The Vatican in January 2007.

88. The settlement of the agreement was funded by approval of The Vatican.

89. As reflected in the attached handwritten agreement, the defendants agreed that the individual plaintiffs and the purported class representative would split $460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese would pay only $460,000.

90. Claims of absent class members were proposed to be resolved on terms materially different than the terms which the purported class representative or representatives received. Instead of a cash payment the same, or similar to, what the purported class representatives were to receive, absent class members were to be required to submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive. Class members had to relinquish all rights for review to qualify for the arbitration.

91. As alleged below, not fewer than seven devices were chosen by overt agreement of the defendants to further the conspiracy against plaintiffs, and other absent putative members of the classes, from being included in any recovery for the class, and to limit the

class recovery from being "too much." If the classes included "too many" claimants, the Diocese would be entitled to withdraw from the agreement. The Diocese defendants wanted the class settlement approved so they could later argue, as they in fact have argued, that no other sexual abuse claims which arose prior to the class approval could be made against the Diocese. The Diocese defendants knew that the class settlement had been negotiated with an "adverse" attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese. The Richter defendants wanted to assure themselves of a large fee without jeopardizing that fee by getting too great a recovery for abuse victims against defendant Richter's own Diocese. So all defendants conspired to create methods to be able to limit the number of class members who could make claims and to limit the amount class members would recover. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge Shopping to Pick the Judge

92. The first technique used by the defendants to limit the class recovery was for the defendants to agree to maneuver a Charleston class action settlement to be presided over not by any judge in Charleston County, where the putative class case was filed and the class case settlement was reached, but to "shop" for a judge they selected to make those determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to overlook court rules and accept fraudulent filings was desired.

93. Instead of complying with SCRCP 23, and submitting the attached 2006 Charleston class action settlement for approval to a judge in Charleston County, the defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese defendants accept service of, newly filed class action cases in Dorchester County, filed August 15, 2006 (06-CP-18-1310 and 06-CP-18-1311), and then the Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193*, was redundantly re-filed in Dorchester County on October 6, 2006, with the same caption (other than the changed county name and case number 06-CP-18-1636), and with the identical allegations. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending and already settled Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to shop for the desired judge.

94. This procedural maneuver agreed to among the defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose.

95. Filing duplicative class actions to have the same case pending simultaneously in two different venues is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court and to the plaintiffs, ostensibly included in each of those duplicative complaints.

96. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending.

97. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement of the defendants, simultaneously pending in two separate counties.

98. Dorchester County was chosen by agreement of the defendants so as to "judge shop" for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, and fairness hearings. The judge was expected to tolerate fraudulent filings by the defendants, an expectation that was rewarded when fraudulent filings were made, by agreement of the defendants, and the court took no action concerning those fraudulent filings.

99. The defendants agreed with this strategy of seeking a pliable state court judge, and consented to the "judge shopping" so as to avoid having to submit the class allegations, and proposed class action settlement, for approval by any judge in Charleston County. The defendants feared completely objective judicial oversight by any of the judges in Charleston County.

100. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the judge they shopped for designate the cases as complex and assign them to that same judge. That designation was improper under the rules at the time, as set forth in more detail below.

101. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the class settlement, as would have been the case if the same request had been made in Charleston. But any Charleston judge would likely exert independent oversight of the class resolution, and defendants sought to avoid independent oversight.

102. Other than to shop for a particular judge, there was no legitimate reason to redundantly file case 2005-CP-10-4913 as case 2006-CP-18-1636.

103. As soon as the handpicked judge assigned the Dorchester actions to herself, the defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

104. No motion was filed in Charleston to approve the class settlement reached in the Charleston cases. All defendants consented to not filing such a motion.

105. SCRCP 23 was not complied with as to the class settlement reached in the Charleston class action. All defendants consented to not complying with SCRCP 23 in Charleston County, and all defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge.

106. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

Conspiracy Technique Two: Using Complex Case designation Improperly.

107. In October 2006, the defendants sought complex case designation of the Dorchester County class action cases.

108. At that time, the Charleston cases were still pending.

109. The July 26, 2006 order of the South Carolina Supreme Court enabling complex case designation approved a particular form for use with complex case motions. Among other things, that motion required counsel to represent certain facts applied to the action for which complex case status was sought. The form states:

> We certify that we have made a good faith effort to settle this case and ***thus far have been unable to do so***. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.

110. At that time, the Charleston cases were still pending, and a class settlement had been reached which, if approved, would resolve all cases.

111. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

112. Defendants falsely represented to the shopped-for judge that no settlement had been reached. Alternatively, defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

113. Complex case status was approved, despite a settlement having been reached before the first Dorchester County case had been filed.

Conspiracy Technique Three: Agreeing to an unethical attorney's fee for class counsel.

114. The 2006 class action settlement reached in the Charleston class action cases included simultaneous negotiation of a common fund, and variable, recovery for the class and a fixed fee amount for class counsel, with the fee to class counsel be paid prior to the claims period.

115. As set forth in the affidavit of Michael Virzi, attached to this complaint and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to

simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese defendants to agree to it. Plaintiffs at no time consented to the Richter defendants negotiating such a settlement.

116. At page 13, paragraph 6B, in the typed version of the Charleston class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

117. Representation of the plaintiffs by the Richter defendants in proposing an unethical fee was inadequate. Alternatively, that representation breached a fiduciary duty to the plaintiffs.

118. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits of what the Diocese defendants and the Vatican were willing to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid before any class member could make a claim, and paid before any class member could be or would be paid.

119. The Richter defendants sacrificed the interests of absent putative class members, such as plaintiffs, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to it as the price of obtaining the cooperation of the Richter defendants in structuring a class resolution that provided only a fraction of the relief the Richter defendants would accept in a case against a Diocese other than Richter's own Diocese.

Conspiracy Technique Four: Disclosing to the Class neither the Settlement terms for the Class Representatives nor the Settlement for Persons who Opted Out of the Class

120. The fourth technique to conspire against the plaintiffs was to make no disclosure to them, or other class members, of either the superior settlement terms agreed to by the defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who opted out of the class settlement.

121. The defendants have all taken the position that the agreement with those persons who opted out of the class action was part of the class action. As part of the class action, the defendants should have informed class members of those terms as an option to the class recovery.

122. Neither the class representatives nor the opt-out abuse victims had to submit their claims to binding arbitration. Their claims were given specific dollar amounts. Each knew precisely what their recovery would be before consenting to resolve their claim.

123. In addition, the terms for the opt-out abuse victims exceeded the low bar the Richter defendants agreed to set for class member recoveries, and the opt-out victims received more than was received by any comparable abuse victim who stayed in the class settlement. In addition to the fee approved by the Court, the Richter defendants charged class members an additional fee to go through the arbitration. The court approved fixed fee was not disclosed to class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing,

124. No notice was given to any class member, including the plaintiffs, about the terms of the opt-out settlements. Had the plaintiffs been given notice of the terms negotiated by the opt-out abuse victims or the class representatives, they might have exercised a choice to receive one or the other recovery. The plaintiffs were abandoned by their attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed to the plaintiffs, by defendants agreeing to define the class so as to ostensibly include the plaintiffs, were breached by all defendants in this action when they agreed to notice designed not to reach the plaintiffs. As alleged below, the abandonment by the plaintiffs was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the plaintiffs. In the alternative, it was a breach of the fiduciary duty assumed by the Richter defendants towards the plaintiffs. That duty was implicitly assumed by other defendants as well, in ostensibly defining the classes as they were defined by agreement of all defendants, when notice was designed not to reach those within the definition.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create A Means of Limiting Total Recovery for Compensating Victims

125. In the "General Terms of Settlement" agreed to in the 2006 mediation of the Charleston class action case on June 14, 2006, there are seven essential terms of the settlement agreement.

126. The first general term is that there will be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

127. The second general term was to provide a means of having a $12 million settlement fund.

128. The third general term was "Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims."

129. The fourth term was that the court would be asked to approve a fixed fee for class counsel "between $950,000 & $2.5 million."

130. The fifth general term was to establish that four individuals would allocate among themselves $460,000.

131. The sixth general term was that the four individuals would be paid whether or not the court approved a class settlement.

132. The seventh general term was that the seven terms are an offer from the Diocese and "shall be acted upon with reasonable promptness" by the four individuals who would allocate $460,000 among them.

133. The four individual accepted the offer, and allocated among themselves $460,000. None of those individuals received more than $160,000. It is not yet known what portion was allocated to legal fee for class counsel.

134. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class.

135. On information and belief, those four individuals accepted that offer shortly after the June 14, 2006 mediation. At least one of them had accepted it by June 16, 2006.

136. The two classes certified in an order signed January 19, 2007, excluded persons who have "previously had any similar claim adjudicated, resolved, or released."

137. After June, 2006, those individuals who represented the class, whose claims had been "resolved," did not qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nevertheless, they were falsely designated as class representatives in subsequent Dorchester County case, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition of the class.

138. In addition to not meeting the class definition, the class representatives received a different settlement than did class members, and excluded themselves from the arbitration process later articulated for the class members. In doing so they were guided by the Richter defendants.

139. In the June 14, 2006 settlement, when the parties reserved details for later specificity ("Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims,") those details were reserved so the defendants could work backwards from the settlement fund, minus class counsel's fixed fee, to enable adjustments to be made to the notice given to the class, and to the methods of relief given to the class members so the recovery to victims would not be "too much." The fee for the Richter defendants could not be jeopardized by having "too many" sexual abuse victims served by the class settlement.

140. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the plaintiffs, was to preserve class counsel's fixed fee. That is why the fee is fixed, and why it takes priority over the recoveries of the clients in

the class. The highest priority of other defendants, after their willingness to pay class counsel's fixed fee, was to either exclude persons such as plaintiffs, or to limit recovery to persons such as plaintiffs, so that within the modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims against another Diocese, the Diocese could argue a *res judicata* benefit from the class settlement without having to pay meaningful relief class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, and for notice to be designed to not inform all persons within the class definitions of the settlement itself.

141. The Diocese defendants knew or should have known that the history of systematic deceit and deception about sexual abuse required by the Vatican and Code of Canon Law, and which the Diocese defendants had in fact implemented, specifically mandated by the Vatican since at least 1962, exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

142. The Diocese defendants knew that juries had placed a high value on the intangible nature of sexual abuse claims.

143. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to a class settlement, hoping it would exclude enough victims so as to produce a desired *res judicata* effect at a fraction of the cost of a proper settlement with all victims. The Diocese defendants realized the close ties of the Richter defendants to the Diocese, and their willingness to sacrifice the interests of their clients for a fee, enabled the Diocese to try to minimize recoveries to the class members yet still get a class approved.

144. All defendants needed to avoid meaningful court oversight of the class action to limit the interests of absent members of the class, so all defendants agreed to "judge shop" to avoid oversight by any Charleston judge, and to obtain a lax oversight by the judge they desired to have.

145. When the defendants realized that "too many" victims, such as plaintiffs, might come forward in the class action, they changed, by agreement, what they would propose to the shopped-for judge for the notice to give the class, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

146. Failing to give notice outside South Carolina, other than immediately adjacent to South Carolina, was one means of eliminating claimants such as plaintiffs. No defendants objected to limit the notice to South Carolina.

147. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the plaintiffs. All defendants were negligent in permitting victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members.

148. Paying class counsel his fixed fee before any notice to the class, before any class claimant had been identified, and before any claims had been submitted, was another way of limiting the recovery to the class.

149. By design of all defendants, the class had no opportunity or input or comment on the proposed fixed fee, to be paid ahead of all class claims, as it was approved without notice to the class and before the class members were known.

150. No defendants disclosed that the Diocese had agreed to overlook the fraudulent information submitted to the shopped-for judge to support the fee claimed, and had agreed to make no mention of those various fraudulent time entries. Nor had the defendants disclosed that they had agreed they would request no post-award fairness hearing.

151. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the psychological injury caused, was another way to limit the recovery to the class.

152. The defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as plaintiffs, then set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, all as means calculated to harm the plaintiffs by excluding them from the class recovery and to try to preclude them from any later claim, and to limit recoveries to class members so as to not exceed the amount the Diocese was willing to pay.

153. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter defendants were paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese to abandon clients such as the plaintiffs, and to limit recoveries to other clients, in the interest of the Diocese defendants.

154. The Richter defendants abandoned absent class members such as plaintiffs, who reside outside of South Carolina, and gave no meaningful notice to those class members that their rights had been adversely impacted when they changed their position on notice

to the class from nationwide notice to a notice limited to publications in and around South Carolina. All other defendants cooperated with that abandonment. Unless the order approving the class settlement means what it says when the court appeared to have accommodated the limited notice by ruling, at page four, "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," and the plaintiffs are not precluded from their claims, the notice and arbitration structure caused damage to the plaintiffs. Unless the plaintiffs are not bound by the *res judicata* effect of the class action, they have been specially harmed by the conspiracy engaged in by the defendants.

Conspiracy Technique Six: Providing False Information to the Court

155. The sixth technique used to cause special harm to the plaintiffs was defendants cooperated in filing with the court false information. When false information was filed by one defendant, all other defendants acquiesced, despite knowing it was false. Even after the information was identified as false, no action was taken to protect the plaintiffs, unless the order means that persons who received no notice are not barred by *res judicata.*

156. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as 2005-CP-10-4913. The case was collusive, and was filed in Dorchester County only to avoid oversight by any Charleston judge and pursuant to the defendants' agreed upon plan to shop for a particular judge.

157. As noted above, the claim that class representatives in Dorchester County met the definition of the class and could serve as adequate representatives were each false,

and known by the defendants to be false when made in any of the Dorchester County class complaints.

158. Patently false information about the procedural history of the class action was included in the Motion to Certify Classes and for Preliminary Approval of Class Settlement filed by the Richter defendants, and acquiesced in by other defendants.

159. Patently false information has also been given to the Charleston County Court and to the public by the Diocese defendants.

160. All defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston class action.

161. By agreement of all defendants, SCRCP 23 was not complied with in dismissing the Charleston class action. Plaintiffs were given no notice of the dismissal, or about the Charleston class settlement, or about the settlement provided those who opted out of the class settlement. Nor was notice given to any other ostensible class member.

162. False information was filed in Dorchester County about the class representatives and their adequacy as class representatives. All defendants acquiesced in that false information to the court.

163. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese defendants made no mention of the false information filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese defendants getting the benefit they have claimed entitles the Diocese defendants

to *res judicata* protection of the class settlement, and was the means by which the defendants conspired to try to eliminating claims by persons such as the plaintiffs.

164. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among defendants, false time records by the Richter defendants (including individual lawyers billing in a single day compilations of 30, 40, 51.5, 60, 80, and even 92 hours; and billings for multiple "February 30" days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

165. The Diocese defendants agreed to remain silent as to these false statements, except where they overtly participated in them.

166. If the plaintiffs are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to them in the class action were breached by the defendants, and special harm has been caused to the plaintiffs by the acts of conspiracy of the defendants.

Conspiracy Technique Seven: Limiting Notice to only publications in and around South Carolina

167. The seventh technique used in the conspiracy among defendants to cause special harm to the plaintiffs was to agree to limit notice to only publications in and around South Carolina, resulting in notice to only those putative class members who reside in and immediately adjacent to South Carolina. The notice given was deficient in that it was designed not to provide notice to those within the definition of the class action. By agreement of all defendants, the notice was calculated to be ineffective to reach putative

absent class members. Unless the order approving the class settlement means what it says and plaintiffs are not bound by the res judicata effect of the class settlement, the defendants have conspired so as to cause special damage to the plaintiffs.

168. The Diocese defendants are well aware, from its own dealings with abuse victims that many victims reside out of South Carolina. All defendants were conscious in choosing limited notice, that doing so served the interests of the Diocese at the expense of persons such as the plaintiffs.

169. By motion filed in Dorchester County in October 2006, the Richter defendants proposed giving nationwide notice of the class action through advertising about the settlement in a newspaper with national coverage.

170. In January 2007, the Richter defendants revised their request for notice to the Dorchester County court, and the Diocese defendants acquiesced in that revision, to limit notice to only publications in newspapers with circulation in or near South Carolina. The request to provide notice through a newspaper with national circulation was abandoned.

171. The Richter defendants abandoned the plaintiffs as putative members of the class in agreeing to notice calculated not to reach them. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the plaintiffs in defining the classes so as to ostensibly include them, then revising the notice so as to provide no notice to them and all other absent members of the class who resided outside of the area immediately adjacent to South Carolina.

172. The Diocese defendants conspired with the Richter defendants to submit for court approval notice to the class that was calculated to omit absent members of the class such as the plaintiffs, and all persons situated similarly to them. The agreement was to

bar the plaintiffs from being able to make claims by the *res judicata* effect of the ostensible class action without having to compensate them for sexual abuse.

173. No effort was made to protect absent members of the class, such as the plaintiffs, by providing notice beyond the immediate area around South Carolina. If the plaintiffs are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to them in the class action were breached by the defendants, and special harm has been caused to the plaintiffs by the acts of conspiracy of the defendants.

174. The Diocese defendants made no objection to lack of nationwide notice. They made no objection as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the plaintiffs from being able to make a claim, while retaining the argument that all absent class members were barred by *res judicata*. The reduced notice agreed upon by all defendants demonstrates that the representation of the class was inadequate, and that the defendants conspired specifically to defeat the interests of persons such as the plaintiffs, to cause them special harm by giving them not even a chance at notice of the class action.

175. The injury to the plaintiffs from the conspiracy engaged in by the defendants harmed the plaintiffs in a manner different from other causes of action. Plaintiffs were improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the plaintiffs being unable to influence the corrupt course of the class action, and its corrupt features by lack of participation. Plaintiffs were deprived of the opportunity to influence the class suit, and to try to assist themselves and other abuse victims from not being limited to the corrupted procedures and manipulations of the class

suit. Among other things, the plaintiffs were unable to participate to influence the miniscule recovery allocated for parent and spousal claims because they were not brought for the class using the common law "loss of services" cause of action. However, if the plaintiffs are not deemed precluded from stating their claims against the Diocese for any reasons, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the defendants to defeat their claims was ineffectual, and this cause of action will be dismissed.

176. As a proximate cause of the actions of the defendants as alleged above, the plaintiffs were damaged, and are entitled to actual and punitive damages from the defendants as a result.

For a Fourth Cause of Action:
Professional Negligence by the Richter Defendants

177. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiffs are precluded, by any reason, including the class action, charitable immunity, or the statute of limitations, from making claims against the Diocese.

178. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a copy of an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants. The original of this affidavit has been filed with a court in another, similar, case.

179. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, the proposed group whose claims were settled on June 14, 2006, in the

Charleston class action mediation was a class specified as "actual victims of Diocese abuse."

180. Plaintiffs were putative members of that class as it was defined in the proposed settlement.

181. When the June 14, 2006 Charleston class mediation agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese defendants, the illicit agreement by defendants on "judge shopping" had been accomplished, and the Charleston class settlement was now claimed to be a proposed settlement of both a Charleston class case and Dorchester County class actions.

182. On October 6, 2006, the Richter defendants filed proposed class definitions that included plaintiffs, and proposed a means of notice by publications with nationwide distribution to give notice to the class. That proposed notice might have given notice to the plaintiffs, enabling them to either participate or to opt out.

183. The Richter defendants assumed a duty to the plaintiffs in each of the filings in (a) the Charleston case which alleged a class action, (b) in that June 14, 2006 class settlement agreement of the Charleston case which alleged a class action, and (c) in its October 6, 2006 Dorchester County alleging a class action.

184. On January 18, 2007, the Richter defendants abandoned giving notice to the plaintiffs about the class settlement that purported to include them. Their proposal for notice was revised to include only publications in and immediately around South Carolina, even though the class was not defined with geographic limitations.

185. On January 19, 2007, the proposed class definitions that included the plaintiffs were approved without objection from the Diocese defendants.

186. In their Charleston and Dorchester County class action cases against the Diocese defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the plaintiffs. In abandoning the plaintiffs, the Richter defendants performed in a professionally negligent manner the duty they had assumed to absent putative class members such as the plaintiffs.

187. The Richter defendants engaged in negligent acts and omissions in their representation of the plaintiffs. Among other things, when they abandoned the plaintiffs, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the plaintiffs reasonably informed, failed to provide them with information with respect to obtaining their informed consent, failed to consult with them about the means for accomplishing their objectives, represented them without their consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal.

188. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the plaintiffs. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

189. Any court approval of the notice was deficient in terms of protecting the plaintiffs because the court overseeing the class action had been shopped for by the defendants, and had been given, by agreement of the defendants, fraudulent information on which to base decisions.

190. The Richter defendants abandoned their absent putative class member clients such as the plaintiffs by agreeing to change the proposed notice to notice calculated not to reach the plaintiffs, and calculated not to reach all putative class members situated similarly to the plaintiffs.

191. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court.

192. The plaintiffs were abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action and jeopardize the fixed fee the Richter defendants had negotiated for themselves at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

193. Having "too many" claimants also was believed to not be in the interest of the Diocese, and because of his conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese more than the interests of putative class members such as the plaintiffs.

194. As a result of their attorneys, the Richter defendants, abandoning the plaintiffs, no notice was given to them of the class action, and they had no opportunity to participate in either the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out. The acts and omissions of the Richter defendants have caused damage to the plaintiffs, assuming the plaintiffs are prevented from their claims against the Diocese for any reason.

195. Plaintiffs were each entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

For a Fifth Cause of Action:
Breach of Fiduciary Duty by the Richter Defendants

196. Allegations of paragraphs 1-17 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiffs are precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations.

197. The Richter defendants chose to propose defining the classes in the class actions so as to have no geographical limit on the classes.

198. All defendants agreed on how the classes were defined.

199. In choosing to define the classes so as to include the plaintiffs, the Richter defendants each assumed fiduciary obligations to each of the plaintiffs, who were absent putative members of the classes they defined.

200. As an alternative to the Fourth Cause of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to each plaintiff as an absent member of their respective putative class.

201. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the plaintiffs by requesting geographically limited notice of the class action and settlement, as opposed to the nationwide notice they initially proposed.

202. The state court judge overseeing the class action was shopped for by all defendants.

203. The state court judge was not asked to give notice to all class members, only a subset of class members that excluded the plaintiffs.

204. The Richter defendants originally proposed nationwide notice, but then abandoned the proposal. The lack of nationwide notice was observed in the record of the

class action, but even after that limitation was noted, the Richter defendants did not request it.

205. On October 6, 2006, the Richter defendants filed proposed class definitions that included the plaintiffs, and proposed a means of nationwide notice to the class that might have given notice to the plaintiffs.

206. The Richter defendants in its Charleston class action filing, and in the June 14, 2006 settlement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the plaintiffs.

207. On January 18, 2007, the Richter defendants abandoned giving to the plaintiffs notice about the class settlement that ostensibly included them.

208. On January 19, 2007, the class definitions that included the plaintiffs were approved without objection from the Diocese defendants.

209. No meaningful notice, at any point, was given to class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

210. The Richter defendants contend that mention of a class action or a class action settlement in a news media outlet is sufficient due process "notice" of a class action or class action settlement within the meaning of SCRCP 23. Mention of a class action or class action settlement in a news media outlet is not notice of a class action or class action settlement within the meaning of SCRCP 23.

211. The Richter defendants each breached their fiduciary duties to the plaintiffs so they would not participate in making a claim against the fund established for the class

action settlement. If notice had been given nationwide, as originally proposed, "too many" claimants might have come forward in the class action, which would have jeopardized the fixed fee the Richter defendants had negotiated for themselves at the expense of their clients.

212. The Richter defendants arranged to have their fixed fee paid before notice to the class and before the claims process.

213. The Richter defendants arranged to have their fixed fee paid before membership in the class was known.

214. The Richter defendants arranged to have their fixed fee paid before distribution to the class was known.

215. The Richter defendants arranged to have their fixed fee paid before class members had an opportunity to object to or comment on the fixed fee and its priority over class member recovery.

216. Having "too many" claimants also was believed by the Richter defendants to not be in the interest of the Diocese, and to protect their own interest in their fixed fee the Richter defendants had to also act to protect the interests of the Diocese more than the interests of the plaintiffs. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class. To promote the interests of the Diocese in trying to later argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the plaintiffs their own interest in their fixed fee, the Richter defendants agreed to change the proposed notice to the class from notice in

publications with nationwide distribution, and also agreed to accept for the class compensation that ranked among the lowest known victim compensation.

217. As a result of the Richter defendants abandoning the interests of the plaintiffs, and breaching the fiduciary duties owed to them, the plaintiffs had no opportunity to participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out, or to make a claim against the Diocese for sexual abuse. The acts and omissions of the Richter defendants have caused damage to the plaintiffs.

218. Plaintiffs are each entitled to actual and punitive damages as a result of the fiduciary duties to them that were breached by the Richter defendants.

For a Sixth Cause of Action:
Judicial Estoppel and Unfair and Deceptive Trade Practices by the Diocese Defendants

219. Allegations of paragraphs 1-17 above are incorporated into this cause of action as if fully stated.

220. The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

221. The Diocese defendants operate an organization engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Diocese defendants advertise and offer for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. They operate churches and schools, and activities, which cater to families.

222. The Diocese defendants encouraged people, including plaintiffs, to use their facilities, and to attend the various activities and functions offered on its premises. In

making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers. The Diocese defendants particularly owed a duty to the plaintiffs, who were minors, and their parents, a greater degree of care because as children the plaintiffs were unable to fully appreciate risks and danger. The Diocese defendants represented to its invitees and their parents or guardians, including the plaintiffs, that its facilities and its priests were safe, and that persons would be would be protected form harm when using its facilities and when interacting with its personnel.

223. For years the Diocese defendants have been aware that certain in its operations, certain of its employees have sexually abused minors.

224. As part of a business decision to address that history of sexual abuse, in 2006 the Diocese elected to adopt a class settlement to address its known history of priests and other employees sexually abusing minors.

225. The Diocese promoted that decision as a responsible action by the Diocese defendants.

226. Part of that settlement was to advertise the offer by the Diocese to distribute both services (in the form of counseling) and property (in the form of compensation) to sexual abuse victims.

227. Advertising was done by the Diocese in, among other publications, newspapers of general circulation in Charleston (*Post and Courier)*, Myrtle Beach (*Sun)*, Columbia (*The State)*, Augusta (*Chronicle*), Rock Hill (*Herald*), Beaufort (*Gazette*), Greenville (*News*), Spartanburg (*Herald*), Orangeburg (*Times-Democrat*), Florence (*Morning News*),

and Aiken (*Standard*). Living outside of South Carolina, plaintiffs saw none of those notices, as was designed by the defendants.

228. In that advertising, tangible property was proposed to be exchanged by the Diocese, and services provided in part for the intangible injury created by acts of sexual abuse.

229. The public interest was affected by the proposed class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved predicated on the false representation made to the Court about how the Diocese would conduct itself.

230. A circuit court judge to approve the class settlement was "shopped for" and selected by the Diocese defendants, in conspiracy and collaboration with the Richter defendants. The Diocese defendants did not want any Charleston County judge, out of concern that the judge might be fully independent.

231. The Diocese defendants were negligent in assessing the damage done by sexual abuse by their employees and the number of persons affected by that abuse. Alternatively, the Diocese knew the number of victims would far exceed the numbers it reported to the court as its expectations for number of victims, and consciously misrepresented that number to the court.

232. The Diocese defendants were aware that the Richter defendants were willing to recover only modest relief for victims in exchange for a substantial fixed fee that took priority over the recoveries to the victims.

233. The Diocese defendants were aware that the Richter defendants had extensive and life-long ties to the Diocese, and would be willing to compromise the interests of the absent class members in exchange for a fixed fee payment.

234. The Diocese defendants conceived a plan to commit a fraud on the Court by representing to the court, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, while giving notice to the class in a geographically limited way. As long as their fee was paid, the Richter defendants were expected by the Diocese defendants to be willing to accommodate the interest of the Diocese, even at the expense of the absent members of the class they represented.

235. All defendants collaborated to submit false information to the Court, and no defendant objected to any of the false information submitted by any of them. Part of their agreement was to remain silent while false information was submitted.

236. To gain court approval of the class settlement the Diocese made overt misrepresentations of fact to the Court that was falsely represented to reflect an "understanding" among all defendants "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 notice procedure. The "understanding" communicated to the Court was to address if "someone pops back up who should have gotten notice who didn't get notice." The understanding communicated to the Court by the Diocese was:

> 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.

237. That representation to the Court appears on page 3 of a transcript dated July 13, 2007.

238. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. In fact, the Diocese was aware, or should have been aware, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves.

239. To avoid nationwide notice, the Diocese falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Diocese assured the court, on page 14 of the same transcript, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

240. The Diocese defendants made no disagreement when, on pages 16 - 17 of that same transcript, class counsel summarizes the position of the Diocese as "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.

241. Nor did the Diocese defendants state any disagreement when the Court observed, as to the Diocese, 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."

242. The Diocese intended, on July 13, 2007, to create the false impression with the court that if a victim within the class definition came forward in the future, that the Diocese would extend relief to that victim. The Diocese created by impression by its statements and its silence in light of statements by others. The Diocese intended that impression to be relied on, and it was relied on. That impression was false, and was known to be false when made.

243. The Court relied on the statements and silence by the Diocese to extend in the July 30, 2007 order approving the class settlement, at page four, this statement:

> 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.

Emphasis added.

244. The Diocese defendants intended that the Court rely on their statements, silence, and conduct to form that impression, even though the impression was false and the Diocese had no intention of honoring the assurances given to the Court.

245. When additional victims came forward, including these plaintiffs, the Diocese refused to honor its representations to the Court, and which the Court placed in its July 30, 2007 order at page 4. Instead, the Diocese asserted the defenses it had waived, claimed the *res judicata* effect it had disclaimed, and acted exactly contrary to its assurances to the Court.

246. The Diocese defendants made their false representations to the Court for the purpose of gaining Court approval of a class settlement with only limited notice to the

class. By contending (falsely) that it would both waive its defenses and provide compensation to class members who had received no notice, the Diocese committed fraud on the Court, on the public, on the plaintiffs, and on all sexual abuse victims born before August 30, 1980. When those representations were made the Diocese had no intention of honoring the representations.

247. The Diocese amply demonstrated that its assurances to the Court were false when, despite those assurances, the Diocese refused to perform on its assurances or on the Court's order when sexually abused persons born prior to August 30, 1980, including the plaintiffs, received no notice of the class and later requested relief.

248. The Diocese has taken inconsistent positions as to different persons included in the same class definition. Those inconsistent positions also affect the public interest.

249. All of the conduct by the Diocese, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the representations made to the Court. Multiple sexual abuse victims born prior to August 30, 1980, received no notice of the class action and have since been refused relief by the Diocese.

250. The proceedings in which those inconsistent positions were taken by the Diocese are related to this action in that each involved one or more members of the class as defined by agreement of the Diocese, who received no notice of the class settlement and for whom the Diocese promised to provide relief.

251. The Diocese was successful in maintaining its disingenuous misrepresentations to the Court, got relief from the Court based on those disingenuous representations, and

as a result of taking that position the Diocese received the benefit of class approval from the Circuit Court.

252. The inconsistency by the Diocese is part of an intentional effort to mislead the Court.

253. The two positions by the Diocese are in fact inconsistent, and as a result the Diocese is estopped from taking a different position as to the plaintiffs from the position it asserted to the Dorchester County court in the class action.

254. Plaintiffs have suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese, trebled as provided by law, with costs and attorneys fees as provided by statute.

255. The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese made a calculated business decision to invest some funds and engage in a public relations exercise, in an effort to procure positive publicity for itself without having to compensate all of its sexual abuse victims, and to attempt to seal off its liability for the full extent of its sexual abuse victims.

256. The Diocese invested funds to design a compensation program for victims which specifically excluded many victims. The Diocese engaged in collusion with other defendants to do so, as alleged above, and engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the plaintiffs.

257. The Diocese defendants took no appeal from the July 30, 2007 order.

258. The Diocese defendants are bound by the July 30, 2007 order in the class action.

259. When the Diocese was contacted on behalf of the plaintiffs, having received no notice of the class action, the plaintiffs were refused relief. Instead, the Diocese has asserted against victims who did not get notice, exactly as they promised they would not, the *res judicata* effect of the class settlement, as well as the defenses it waived on the record, and has done so even as to victims for whom the Diocese did not even attempt to provide notice.

260. The representation made by the Diocese to the Circuit Court was false when made by the Diocese, and was knowingly false when made by the Diocese. The Diocese had no intention of including other victims who received no notice "for whatever reason." Despite its representations, the Diocese defendants intend to use the collusive class action cases to attempt to terminate liability of the Diocese, to do so at a fraction of the recovery a truly adversarial counsel might demand on these facts.

261. The Diocese defendants made their misrepresentations with the intention of convincing the Circuit Court to approve a collusive class settlement, even though the Diocese had no intention of honoring its assurances to the Circuit Court. The intention by the Diocese to mislead the Circuit Court succeeded, and the settlement was approved.

262. The unfair and deceptive acts and practices of the Diocese have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese has refused multiple persons who came forward having not gotten notice of the class action. The practices engaged in by the Diocese, of misrepresentations to the court and the public through its court

statements as well as its statements to the press, are extensions of longstanding practices of deceit and deception by the Diocese. Maintaining secret archives of files, practicing "mental reservation" to support and justify lying (even while under oath), using diplomatic immunity to conceal documents, mandating that persons with knowledge of abuse conceal that knowledge, are all techniques used by the Diocese to maintain deception. Overtly misrepresenting to a Court, and to the public, its intentions, are extensions of techniques the Diocese has used for years.

263. The false and deceptive practices of the Diocese will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Diocese have been actually repeated, as well as having had the potential for repetition. The Diocese has engaged in misrepresentations of material fact.

264. The Diocese should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to past sexual abuse.

265. The Diocese violated the UTPA willfully, in that it knew or should have known that its conduct was a violation of S.C. Code § 39-5-20.

266. The plaintiffs suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Diocese in posturing for the Court as if it would respond to additional victims who got no notice, but then refusing relief when victims who got no notice actually contacted the Diocese; posturing for the Court that it waived defenses for victims who got no notice but then asserting those same defenses when additional victims

actually came forward. Conduct by the Diocese was willful, and the Diocese knew or should have known that its conduct was unfair and deceptive.

267. The plaintiffs are entitled to treble damages as a result of the conduct of the Diocese, as well as actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

Demand for Jury Trial

268. Plaintiffs demand a trial by jury.

Relief Sought

Wherefore, Plaintiffs seeks relief in the form of:

269. Actual damages to be awarded to the plaintiffs by the finder of fact against the various defendants, trebled as authorized by law for the appropriate cause of action,

270. Costs and disbursements of this action,

271. Attorneys fees as authorized by law,

272. Punitive damages as authorized by law, and for

273. Injunctive relief to enjoin the Diocese defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for

274. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

Gregg Meyers

Gregg Meyers
1 Poston Road Suite 110

Charleston SC 29407
843-556-1025
attygm@gmail.com

Attorney for Plaintiffs

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
John Doe #66)
v.)
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-2053)
)
John Doe #66A)
v.)
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-3293)
)
John Doe #53)
v.)
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-4913)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

See Terms attached on Ex H. #1

In a mediation conducted on this ________ day of __________________, 2006, the above named parties agreed to the following terms:

1. ________________________________ shall pay to ______________________ $____________;
2. Plaintiff/Respondent will execute a general release dismissing all claims on account of the matters raised in the above captioned lawsuit;
3. Plaintiff/ Respondent will cooperate in having a dismissal with prejudice entered by the court; and
4. The parties shall split the mediation fees ____.

______________________________	______________________________
By: ______________________ (Print Name)	By: ______________________ (Print Name)
Its: ______________________	Its: ______________________
Dated: ______________	Dated: ______________

EXHIBIT "4"

P.06/09 JUN-18-2006 16:29

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create settlement class, subject to Court approval of:
   (a) ACTUAL VICTIMS OF DIOCESE ABUSE
   (b) SPOUSAL &/or Parent claims deriving from victims abused

2. Class settlement FUND will be for $12,000,000 FUNDED AS FOLLOWS:
   (a) $5,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with $7,000,000 limits once the $5,000,000 Letter of Credit has been drawn down to $1,000,000.

3. DETAILS of claims process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

2

4. Court shall be asked to approve attorneys' fees for class counsel at between $950,000 + $2.5 million, subject to Defendants obtaining credit to secure the obligation.

5. Mr. T Redacted* shall be paid ________

Mr. S Redacted* shall be paid ________

Mr. N Redacted* shall be paid ________

Mr. M Redacted* shall be paid ________

* COLLECTIVELY paid $460,000 to be divided among the 4 gentlemen above after accepted as agreed to.

6. If the Court fails to approve settlement class +/or provision of class settlement, the compromise settlement with the individuals in "5." above shall not be excused + shall proceed to settlement in the amounts set out in "5." above with appropriate general releases +/or dismissals with prejudice executed in favor of defendants.

~~7. [illegible]~~

(3)

7. These terms are in the form of an offer by Defendants & shall be acted upon with reasonable promptness by Plaintiffs/Claimants named in "5." above.

James [illegible], Attorney

ON BEHALF OF DEFENDANTS

Attorney for and with authority of the Diocese of Charleston

June 14, 2006

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF COUNTY OF RICHLAND)

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

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

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

   A. I am a lawyer licensed to practice law in South Carolina;

   B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court and current Chairman of the South Carolina Bar Ethics Advisory Committee;

   C. I am a frequent CLE speaker and law school guest lecturer on the topic of lawyer ethics and have been selected as one of five instructors for the South Carolina Supreme Court's Ethics School; and

   D. Since leaving the Office of Disciplinary Counsel in 2006, my practice has focused almost exclusively on matters of lawyer ethics.

3. My opinion is based on the facts provided to me by Plaintiff's counsel and review of various documents. Included in my document review are the following:

   A. Complaint in the Original Jurisdiction of the Supreme Court. John Doe et al. v. Lawrence E. Richter, Jr., et al.;

   B. Affidavit of Gregg Meyers, dated June 18, 2008, and filed June 18, 2008, in John Doe C, et al. v. The Diocese of Charleston, et al., Case No. 08-CP-10-1274, and attachments including:

      i. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

ii. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

iii. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;

iv. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

v. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

vi. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913; and

vii. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

C. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;

D. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-____ (blank line in original);

E. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

F. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636; and

G. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636, and exhibits attached thereto including:

i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;

ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;

iii. Affidavit of Angela Pittard, with attached timesheets;

iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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

5. Based on my experience, education, training, and knowledge of the standard of care for lawyers and on my review of the above-listed documents and my discussions with Plaintiffs' counsel, it is my opinion that, Lawrence E. Richter, Jr., Esquire, David K. Haller, Esquire, and Richter & Haller, LLC, (hereinafter "Defendants") engaged in negligent acts and omissions in their representation of Plaintiffs including the following:

A. failure to provide competent representation;

B. failure to act with reasonable diligence and promptness;

C. failure to promptly inform clients of decisions and circumstances with respect to which the clients' informed consent is required;

D. failure to reasonably consult with clients about the means by which the clients' objectives are to be accomplished;

E. failure to keep clients reasonably informed about the status of matters:

F. failure to explain matters to the extent reasonably necessary to permit clients to make informed decisions regarding the representation:

G. attempting to charge and charging an unreasonable fee:

H. representing clients when the representation involved a concurrent conflict of interest, without obtaining the informed consent of each client. confirmed in writing;

I. failure to exercise independent professional judgment and render candid advice in representing clients;

J. failure to expedite litigation consistent with the interests of clients:

K. lack of candor toward a tribunal; and

L. conduct prejudicial to the administration of justice.

6. In particular, it appears from the above-referenced documents that Defendants failed to inform clients of Richter's extensive personal relationship with an adverse party, the Diocese of Charleston, and Richter's continuing work on behalf of the Diocese during litigation in which Defendants' clients were adverse to the Diocese. It is apparent from Richter's own affidavit (identified in paragraph 3.F.ii above) that he has a lifelong, extensive personal relationship with the Diocese and many of its current and former constituents, in addition to being a constituent himself and continuing to perform official functions during the pendency of the client matter. This presents a conflict of interests, requiring Defendants to disclose the nature

and extent of the relationship to the clients, along with the risks of the representation and the reasonably available alternatives. Defendants apparently did not do so.

7. It further appears that Defendants engaged in acts and omissions that would be potentially disadvantageous to their own clients and advantageous to the Diocese, including:

A. failing to promptly seek class certification in the Charleston County class action;

B. executing Consent Orders of Dismissal in the Charleston County cases;

C. reducing the extent of notice to class members contained in Defendants' Motion to Certify Classes;

D. agreeing to reduce their clients' recovery but not Defendants' fees, if the claims exceeded the pool;

E. failing to object to the Diocese having sole, unsupervised, unfettered discretion to discover potential class members from its own files;

F. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review;

G. expressly sacrificing clients' opportunity for post-claim review by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal or suit and that claimants, by participating in the claims process, expressly waive the right to appeal;

H. participating in negotiations of the claims of several opted-out class members, resulting in an agreement that payment of such claims may come from the settlement pool available to class members;

l. agreeing to contribute $100,000 from either Defendants' fee or the settlement pool, toward a settlement between the Diocese and several opted-out class members.

It appears that Defendants engaged in these acts and omissions without first consulting or otherwise communicating with clients. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

8. It further appears that Defendants engaged in acts and omissions that would be potentially disadvantageous to their own clients and advantageous to Defendants, including simultaneously seeking a common fund recovery for class members and a fixed fee amount for Defendants. It appears that Defendants engaged in this conduct without first consulting with clients. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

9. It further appears that Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-class-representative clients, including agreeing to subject some clients to a damages matrix and claim scrutiny to which class representatives were not subjected, settling the claims of the class representatives prior to class certification and court approval of the class settlement, and expressly agreeing to settlement terms for the class representatives regardless of court approval of the class settlement. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

10. It further appears that Defendants sought an improper and unreasonable fee from the settlement pool and a payment structure that favored Defendants' own interest above those of their clients. Defendants' fee petition, affidavits and billing records overstate work performed and misrepresent the nature of the case. Defendants describe the case as hotly contested and aggressive, and the defense formidable and substantial, depicting a time-intensive case requiring the highest skills of the most competent counsel: yet the documents indicate contrary circumstances: little discovery (some paper requests from class counsel but no evidence of responses received nor of requests received from opposing counsel), no depositions, few motions, and after mediation no client disputes, few hearings, and no animosity or contention except on the issue of Defendants' collection of their fee. Defendants' billing records show 3385.5 total hours spent by lawyers and staff at Richter & Haller; however many of the time entries are clearly false in that they are nonsensical and/or impossible, including:

A. each and every entry on all 68 pages of billing records is a round, even-hour increment or an entry of ".5" hours;

B. countless round-number or .5-hour time entries at "12:00:00 AM"—including multiple tasks by the same person at the same time—while other entries indicate exact times;

C. a 10-hour time entry for "Oversight and Review" by "LER" on the 30th day of each month for 3 and a half years, including the same 10-hour time entry for "Oversight and Review" by "LER" just nine days after the first activity in the case in July 2003;

D. a 2-hour time entry for "Bookkeeping" on the 30th day of each month;

E. a 3-hour time entry for "Photocopying / Monthy" at irregular intervals but always exactly 3 hours, including one such entry when no other work had been performed in the previous month;

F. three 5-hour time entries (one each for "DKH," "LER," and "Clerk") for "Legal Research" on the 30th day of each month, including January 30, 2007, within 2 days of the end of the case (and after which no further time is recorded except 7 hours of faxing by "Staff" and 14 hours of emailing by "DKH" & "LER" over the next 2 days);

G. time entries on days that do not exist: February 30, 2004, and February 30, 2005;

H. a 16-month period, from September 2003 through December 2004, when only 5.5 hours of specific work is entered, yet 426 hours is entered in the same repeated, identical, rote entries of "Oversight and Review," "Bookkeeping," "Legal Research," and "Photocopying / Monthly" described hereinabove;

I. 3 .5-hour time entries for drafting 3 Certificates of Service at the same time on the same day (this set of entries occurs multiple times);

J. 12 *consecutive* 1-hour time entries by "LER" for work on 12 different documents, all at specific times beginning at "07:38:38 AM" on "10/26/06" but extending consecutively over a period of approximately 1 hour and 49 minutes ending at "09:27:30 AM," with many 1-hour entries within less than a minute of each other;

K. numerous sets of entries similar to the 12 described in the immediately preceding subparagraph (J), such as 3 consecutive 1-hour time entries by "LER" for work on 2 documents, all at specific times beginning at "03:54:19 PM" but extending consecutively over a period of 1 minute and 13 seconds;

L. entries of exactly 20 hours for drafting each discovery document:

M. multiple instances of more than one 20-hour time entry for the same person ("DKH") on the same day:

N. 27.5 hours (in 55 increments of .5 each, all at "12:00:00 AM") in one day by "DKH" for emailing to "David K. Haller";

O. 60 hours (10 by "LER" and 50 by "DKH") for amending complaints that ultimately contained very little amendment, including one which apparently changed only the county in the caption and the date at the end;

P. multiple instances of one person ("DKH" in some instances, "LER" in others) of billing more than 24 hours in a day;

Q. 568.5 hours of entries appended to the end of the (otherwise chronological) timesheets, for dates ranging from 2004 through 2007, 500 hours of which is in whole multiples of 10 and expressed in date ranges rather than in dates and times, including 3 130-hour single entries by "DKH" for one- and two-week time periods in June and October 2006; and

R. one of the above-referenced 130-hour single entries by "DKH" for the eight-day time period of October 4-11, 2006, during which period "DKH" had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

Defendants stated to the court that the above entries were "by far conservative" estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus Defendants appear to have made false statements to a tribunal in support of a fixed fee that was unreasonable and put Defendants in a position potentially adverse to their own clients without taking appropriate steps to deal with the conflict of interests created thereby.

11. As a result, it is my opinion that Defendants' conduct fell below the standard of care, competence, diligence, and loyalty expected of lawyers.

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

FURTHER AFFIANT SAYETH NOT.

Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 10th day of December, 2008

Notary Public
My Commission Expires : My Commission Expires July 25, 2013

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 10-CP-10-7233
John Doe 10, Plaintiff, v. The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop Of Charleston, in his official 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.	Negligence; Gross Negligence Fraudulent Concealment Civil Conspiracy Professional Negligence Breach of Fiduciary Duty Judicial Estoppel Unfair and Deceptive Trade Practices Jury Trial Requested

FILED
2010 SEP -3 AM 11:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Complaint

For his complaint, the plaintiff alleges:

Parties and Jurisdiction

1. Plaintiff is an adult citizen and resident of a state other than South Carolina. He was sexually molested as a child by a priest of the Diocese of Charleston, Frederick Hopwood, when Mr. Hopwood was assigned to Saint Mary's in Greenville, S.C.

2. A pseudonym is used for the plaintiff due to the sexual abuse injury, which is the subject of this complaint. The defendants will be informed of the identity of the plaintiff upon their agreement to reciprocate in discovery and to maintain the plaintiff's identity as

confidential in the public record.

3. Frederick Hopwood was assigned by the defendants to Saint Mary's in Greenville, S.C. in approximately 1984. Prior to his move to Greenville, Mr. Hopwood served as a priest and was known to sexually abuse children. During his time at St. Mary's, defendants knew, or should have known, that Frederick Hopwood was sexually abusive to children, and posed a danger to children.

4. The Bishop of Charleston, a Corporation Sole, is the entity that governs the activities of the various entities comprising the Catholic Church throughout South Carolina. It is referred to in this complaint as the Diocese. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. The Diocese operated St. Mary's, a Catholic Church in Greenville, S.C. Although the acts associated with the abuse of the plaintiff took place in and around Greenville, S.C., in Greenville County, the acts of negligence and recklessness by others with the Diocese, in exposing the plaintiff to the risk presented by Frederick Hopwood, occurred in Charleston County. As a result, venue is proper in either Charleston County or Greenville County.

5. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County, South Carolina. He is sued individually, and in his official capacity, and is a party necessary for complete relief. All persons working for the Diocese are subordinate to the Bishop.

6. Prior to Bishop Guglielmone, from October 2007, to March 2009, the Diocese had no Bishop, and was administered under the Code of Canon Law by the Rev.

Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina.

7. Prior to Administrator Laughlin, from July 1999 to August 2007, the Bishop was Robert J. Baker, presently a resident of, and citizen of, Alabama.

8. In this complaint, the Diocese, the Bishop defendants, and the Administrator are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

9. The Court has jurisdiction over the parties to this action.

10. The Court has jurisdiction over the subject matter of this action.

11. Venue of this action is proper in Charleston County.

12. John Doe 10 was similarly situated as other individuals ostensibly within the definition of a class certified by a South Carolina court as part of a class action in 2007. However, by agreement among the defendants, the plaintiff received no notice of the class action, thus had no opportunity to be heard or participate in the litigation, either in person or through counsel. By agreement among defendants, notice given in the class action was designed to be insufficient as to the plaintiff, so as to permit the Diocese, starting in 2009, to argue that the class action precluded any and all claims for abuse, by preventing the plaintiff from either participating in the class action or being able to remove himself from the class action by opting out. In being within the putative definition of the class as the defendants agreed to define the class, the plaintiff, along with other members of that class who resided outside of South Carolina, ostensibly was formerly represented by, until in 2007 he was abandoned by, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC.

13. Alternatively, and at minimum, defendants Lawrence E. Richter, Jr., David K.

Haller, and Richter and Haller, LLC assumed duties as to the plaintiff by defining the class so as to ostensibly include him. The defendants conspired against the plaintiff to cause him special harm in the form of the effort to preclude him from making any claim against the Diocese. The representation the plaintiff was given in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

14. This action is not alleged as a class action. It involves as a plaintiff a person who was, until he was abandoned by his class counsel, the Richter defendants, a putative members of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court.

15. But for the Richter defendants having breached their duties to plaintiff by abandoning the plaintiff, in agreement with and full complicity with the other defendants, the class action would ostensibly have included the plaintiff. A number of other individuals have made similar allegations of having been excluded by design from the class action, and this complaint may be amended to state a class action.

16. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

17. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

18. Richter & Haller, LLC did business in Charleston County, South Carolina at all times pertinent to this complaint, and had its principal place of business in Charleston County.

19. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the "Richter defendants."

Nature of Wrongdoing

20. This complaint sets out various causes of action built around four different levels of disregard for others and corruption. First, the disregard by the Diocese defendants in operating a system which actively disregarded the risks to children and families for sexual assault of children by their priests and other employees, and which then actively, and fraudulently, concealed the abuse that happened and the dangers to children it solicited into danger. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy for the Catholic Church a layer of what was hoped would be protection from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese. Third, the corruption of particular lawyers who assumed a duty to act for sexual abuse victims, including the plaintiff, but who then acted in a professionally negligent way, willfully and wantonly abandoning their client so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese in exchange for their cooperation in trying to both limit relief to victims and protect the Church from future cases, and from claims by this plaintiff and other sexual abuse victims. The danger to the Diocese of future cases was that future cases might be brought by lawyers actually adverse to the Diocese, as opposed to the lawyers who entered into the collusive class agreement with them. Fourth, overt misrepresentations of fact by the Diocese defendants to the court, which approved the class action settlement, and fraudulent concealment of that

misrepresentation until 2009.

21. So confident were the corrupt lawyers in their ability to manipulate the state court judge they had selected and maneuvered the cases before, and so confident were the corrupt lawyers in gaining the cooperation of the Diocese defendants and their supposed adversary lawyers, that the corrupt lawyers, the Richter defendants, calculated they could submit even blatantly false and inflated time records to justify their large fee, and that no objection to them would be raised by the Diocese defendants. In exchange for their cooperation, the Diocese (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention any of the false time records submitted by the Richter defendants, (c) agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee, (d) agreed to make no objection to an unethical fixed fee for class counsel while, simultaneously, compensation to the class of victims was variable, (e) agreed to make no objection to the fee being awarded before any class member claimant was even identified, and before any class member claimant was paid, and (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law.

22. In turn, the Diocese defendants overtly misrepresented to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement, and once the court relied on that representation the Diocese defendants ignored that they made the representation. The duplicity by the Diocese defendants was disclosed only in 2009, when they first asserted that the class action precluded other sexual abuse victims from any relief even tough they had no notice of the class action.

23. Of the four levels of wrongdoing alleged, the causes of action which apply hinge,

in part, on whether or not the plaintiff is regarded as being bound by the *res judicata* effect of the class action to which the Diocese was party. As alleged more fully below, plaintiff ostensibly falls within a class defined in that action, but the notice given to the classes, by design, was changed by all defendants so as to exclude notice to the plaintiff. As a practical matter, notice was revised so it would go only to a subset of the approved classes — the subclasses being those class members living in and immediately adjacent to South Carolina. The change to the extent of the proposed notice was noted to the state court but ignored when notice was approved by the court. All defendants cooperated together to better protect the Diocese by asking for only notice that would be insufficient to notify all members of the class, and the Diocese actively misled the court in seeking approval for the limited notice with the false promise that the Diocese would protect the interests of persons such as the plaintiff who received no notice.

24. Until 2009 the promise by the Diocese was not publicly known to have been false.

25. Until September 19, 2009, when the South Carolina Supreme Court ordered that the proceedings in the class action be concluded, the Richter defendants were charged with correcting the known deficiency in the class action notice, and took no steps to correct the deficiency in the notice to the class.

26. Similarly, until September 19, 2009, when the South Carolina Supreme Court ordered that the proceedings in the class action be concluded, the Diocese defendants were aware that various persons within the class received no notice, and did nothing to clarify its overt misrepresentation to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

27. Until 2010, the plaintiff was unaware of (a) any class settlement by the Diocese,

(b) that the Diocese waived charitable immunity for any person in the class definition, (c) that the Diocese waived the statute of limitations for any person in the class definition. Plaintiff was unaware of any of those things because, by agreement of all defendants, plaintiff got no notice of any of those things.

28. In its order approving the class action, the state court may have provided for absent members of the class, such as the plaintiff. However, beginning in 2009 the Diocese began to contend the court's order does not mean what it says, and starting in 2009 the Diocese began to argue it has no duty to absent members with the class definition that received no notice of the class settlement or the various waivers of defenses by the Diocese. In doing so the Diocese perpetuates the fraud the Diocese defendants intended to achieve in 2007 through the class action and through cooperation with the Richter defendants.

29. Plaintiff is an absent member of a class who, by design among defendants, received no notice of the class action. As such, plaintiff should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of his interests, because his representation by the Richter defendants was inadequate and fell below the applicable standard of care, and because the state court order appears to contemplate the insufficient notice by holding that the plaintiff is not properly bound by any *res judicata* effect, as set forth more fully below. Any of those grounds is a sufficient basis to relieve the plaintiff of the *res judicata* effect of the class action.

30. If the Diocese agrees, or the court finds, that the plaintiff is 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 plaintiff's due process rights, then the causes of action against the Richter defendants who, for a fee, abandoned their client, and those who conspired against them through the class action, are irrelevant because plaintiff can make his claims against the Diocese. If the court finds that the plaintiff is precluded for any reason, including the *res judicata* effect of the class action, charitable immunity (which the Diocese waived for those within the class definition), or by the statute of limitations (which the Diocese waived for those within the class definition), 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 him as well as against the Richter defendants who failed to properly represent him.

31. In March, 2009, the South Carolina Supreme Court ordered that all proceedings in the class action be concluded by September 19, 2009. The class action is concluded.

32. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No change is sought as to the class action. This action seeks an interpretation as to the preclusive effect of the class action as applied to the plaintiff.

For a First Cause of Action:
Negligence and Gross Negligence by Diocese Defendants

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

34. The defendant Diocese employed Frederick Hopwood as a priest.

35. In his capacity as priest, Frederick Hopwood was placed by the Diocese defendants in a position of trust and confidence, and had access to the plaintiff and other

children. In that capacity, Frederick Hopwood sexually molested the plaintiff and many other children.

36. Prior to plaintiff being molested, the Diocese defendants became aware that Frederick Hopwood was dangerous to children. After knowing he was dangerous, the Diocese defendants moved Frederick Hopwood from place to place within the Diocese, and thereby facilitated his access to young people whom he could molest. The plaintiff was molested after Hopwood was known to be dangerous to children.

37. Alternatively, the Diocese defendants operated various schools, activities, and churches that were intended to, and did, attract children and families. The Diocese defendants encouraged people, including plaintiff and his parents, to use their facilities, and to attend the various activities and functions offered on its premises. In making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers, and from known dangers such as Frederick Hopwood, by representing nothing to the contrary to the public. The Diocese defendants particularly owed a duty to the plaintiff, who was a minor, and his parents, a greater degree of care because as a child the plaintiff relied on his safety within the Diocese, was unable to fully appreciate risks and danger and protect himself from Frederick Hopwood. The Diocese defendants falsely represented to its invitees, and their parents or guardians, including the plaintiff, that its facilities and its priests were safe, and that persons would be would be protected from harm when using its facilities and when interacting with its personnel.

38. After he was moved to Greenville, S.C., Frederick Hopwood molested the plaintiff.

39. The Diocese defendants negligently supervised Frederick Hopwood. The Bishop was grossly negligent in supervising Frederick Hopwood. Moving him without proper warning to children and their parents was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, plaintiff was sexually abused by Frederick Hopwood.

40. The Diocese defendants were negligent in failing to warn the plaintiff or his parents about Frederick Hopwood. The Bishop performed that duty in a grossly negligent manner.

41. The Diocese defendants knew, or should have known, that Frederick Hopwood was a pedophile. Despite that knowledge, the Diocese defendants, including Bishop Guglielmone, Bishop Baker, and Rev. Monsignor Laughlin, made no effort, or no competent effort, to ascertain how many children Frederick Hopwood had molested, and no effort, or no competent effort, to locate victims of Frederick Hopwood. If the Diocese did make such an effort, it assumed the duty but performed it negligently. Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

42. The Dioceses defendants' failure to do so was negligent, and grossly negligent on behalf of the presiding Bishop from the time of the plaintiff's abuse to the present, including the gross negligence by Bishop Guglielmone, Bishop Baker, Rev. Monsignor Laughlin, and the Bishops who preceded them.

43. As a result of the negligence and gross negligence by the Diocese defendants in failing to either prevent abuse or identify abuse victims by its agent or employee Frederick Hopwood\, the problems for the plaintiff were first caused, and then exacerbated, by the delay of the Diocese defendants.

44. As set forth more fully below, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants. The most recent act of fraudulent concealment by the Diocese defendants was in 2009, and it was discovered by the plaintiff in 2010. This action is brought within three years of that most recent act of fraudulent concealment, and fraudulent conduct, by the Diocese defendants, and within three years of its discovery by the plaintiff.

45. The plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese defendants, and gross negligence of Bishops Guglielmone and Baker, and Administrator Rev. Monsignor Laughlin, in failing to perform a proper review for Hopwood's victims, or in performing that duty in a negligent manner.

For a Second Cause of Action:
Fraudulent Concealment by Diocese Defendants

46. Allegations above are incorporated into this cause of action as if fully set forth.

47. The Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children.

48. The Diocese defendants had a duty to discover and to disclose to plaintiff or his parents their knowledge that Frederick Hopwood was known to have a sexual interest in children. That duty arises from (a) the preexisting fiduciary relationship between the plaintiff and the Diocese defendants, which relationship the Diocese solicited; (b) from

the parents of the plaintiff having expressly reposed their trust and confidence in the Diocese defendants so as to entrust the plaintiff to the presence of Frederick Hopwood, which placed the plaintiff in a vulnerable position with Frederick Hopwood. That position of trust and confidence was implicit from those circumstances of plaintiff being entrusted to the presence of Frederick Hopwood, as well as from the nature of the dealings between the plaintiff, his parents, and the Diocese defendants, who promoted that the plaintiff's parents should leave the plaintiff in the presence of Frederick Hopwood, (c) from the essential nature of the Diocese defendants and their inducement to the plaintiff's parents to have the plaintiff participate in activities with Frederick Hopwood as being beneficial to the plaintiff, or at least not harmful to him, (d) from the secrecy provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese to discover, but then to maintain secrecy about, "other persons solicited" by any person such as Frederick Hopwood, who commits the "unspeakable crime" of sexually abusing a child, and (e) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the Diocese defendants designation, grossly negligently), during 2005 - 2010, to locate victims such as the plaintiff.

49. The plaintiff was sexually abused by Frederick Hopwood after 1962.

50. Concerning each of (a) the undisclosed dangers Frederick Hopwood represented to the plaintiff, and (b) assisting to repair the damage done to the plaintiff by Frederick Hopwood, the Diocese defendants were obligated to the plaintiff to engage with him or his parents on his behalf in perfect good faith and with full disclosure.

51. Instead of full disclosure, the Diocese defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including Frederick Hopwood. In its own operations, the Diocese required secrecy and concealment, and it has enlisted its agents and employees to further conceal its knowledge of abuse so as to limit its exposure for the Diocese defendants being held responsible for sexual abuse of children.

52. Specifically, the Diocese defendants created, as embodied in the Code of Canon law, which required it, an archive (required by Canon 486), accessible only by the Bishop and chancellor (required by Canon 487). Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia (required by Canon 488). Canon 489 requires that a Secret Archive also be created. In it "documents are to be kept secret" and "protected most securely." Canon 489, Section 2 states: "Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained." Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (required by Canon 490). The bishop is authorized to include in the secret archive any matter which can be regarded as scandalous.

53. Matters related to agents and employees of the Diocese sexually abusing children, including Frederick Hopwood's sexual abuse of children including plaintiff when he was a child, were regarded as scandalous, and were maintained in the Secret Archive.

54. Matters related to agents and employees of the Diocese sexually abusing children, including Frederick Hopwood's sexual abuse of children including plaintiff when he was a child, because they were regarded as scandalous, were maintained in the Secret Archive and were destroyed as called for by the Code of Canon Law in the routine practice by the Diocese defendants to destroy evidence of known criminal activity.

55. In 1962 the Diocese defendants expanded on the secrecy required concerning sexual abuse, publishing an "Instruction" which was to be stored in the Secret Archive. (Required by the Instruction, page 1). In the Instruction, matters involving priests who "solicit or provoke" (Instruction, p. 1 ¶ 1) a penitent "toward impure and obscene matters" (Instruction, p. 1 ¶ 1), "which is also silence" (Instruction, ¶ 11) and deemed "a secret of the Holy Office" (Instruction, p. 3 ¶ 11), "under the penalty of excommunication" (Instruction, p. 3 ¶ 11). The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." (Instruction, p. 4 ¶ 12. See also, Instruction, p. 5 ¶ 23 and Instruction, p. 6 ¶ 28).

56. Plaintiff fits within the "penitent" referred to in the Instruction.

57. The 1962 Instruction states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." Instruction, p. 15, ¶ 71. "The worst crime" is also defined as "any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex." Instruction, p. 16, ¶ 73.

58. Frederick Hopwood was, and the plaintiff is, male. The conduct by Frederick Hopwood to the plaintiff qualifies under the 1962 Instruction as "the worst crime."

59. Among other things, the 1962 Instruction directs the Diocese defendants to assume the duty of locating "other persons solicited by the same confessor" (Instruction,

p. 7 ¶ 29). In this instance, the Instruction calls for the Diocese defendants to locate other persons solicited by Frederick Hopwood. The Instruction at p. 9 ¶ 37 also refers to an "Instruction of the Holy Office, February 20, 1867," in directing the manner of interrogation for persons with information about solicitations or those solicited.

60. The Diocese defendants assumed the duty to locate victims ascribed to it by the 1962 Instruction, but performed that duty in a grossly negligent manner. The Diocese defendants failed to locate plaintiff, failed to locate many other abuse victims, and made no competent inquiry to locate them. The Diocese defendants purposefully avoided making the type of inquiry that would have elicited discovery of the plaintiff.

61. The 1962 Instruction was approved by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 Instruction.

62. In the Appendix to the 1962 Instruction are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the plaintiff. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff," according to page 17 of the 1962 Instruction.

63. "Whatever type of pretext" overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the 1962 Instruction for complying with civil authority.

64. Unless the Pope himself has specifically approved otherwise, secrecy was, until this complaint, to have been maintained not only by the plaintiff, but also by every

member of the Diocese defendants, and by even witnesses to sexual abuse. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the 1962 Instruction, the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese defendants can all be expected to be obedient to the 1962 Instruction, to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese defendants have, to date, done so.

65. The call for secrecy in the 1962 Instruction and in the Code of Canon law constitutes spoliation of evidence, as well as fraudulent concealment. Among the spoliation was evidence related to Frederick Hopwood's known sexual interest in children.

66. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the defendants as to Frederick Hopwood's sexual abuse of the plaintiff. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of the plaintiff, or to ascertain that the plaintiff was a victim of the abuse by Frederick Hopwood.

67. As courts began to require the Diocese, despite its commitment to secrecy and deception, to be accountable for sexual abuse, the Diocese had to reach a new level of deception and manipulation to limit the damage to the Diocese from its having to take responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its

history of abuse and concealment. The Diocese engaged with other defendants to conspire to do so, as set forth below. The acts of conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse. The conspiracy cause of action concerns deliberate exclusion from the class, so hinges on the proper interpretation of the orders in the class action, and whether the actions of the Richter defendants constituted merely greed, fraud, and self-interest, as opposed to professional negligence, in excluding from the class action, by design, the plaintiff and many others who were within the class definition. If there was professional negligence, then the acts of professional negligence predominate, and the damages from the exclusion are properly paid by the Richter defendants. If the actions do not rise to professional negligence, and the Richter defendants and Diocese defendants were merely corrupt, then the damages for the exclusion are properly shared among all defendants for their conspiratorial actions in excluding the plaintiff by design. And if the plaintiff is not precluded from his claims against the Diocese by the *res judicata* effect of the class action, and the Richter defendants were merely corrupt, then the plaintiff requires no relief for either professional negligence by the Richter defendants or conspiracy involving the Richter defendants.

68. This cause of action presumes that the plaintiff is not precluded in making this claim by any prior litigation brought against the Diocese, for lack of due process in those proceedings, lack of competent representation sufficient to bind this plaintiff, the

collusive nature of the class settlement, or because the terms of the class action order do not apply to the plaintiff.

69. The plaintiff is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and thus failing to perform a proper review for Hopwood's victims, including the plaintiff, or in performing that duty in a negligent manner.

For a Third Cause of Action:
Civil Conspiracy by All Defendants

70. Allegations above, other than ¶ 66, are incorporated as if fully stated. This cause of action presumes the class action order is interpreted to bind the plaintiff to its *res judicata* effect, despite insufficient due process and for which (by design) the plaintiff got no notice, so presumes the plaintiff is properly precluded from bringing claims against the Diocese related to sexual abuse, and presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

71. Defendants have conspired with others to injure the plaintiff, and those actions have caused special damage to the plaintiff.

72. The defendants have acted in concert in numerous ways, which reflect the joint assent with minds of other persons to injure the plaintiff, and defendants have taken overt acts to pursue the common design to injure the plaintiff.

73. Some actions that have been taken have been legal; other actions were legal but violated professional standards in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the plaintiff by making sure he and all other out-of-state putative class members could not participate in

the state court class action, and could be prevented from bringing their own action. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the plaintiff's one-time lawyers, the Richter defendants, agreed to act against the plaintiff's interests, and to collaborate instead to act against the plaintiff's interest and in the interest of the Diocese.

74. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, plaintiff's one-time lawyers, the Richer defendants, agreed to abandon the plaintiff, quietly dropping their request to give nationwide notice to class members such as the plaintiff, even though the Richter defendants had defined class action classes so as to ostensibly include the plaintiff and had originally proposed giving nationwide notice. The notice designed not to reach the class as defined, and designed to exclude the plaintiff, breached a duty to the plaintiff assumed by the Richter defendants, either from an attorney-client relationship or a fiduciary duty assumed when they elected to bring the class action and define the classes as they chose to do so as to include the plaintiff.

75. The Richter defendants elected to abandon their out of state putative class member clients, and dropped their request for nationwide notice to their out of state class members, so as to prevent the plaintiff, and others similarly situated, from finding out about the class action and from making claims against the class fund. In the class allegations, joinder was said to be impracticable because the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36 and in the identical John Doe #53 Complaint redundantly filed in 06-CP-18-1636.

76. If "too many" of those hundreds of victims participated in the class action, the Richter defendants would jeopardize the large fee the Diocese had agreed to enable them to get, and the Diocese might not get the ostensible protection from future suits it was colluding to try to obtain at the lowest possible cost.

77. For the Richter defendants, both their fee, and the interests of the Diocese, were more important to them than were the interests of their absent putative class member clients.

78. In exchange for the Richter defendants abandoning the plaintiff and all of their other putative class member clients living outside of South Carolina, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request, (e) agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to class counsel before any class member's claim was known or the class was even identified, (g) acquiesced in the unethical conduct of abandoning all out of state class members by agreeing to give them no notice of the class resolution, and (h) agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the class

action, to a state court judge known to have extensive social and professional ties to the Richter defendants, in the aspiration that a more pliable oversight would be received for the class settlement.

79. The Diocese defendants undertook a duty to the plaintiff to identify abuse victims such as plaintiff and negotiated, in June, 2006, a class resolution to what was referred to as "spousal &/or parent claims deriving from victims abused," in the Charleston Mediated Settlement agreement at ¶ 1. At that time no class of "spousal &/or parent claims" had been certified or even alleged. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County. In disobeying SCRCP 23 in Charleston County, and in judge-shopping in Dorchester County, the defendants violated judicial norms and rules. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which duplicated an existing Charleston County complaint alleging a class, resulting in the identical case pending simultaneously in circuit court in both Charleston County and Dorchester County. That was done as the means of judge-shopping. The Diocese defendants also agreed to remain silent so as to enable the Richter defendants to submit false information to the court.

Details of the Conspiracy

80. In 2003, the Richter defendants were associated by one or more lawyers to assist in representing a victim of sexual abuse in a claim to be asserted against, *inter alia*, The Diocese defendants.

81. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the remainder of 2003 and all of 2004.

82. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The Bishop of Charleston, et al., 05-CP-10-2053.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

83. That John Doe 66 complaint made no class action allegations.

84. In August 2005, the Richter defendants filed another individual action in the Charleston County Court of Common Pleas, styled *John Doe #66A v. The Bishop of Charleston, et al., 05-CP-10-3293.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

85. The John Doe 66A complaint made no class action allegations.

86. In October 2005, the Richter defendants met personally with then Bishop Baker.

87. As a result of that meeting, in December, 2005, the Richter defendants filed a class action complaint in the Charleston County Court of Common Pleas, styled *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

88. In February 2009 the Diocese defendants published to the public through their press spokesman the lie that the Charleston County John Doe 53 complaint was one of three individual cases filed in Charleston, as opposed to it being a complaint which alleged a class action. The representation that it was an individual suit was a lie by the Diocese defendants in furtherance of the routine and consistent practice by the Diocese defendants to engage in fraudulent concealment of sexual abuse matters, and to further the agreement among defendants to cause harm to the plaintiff.

89. Rule 23(d)(1) SCRCP requires "as soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained."

90. From December 2005 until June 2006, the Richter defendants made no effort to seek class certification for the class they had alleged in the December class action complaint in Charleston County, nor did any other defendants. In that time the public records show there were no motion hearings held in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, and sent out hearing notices, the defendants collaborated to ask that the motions be continued rather than heard.

91. In June 2006, the defendants met in a mediation conference. At that time, no class action had been certified, and no class was alleged for spouses or parents of sexual abuse victims.

92. At that conference, which took place over two days, the defendants purported to settle all claims of all class members in two classes, as the classes were defined by the 2006 agreement of the parties.

93. Ostensibly included in the classes as defined in the mediation was the plaintiff. By defining the classes so as to ostensibly include the plaintiff, and by purporting to settle his claims, the Richter defendants assumed professional obligations to him, including fiduciary duties towards him, and created a constructive attorney-client relationship, if not an actual attorney-client relationship, with the plaintiff.

94. The agreement reached in that mediation is attachment A to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the plaintiff.

95. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 mediation of the Charleston cases.

96. The typewritten document was approved by The Vatican in January 2007.

97. The settlement of the agreement was funded by approval of The Vatican.

98. As reflected in the attached handwritten agreement, the defendants agreed that the individual plaintiffs in those actions and the purported class representative would split $460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese would pay only $460,000.

99. Claims of absent class members were proposed to be resolved on terms materially different than the terms which the purported class representative or representatives received. Instead of a cash payment the same, or similar to, what the purported class representatives were to receive, absent class members were to be required

to submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive. Class members had to relinquish all rights for review to qualify for the arbitration.

100. As alleged below, not fewer than seven devices were chosen by overt agreement of the defendants to further the conspiracy against plaintiff, and other absent putative members of the classes, from being included in any recovery for the class, and to limit the class recovery from being "too much." If the classes included "too many" claimants, the Diocese defendants would be entitled to withdraw from the agreement. The Diocese defendants wanted the class settlement approved so they could later argue, as they in fact have argued, that no other sexual abuse claims which arose prior to the class approval could be made against the Diocese. The Diocese defendants knew that the class settlement had been negotiated with an "adverse" attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese. The Richter defendants wanted to assure themselves of a large fee without jeopardizing that fee by getting too great a recovery for abuse victims against defendant Richter's own Diocese. So all defendants conspired to create methods to be able to limit the number of class members who could make claims and to limit the amount class members would recover. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge Shopping to Pick the Judge

101. The first technique used by the defendants to limit the class recovery was for the defendants to agree to maneuver a Charleston class action settlement to be

presided over not by any judge in Charleston County, where the putative class case was filed and the class case settlement was reached, but to "shop" for a judge they selected to make those determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to overlook court rules and accept fraudulent filings was desired.

102. Instead of complying with SCRCP 23, and submitting the attached 2006 Charleston class action settlement for approval to a judge in Charleston County, the defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese defendants accept service of, newly filed class action cases in Dorchester County, filed August 15, 2006 (06-CP-18-1310 and 06-CP-18-1311), and then the Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193*, was redundantly re-filed in Dorchester County on October 6, 2006, with the same caption (other than the changed county name and case number 06-CP-18-1636), and with the identical allegations. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending and already settled Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to shop for the desired judge.

103. This procedural maneuver agreed to among the defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose.

104. Filing duplicative class actions to have the same case pending simultaneously in two different venues is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court and to the plaintiff, ostensibly included in each of those duplicative complaints.

105. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending.

106. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement of the defendants, simultaneously pending in two separate counties.

107. Dorchester County was chosen by agreement of the defendants so as to "judge shop" for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, and fairness hearings. The judge was expected to tolerate fraudulent filings by the defendants, an expectation that was rewarded when fraudulent filings were made, by agreement of the defendants, and the court took no action concerning those fraudulent filings.

108. The defendants all agreed with this strategy of seeking a pliable state court judge, and consented to the "judge shopping" so as to avoid having to submit the class allegations, and proposed class action settlement, for approval by any judge in Charleston County. The defendants feared completely objective judicial oversight by any of the judges in Charleston County.

109. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the judge they shopped for designate the cases as complex and assign them to that same judge. That designation was improper under the rules at the time, as set forth in more detail below.

110. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the class settlement. If the same request had been made and granted in Charleston, only a single judge would have presided over all aspects of the settlement. But any Charleston judge would likely exert independent oversight of the class resolution, and defendants sought to avoid independent oversight.

111. Other than to shop for a particular judge, there was no legitimate reason to redundantly file case 2005-CP-10-4913 as case 2006-CP-18-1636.

112. As soon as the handpicked judge assigned the Dorchester actions to herself, the defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

113. No motion was filed in Charleston to approve the class settlement reached in the Charleston cases. All defendants consented to not filing such a motion.

114. SCRCP 23 was not complied with as to the class settlement reached in the Charleston class action. All defendants consented to not complying with SCRCP 23 in Charleston County, and all defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge.

115. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

Conspiracy Technique Two: Using Complex Case designation Improperly.

116. In October 2006, the defendants sought complex case designation of the Dorchester County class action cases.

117. At that time, the Charleston cases were still pending.

118. The July 26, 2006 order of the South Carolina Supreme Court enabling complex case designation approved a particular form for use with complex case motions. Among other things, that motion required counsel to represent certain facts applied to the action for which complex case status was sought. The form states:

> We certify that we have made a good faith effort to settle this case and ***thus far have been unable to do so***. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.

119. At that time, the Charleston cases were still pending, and a class settlement had been reached which, if approved, would resolve all cases.

120. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

121. Defendants falsely represented to the shopped-for judge that no settlement had been reached. Alternatively, defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

122. Complex case status was approved, despite a settlement having been reached before the first Dorchester County case had been filed.

Conspiracy Technique Three: Agreeing to an unethical attorney's fee for class counsel.

123. The 2006 class action settlement reached in the Charleston class action cases included simultaneous negotiation of a common fund, and variable, recovery for the class and a fixed fee amount for class counsel, with the fee to class counsel be paid prior to the claims period.

124. As set forth in the affidavit of Michael Virzi, attachment B to this complaint and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese defendants to agree to it. Plaintiff at no time consented to the Richter defendants negotiating such a settlement, and it was not disclosed to him.

125. At page 13, paragraph 6B, in the typed version of the Charleston class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure set forth in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

126. Representation of the plaintiff by the Richter defendants in proposing an unethical fee was inadequate. Alternatively, that representation breached a fiduciary duty to the plaintiff.

127. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits of what the Diocese defendants and the Vatican were willing to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of

class members was known, paid before any class member could make a claim, and paid before any class member could be or would be paid.

128. The Richter defendants sacrificed the interests of absent putative class members, such as the plaintiff, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to it as the price of obtaining the cooperation of the Richter defendants in structuring a class resolution that provided only a fraction of the relief the Richter defendants would accept in a case against a Diocese other than Richter's own Diocese.

Conspiracy Technique Four: Disclosing to the Class neither the Settlement terms for the Class Representatives nor the Settlement for Persons who Opted Out of the Class

129. The fourth technique to conspire against the plaintiff was to make no disclosure to him, or other class members, of either the superior settlement terms agreed to by the defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who opted out of the class settlement.

130. The defendants have all taken the position that the agreement with those persons who opted out of the class action was part of the class action. As part of the class action, the defendants should have informed class members of those terms as an option to the class recovery.

131. Neither the class representatives nor the opt-out abuse victims had to submit their claims to binding arbitration. Their claims were given specific dollar amounts. Each knew precisely what their recovery would be before consenting to resolve his or her claim.

132. In addition, the terms for the opt-out abuse victims exceeded the low bar the Richter defendants agreed to set for class member recoveries, and the opt-out victims received more than was received by any comparable abuse victim who stayed in the class settlement. In addition to the fee approved by the Court, the Richter defendants charged class members an additional fee to go through the arbitration. The court approved fixed fee was not disclosed to class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing because no post-award fairness hearing was held.

133. No notice was given to any class member, including the plaintiff, about the terms of the opt-out settlements. Had the plaintiff been given notice of the terms available for the class, the terms negotiated by the opt-out abuse victims, or the terms applicable to the class representatives, he could have exercised a choice to receive one or the other recoveries. The plaintiff was abandoned by his attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed to the plaintiff, by defendants agreeing to define the class so as to ostensibly include the plaintiff, were breached by all defendants in this action when they agreed to notice designed not to reach the plaintiff. As alleged below, the abandonment by the plaintiff was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the plaintiff. In the alternative, it was a breach of the fiduciary duty assumed by the Richter defendants towards the plaintiff. That duty was implicitly assumed by other defendants as well, in ostensibly defining the classes as they were defined by agreement of all defendants, when notice was designed not to reach those within the definition.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create A Means of Limiting Total Recovery for Compensating Victims

134. In the "General Terms of Settlement" agreed to in the 2006 mediation of the Charleston class action case on June 14, 2006, there are seven essential terms of the settlement agreement.

135. The first general term is that there will be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

136. The second general term was to provide a means of having a $12 million settlement fund.

137. The third general term was "Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims."

138. The fourth term was that the court would be asked to approve a fixed fee for class counsel "between $950,000 & $2.5 million."

139. The fifth general term was to establish that four individuals would allocate among themselves $460,000.

140. The sixth general term was that the four individuals would be paid whether or not the court approved a class settlement.

141. The seventh general term was that the seven terms are an offer from the Diocese and "shall be acted upon with reasonable promptness" by the four individuals who would allocate $460,000 among them.

142. The four individual accepted the offer, and allocated among themselves $460,000. None of those individuals received more than $160,000. It is not yet known what portion was allocated to legal fee for class counsel.

143. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class.

144. On information and belief, those four individuals accepted that offer shortly after the June 14, 2006 mediation. At least one of them had accepted it by June 16, 2006.

145. The two classes preliminarily certified in an order signed January 19, 2007, excluded persons who have "previously had any similar claim adjudicated, resolved, or released."

146. After June, 2006, those individuals who represented the class, whose claims had been "resolved," did not qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nevertheless, they were falsely designated as class representatives in subsequent Dorchester County case, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition of the class.

147. In addition to not meeting the class definition, the class representatives received a different settlement than did class members, and excluded themselves from the arbitration process later articulated for the class members. In doing so they were guided by the Richter defendants.

148. In the June 14, 2006 settlement, when the parties reserved details for later specificity ("Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims,") those details were reserved so the defendants could work backwards from the settlement fund, minus class counsel's fixed fee, to enable adjustments to be made to the notice given to the class, and to the methods of relief given to the class members so the recovery to victims would not

be "too much." The fee for the Richter defendants could not be jeopardized by having "too many" sexual abuse victims served by the class settlement.

149. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the plaintiff, was to preserve class counsel's fixed fee. That is why the fee is fixed, and why it takes priority over the recoveries of the clients in the class. The highest priority of other defendants, after their willingness to pay class counsel's fixed fee, was to either exclude persons such as plaintiff, or to limit recovery to persons such as plaintiff, so that within the modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims against another Diocese, the Diocese could argue a *res judicata* benefit from the class settlement without having to pay meaningful relief to class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, and for notice to be designed to not inform all persons within the class definitions of the settlement itself.

150. The Diocese defendants knew or should have known that the history of systematic deceit and deception about sexual abuse required by the Vatican and Code of Canon Law, and which the Diocese defendants had in fact implemented, specifically mandated by the Vatican since at least 1962, exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

151. The Diocese defendants knew that juries had placed a high value on the intangible nature of sexual abuse claims.

152. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to a class settlement, hoping it would exclude enough victims so as to produce a desired *res judicata* effect at a fraction of the cost of a proper settlement with all victims. The Diocese defendants realized the close ties of the Richter defendants to the Diocese, and their willingness to sacrifice the interests of their clients for a fee, enabled the Diocese to try to minimize recoveries to the class members yet still get a class approved.

153. All defendants needed to avoid meaningful court oversight of the class action to limit the interests of absent members of the class, so all defendants agreed to "judge shop" to avoid oversight by any Charleston judge, and to obtain a lax oversight by the judge they desired to have.

154. When the defendants realized that "too many" victims, such as the plaintiff, might come forward in the class action, they changed, by agreement, what they would propose to the shopped-for judge for the notice to give the class, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

155. Failing to give notice outside South Carolina, other than immediately adjacent to South Carolina, was one means of eliminating claimants such as the plaintiff. No defendants objected to limit the notice to South Carolina.

156. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the plaintiff. All defendants were negligent in permitting

victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members.

157. Paying class counsel his fixed fee before any notice to the class, before any class claimant had been identified, and before any claims had been submitted, was another way of limiting the recovery to the class.

158. By design of all defendants, the class had no opportunity or input or comment on the proposed fixed fee, to be paid ahead of all class claims, as the fixed fee was approved without notice to the class and before the class members were known.

159. No defendants disclosed that the Diocese had agreed to overlook the fraudulent information submitted to the shopped-for judge to support the fee claimed, and had agreed to make no mention of those various fraudulent time entries. Nor had the defendants disclosed that they had agreed they would request no post-award fairness hearing.

160. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the psychological injury caused, was another way to limit the recovery to the class.

161. The defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as the plaintiff, then set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, all as means calculated to harm the plaintiff by excluding him from the class recovery and to try to preclude him from any later claim, and to limit recoveries to class members so as to not exceed the amount the Diocese was willing to pay.

162. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter defendants were paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese to abandon clients such as the plaintiff, and to limit recoveries to other clients, in the interest of the Diocese defendants.

163. The Richter defendants abandoned absent class members such as the plaintiff, who reside outside of South Carolina, and gave no meaningful notice to those class members that their rights had been adversely impacted when they changed their position on notice to the class from nationwide notice to a notice limited to publications in and around South Carolina.. All other defendants cooperated with that abandonment. Unless the order approving the class settlement means what it says when the court appeared to have accommodated the limited notice by ruling, at page four, "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," and the plaintiff is not precluded from his claims, the notice and arbitration structure caused damage to the plaintiff. Unless the plaintiff is not bound by the *res judicata* effect of the class action, he has been specially harmed by the conspiracy engaged in by the defendants.

Conspiracy Technique Six: Providing False Information to the Court

164. The sixth technique used to cause special harm to the plaintiff was defendants cooperated in filing with the court false information. When false information was filed by one defendant, all other defendants acquiesced, despite knowing it was false. Even after the information was identified as false, no action was taken to protect the plaintiff,

unless the order means that persons who received no notice are not barred by *res judicata*.

165. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as case 2005-CP-10-4913. The case was collusive, and was filed in Dorchester County only to avoid oversight by any Charleston judge and pursuant to the defendants' agreed upon plan to shop for a particular judge.

166. As noted above, the claim that class representatives in Dorchester County met the definition of the class and could serve as adequate representatives were each false, and known by the defendants to be false when made in any of the Dorchester County class complaints.

167. Patently false information about the procedural history of the class action was included in the Motion to Certify Classes and for Preliminary Approval of Class Settlement filed by the Richter defendants, and acquiesced in by other defendants.

168. Patently false information has also been given to the Charleston County Court and to the public by the Diocese defendants.

169. All defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston class action.

170. By agreement of all defendants, SCRCP 23 was not complied with in dismissing the Charleston class action. Plaintiff was given no notice of the dismissal, or about the Charleston class settlement, or about the settlement provided those who opted out of the class settlement. Nor was notice given to any other ostensible class member.

171. False information was filed in Dorchester County about the class representatives and their adequacy as class representatives. All defendants acquiesced in that false information to the court.

172. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese defendants made no mention of the false information filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese defendants getting the benefit they have claimed entitles the Diocese defendants to *res judicata* protection of the class settlement, and was the means by which the defendants conspired to try to eliminating claims by persons such as the plaintiff.

173. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among defendants, false time records by the Richter defendants (including individual lawyers billing in a single day compilations of 30, 40, 51.5, 60, 80, and even 92 hours; and billings for multiple "February 30" days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

174. The Diocese defendants agreed to remain silent as to these false statements, except where they overtly participated in them.

175. If the plaintiff is barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity defense waived as to persons in the class definition, statute of limitations waived as to persons in the class definition, or for any

other reasons, then duties to him in the class action were breached by the defendants, and special harm has been caused to the plaintiff by the acts of conspiracy of the defendants.

Conspiracy Technique Seven: Limiting Notice to only publications in and around South Carolina

176. The seventh technique used in the conspiracy among defendants to cause special harm to the plaintiff was to agree to limit notice to only publications in and around South Carolina, resulting in notice to only those putative class members who reside in and immediately adjacent to South Carolina. The notice given was deficient in that it was designed not to provide notice to those within the definition of the class action. By agreement of all defendants, the notice was calculated to be ineffective to reach putative absent class members. Unless the order approving the class settlement means what it says and plaintiff is not bound by the *res judicata* effect of the class settlement, the defendants have conspired so as to cause special damage to the plaintiff.

177. The Diocese defendants are well aware, from its own dealings with abuse victims, that many victims reside out of South Carolina. All defendants were conscious that choosing limited notice served the interests of the Diocese at the expense of persons such as the plaintiff.

178. By motion filed in Dorchester County in October 2006, the Richter defendants proposed giving nationwide notice of the class action through advertising about the settlement in a newspaper with national coverage.

179. In January 2007, the Richter defendants revised their request for notice to the Dorchester County court, and the Diocese defendants acquiesced in that revision, to limit notice to only publications in newspapers with circulation in or near South Carolina. The request to provide notice through a newspaper with national circulation was abandoned.

180. The Richter defendants abandoned the plaintiff as a putative member of the class in agreeing to notice calculated not to reach him. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the plaintiff in defining the classes so as to ostensibly include him, then revising the notice so as to provide no notice to him and all other absent members of the class who resided outside of the area immediately adjacent to South Carolina.

181. The Diocese defendants conspired with the Richter defendants to submit for court approval notice to the class that was calculated to omit absent members of the class such as the plaintiff, and all persons situated similarly to them. The agreement was to bar the plaintiff from being able to make claims by the *res judicata* effect of the ostensible class action without having to compensate him for Frederick Hopwood's sexual abuse.

182. No effort was made to protect absent members of the class, such as the plaintiff, by providing notice beyond the immediate area around South Carolina. If the plaintiff is are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity (which was waived as to those within the class definition), statute of limitations (which was waived as to those within the class definition), or for any other reasons, then duties to the plaintiff in the class action were breached by the defendants, and special harm has been caused to the plaintiff by the acts of conspiracy of the defendants.

183. The Diocese defendants made no objection to lack of nationwide notice. They made no objection as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the plaintiff from being able to make a claim, while retaining the argument that all absent class members were barred by *res*

judicata. The reduced notice agreed upon by all defendants demonstrates that the representation of the class was inadequate, and that the defendants conspired specifically to defeat the interests of persons such as the plaintiff, to cause him special harm by giving him not even a chance at notice of the class action.

184. The injury to the plaintiff from the conspiracy engaged in by the defendants harmed the plaintiff in a manner different from other causes of action. The plaintiff was improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the plaintiff being unable to influence the corrupt course of the class action, and its corrupt features, by lack of participation. Plaintiff was deprived of the opportunity to influence the class suit, and to try to assist himself and other abuse victims from not being limited to the corrupted procedures and manipulations of the class suit. Among other things, the plaintiff was unable to participate to influence the miniscule recovery allocated for parent and spousal claims because they were not brought for the class using the common law "loss of services" cause of action. However, if the plaintiff is not deemed precluded from stating his claims against the Diocese for any reason, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the defendants to defeat his claims was ineffectual, and this cause of action will be dismissed.

185. As a proximate cause of the actions of the defendants as alleged above, the plaintiff was damaged, and is entitled to actual and punitive damages from the defendants as a result.

For a Fourth Cause of Action:
Professional Negligence by the Richter Defendants

186. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiff is precluded, by any reason, including the class action, charitable immunity, or the statute of limitations, from making his claims against the Diocese.

187. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a copy of an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants. The original of this affidavit has been filed with a court in another, similar, case.

188. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, the proposed group whose claims were settled on June 14, 2006, in the Charleston class action mediation was a class specified as "actual victims of Diocese abuse."

189. Plaintiff was a putative member of that class as it was defined in the proposed settlement.

190. When the June 14, 2006 Charleston class mediation agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese defendants, the illicit agreement by defendants on "judge shopping" had been accomplished, and the Charleston class settlement was now claimed to be a proposed settlement of both a Charleston class case and Dorchester County class actions.

191. On October 6, 2006, the Richter defendants filed proposed class definitions that included the plaintiff, and proposed a means of notice by publications with nationwide

distribution to give notice to the class. That proposed notice might have given notice to the plaintiff, enabling him to either participate or to opt out.

192. The Richter defendants assumed a duty to the plaintiff in each of the filings in (a) the Charleston case which alleged a class action, (b) in that June 14, 2006 class settlement agreement of the Charleston case which alleged a class action, and (c) in its October 6, 2006 Dorchester County filings alleging a class action defined so as to include the plaintiff.

193. On January 18, 2007, the Richter defendants abandoned giving notice to the plaintiff about the class settlement that purported to include him. Their proposal for notice was revised to include only publications in and immediately around South Carolina, even though the class was not defined with geographic limitations.

194. On January 19, 2007, the proposed class definitions that included the plaintiff was approved without objection from the Diocese defendants.

195. In their Charleston and Dorchester County class action cases against the Diocese defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the plaintiff. In abandoning the plaintiff, the Richter defendants performed in a professionally negligent manner the duty they had assumed to absent putative class members such as the plaintiff.

196. The Richter defendants engaged in negligent acts and omissions in their representation of the plaintiff. Among other things, when they abandoned the plaintiff, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the plaintiff reasonably informed, failed to provide him with information with respect to obtaining his informed consent, failed to consult with him

about the means for accomplishing his objectives, represented him without his consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal.

197. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the plaintiff. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiff, or even to all in-state victims.

198. Any court approval of the notice was deficient in terms of protecting the plaintiff because the court overseeing the class action had been shopped-for by the defendants, and had been given, by agreement of the defendants, fraudulent information on which to base decisions.

199. The Richter defendants abandoned their absent putative class member clients such as the plaintiff by agreeing to change the proposed notice to notice calculated not to reach the plaintiff, and calculated not to reach all putative class members situated similarly to the plaintiff.

200. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court.

201. The plaintiff was abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action and jeopardize the fixed fee the Richter defendants had negotiated for themselves at the expense of the class members,

that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

202. Having "too many" claimants also was believed to not be in the interest of the Diocese, and because of his conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese more than the interests of putative class members such as the plaintiff.

203. As a result of his attorneys, the Richter defendants, abandoning the plaintiff, no notice was given to him of the class action, and he had no opportunity to participate in either the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out. The acts and omissions of the Richter defendants have caused damage to the plaintiff, assuming the plaintiff is prevented from his claims against the Diocese for any reason.

204. Plaintiff is entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

For a Fifth Cause of Action:
Breach of Fiduciary Duty by the Richter Defendants

205. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiff is precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations.

206. The Richter defendants chose to propose defining the classes in the class actions so as to have no geographical limit on the classes.

207. All defendants agreed on how the classes were defined.

208. In choosing to define the classes so as to include the plaintiff, the Richter defendants each assumed fiduciary obligations to the plaintiff, who was an absent putative member of one of the classes they defined.

209. As an alternative to the Fourth Cause of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to the plaintiff as an absent member of their respective putative class.

210. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the plaintiff by requesting geographically limited notice of the class action and settlement, as opposed to the nationwide notice they initially proposed.

211. The state court judge overseeing the class action was shopped-for by all defendants.

212. The state court judge was not asked to give notice to all class members, only a subset of class members that excluded the plaintiff.

213. The Richter defendants originally proposed nationwide notice, but then abandoned the proposal. The lack of nationwide notice was observed in the record of the class action, but even after that limitation was noted, the Richter defendants did not request it.

214. On October 6, 2006, the Richter defendants filed proposed class definitions that included the plaintiff, and proposed a means of nationwide notice to the class that might have given notice to the plaintiff.

215. The Richter defendants in its 2005 Charleston class action filing, and in the June 14, 2006 settlement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the plaintiff.

216. On January 18, 2007, the Richter defendants abandoned giving to the plaintiff notice about the class settlement that ostensibly included him.

217. On January 19, 2007, the class definitions that included the plaintiff was approved without objection from the Diocese defendants.

218. No meaningful notice, at any point, was given to class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiff, or even to all in-state victims.

219. The Richter defendants contend that mention of a class action or a class action settlement in a news media outlet is sufficient due process "notice" of a class action or class action settlement within the meaning of SCRCP 23. Mention of a class action or class action settlement in a news media outlet is not notice of a class action or class action settlement within the meaning of SCRCP 23.

220. That the Richter defendants contend that news mention of a class action is the equivalent of notice under SCRCP 23 is a reflection of the professional negligence of the Richter defendants towards the plaintiff in conducting a class action.

221. The Richter defendants each breached their fiduciary duties to the plaintiff so he would not participate in making a claim against the fund established for the class action settlement. If notice had been given nationwide, as originally proposed, "too many" claimants might have come forward in the class action, which would have jeopardized the fixed fee the Richter defendants had negotiated for themselves at the expense of their clients.

222. The Richter defendants arranged to have their fixed fee paid before notice to the class and before the claims process.

223. The Richter defendants arranged to have their fixed fee paid before membership in the class was known.

224. The Richter defendants arranged to have their fixed fee paid before distribution to the class was known.

225. The Richter defendants arranged to have their fixed fee paid before class members had an opportunity to object to or comment on the fixed fee and the priority it was to be given over class member recovery.

226. Having "too many" claimants also was believed by the Richter defendants to not be in the interest of the Diocese, and to protect their own interest in their fixed fee the Richter defendants had to also act to protect the interests of the Diocese more than the interests of the plaintiff. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class. To promote the interests of the Diocese in trying to later enable the Diocese defendants to argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the plaintiff their own interest in their fixed fee, the Richter defendants agreed to change the proposed notice to the class from notice in publications with nationwide distribution, and also agreed to accept for the class compensation that ranked among the lowest known victim compensation.

227. As a result of the Richter defendants abandoning the interests of the plaintiff, and breaching the fiduciary duties owed to him, the plaintiff had no opportunity to

participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out, or to make a claim against the Diocese for sexual abuse. The acts and omissions of the Richter defendants have caused damage to the plaintiff.

228. Plaintiff is entitled to actual and punitive damages as a result of the fiduciary duties to them that were breached by the Richter defendants.

For a Sixth Cause of Action:
Judicial Estoppel and Unfair and Deceptive Trade Practices by the Diocese Defendants

229. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated.

230. The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

231. The Diocese defendants operate an organization engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Diocese defendants advertise and offer for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. They operate churches and schools, and activities, which cater to families.

232. The Diocese defendants encouraged people, including plaintiff, to use their facilities, and to attend the various activities and functions offered on its premises. In making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers. The Diocese defendants particularly owed a duty to the plaintiff, who was a minor, and his parents, a greater degree of care because as a child the plaintiff was unable to fully appreciate risks and

danger. The Diocese defendants implicitly represented to its invitees and their parents or guardians, including the plaintiff, that its facilities and its priests were safe, and that persons would be would be protected form harm when using its facilities and when interacting with its personnel. No exception was made for Frederick Hopwood.

233. For years the Diocese defendants have been aware that certain of its operations, and certain of its employees, have sexually abused minors.

234. As part of a business decision to address that history of sexual abuse, in 2006 the Diocese elected to adopt a class settlement to address its known history of priests and other employees sexually abusing minors.

235. The Diocese promoted that decision as a responsible action by the Diocese defendants. Then Bishop Baker issued the press release that is Attachment C to this complaint. Its terms are incorporated into this cause of action as if fully stated pursuant to SCRCP 10(c).

236. Part of that settlement was to advertise the offer by the Diocese to distribute both services (in the form of counseling) and property (in the form of compensation) to sexual abuse victims.

237. Advertising was done by the Diocese in, among other publications, newspapers of general circulation in Charleston (*Post and Courier)*, Myrtle Beach (*Sun)*, Columbia (*The State)*, Augusta (*Chronicle*), Rock Hill (*Herald*), Beaufort (*Gazette*), Greenville (*News*), Spartanburg (*Herald*), Orangeburg (*Times-Democrat*), Florence (*Morning News*), and Aiken (*Standard*). Living outside of South Carolina, plaintiff saw none of those notices, as was designed by the defendants.

238. In that advertising, tangible property was proposed to be exchanged by the Diocese, and services provided in part for the intangible injury created by acts of sexual abuse.

239. The public interest was affected by the proposed class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved predicated on the false representation made to the Court about how the Diocese would conduct itself.

240. Among the false statements made at the time by the Diocese defendants was the Bishop Baker's statement that the proposed class resolution was "for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades." When stated, it was known that the class settlement proposed was to be limited to only persons in and around South Carolina. In its public statements, the Diocese defendants misrepresented the reach of its proposed class settlement, and did not disclose that in fact the proposed resolution was designed to omit many persons who had been sexually abused.

241. A circuit court judge to approve the class settlement was "shopped for" and selected by the Diocese defendants, in conspiracy and collaboration with the Richter defendants. The Diocese defendants did not want any Charleston County judge, out of concern that the judge might be fully independent.

242. The Diocese defendants were negligent in assessing the damage done by sexual abuse by their employees and the number of persons affected by that abuse. Alternatively, the Diocese knew the number of victims would far exceed the numbers it

reported to the court as its expectations for number of victims, and consciously misrepresented that number to the court and to the public.

243. The Diocese defendants were aware that the Richter defendants were willing to recover only modest relief for victims in exchange for a substantial fixed fee that took priority over the recoveries to the victims.

244. The Diocese defendants were aware that the Richter defendants had extensive and life-long ties to the Diocese, and would be willing to compromise the interests of the absent class members in exchange for a fixed fee payment.

245. The Diocese defendants conceived a plan to commit a fraud on the Court and the public by representing to the court and the public, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, while giving notice to the class in a geographically limited way. As long as their fee was paid, the Richter defendants were expected by the Diocese defendants to be willing to accommodate the interest of the Diocese, even at the expense of the absent members of the class they represented.

246. All defendants collaborated to submit false information to the Court, and no defendant objected to any of the false information submitted by any of them. Part of their agreement was to remain silent while false information was submitted.

247. To gain court approval of the class settlement the Diocese made overt misrepresentations of fact to the Court that was falsely represented to reflect an "understanding" among all defendants "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 notice procedure. The "understanding" communicated to the Court was to address

if "someone pops back up who should have gotten notice who didn't get notice." The understanding communicated to the Court by the Diocese defendants was:

> 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.

248. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. It was undisclosed to others outside of that litigation, including the plaintiff, until 2009.

249. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. In fact, the Diocese was aware, or should have been aware, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves.

250. To avoid nationwide notice, the Diocese falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Diocese assured the court, on page 14 of the same transcript, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

251. The Diocese defendants made no disagreement when, on pages 16 - 17 of that same transcript, class counsel summarizes the position of the Diocese as "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.

252. Nor did the Diocese defendants state any disagreement when the Court observed, as to the Diocese, 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."

253. The Diocese intended, on July 13, 2007, to create the false impression with the court that if a victim within the class definition came forward in the future, that the Diocese would extend relief to that victim. The Diocese created by impression by its statements and its silence in light of statements by others. The Diocese intended that impression to be relied on, and it was relied on. That impression was false, and was known to have been false when made.

254. The Diocese concealed until 2009 its true position, which was to use that false position starting in 2009 to deprive other sexual abuse victims of any relief. That fraudulent concealment by the Diocese became known only in 2009.

255. The Court relied on the statements and silence by the Diocese to extend in the July 30, 2007 order approving the class settlement, at page four, this statement:

> 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.

Emphasis added.

256. The Diocese defendants intended that the Court rely on their statements, silence, and conduct to form that impression, even though the impression was false and the Diocese had no intention of honoring the assurances given to the Court.

257. When additional victims came forward, the Diocese refused to honor its representations to the Court, and which the Court placed in its July 30, 2007 order at page 4. Instead, the Diocese asserted the defenses it had waived, claimed the *res judicata* effect it had disclaimed, and acted exactly contrary to its assurances to the Court and the public statement by then Bishop Robert Baker in January, 2007 that the Diocese intended a just resolution for every person who had been abused within the Diocese of Charleston.

258. The Diocese defendants made their false representations to the Court for the purpose of gaining Court approval of a class settlement with only limited notice to the class. By contending (falsely) that it would both waive its defenses and provide compensation to class members who had received no notice, the Diocese committed fraud on the Court, on the public, on the plaintiff, and on all sexual abuse victims born before August 30, 1980. When those representations were made the Diocese had no intention of honoring the representations.

259. The Diocese amply demonstrated that its assurances to the Court were false when, despite those assurances, the Diocese refused to perform on its assurances or on the Court's order when sexually abused persons born prior to August 30, 1980, received no notice of the class and later requested relief. That refusal includes the plaintiff.

260. The Diocese has taken inconsistent positions as to different persons included in the same class definition. Those inconsistent positions also affect the public interest.

261. All of the conduct by the Diocese, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the representations made to the Court. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action, and have since been refused relief by the Diocese when they made a claim for relief.

262. The proceedings in which those inconsistent positions were taken by the Diocese are related to this action in that each involved one or more members of the class as defined by agreement of the Diocese, who received no notice of the class settlement and for whom the Diocese promised to, but then denied, to provide relief.

263. The Diocese was successful in maintaining its disingenuous misrepresentations to the Court, got relief from the Court based on those disingenuous representations, and as a result of taking that position the Diocese received the benefit of class approval from the Circuit Court.

264. The inconsistency by the Diocese is part of an intentional effort to mislead the Court.

265. The two positions by the Diocese are in fact inconsistent, and as a result the Diocese is estopped from taking a different position as to the plaintiff, compared to the position it asserted to the Dorchester County court in the class action.

266. Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese, trebled as provided by law, with costs and attorneys fees as provided by statute.

267. The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese made a calculated business decision to invest some funds and engage in a public relations exercise, in an effort to procure positive publicity for itself without having to compensate all of its sexual abuse victims, and to attempt to seal off its liability for the full extent of its sexual abuse victims. The statement of then Bishop Baker that is attachment C to this complaint was one aspect of that public relations campaign that was postured to be inclusive but was by design created so as to be under-inclusive.

268. The Diocese invested funds to design a compensation program for victims which specifically excluded many victims. The Diocese engaged in collusion with other defendants to do so, as alleged above, and engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the plaintiff.

269. The Diocese defendants took no appeal from the July 30, 2007 order.

270. The Diocese defendants are bound by the July 30, 2007 order in the class action, and by the representations made to the court to obtain that order.

271. When the Diocese was contacted on behalf of other abuse victims who had received no notice of the class action, the Diocese refused them relief. Instead, the Diocese asserted against victims who did not get notice, exactly as they promised the court they would not, the *res judicata* effect of the class settlement, as well as the defenses it had waived on the record for persons within the class definition, and the

Diocese defendants have done so even as to victims for whom the Diocese did not even attempt to provide notice, such as the plaintiff.

272. The representation made by the Diocese to the Circuit Court was false when made by the Diocese, and was knowingly false when made by the Diocese. The Diocese had no intention of including other victims who "for whatever reason" received no notice. Despite its representations, the Diocese defendants intend to use the collusive class action cases to attempt to terminate liability of the Diocese, to do so at a fraction of the recovery a truly adversarial counsel might have demanded on these facts.

273. The Diocese defendants made their misrepresentations with the intention of convincing the Circuit Court to approve a collusive class settlement, even though the Diocese had no intention of honoring its assurances to the Circuit Court. The intention by the Diocese to mislead the Circuit Court succeeded, and the settlement was approved.

274. The unfair and deceptive acts and practices of the Diocese have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese has refused multiple persons who came forward having not gotten notice of the class action. The practices engaged in by the Diocese, of misrepresentations to the court and the public through its court statements as well as its statements to the press, are extensions of longstanding practices of deceit and deception by the Diocese. Maintaining secret archives of files, practicing "mental reservation" to support and justify lying (even while under oath), using diplomatic immunity to conceal documents, mandating that persons with knowledge of abuse conceal that knowledge, are all techniques used by the Diocese to maintain

deception. Overtly misrepresenting to a Court, and to the public, its intentions, are extensions of techniques the Diocese has used for years.

275. The false and deceptive practices of the Diocese will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Diocese have been actually repeated, as well as having had the potential for repetition. The Diocese has engaged in misrepresentations of material fact.

276. The Diocese should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to past sexual abuse.

277. The Diocese violated the UTPA willfully, in that it knew or should have known that its conduct was a violation of S.C. Code § 39-5-20.

278. The plaintiff suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Diocese in posturing for the Court as if it would respond to additional victims who got no notice, but then refusing relief when victims who got no notice actually contacted the Diocese; posturing for the Court that it waived defenses for victims who got no notice but then asserting those same defenses when additional victims actually came forward. Conduct by the Diocese was willful, and the Diocese knew or should have known that its conduct was unfair and deceptive.

279. The plaintiff is entitled to treble damages as a result of the conduct of the Diocese, as well as actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

Demand for Jury Trial

280. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

281. Actual damages to be awarded to the plaintiff by the finder of fact against the various defendants, trebled as authorized by law for the appropriate cause of action,

282. Costs and disbursements of this action,

283. Attorneys fees as authorized by law,

284. Punitive damages as authorized by law, and for

285. Injunctive relief to enjoin the Diocese defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for

286. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

Gregg Meyers

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843-556-1025
attygm@gmail.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
John Doe #66)
v.)
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-2053)
)
John Doe #66A)
v.)
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-3293)
)
John Doe #53)
v.)
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-4913)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

See Terms attached on Ext. #1

In a mediation conducted on this ________ day of ________________, 2006, the above named parties agreed to the following terms:

1. ______________________________ shall pay to ______________________ $____________;
2. Plaintiff/Respondent will execute a general release dismissing all claims on account of the matters raised in the above captioned lawsuit;
3. Plaintiff/ Respondent will cooperate in having a dismissal with prejudice entered by the court; and
4. The parties shall split the mediation fees ______________________________________.

______________________________	______________________________
By: ____________________ (Print Name)	By: ____________________ (Print Name)
Its: ____________________	Its: ____________________
Dated: ______________	Dated: ______________

EXHIBIT "4"

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create settlement class, subject to Court approval of:

ⓐ ACTUAL VICTIMS OF DIOCESE ABUSE

ⓑ SPOUSAL &/or Parent claims deriving from victims abused

2. Class settlement FUND will be for $12,000,000 FUNDED AS FOLLOWS:

ⓐ $5,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with $7,000,000 limits once the $5,000,000 Letter of Credit has been drawn down to $1,000,000.

3. DETAILS of claims process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

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Attachment A

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4. Court shall be asked to approve attorneys' fees for class counsel at between $950,000 + $2.5 million, subject to Defendants' obtaining credit to secure the obligation.

5. Mr. T Redacted* shall be paid ______

Mr. S Redacted* shall be paid ______

Mr. N Redacted* shall be paid ______

Mr. M Redacted* shall be paid ______

* COLLECTIVELY paid $460,000 to be divided among the 4 gentlemen above after accepted as agreed to.

6. If the Court fails to approve settlement class +/or provision of class settlement, the compromise settlement with the individuals in "5." above shall not be excused + shall proceed to settlement in the amounts set out in "5." above with appropriate general releases +/or dismissals with prejudice executed in favor of defendants.

~~[illegible]~~

(3)

7. These terms are in the form of an offer by Defendants & shall be acted upon with reasonable promptness by Plaintiffs/Claimants named in "5" above.

June 14, 2006

James Deeley, Attorney
ON BEHALF OF DEFENDANTS
Attorney for and with authority of the Diocese of Charleston

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COUNTY OF RICHLAND)

AFFIDAVIT

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

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

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

   A. I am a lawyer licensed to practice law in South Carolina;

   B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court and current Chairman of the South Carolina Bar Ethics Advisory Committee;

   C. I am a frequent CLE speaker and law school guest lecturer on the topic of lawyer ethics and have been selected as one of five instructors for the South Carolina Supreme Court's Ethics School; and

   D. Since leaving the Office of Disciplinary Counsel in 2006, my practice has focused almost exclusively on matters of lawyer ethics.

3. My opinion is based on the facts provided to me by Plaintiff's counsel and review of various documents. Included in my document review are the following:

   A. Complaint in the Original Jurisdiction of the Supreme Court, John Doe et al. v. Lawrence E. Richter, Jr., et al.;

   B. Affidavit of Gregg Meyers, dated June 18, 2008, and filed June 18, 2008, in John Doe C, et al. v. The Diocese of Charleston, et al., Case No. 08-CP-10-1274, and attachments including:

      i. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

ii. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

iii. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;

iv. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

v. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

vi. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913; and

vii. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

C. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;

D. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-____ (blank line in original);

E. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

F. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636; and

G. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636, and exhibits attached thereto including:

i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;

ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;

iii. Affidavit of Angela Pittard, with attached timesheets;

iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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

5. Based on my experience, education, training, and knowledge of the standard of care for lawyers and on my review of the above-listed documents and my discussions with Plaintiffs' counsel, it is my opinion that, Lawrence E. Richter, Jr., Esquire, David K. Haller, Esquire, and Richter & Haller, LLC, (hereinafter "Defendants") engaged in negligent acts and omissions in their representation of Plaintiffs including the following:

A. failure to provide competent representation;

B. failure to act with reasonable diligence and promptness;

C. failure to promptly inform clients of decisions and circumstances with respect to which the clients' informed consent is required;

D. failure to reasonably consult with clients about the means by which the clients' objectives are to be accomplished;

E. failure to keep clients reasonably informed about the status of matters;

F. failure to explain matters to the extent reasonably necessary to permit clients to make informed decisions regarding the representation;

G. attempting to charge and charging an unreasonable fee;

H. representing clients when the representation involved a concurrent conflict of interest, without obtaining the informed consent of each client, confirmed in writing;

I. failure to exercise independent professional judgment and render candid advice in representing clients;

J. failure to expedite litigation consistent with the interests of clients;

K. lack of candor toward a tribunal; and

L. conduct prejudicial to the administration of justice.

6. In particular, it appears from the above-referenced documents that Defendants failed to inform clients of Richter's extensive personal relationship with an adverse party, the Diocese of Charleston, and Richter's continuing work on behalf of the Diocese during litigation in which Defendants' clients were adverse to the Diocese. It is apparent from Richter's own affidavit (identified in paragraph 3.F.ii above) that he has a lifelong, extensive personal relationship with the Diocese and many of its current and former constituents, in addition to being a constituent himself and continuing to perform official functions during the pendency of the client matter. This presents a conflict of interests, requiring Defendants to disclose the nature

and extent of the relationship to the clients, along with the risks of the representation and the reasonably available alternatives. Defendants apparently did not do so.

7. It further appears that Defendants engaged in acts and omissions that would be potentially disadvantageous to their own clients and advantageous to the Diocese, including:

A. failing to promptly seek class certification in the Charleston County class action;

B. executing Consent Orders of Dismissal in the Charleston County cases;

C. reducing the extent of notice to class members contained in Defendants' Motion to Certify Classes;

D. agreeing to reduce their clients' recovery but not Defendants' fees, if the claims exceeded the pool;

E. failing to object to the Diocese having sole, unsupervised, unfettered discretion to discover potential class members from its own files;

F. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review;

G. expressly sacrificing clients' opportunity for post-claim review by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal or suit and that claimants, by participating in the claims process, expressly waive the right to appeal;

H. participating in negotiations of the claims of several opted-out class members, resulting in an agreement that payment of such claims may come from the settlement pool available to class members;

l. agreeing to contribute $100,000 from either Defendants' fee or the settlement pool, toward a settlement between the Diocese and several opted-out class members.

It appears that Defendants engaged in these acts and omissions without first consulting or otherwise communicating with clients. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

8. It further appears that Defendants engaged in acts and omissions that would be potentially disadvantageous to their own clients and advantageous to Defendants, including simultaneously seeking a common fund recovery for class members and a fixed fee amount for Defendants. It appears that Defendants engaged in this conduct without first consulting with clients. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

9. It further appears that Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-class-representative clients, including agreeing to subject some clients to a damages matrix and claim scrutiny to which class representatives were not subjected, settling the claims of the class representatives prior to class certification and court approval of the class settlement, and expressly agreeing to settlement terms for the class representatives regardless of court approval of the class settlement. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

10. It further appears that Defendants sought an improper and unreasonable fee from the settlement pool and a payment structure that favored Defendants' own interest above those of their clients. Defendants' fee petition, affidavits and billing records overstate work performed and misrepresent the nature of the case. Defendants describe the case as hotly contested and aggressive, and the defense formidable and substantial, depicting a time-intensive case requiring the highest skills of the most competent counsel; yet the documents indicate contrary circumstances: little discovery (some paper requests from class counsel but no evidence of responses received nor of requests received from opposing counsel), no depositions, few motions, and after mediation no client disputes, few hearings, and no animosity or contention except on the issue of Defendants' collection of their fee. Defendants' billing records show 3385.5 total hours spent by lawyers and staff at Richter & Haller; however many of the time entries are clearly false in that they are nonsensical and/or impossible, including:

A. each and every entry on all 68 pages of billing records is a round, even-hour increment or an entry of ".5" hours;

B. countless round-number or .5-hour time entries at "12:00:00 AM"—including multiple tasks by the same person at the same time—while other entries indicate exact times;

C. a 10-hour time entry for "Oversight and Review" by "LER" on the 30th day of each month for 3 and a half years, including the same 10-hour time entry for "Oversight and Review" by "LER" just nine days after the first activity in the case in July 2003;

D. a 2-hour time entry for "Bookkeeping" on the 30th day of each month;

E. a 3-hour time entry for "Photocopying / Monthy" at irregular intervals but always exactly 3 hours, including one such entry when no other work had been performed in the previous month;

F. three 5-hour time entries (one each for "DKH," "LER," and "Clerk") for "Legal Research" on the 30th day of each month, including January 30, 2007, within 2 days of the end of the case (and after which no further time is recorded except 7 hours of faxing by "Staff" and 14 hours of emailing by "DKH" & "LER" over the next 2 days);

G. time entries on days that do not exist: February 30, 2004, and February 30, 2005;

H. a 16-month period, from September 2003 through December 2004, when only 5.5 hours of specific work is entered, yet 426 hours is entered in the same repeated, identical, rote entries of "Oversight and Review," "Bookkeeping," "Legal Research," and "Photocopying / Monthly" described hereinabove;

I. 3 .5-hour time entries for drafting 3 Certificates of Service at the same time on the same day (this set of entries occurs multiple times);

J. 12 *consecutive* 1-hour time entries by "LER" for work on 12 different documents, all at specific times beginning at "07:38:38 AM" on "10/26/06" but extending consecutively over a period of approximately 1 hour and 49 minutes ending at "09:27:30 AM," with many 1-hour entries within less than a minute of each other;

K. numerous sets of entries similar to the 12 described in the immediately preceding subparagraph (J), such as 3 consecutive 1-hour time entries by "LER" for work on 2 documents, all at specific times beginning at "03:54:19 PM" but extending consecutively over a period of 1 minute and 13 seconds;

L. entries of exactly 20 hours for drafting each discovery document;

M. multiple instances of more than one 20-hour time entry for the same person ("DKH") on the same day;

N. 27.5 hours (in 55 increments of .5 each, all at "12:00:00 AM") in one day by "DKH" for emailing to "David K. Haller";

O. 60 hours (10 by "LER" and 50 by "DKH") for amending complaints that ultimately contained very little amendment, including one which apparently changed only the county in the caption and the date at the end;

P. multiple instances of one person ("DKH" in some instances, "LER" in others) of billing more than 24 hours in a day;

Q. 568.5 hours of entries appended to the end of the (otherwise chronological) timesheets, for dates ranging from 2004 through 2007, 500 hours of which is in whole multiples of 10 and expressed in date ranges rather than in dates and times, including 3 130-hour single entries by "DKH" for one- and two-week time periods in June and October 2006; and

R. one of the above-referenced 130-hour single entries by "DKH" for the eight-day time period of October 4-11, 2006, during which period "DKH" had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

Defendants stated to the court that the above entries were "by far conservative" estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus Defendants appear to have made false statements to a tribunal in support of a fixed fee that was unreasonable and put Defendants in a position potentially adverse to their own clients without taking appropriate steps to deal with the conflict of interests created thereby.

11. As a result, it is my opinion that Defendants' conduct fell below the standard of care, competence, diligence, and loyalty expected of lawyers.

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

FURTHER AFFIANT SAYETH NOT.

Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 10th day of December, 2008

Notary Public
My Commission Expires : My Commission Expires July 25, 2013

Attachment B

January 21, 2007

Open Letter by Bishop Robert J. Baker on the Resolution of a Class Action Settlement for Child Sexual Abuse Cases

Sexual misconduct and abuse of children is an unfortunate reality in our society. Children require protection by society, since they cannot adequately provide it for themselves. The Diocese of Charleston is adamant that the abuse of children, including physical injury, sexual molestation, or grave emotional damage, will not be tolerated, by anyone, especially Church personnel.

For the past several years my staff and I have been working diligently with victims of sexual abuse to come to just resolution for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades. Today, I am pleased to announce an agreement has been reached and submitted to the Court of Common Pleas for approval and oversight.

While the instances of abuse addressed through this action span decades, we take to heart the pain and anguish which they may have caused to the individuals affected and those around them. Can a human family have real peace and joy if some of its members are feeling the pain of previous offenses? As a communion of persons, a family, the good of the Church is tied to the spiritual good of all of her members, without exception. In order for individuals who have been sexually abused to heal and the entire Church to grow in peace and the love of Christ, we must seek to truly mend the hurts of the past.

The demands of justice and the desire to heal the hurts of those abused by those sent to minister to them weigh heavily upon my heart. I deeply regret the anguish of any individual who has suffered the scourge of childhood abuse and am firmly committed to a just resolution of any instance in which a person who holds the responsibility of protector has become a predator.

Any instance of childhood abuse is not only a grave moral evil; it has damaging consequences that can affect the child for the rest of his or her life and influences the Church in its credibility in evangelization efforts for years to come. I believe that a proactive approach to healing the evil that has been done is not only constructive, but absolutely necessary.

The details of the settlement include an initial fund to settle instances of abuse at a predetermined amount of damages. In the event claims exceed the initial fund, there is an agreement in place to access additional funds.

I hope and pray that you will join me in praying and working for the good of those who have been harmed. It is my fervent hope that this settlement will allow us, as the Catholic community

Office of the Bishop

119 Broad Street · Charleston, South Carolina 29401
P.O.Box 818 · Charleston, South Carolina 29402 · Phone (843) 853-2130 ext. 203 · FAX (843) 724-6387

of faith in South Carolina, to bring closure to an ugly period in our history and look forward with joyful hope to the future of our Church, where we can carry on the mission of Jesus Christ to bring light, truth, compassion, healing, and peace into our world.

Sincerely yours,

+ Robert J. Baker

Most Reverend Robert J. Baker
Bishop of Charleston

Attachment C

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 12-CP-10-5559

Jane Doe 11,

Plaintiff,

v.

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

Defendants.

Civil Conspiracy
Professional Negligence
(Legal Malpractice)
Breach of Fiduciary Duty

Jury Trial Requested

FILED
2012 AUG 23 PM 3:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY ______

Complaint

For her complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Plaintiff is an adult citizen and resident of a state other than South Carolina. She is the spouse of a person who was sexually molested as a child by a priest of the Diocese of Charleston, James W. McCarthy, also known at times as Leo McCarthy, Leo J. McCarthy, and James W. McCarthy, when he was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.

2. A pseudonym is used for the Plaintiff due to the sexual abuse injury sustained by her husband. The Defendants will be informed of the identity of the Plaintiff upon their

agreement to reciprocate in discovery and to maintain Plaintiff's identity as confidential in the public record.

3. The Bishop of Charleston, a Corporation Sole, is the entity that governs the activities of the various entities comprising the Catholic Church throughout South Carolina. It is referred to in this complaint as the Diocese.

4. The Diocese was created in 1880 by an Act of the South Carolina General Assembly.

5. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. The Diocese operated St. William Parish, a Catholic Church in Ward, S.C.. James W. McCarthy was assigned by the Diocese Defendants to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971. During his time at St. William, the Diocese Defendants knew, or should have known, that James McCarthy was sexually abusing children.

6. The acts associated with the abuse of the Plaintiff's spouse took place in and around Ward, S.C., in Saluda County, but the acts associated with the conspiracy occurred in major part in Charleston County.

7. Venue is proper in Charleston County.

8. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued in his official capacity, and is a party necessary for complete relief. All persons working for the Diocese are subordinate to the Bishop.

9. Prior to Bishop Guglielmone, from October 2007, to March 2009, the Diocese

had no Bishop, and was administered under the Code of Canon Law by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County.

10. Prior to Administrator Laughlin taking charge of the Diocese, from July 1999 to August 2007, the Bishop in charge of the Diocese was Robert J. Baker, presently a resident of, and citizen of, Alabama.

11. In this complaint, the Diocese, the individual Bishop defendants, and the Administrator are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

12. Jane Doe 11 was similarly situated as other individuals ostensibly within the definition of a class certified by a South Carolina court as part of a class action. However, by collusive agreement among the Defendants, the Plaintiff received no notice of the class action, thus had no opportunity to be heard or participate in the litigation, either in person or through counsel. By collusive agreement among Defendants, notice given in the class action was designed to be insufficient as to the Plaintiff, so as to permit the Diocese to later argue that the class action precluded any and all claims for abuse, by preventing the Plaintiff from either participating in the class action or being able to remove herself from the class action by opting out of the class action.

13. Defendants continue to extend their best efforts to conceal the collusive nature of the class action. Acts to conceal the collusive nature of the class action extend into 2012. The plaintiff brings this action within three years of the active concealment by the defendants.

14. In being within the putative definition of the class as the Defendants agreed to define the class, the Plaintiff, along with other members of that class who resided outside

of South Carolina, ostensibly were formerly represented by, until in 2007 each was abandoned by, Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC. Alternatively, and at minimum, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC assumed duties as to the Plaintiff by defining the class so as to ostensibly include her. The Defendants conspired against the Plaintiff to cause her special harm in the form of the effort to preclude her from making any claim. The representation the Plaintiff was given in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

15. In this complaint, Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC are collectively referred to as "the Richter defendants."

16. This action is not alleged as a class action. It involves as Plaintiff one person who was, until she was abandoned by her counsel, the Richter defendants, a putative member of (a) a class as alleged in a state court class action, (b) a collusive class settlement agreed to among Defendants, and (c) a class approved by a state court. But for the Richter Defendants having breached their duties to Plaintiff by abandoning the Plaintiff, in agreement with and full complicity with the other Defendants, the class action would ostensibly have included the Plaintiff. A number of other individuals have made similar allegations of having been excluded by design from the class action, and this complaint may be amended to state a class action.

17. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in Charleston County as a practicing attorney.

18. David K. Haller is a citizen and resident of South Carolina doing business in Charleston County as a practicing attorney.

19. Richter & Haller, LLC did business in Charleston County at all times pertinent to this complaint, and had its principal place of business in Charleston County.

20. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to as the "Richter defendants."

21. The Court has jurisdiction over the parties to this action.

22. The Court has jurisdiction over the subject matter of this action.

23. Venue of this action is proper in Charleston County.

Nature of Wrongdoing

24. This In 2005 a class action against the Diocese defendants was begun in Charleston County.

25. In 2009 the class action against the Diocese defendants had not been concluded.

26. On March 19, 2009, in an appeal involving the class action, and specifically involving the Richter Defendants and the Diocese defendants, the South Carolina Supreme Court ordered, "we hereby direct that the underlying matters be concluded within six months of the date of this order. No extension shall be granted absent prior permission by this Court."

27. By September 19, 2009, the class action was ended by order of the South Carolina Supreme Court.

28. The Defendants have each ignored that order of the Supreme Court and in 2012 continue to collude in the class action.

29. This complaint sets out allegations of corruption and collusion by lawyers and parties to manipulate three Charleston County cases, and later Dorchester County cases,

to cooperate among Defendants to try to buy for the Catholic Church a layer of what was hoped would be protection from civil lawsuits almost certain to keep coming over that historical sexual abuse and the fraudulent concealment of abuse by the Diocese. It also sets forth allegations of fact related to corruption of particular lawyers who assumed a duty to act for victims of the sexual abuse, including the Plaintiff, but who then acted negligently, willfully and wantonly, by abandoning their client so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese in exchange for their cooperation with the Diocese in trying to protect the Church from future cases, and from claims by this Plaintiff and other spouses of sexual abuse victims. The danger to the Diocese of future cases was that future cases might be brought by lawyers actually adverse to the Diocese Defendants, as opposed to the Richter Defendants, some of whom had life-long ties to the Diocese Defendants. Those life-long ties were never disclosed to the class, and created a willingness among the Richter defendants (combined with cooperation from the Diocese Defendants to obtain the fee for the Richter Defendants) to enter the collusive class agreement with the Diocese Defendants. The Complaint also sets forth overt misrepresentations of fact by the Defendants to the Court which approved the class action settlement.

30. So confident were the corrupt lawyers in their ability to manipulate the state court judge they had selected and maneuvered the class action cases before, and so confident were the corrupt lawyers in gaining the cooperation of the Diocese Defendants, their supposed adversaries, that the corrupt lawyers, the Richter defendants, calculated they could (a) submit blatantly false and inflated time records to justify their large fee, (b) that no objection to them would be raised by the Diocese Defendants, (c) no scrutiny would

be paid those blatantly false time records by the state court judge they had among themselves colluded to "shop for" and maneuver the class action cases before, and (d) in 2012 the Richter Defendants would move before the state judge to again rule in the class action, purporting to represent clients they did not represent, to get a ruling in a case that had been closed since 2009 by order of the South Carolina Supreme Court, to obtain relief supposedly for clients they did not represent (and whom they knew to be represented by other counsel), but relief in fact designed to protect the Diocese Defendants as well as themselves.

31. In exchange for their cooperation with the Richter defendants, the Diocese (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention any of the false time records submitted by the Richter Defendants, (c) agreed to a range to be established for the fee to the Richter defendants, (d) agreed to state only the weakest and most vague argument that the fee awarded to the Richter defendants should be the low end of the agreed range for the fee, (e) agreed to make no objection to an unethical fixed fee for class counsel while, simultaneously, compensation to the class of victims was variable, (f) agreed to make no objection to the fee being awarded to class counsel before any class member claimant was identified, before class members had any opportunity to opt-out, before any class claims had been presented, and before any class member claimant was paid, (g) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court, ethical practices, and South Carolina law, and (h) in 2012 raised no objections to the Richter Defendants seeking to reopen the closed class action suit on behalf of persons the Diocese knew to be represented by counsel other than class counsel.

32. In turn, the Diocese Defendants overtly misrepresented to the Circuit Court their proposed treatment for class members who did not receive notice of the class action settlement, and once the Court relied on that representation and approved the class relying on that representation, the Diocese Defendants ignored that they made the representation, abandoned the commitment they made on the record to the Circuit Court and to the public, and demonstrated that the representation when it was made to the Circuit Court was false when made, and was false when made to the public through Bishop Baker's public statements. Correspondingly, the Richter defendants failed in 2008 to secure by court order for their clients, the class members, the assurances of treatment the Diocese overtly misrepresented to the Court would be made available to class members who received no notice when the court failed to secure those assurances overtly in the order, and in 2012 purported to file in the same class action, which had been closed since 2009, a motion which purports to represent individuals known by all Defendants to be represented by other counsel. The motion in fact seeks to promote the interests of the Richter defendants by furthering the collusive actions with the Diocese defendants.

33. Of the five levels of wrongdoing alleged in this Complaint, the causes of action hinge, in part, on whether or not the Plaintiff is regarded as being bound by the *res judicata* effect of the class action to which the Diocese was party. As alleged more fully below, Plaintiff ostensibly falls within a class defined in that action, but the notice given to the classes, by design, was changed by all Defendants so as to exclude notice to the Plaintiff. As a practical matter, notice was revised so it would go only to a subset of the approved classes; those class members living in and immediately adjacent to South

Carolina who happened to read a particular newspaper. The change to the extent of the proposed notice to the class was noted to the state court by objectors to the class but the state judge that was hand-picked by the Defendants through their judge-shopping techniques ignored the issue in 2007 when notice was approved for the class action. The Richter defendants, colluding with the Diocese defendants, in 2008 took no appeal from the notice they knew would be insufficient. All Defendants cooperated together to better protect the Diocese by asking for only notice that would be insufficient to notify all members of the class. In 2012, after their fraud and collusion was discovered and disclosed in documented court proceedings, the Richter Defendants sought to protect themselves and the Diocese defendants by seeking to have the shopped-for state judge make supplemental rulings, on behalf of clients they knew were represented by other counsel, in the class action which the South Carolina Supreme Court had closed in September, 2009.

34. The state court order which approved the class appeared to have provided for absent members of the class who received no notice, but the Diocese Defendants now contend, contrary to representations made to the Court in 2007, that the Diocese has no duty to absent members of the class that received no notice of the class settlement. By that argument the Diocese Defendants seek to perpetuate the civil conspiracy the Diocese Defendants intended to achieve through the class action and with the collusive cooperation of the Richter Defendants.

35. Plaintiff was an absent member of a class who, by collusive design among Defendants, received no notice of the class action. As such, Plaintiff should not be bound by any *res judicata* effect of the class action because the class action was collusive,

because the procedure used did not adequately insure the protection of her interests, because her representation by the Richter Defendants was inadequate and fell below the applicable standard of care, because the state court order appears to contemplate the insufficient notice by holding that the Plaintiff is not properly bound by any *res judicata* effect, as set forth more fully below. Nor should the plaintiff be bound by any orders that emanate from a 2012 filing by and on behalf of the Richter Defendants in that closed class action, where class counsel filed on behalf of themselves rather than on behalf of any client represented by class counsel, and in fact has made a court filing attempting to affect the interests of individuals knowing those individuals were represented by other counsel and designed to compromise the interests of those individuals rather than to promote the interests of those individuals.

36. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No change is sought as to the class action. Only an interpretation is sought as to the preclusive effect of the class action as applied to the Plaintiff.

37. In 2012, a circuit judge concluded that the notice provisions in the class action was insufficient to constitute Due Process for any individual, such as the Plaintiff, within the class definition who lived out of state.

For a First Cause of Action:
Civil Conspiracy (against all Defendants)

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

39. The Diocese Defendant employed as a priest a person known at times as James McCarthy. He was also known for a time as Leo McCarthy.

40. The Diocese Defendants placed James McCarthy in Ward, S.C.

41. In his capacity as priest, James McCarthy was placed by the Diocese Defendants in a position of trust and confidence, and had access to the Plaintiff's spouse when her spouse was a child, and had access to other children. In that capacity, James McCarthy sexually molested the Plaintiff's spouse when he was a child. James McCarthy also molested other children.

42. James McCarthy invited children to his residence and provided alcohol to children prior to molesting them.

43. Prior to Plaintiff's spouse being molested, the Diocese defendants became aware that James McCarthy was dangerous to children. The Diocese defendants moved James McCarthy from place to place within the Diocese, and thereby facilitated his access to young people whom he could molest.

44. The Diocese Defendants negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy. Moving him without proper warning to children and their parents, and without proper supervision, was grossly negligent.

45. The Diocese Defendants have for decades maintained a policy and practice of fraudulent concealment when their agents and employees were known to sexually abuse children. The most recent act of fraudulent concealment by the Diocese defendants was in 2012. This action is brought within three years of that most recent act of concealment and fraudulent conduct by the Diocese Defendants.

46. The Diocese Defendants operate under secrecy provisions in its administrative operating procedures in the Code of Canon Law and in the 1962 document titled

"Instruction." The Instruction charges the Diocese to discover, but then to maintain secrecy about, "other persons solicited" by any person, such as James McCarthy, who commits the "unspeakable crime" of sexually abusing a child. In addition, the Diocese defendants operate with a policy and practice of secrecy as to matters which relate to sexual abuse.

47. The Diocese defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including James McCarthy. The Diocese required secrecy and concealment, and it has enlisted its agents and employees to further conceal its knowledge of abuse so as to limit its exposure for the Diocese defendants being held responsible for sexual abuse of children.

48. Specifically, the Diocese defendants utilized a records retention practice of secrecy, in which the Diocese created an archive, accessible only by the Bishop and chancellor, which included matters concerning sexual abuse. Documents were not permitted to be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia. The Diocese required that a "Secret Archive" also be created, where "documents are to be kept secret" and "protected most securely." The administrative rules and policy the Diocese uses on document retention states: "Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained." Only the Bishop is to have the key to the Secret Archive, and documents are not to be removed from that archive. The Bishop is authorized to include

in the secret archive any matter which can be regarded as scandalous, and the practice by the Diocese has been to include in the Secret Archive matters related to sexual abuse.

49. In 1962 the Diocese defendants expanded on the secrecy required concerning sexual abuse, receiving an "Instruction" which was to be stored in the Secret Archive. Instruction, page 1. In the Instruction, matters involving priests who "solicit or provoke" (p. 1 ¶ 1) a penitent "toward impure and obscene matters" (p. 1 ¶ 1), "which is also silence" (¶ 11) and deemed "a secret of the Holy Office" (p. 3 ¶ 11), "under the penalty of excommunication" (p. 3 ¶ 11). The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." (p. 4 ¶ 12. See also, p. 5 ¶ 23 and p. 6 ¶ 28).

50. These administrative policies relate to secrecy for criminal conduct rather than to matters of doctrine or religious faith.

51. The 1962 Instruction states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." P. 15, ¶ 71. It is also defined as "any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex." P. 16, ¶ 73. These references include criminal sexual abuse of minors.

52. The 1962 Instruction directs the Diocese defendants to assume the duty of locating "other persons solicited by the same confessor" (p. 7 ¶ 29), in this instance, other persons solicited by James McCarthy. The Instruction at p. 9 ¶ 37 also refers to an "Instruction of the Holy Office, February 20, 1867," in directing the manner of interrogation for persons with information about solicitations or those solicited. These policies apply to criminal matters involving sexual abuse of minors.

53. The 1962 "Instruction" is an official publication of the Holy See.

54. The 1962 Instruction was approved by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 Instruction.

55. The 1962 "Instruction" is applicable to the Diocese Defendants.

56. The 1962 "Instruction" is applicable to criminal sexual conduct with minors by agents or employees of the Diocese Defendants.

57. In the Appendix to the 1962 Instruction are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the plaintiffs. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff," according to page 17 of the 1962 Instruction.

58. "Whatever type of pretext" overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the 1962 Instruction for complying with civil authority, and none is made in practice.

59. Unless the Pope himself has specifically approved otherwise, and there is no indication that he has, secrecy was to have been maintained by the Defendants, and by even witnesses to sexual abuse. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the 1962 Instruction, the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. That has been the administrative practice of the Diocese Defendants on matters as to criminal sexual conduct as to minors. Accordingly, unless the Pope has specifically instructed

otherwise, the Diocese defendants can all be expected to be obedient to the 1962 Instruction, to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse, even where it constitutes criminal sexual conduct of minors. The Diocese defendants have, to date, done so.

60. The Pope has taken no action to relieve Defendants from the secrecy imposed on them by the 1962 Instruction.

61. In 2008 the Diocese defendants voluntarily assumed the duty to locate victims ascribed to it by the 1962 Instruction, but conspired with the other Defendants to make the undertaking a fraud, and to deliberately omit the Plaintiff. The Diocese Defendants failed to locate the Plaintiff, her husband, or many other abuse victims, and with the cooperation of other Defendants made no competent inquiry to locate them. The Diocese defendants purposefully avoided making the type of inquiry that would have elicited discovery of the Plaintiff or her spouse, and did so to serve their own ends.

62. Defendants have conspired to injure the Plaintiff, and those actions have caused special damage to the Plaintiff. The defendants have acted in numerous ways which reflect the joint assent to injure the Plaintiff, and have taken overt acts to pursue the common design to injure the Plaintiff. Details of the overt acts which reflect that joint assent are set forth below.

63. Some actions that have been taken have been legal; other actions were legal but violated professional standards embodied in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the Plaintiff by making sure she and all other out-of-state putative class members could not participate

in the state court class action, on one hand, and on the other, to make sure the Plaintiff would be prevented from opting out of the class action and bringing her own action.

64. In exchange for a sufficient amount of money directed to colluding lawyers as a fee, the Plaintiff's one-time lawyers, the Richter defendants, agreed to act against the Plaintiff's interest, and to collaborate instead to act against the Plaintiff's interest and in the interest of the Diocese.

65. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese Defendants to be silent as to the fraudulent means used to justify that fee, the Plaintiff's one-time lawyers, the Richer defendants, agreed to abandon the Plaintiff, quietly dropping their request to give nationwide notice to class members such as her, even though The Richter Defendants had, in coordination with the Diocese Defendants, defined class action classes so as to ostensibly include the Plaintiff and had originally proposed nationwide notice to those classes. That proposal to give nationwide notice was then changed to notice only in the area immediately around South Carolina. The revised proposal for notice was designed by the defendants not to reach the individuals within the class as defined, and instead was designed to exclude the Plaintiff, and breached a duty to the Plaintiff assumed by the Richter defendants.

66. The Richter defendants assumed a duty to the Plaintiff either from an attorney-client relationship with the Plaintiff or from a fiduciary duty assumed as to the Plaintiff when the Richter defendants brought the class action and defined the class as they chose to define it, so as to include the Plaintiff.

67. The Richter defendants elected to abandon their out of state putative class member clients, such as the Plaintiff, by dropping their request for nationwide notice to

the out-of-state class members, so as to prevent the Plaintiff, and others similarly situated, from finding out about the class action and from making claims against the class fund. Doing so protected the interests of the Richter defendants at the expense of their ostensible clients, and promoted the interests of the Diocese defendants.

68. In the class allegations, joinder was said to be impracticable because the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, and in the identical John Doe #53 Complaint redundantly filed in 06-CP-18-1636, also at ¶ 36.

69. If "too many" of those hundreds of victims participated in the class action, the Richter defendants would jeopardize the large fee the Diocese had agreed to enable them to get, and the Diocese might not get the ostensible protection from future suits it was colluding to try to obtain at the lowest possible cost.

70. For the Richter defendants, both their fee, and the interests of the Diocese, were more important than the interests of their absent putative class member clients.

71. In exchange for the Richter defendants abandoning the Plaintiff and all of the other putative class members living outside of South Carolina, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which were used to support the fee request by the Richter defendants, (e) agreed to the unethical conduct of a settlement

which established a fixed fee amount for class counsel while establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to counsel before any class member's claim was known or the class was even identified, (g) acquiesced in the unethical conduct of abandoning all out-of-state class members by agreeing to give those class members no notice of the class resolution, and (h) agreed to violate SCRCP 23 and other professional standards by moving the class action cases to a state court judge outside of Charleston County known to have extensive social and professional ties to the Richter defendants, in the aspiration that a more pliable oversight would be received for the class settlement.

72. The Diocese defendants undertook a duty to the Plaintiff to identify abuse victims and their spouses, such as the Plaintiff, and negotiated, in June, 2006, a class resolution to what was referred to as "spousal &/or parent claims deriving from victims abused," in the 2006 Charleston Mediated Settlement agreement at ¶ 1. At that time no class of "spousal &/or parent claims" had been certified or even alleged. To get approval of the class settlement, the Diocese defendants colluded, along with the Richter defendants, to circumvent the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County.

73. In disobeying SCRCP 23 in Charleston County, and in judge-shopping in Dorchester County, the defendants violated judicial norms and rules. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which duplicated an existing Charleston County

complaint alleging a class, resulting in the identical case pending simultaneously in circuit court in both Charleston County and Dorchester County on behalf of the sa,e individual class representative, and on behalf of the same putative class. That was done as the means of judge shopping. The Diocese defendants also agreed to remain silent so as to enable the Richter defendants to submit false information to the judge that was hand-picked by the Defendants in the expectation that the judge would provide a pliable, and less than independent, oversight of the class settlement and class claims process.

Details of the Conspiracy

74. In 2003, the Richter defendants were associated by one or more lawyers to assist in representing a victim of sexual abuse in a claim to be asserted against, *inter alia*, The Diocese of Charleston.

75. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the remainder of 2003 and all of 2004.

76. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The Bishop of Charleston, et al.*. That action was assigned case number 05-CP-10-2053. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

77. That John Doe 66 complaint made no class action allegations.

78. In August 2005, the Richter defendants filed another individual action in the Charleston County Court of Common Pleas, styled *John Doe #66A v. The Bishop of Charleston, et al.*. That case was assigned case number 05-CP-10-3293. No complaint is

made against the other attorneys who signed that complaint along with the Richter defendants.

79. The John Doe 66A complaint made no class action allegations.

80. In October 2005, the Richter defendants met personally with then Bishop Baker.

81. After that meeting, in December, 2005, the Richter defendants filed a class action complaint in the Charleston County Court of Common Pleas, styled *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al.*. That case was assigned case number *05-CP-10-4193*. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

82. In February 2009 the Diocese defendants published to the public through their press spokesman a lie. The lie was that the Charleston County John Doe 53 complaint was one of three individual cases filed in Charleston, as opposed to it being a complaint which alleged a class action. The representation that it was an individual suit was a lie in furtherance of the routine and consistent administrative practice by the Diocese defendants to engage in fraudulent concealment of sexual abuse matters, and to further the agreement among defendants to cause harm to the Plaintiff.

83. Rule 23(d)(1) SCRCP requires "as soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained."

84. From December 2005 until June 2006, the Richter defendants made no effort to seek class certification for the class they had alleged in the December class action complaint in Charleston County, nor did any other Defendants. In that time the public

records show there were no motion hearings held in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, on topics other than on class certification, and sent out hearing notices, the Defendants collaborated to ask that the motions be continued rather than heard.

85. In June 2006, the Defendants met in a mediation conference. At that time, no class action had been certified, and no class had been alleged for spouses or parents of sexual abuse victims.

86. At that conference, which took place over two days, the parties purported to settle all claims of all class members in two classes, as the classes were defined by agreement of the parties. That agreement was reduced to writing in 2006.

87. Ostensibly included in the classes as defined in the mediation was the Plaintiff. By defining the classes so as to ostensibly include the Plaintiff, and by purporting to settle her claims, the Richter defendants assumed professional obligations to them, including fiduciary duties towards them, and created a constructive attorney-client relationship, if not an actual attorney-client relationship with each plaintiff. The Richter defendants are unaware of such obligations, and deny such obligations exist despite South Carolina cases which affirm those obligations.

88. Correspondingly, by volunteering to settle claims for a class which had not been alleged in any pending action, the Diocese also assumed a duty to the Plaintiff to give her notice of the proposed settlement, which the Diocese had no intention of doing.

89. The agreement reached in that mediation is Attachment A to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the agreement purports to settle the three cases then pending

in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the Plaintiff.

90. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 mediation of the Charleston cases.

91. The typewritten document was approved by The Vatican in January 2007.

92. The settlement of the agreement was funded by approval of The Vatican.

93. Because the fund established for the class settlement exceeded $10 million, the Diocese defendants were obligated to get approval of the Vatican. The Diocese is required to get approval of the Vatican before it can "alienate the patrimony" by an amount in excess of $10 million.

94. As reflected in the attached handwritten agreement, the Defendants agreed that certain individuals and the purported class representative would split $460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese would pay only $460,000.

95. In that 2006 mediated agreement, claims of absent class members were proposed to be resolved on terms materially different than the terms applicable to those individuals and the purported class representative. Instead of a clearly identified cash payment the same as, or similar to, what the individuals and the purported class representative was to receive, absent class members were to be required to waive all rights first, and second submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive. Class members had to relinquish all rights for review to

qualify for the arbitration, whereas the individuals addressed in the 2006 mediated class settlement received a known distribution prior to having to surrender their rights.

96. As alleged below, not fewer than eight techniques were chosen by overt agreement among the Defendants to further the conspiracy against Plaintiff, and other absent putative members of the classes, from being included in any recovery for the class, and to limit the class recovery from being "too much." If the class settlement included "too many" claimants, the Diocese would be entitled to withdraw from the agreement, and the Richter defendants would not be entitled to the large fee they would otherwise obtain by colluding with the Diocese.

97. For their part, the Diocese defendants wanted the class settlement approved so they could later argue, as they in fact have argued, that no other sexual abuse claims which arose prior to the class approval could be made against the Diocese. The Diocese defendants knew that the class settlement had been negotiated with an "adverse" attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese. The Richter defendants wanted to assure themselves of a large fee without jeopardizing that fee by getting too great a recovery for abuse victims against defendant Richter's own Diocese. So all Defendants conspired to create methods to be able to limit the number of class members who could make claims and to limit the amount class members would recover. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge Shopping to Avoid Charleston Judges

98. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver a Charleston class action settlement to be presided over not by any judge in Charleston County, where the putative class case was filed and the class case settlement was reached, but to "shop" for an alternative judge they selected to make those determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to overlook court rules and accept fraudulent filings was desired.

99. Instead of complying with SCRCP 23, and submitting the attached 2006 Charleston class action settlement for approval to a judge in Charleston County, the Defendants agreed to cooperate among themselves so as to have the Richter defendants file, and the Diocese defendants accept service of, newly filed class action cases in Dorchester County. Two such cases were filed August 15, 2006 (case numbered 06-CP-18-1310 and case numbered 06-CP-18-1311), and then the pending (and settled) Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al.,* which was assigned case number 05-CP-10-4193, was redundantly re-filed in Dorchester County on October 6, 2006, with the same caption (other than the changed county name and new case number 06-CP-18-1636), and with the identical allegations. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending (and already settled) Charleston class action, to attempt to place all of the settled Charleston cases

within the scope of the duplicate cases in Dorchester County, and as the means to shop for the desired judge so as to avoid judges not desired.

100. This procedural maneuver agreed to among the Defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose.

101. Filing duplicative class actions to have the same case pending simultaneously in two different venues for the same class representative and class is inherently abusive conduct by class counsel, as is the Diocese defendants cooperating to accept service of the duplicative class action filed in two different venues. Such conduct violates professional standards and breaches an independent duties to the court and to the Plaintiff, who was ostensibly included in each of those duplicative complaints. Nor were the actions adverse.

102. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending although a settlement had been reached in each Charleston case.

103. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement among all Defendants, simultaneously pending in two separate counties for the same class representative and the same class.

104. Dorchester County was chosen by agreement of the Defendants so as to "judge shop" for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice,

attorneys fees, and fairness hearings. The judge was expected to tolerate fraudulent filings by the defendants, an expectation that was rewarded when fraudulent filings were made, by agreement of the Defendants, and the court took no action concerning those fraudulent filings, even after the fraud of the filings was explicitly disclosed to the court.

105. The Defendants all agreed with this strategy of seeking a pliable state court judge, and consented to the "judge shopping" so as to avoid having to submit the class allegations, and proposed class action settlement, for approval by any judge in Charleston County. The Defendants feared completely objective judicial oversight by any of the judges in Charleston County. The Defendants continue to fear independent oversight by any judge other than the judge the Defendant colluded to hand-pick.

106. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the judge they shopped for designate the three Dorchester County cases as complex and assign them to that same shopped-for judge. That designation was improper under the rules at the time, as set forth in more detail below.

107. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the class settlement. Had the same request been made in Charleston, and had it been successful, only a single judge would have been assigned to the cases. But any Charleston judge would likely exert independent oversight of the class resolution, and Defendants all sought to avoid independent oversight through the use of judge-shopping.

108. Other than to shop for a particular judge, there was no legitimate reason to redundantly file case 2005-CP-10-4913 as case 2006-CP-18-1636.

109. As soon as the handpicked judge assigned the Dorchester actions to herself, the Defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

110. The administrative judge was not told that any of the cases sought to be dismissed without prejudice alleged a class action.

111. No motion was filed in Charleston to approve the class settlement reached in the Charleston cases. All Defendants colluded to not filing such a motion.

112. SCRCP 23 was not complied with as to the class settlement reached in the Charleston class action. All defendants consented to not complying with SCRCP 23 in Charleston County, and all defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge.

113. By collusive agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases.

Conspiracy Technique Two: Using Complex Case designation Improperly.

114. In October 2006, the Defendants colluded to seek complex case designation of the Dorchester County class action cases.

115. At that time, the Charleston cases were still pending, including the Charleston County class action.

116. A July 26, 2006 order of the South Carolina Supreme Court enabled complex case designation, and approved a particular form for use with motions for complex case status. Among other things, that motion required all counsel to represent to the court that

certain facts applied to the action for which complex case status was sought. The required form stated, emphasis added:

> We certify that we have made a good faith effort to settle this case and ***thus far have been unable to do so***. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.

117. At that time, the Charleston cases were still pending, and a class settlement had been reached which, if approved, would resolve all cases.

118. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases.

119. On information and belief, Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached, when in fact a class settlement had been reached prior to any Dorchester County cases being filed. Alternatively, Defendants disclosed that all Dorchester County cases were already settled before they were filed and Defendants solicited, and obtained, the shopped-for judge's consent to misrepresent facts so as to ignore the Supreme Court's requirements for complex case status.

120. In 2009 all Defendants, and the shopped-for judge, ignored the directive from the South Carolina Supreme Court to conclude the class action by September 19, 2009.

121. In 2012 the Richter defendants would ask that shopped-for judge to again ignore the Supreme Court's order of March 19, 2009 by filing a motion to obtain advisory opinions on behalf of themselves, and ostensibly on behalf of individuals known by the Richter defendants to be represented by other counsel. They did so by ignoring that the class action had been ordered to be closed in 2009 by the SC Supreme Court.

122. Complex case status was approved in 2006 by the shopped-for judge, despite a settlement having been reached before the first Dorchester County case had been filed.

Conspiracy Technique Three: Agreeing to an unethical attorney's fee for class counsel.

123. The 2006 class action settlement reached in the Charleston class action cases included simultaneous negotiation of a common fund (and variable recovery) for the class members and a fixed fee amount for class counsel, with the fee to class counsel be paid prior to the claims period.

124. As set forth in the affidavit of Michael Virzi, Attachment B to this complaint and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese defendants to agree to it. Plaintiff at no time consented to the Richter defendants negotiating such a settlement.

125. At page 13, paragraph 6B, in the typed version of the Charleston class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

126. Representation of the Plaintiff by the Richter defendants in proposing an unethical fee was inadequate and fell below the standard of care applicable to counsel. Alternatively, that representation breached a fiduciary duty to the Plaintiff.

127. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the

financial limits of what the Diocese defendants and the Vatican were willing to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid before any class member could make a claim, and paid before any class member could be or was paid.

128. The Richter defendants sacrificed the interests of absent putative class members, such as the Plaintiff, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to it as the price of obtaining the collusion of the Richter defendants in structuring a class resolution that provided only a fraction of the relief the Richter defendants would accept in a case against a Diocese other than Richter's own Diocese.

Conspiracy Technique Four: Disclosing to the Class neither the Settlement terms for the Class Representatives nor the Settlement for Persons who Opted Out of the Class

129. The fourth technique to conspire against the Plaintiff was to make no disclosure to her or to any putative class members, about either the superior settlement terms agreed to by the Defendants with the individuals named in the 2006 mediated settlement, or the superior settlement terms reached with the individuals who opted out of the class settlement.

130. The Defendants have all taken the position that the agreement with those persons who opted out of the class action was part of the class action. As part of the class action, the Defendants should have informed class members of those terms as an option to the class recovery.

131. Neither the individuals named in the 2006 mediated class settlement agreement nor the opt-out abuse victims had to submit their claims to binding arbitration.

Their claims were given specific dollar amounts prior to them relinquishing any rights. Each knew precisely what their recovery would be before consenting to resolve their claim.

132. In addition, the terms for the opt-out abuse victims exceeded the low bar the Richter defendants agreed to set for class member recoveries, and the opt-out victims received more than was received by any comparable abuse victim who stayed in the class settlement. In addition to the fee approved by the shopped-for judge, the Richter defendants charged class members an additional fee to go through the arbitration. The fixed fee approved by the shopped-for judge was not disclosed to class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing, since no post-award fairness hearing was held.

133. No notice was given to any class member, including the Plaintiff, about the terms of the opt-out settlements, depriving the Plaintiff of the choice to receive one or the other recovery. The Plaintiff was abandoned by her attorneys, the Richter defendants, with the collusion and collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed towards the Plaintiff, by Defendants agreeing to define the class so as to ostensibly include her, were breached by all Defendants in this action when they agreed to request notice designed not to reach the Plaintiff. As alleged below, the abandonment by the Plaintiff was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the Plaintiff. In the alternative, it was a breach of the fiduciary duty assumed by the Richter defendants towards the Plaintiff. That duty was implicitly assumed by other Defendants as well, in

agreeing to a class settlement for a class that included the Plaintiff but which had been alleged in no action pending at the time of the 2006 class settlement. Defendants defined the classes by agreement, and colluded to request notice designed not to reach those within the definition.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create A Means of Limiting Total Recovery for Compensating Victims

134. In the "General Terms of Settlement" agreed to in the 2006 mediation of the Charleston class action case on June 14, 2006, there are seven essential terms of the settlement agreement.

135. The first general term is that there will be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

136. No case pending at the time of the 2006 mediated class settlement agreement alleged a "spousal or parent" class.

137. The second general term of the 2006 mediated class settlement was to provide a means of having a $12 million settlement fund.

138. The third general term of the 2006 mediated class settlement was "Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims."

139. The fourth term of the 2006 mediated class settlement was that the court would be asked to approve a fixed fee for class counsel "between $950,000 & $2.5 million."

140. The fifth general term of the 2006 mediated class settlement was to establish that four individuals would allocate among themselves $460,000.

141. The sixth general term of the 2006 mediated class settlement was that the four individuals would be paid whether or not the court approved a class settlement.

142. The seventh general term of the 2006 mediated class settlement was that the seven terms were an offer from the Diocese and were to be "acted upon with reasonable promptness" by the four individuals who would allocate $460,000 among them.

143. The four individual accepted the offer from the Diocese in the 2006 mediated class settlement, and allocated among themselves $460,000. None of those individuals received more than $160,000. It is not yet known what portion was allocated to legal fee for class counsel.

144. Once those individuals accepted the offer, their respective claims were resolved. Their resolution did not depend on court approval of the class.

145. On information and belief, those four individuals accepted that offer shortly after the June 14, 2006 mediation. At least one of them had accepted it by June 16, 2006.

146. The two classes certified in an order signed January 19, 2007, excluded persons who have "previously had any similar claim adjudicated, resolved, or released."

147. After June, 2006, those individuals who represented the class, whose claims had been "resolved," did not qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nevertheless, they were falsely designated as class representatives in subsequent Dorchester County case, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition of the class.

148. In addition to not meeting the class definition, the class representatives received a different settlement than did class members, and excluded themselves from the

arbitration process later articulated for the class members. In doing so they were guided by the Richter defendants.

149. The June 14, 2006 mediated class settlement reserved details for later specificity. That 2006 mediated class settlement states, "Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims." Those details were reserved so the Defendants could work backwards from the settlement fund, minus class counsel's fixed fee, to enable adjustments to be made to (a) the notice given to the classes, and (b) to the variable relief given to the class members so the recovery to victims would not be "too much." The fee for the Richter defendants could not be jeopardized by having "too many" sexual abuse victims served by the class settlement. "Too many" class claimants would jeopardize the fee for the Richter defendants.

150. The structure of the notice and the arbitration process for the class was devised to enable working backwards from the desired end result to limit the variable claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the Plaintiff, was to preserve class counsel's fixed fee. That is why the fee is fixed but class recovery is variable, why the fee takes priority over the recoveries for the persons in the class, why the judge to approve the fee was shopped-for, why the criteria applicable to complex case status were falsified, and why fraudulent information was submitted to the shopped-for judge both to obtain complex case status and to obtain the fixed fee. The highest priorities of other defendants, after their willingness to pay class counsel's fixed fee, was to either exclude persons such as the Plaintiff, and to limit recovery to persons such as the Plaintiff, so that

within the modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims against another Diocese, the Diocese could argue a *res judicata* benefit from the class settlement without having to pay meaningful relief class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all Defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, and for notice to be designed to not inform all persons within the class definitions about the settlement itself.

151. The Diocese defendants knew or should have known that the history of systematic deceit and deception about sexual abuse required by the Vatican, the administrative rules within the Code of Canon Law, and the policies which the Diocese defendants had in fact implemented, specifically mandated by the Vatican in the Instruction since at least 1962, exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

152. The Diocese defendants waived the statute of limitations and charitable immunity defenses for the persons within the 2006 mediated settlement classes.

153. The Diocese defendants knew that juries had placed a high value on the intangible nature of sexual abuse claims.

154. To try to limit future sexual abuse claims, the Diocese defendants elected in 2006 to consent to a class settlement, hoping it would exclude enough victims so as to produce a desired *res judicata* effect at a fraction of the cost of a proper settlement with all victims. The Diocese defendants realized the close ties of the Richter defendants to the Diocese, and the willingness of the Richter defendants to sacrifice the interests of

their clients for a fee, enabled the Diocese to try to minimize recoveries to the class members yet still get a class approved.

155. All Defendants needed to avoid meaningful court oversight of the class action to limit the interests of absent members of the class, so all defendants agreed to "judge shop" to avoid oversight by any Charleston judge, and to obtain a lax oversight by the judge they desired to have and for whom who they successfully "shopped."

156. After the 2006 mediated settlement the Defendants realized that "too many" victims, such as the Plaintiff, might come forward in response to the nationwide notice originally proposed in 2006 by the Richter defendants. As a result, all Defendants colluded to restrict by agreement what they would propose to the shopped-for judge as notice to give the classes. Because the Defendants had successfully shopped-for the judge they expected to be more pliable, the Defendants expected approval of the reduced notice they agreed to propose, and through that method they planned to limit how many victims would participate. Defendants also created the arbitration process to further limit relief available to those who did participate by authorizing the arbiter to continue to adjust all awards given so as to stay within the overall limits that were agreeable to the Diocese. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

157. Failing to give notice outside South Carolina, other than immediately adjacent to South Carolina, was one means of eliminating claimants such as the Plaintiff. The Diocese defendants made no objection to limit the notice to South Carolina.

158. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiff. All Defendants were negligent in permitting

the Diocese defendants to self-identify victims, rather than insisting on giving meaningful notice to putative class members as a way of identifying victims. The Diocese had administrative rules which required it to destroy information about sexual abuse claims more than ten years old, and had a history of fraudulent concealment of sexual abuse reports.

159. Paying class counsel his fixed fee before any notice was given to the class, before any class claimant had been identified, and before any class member's claim had been submitted, was another way of limiting the recovery to the class.

160. By design of all Defendants, the members of the classes had no opportunity for input or comment on the proposed fixed fee, to be paid ahead of all class claims, since by agreement among all Defendants the shopped-for judge approved the fee without notice to the class and before the class members were known.

161. No Defendant disclosed to the class or to the public that the Diocese had agreed to overlook the fraudulent information submitted to the shopped-for judge to support the fee claimed for the Richter defendants, and had agreed to make no mention of those various fraudulent time and billing entries. Nor had any Defendants disclosed that they had agreed they would request no post-award fairness hearing.

162. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the psychological injury caused, was another way to limit the recovery to the class.

163. The Defendants agreed to change the notice proposed for the class to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as Plaintiff, then Defendant sset the categories and

recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, all as means calculated to harm the Plaintiff by excluding her from the class recovery and to try to preclude her from any later claim, and to limit recoveries to class members so as to not exceed the amount the Diocese was willing to pay.

164. By agreement among Defendants, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the classes to make sure that the Richter defendants were paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese to abandon clients such as the Plaintiff, and to limit recoveries to other clients, to serve the interest of the Diocese defendants.

165. The Richter defendants abandoned absent class members such as the Plaintiff, who resides outside of South Carolina, and gave no meaningful notice to those class members that their rights had been adversely impacted when the Richter defendants, with collusion of the Diocese defendants, changed their position on notice to the classes from nationwide notice to a notice limited to publications in and around South Carolina. All other defendants cooperated with the Richter defendants abandoning their clients such as the Plaintiff. Unless the order approving the class settlement means what it says when the court appeared to have accommodated the limited notice by ruling, at page four, "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," and the Plaintiff is not precluded from her claims, the notice and arbitration structure produced when her former counsel abandoned her interests in favor of their own interests caused damage to the Plaintiff. Unless the Plaintiff is not bound by the *res judicata* effect of the class action, she has been specially harmed by the conspiracy engaged in by the Defendants.

Conspiracy Technique Six: Providing False Information to the Court

166. The sixth technique used to cause special harm to the Plaintiff was that the Defendants cooperated in filing false information with the shopped-for judge. When false information was filed by the Richter defendants, all other Defendants acquiesced, despite knowing the information submitted was false. Even after the information was overtly identified as false, no action was taken to protect the Plaintiff, unless the order means that persons who received no notice are not barred by *res judicata*.

167. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as 2005-CP-10-4913. The case filing itself was collusive, and was filed in Dorchester County only to avoid oversight by any Charleston judge, and pursuant to the collusion by all Defendants to shop for a particular judge.

168. As noted above, the claim that class representatives in Dorchester County met the definition of the classes, and could serve as adequate representatives, were each false, and known by the Defendants to be false, when made in the Dorchester County class complaints.

169. Patently false information about the procedural history of the class action was included in the Motion to Certify Classes and for Preliminary Approval of Class Settlement filed by the Richter defendants, and acquiesced in by other Defendants.

170. Patently false information has also been given to the Charleston County Court, and to the public, by the Diocese defendants.

171. All Defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston complaint which alleged a class action.

172. By agreement of all Defendants, SCRCP 23 was not complied with in dismissing the Charleston complaint which alleged a class action. Plaintiff was given no notice of the class action, no information about its dismissal, no information about the Charleston class settlement, and no information about the settlement provided those who opted out of the class settlement. Nor was notice given to any other ostensible putative class member.

173. False information was filed in Dorchester County about the class representatives and their adequacy as class representatives. All defendants acquiesced in that false information to the shopped-for judge.

174. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese defendants made no mention of the false information filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, were the *quid pro quo* for the Diocese defendants getting the benefit they have claimed entitles the Diocese defendants to *res judicata* protection of the class settlement, and was the means by which the defendants conspired to try to eliminating claims by persons such as the Plaintiff.

175. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among Defendants, false time records by the Richter defendants (including individual lawyers billing in a single day

compilations of 30, 40, 51.5, 60, 80, and even 92 hours; and time billings on multiple "February 30" days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

176. The Diocese defendants agreed to remain silent as to these false statements, except where they overtly participated in them.

177. If the Plaintiff is barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reason, then duties to her in the class action were breached by the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy of the Defendants.

Conspiracy Technique Seven: Limiting Notice to only publications in and around South Carolina

178. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was to agree to limit notice of the class settlement to only publications in and around South Carolina, resulting in notice to only those putative class members who reside in and immediately adjacent to South Carolina. The notice given was deficient in that it was designed to omit notice to many persons, such as the Plaintiff, within the definition of the class action. By collusive agreement of all Defendants, the notice was calculated to be ineffective to reach putative absent class members. Unless the order approving the class settlement means what it says, and Plaintiff is not bound by the *res judicata* effect of the class settlement, the Defendants have conspired so as to cause special damage to the Plaintiff.

179. The Diocese defendants are well aware, from its own dealings with abuse victims, that many victims reside out of South Carolina. All Defendants were conscious,

in choosing to revise the notice requested to be only limited notice, that doing so served the interests of the Diocese at the expense of persons such as the Plaintiff.

180. By motion filed in Dorchester County in October 2006, the Richter defendants proposed giving nationwide notice of the class action through advertising about the settlement in a newspaper with national coverage.

181. In January 2007, the Richter defendants revised their request for notice to the Dorchester County court, and the Diocese defendants acquiesced in that revision, to limit notice to only publications in newspapers with circulation in or near South Carolina. The request to provide notice through a newspaper with national circulation was abandoned.

182. The Richter defendants abandoned the Plaintiff as a putative member of the class in agreeing to notice calculated not to reach her. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the Plaintiff in defining the classes so as to ostensibly include her, then revising the notice to propose to the shopped-for judge so as to provide no notice to the Plaintiff or to any other absent members of the class who resided outside of the area immediately adjacent to South Carolina.

183. The Diocese defendants conspired with the Richter defendants to submit for approval by the shopped-for judge notice to the class that was calculated to omit absent members of the class such as the Plaintiff, and all persons situated similarly to her. The agreement was made among Defendants to bar the Plaintiff from being able to make claims by the *res judicata* effect of the ostensible class action without having to compensate her for the sexual abuse to her spouse.

184. No effort was made to protect absent members of the class, such as the Plaintiff, by providing notice beyond the immediate area around South Carolina. If the Plaintiff is barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to her in the class action were breached by the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy of the defendants.

185. The Diocese defendants made no objection to lack of nationwide notice. They made no objection as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the Plaintiff from being able to make a claim, while retaining the argument that all absent class members were barred by *res judicata*. The reduced class notice agreed upon by all Defendants to submit to the shopped-for judge demonstrates that the representation of the class was inadequate, and that the Defendants conspired specifically to defeat the interests of persons such as the Plaintiff, to cause her special harm by giving them not even a chance at notice of the class action.

Conspiracy Technique Eight: Ignoring the South Carolina Supreme Court

186. The eighth technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was the Richter Defendants efforts to ignore the rulings of the South Carolina Supreme Court which ended the class action.

187. As alleged above, in March 2009 the South Carolina Supreme Court ordered the Defendants and the shopped-for judge to conclude the class action by September 19, 2009.

188. The South Carolina Supreme Court at no point extended its deadline. Its March 2009 order stated that its time limits could be extended only by ruling of the South Carolina Supreme Court.

189. No action was taken in 2009 by the Defendants or by the shopped-for judge to conclude the class action.

190. In 2012, the Richter defendants, completely ignoring the rulings of the South Carolina Supreme Court, filed a motion with the shopped-for judge in Dorchester County. The motions seeks rulings on behalf of no client of the Richter defendants, and on behalf of no member of the class, but to advance their own interests, to solicit from the shopped-for judge protections to protect the Richter defendants from their collusive conduct with the Defendants.

191. The Richter defendants filed in 2012, in the class action closed in 2009, a motion on behalf of individuals known to be outside the class and known to be represented by counsel other than themselves.

192. The motion was filed on behalf of no member of the class in the class action closed in 2009.

193. In so doing, the Richter defendants have furthered the interests of themselves rather than the interest of any client. The Richter defendants seek to maintain an action to obtain possible employment for themselves, and in addition seek to use the shopped-for judge as a shield for orders to collaterally attack other actions pending in the circuit court which challenge their conduct and expose the fraudulent behaviors of all Defendants.

194. The motion ignores the order of the South Carolina Supreme Court which ended the class action on September 19, 2009.

195. The Richter defendants constitute one or more "persons" under the law of South Carolina.

196. The Richter defendants have willfully maintained a civil action in the circuit court in Dorchester County to obtain possible employment for themselves.

197. No client the Richter defendants represent has any direct or substantial interest in the motion filed in 2012. The motion is filed solely on behalf of out-of-state clients abandoned by the Richter defendants during the now-closed class action, known to have been excluded from the class, and known by the Richter defendants to be represented by other counsel.

198. No client represented by the Richter defendants in the now-closed class action has any direct and substantial interest in the 2012 motion filed, or the relief sought by the motion.

199. The Richter defendants believe, based on the long social and professional ties between them and the shopped-for judge, that the shopped-for judge will order any relief they request, which is the reason all Defendants shopped-for that judge.

200. The 2012 motion is part of the continuing effort by the Richter defendants to defraud or mislead the court by continuing to defraud or mislead the shopped-for judge. Alternatively, the 2012 motion is part of the continuing effort to engage the shopped-for judge in collusive litigation.

Harm to the Plaintiff from the Conspiracy among Defendants

201. The injury to the Plaintiff from the conspiracy engaged in by the Defendants harmed the Plaintiff in a manner different from other causes of action. The Plaintiff was improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the Plaintiff being unable to participate so as to publicly identify and influence the corrupt course of the class action, including the judge-shopping. The Plaintiff was deprived of the opportunity to influence the class suit, and to try to assist herself and other out-of-state abuse victims from not being limited to the corrupted procedures and manipulations of the class suit before a judge that the Defendants had colluded to shop-for, and who was prepared to permit fraud in those proceedings.

202. Among other things, the Plaintiff was unable to participate to influence the miniscule recovery allocated for parent and spousal claims because those claims were not brought for the class using the common law "loss of services" cause of action for parental claims. Only in the class action context can the Plaintiff have made such a contention, since she was included in that class definition but does not herself have a parent claim.

203. Even if the Plaintiff is not deemed to be precluded from stating her claims against the Diocese for any reason, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the defendants to defeat her claims will prove ineffectual.

204. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiff was specially damaged, and she is entitled to actual and punitive damages from the Defendants as a result.

**For a Fourth Cause of Action:
Professional Negligence by the Richter Defendants: Count One**

205. Allegations of paragraphs 1-23 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the Plaintiff is precluded, by any reason, including the prior class action, or charitable immunity, or the statute of limitations, from making claims against the Diocese.

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

207. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, at page 2, the proposed group whose claims were settled in the 2006 Charleston class action mediation was a class specified as "spousal &/or parent claims deriving from victims abused."

208. Plaintiff was a putative member of that class as it was defined in the 2006 mediated class settlement.

209. The Defendants delayed preparing the formal, typed version of the 2006 Charleston class mediation agreement from June, 2006 to January, 2007, to permit them time to accomplish the judge-shopping alleged above.

210. The formal, typed versions of the 2006 mediated class settlement was approved by the Richter defendants, the Vatican, and the Diocese defendants, after the illicit agreement by Defendants on "judge shopping" had been accomplished.

211. Once the "judge shopping" had been accomplished, the 2006 Charleston mediated class settlement was claimed to be a proposed settlement of both a Charleston

class case and newly filed Dorchester County class actions, when in fact, the 2006 Charleston mediated class settlement resolved cases then pending only in Charleston County, and the class settlement agreement existed before any Dorchester County actions were filed.

212. On October 6, 2006, the Richter defendants filed in Dorchester County, proposed class definitions that included the Plaintiff, and a motion which proposed a means of notice to the class by publication with nationwide distribution. That proposed notice might have given notice to the Plaintiff, enabling her to either participate or to opt out.

213. The Richter defendants assumed a duty to the Plaintiff in each of the filings in (a) the June 14, 2006 class settlement agreement which by agreement proposed a class settlement that included the Plaintiff, and (b) in its October 6, 2006 Dorchester County filing which alleged a class action which included the Plaintiff.

214. The Diocese defendants voluntarily assumed a duty to the Plaintiff on June 14, 2006 when it agreed as a volunteer to include in the Charleston mediated settlement a class including the Plaintiff when no ending case alleged a class which included the Plaintiff.

215. On January 18, 2007, the Richter defendants abandoned giving notice to the Plaintiff about the class settlement that purported to include her. Their proposal for notice was revised to include only publications in and immediately around South Carolina, even though the class was not defined with geographic limitations.

216. On January 19, 2007, the proposed class definitions that included the Plaintiff was approved without objection from the Diocese defendants.

217. In their Charleston and Dorchester County class action cases against the Diocese defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the Plaintiff. In abandoning any form of notice which might reach the Plaintiff, the Richter defendants performed in a professionally negligent manner the duty they had assumed to absent putative class members such as the Plaintiff.

218. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they abandoned the Plaintiff, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the Plaintiff reasonably informed, failed to provide her with information with respect to obtaining her informed consent, failed to consult with her about the means for accomplishing her objectives, represented her without her consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal.

219. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the area in which the Plaintiff resides. If any notice was given it was deficient in that it was not designed to accomplish notice to out-of-state spouses of abuse victims such as the Plaintiff.

220. Any court approval of the notice was deficient in terms of protecting the Plaintiff because the shopped-for judge overseeing the class action had been given, by agreement of the defendants, fraudulent information on which to base decisions.

221. The Richter defendants abandoned their absent putative class member clients such as the Plaintiff by agreeing to change the proposed notice to notice calculated not to reach the Plaintiff, and calculated not to reach all putative class members situated similarly to the Plaintiff.

222. The Richter defendants abandoned their client's interests and acted in a professionally negligent manner by submitting fraudulent information to the court.

223. The Plaintiff was abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action and jeopardize the fixed fee the Richter defendants had negotiated for themselves at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

224. Having "too many" claimants also was believed to not be in the interest of the Diocese, and because of their conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese more than the interests of putative class members such as the Plaintiff.

225. As a result of their attorneys, the Richter defendants, abandoning the Plaintiff, no notice was given to her of the class action, and she had no opportunity to participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out. The acts and omissions of the Richter defendants have caused damage to the Plaintiff, assuming the Plaintiff is prevented from asserting her claims against the Diocese for any reason.

226. Plaintiff was entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

For a Fifth Cause of Action:
Professional Negligence by the Richter Defendants: Count Two

227. Allegations of paragraphs 1-23 above, and 205 to 226 above, are incorporated into this cause of action as if fully stated. This cause of action presumes that the Plaintiff is precluded, by charitable immunity or the statute of limitations or any other reason, from making claims against the Diocese.

228. In colloquy with the shopped-for judge in the class action, the Richter Defendants purported to secure for the Plaintiff, whether or not she participated in the class action, protections for her against the statute of limitations and charitable immunity defenses the Diocese might assert against the Plaintiff.

229. During a hearing held before the shopped-for judge on July 13, 2007, the Richter defendants claimed to have secured a waiver by the Diocese for "anybody [who] has been missed" a waiver of the defenses that the Diocese waived in the class action. "[T]he diocese waives all the same defenses that they have given up in this class settlement," is how class counsel summarized his accomplishment.

230. Class counsel failed to secure any of those protections in any written order of the shopped-for judge.

231. In 2011 the Diocese disclosed that it disagrees that it waived defenses for "anybody [who] had been missed."

232. In 2007 the Richter defendants were well aware that the Diocese had a history of fraud and concealment on abuse topics, and was untrustworthy, and could not be counted on to honor any commitment, even commitments made on the record to the shopped-for judge or in public statements.

233. The Plaintiff was unaware until 2012 that the Richter defendants had purported to represent her or had purported to protect her from the known untrustworthiness of the Diocese.

234. In failing to secure by order what the Richter defendants purported to secure for the Plaintiff, the Richter defendants acted in a manner that fell below the standard of care.

235. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants, including this failure to secure by order benefits which the Richter defendants purported to secure against a defendant known to be dishonest and manipulative.

236. Plaintiff was within the "anybody [who] has been missed" category of the putative class as it was defined in the 2006 mediated class settlement, the 2007 typed formal version of that settlement, and the persons known by July 2007 to be omitted from the group of out-of-state class members for whom no effort at giving notice was to be made.

237. In this respect, the Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they failed to secure by order rights and benefits which they purported to secure, they abandoned the Plaintiff, failed to provide her competent representation, failed to act with reasonable diligence, failed to keep the Plaintiff reasonably informed, failed to provide her with information with respect to obtaining her informed consent, failed to consult with her about the means for accomplishing her objectives, represented her without her consent in circumstances

which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal.

238. The Richter defendants knew the Diocese would do nothing of its own volition, and knew the Diocese had a history of deception, fraud, and manipulation. As class counsel himself contended before the shopped-for judge on March 9, 2007, "I want to say publicly that the diocese did nothing of its own initiative. The diocese was brought here kicking and screaming." Class counsel was well aware that the Diocese was untrustworthy, and would honor only commitments which a court order compelled the Diocese to honor. Yet class counsel did nothing to either notify the Plaintiff of the class action, or to secure by written order for the Plaintiff, the entitlement class counsel purports to secure for her.

239. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the area in which the Plaintiff resides. If any notice was given it was deficient in that it was not designed to accomplish notice to out-of-state spouses of abuse victims such as the Plaintiff.

240. No order from the shopped-for judge protected the rights which class counsel purported to obtain for the Plaintiff, even if she "was missed" and failed to participate in the class action.

241. The Richter defendants abandoned their absent putative class member clients such as the Plaintiff by agreeing to give her no notice and by failing to protect for her the rights class counsel purported to secure.

242. The Richter defendants abandoned their client's interests and acted in a professionally negligent manner by failing to secure rights they purported to secure.

243. The acts and omissions of the Richter defendants have caused damage to the Plaintiff, assuming the Plaintiff is prevented from asserting her claims against the Diocese for any reason.

244. Plaintiff was entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

For a Sixth Cause of Action:
Breach of Fiduciary Duty by the Richter Defendants

245. Allegations of paragraphs 1-23 and 205 - 244 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the Plaintiff is precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations.

246. The Richter defendants chose to propose defining the classes in the class actions so as to have no geographical limit on the classes.

247. All defendants agreed on how the classes were defined.

248. In choosing to define the classes so as to include the Plaintiff, the Richter defendants each assumed fiduciary obligations to her as an absent putative member of the class they defined.

249. As an alternative to the Fourth and Fifth Causes of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to the Plaintiff as an absent member of the putative class.

250. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiff by (a) requesting geographically limited notice of the class action and settlement, as opposed to the nationwide notice they initially proposed, and (b) by failing to secure for the Plaintiff rights which the Richter defendants purported to secure for her.

251. The state court judge overseeing the class action was shopped-for by all Defendants.

252. The shopped-for state court judge was not asked to give notice to all class members, only a subset of class members that excluded the Plaintiff.

253. The shopped-for state court judge was not asked to secure by order rights for the Plaintiff which on the record the Richter defendants purported to secure for the Plaintiff.

254. The Richter defendants originally proposed nationwide notice, but then abandoned the proposal, with the consent and collusion of the Diocese defendants. The lack of nationwide notice was observed in the record of the class action, but even after that limitation was noted, the Richter defendants did not request it.

255. On October 6, 2006, the Richter defendants filed proposed class definitions that included the Plaintiff, and proposed a means of nationwide notice to the class that might have given notice to the Plaintiff.

256. On July 13, 2007, the Richter defendants purported on the record before the shopped-for state court judge to have secured for the Plaintiff even if she was "missed" a benefit for her that was not later reflected in any order from the shopped-for judge.

257. The Richter defendants in its Charleston class action filing, and in the June 14, 2006 settlement, and in its October 6, 2006 filing in Dorchester County, and in its comments on the record on July 13, 2007, assumed fiduciary duties to the Plaintiff.

258. On January 18, 2007, the Richter defendants abandoned giving to the Plaintiff notice about the class settlement that ostensibly included them.

259. On January 19, 2007, the class definitions that included the Plaintiff was approved without objection from the Diocese defendants.

260. On July 13, 2007, the Richter defendants purported to secure for the Plaintiff benefits even if she was "missed" in the class action, but no effort was made to reduce those benefits to an order and the Diocese, while making no objection to the rights purported to have been secured on the record on July 13, 2007, in 2011 the Diocese denied it had made any such commitment to secure such rights for persons such as the Plaintiff who had been "missed" in the notice given for the class action.

261. No meaningful notice, at any point, was given to class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

262. The Richter defendants reflect their ignorance of class action obligations by, among other things, contending that mention of a class action or a class action settlement in a news media outlet is sufficient due process "notice" of a class action or class action settlement within the meaning of SCRCP 23. Mention of a class action or class action settlement in a news media outlet is not notice of a class action or class action settlement within the meaning of SCRCP 23, and the contention by the Richter defendants reflects

their inadequate understanding of their obligations to absent class member clients under SCRCP 23.

263. The Richter defendants each breached their fiduciary duties to the Plaintiff so she would not participate in making a claim against the fund established for the class action settlement. If notice had been given nationwide, as originally proposed, "too many" claimants, including the Plaintiff, might have come forward in the class action, which would have jeopardized the fixed fee the Richter defendants had negotiated for themselves at the expense of their clients, and had arranged with the sopped-for judge to have been paid before notice to the classes was given.

264. The Richter defendants arranged to have their fixed fee paid before notice to the class and before the claims process had begun.

265. The Richter defendants arranged to have their fixed fee paid before membership in the class was known.

266. The Richter defendants arranged to have their fixed fee paid before distribution to the class was known.

267. The Richter defendants arranged to have their fixed fee paid before class members had an opportunity to object to or comment on the fixed fee and its priority over class member recovery.

268. Having "too many" claimants also was believed by the Richter defendants to not be in the interest of the Diocese, and to protect their own interest in their fixed fee the Richter defendants had to also act to protect the interests of the Diocese more than the interests of the Plaintiff.

269. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class. To promote the interests of the Diocese in trying to later argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the Plaintiff their own interest in their fixed fee, the Richter defendants agreed to change the proposed notice to the class from notice in publications with nationwide distribution, agreed to accept for the class compensation that ranked among the lowest known victim compensation, and agreed to omit from any class action order the rights supposedly secured for persons, such as the Plaintiff, who were "missed" by the notice known to be insufficient to provide notice to her and any other out-of-state class member.

270. As a result of the Richter defendants abandoning the interests of the Plaintiff, and breaching the fiduciary duties owed to her, the Plaintiff had no opportunity to participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out, or to make a claim against the Diocese for sexual abuse. The acts and omissions of the Richter defendants have caused damage to the Plaintiff.

271. The Plaintiff is entitled to actual and punitive damages as a result of the fiduciary duties to her that were breached by the Richter defendants.

For a Seventh Cause of Action: Injunctive Relief

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

273. The Diocese is properly enjoined from asserting against the Plaintiff any of the defenses, including the statute of limitations and charitable immunity, which on the

record in 2007 it agreed it waived for "anybody who has kind of, lack of a better word, comes out of the woodwork," and "if anybody has been missed."

274. As articulated by then Bishop Baker in comments he initiated to the public in January, 2007, the Bishop agreed to "a just resolution of any instance" of sexual abuse.

275. According to the Diocese defendants, any instance of childhood abuse is a grave moral evil.

276. According to the Diocese defendants, any instance of childhood abuse has damaging consequences that can affect a child for the rest of his or her life.

277. The Court should enjoin the Diocese from asserting in this action any of the defenses waived by the Diocese as to abuse victims in its public comments made in 2007.

Demand for Jury Trial

278. Plaintiffs demand a trial by jury.

Relief Sought

Wherefore, Plaintiffs seeks relief in the form of:

279. Actual damages to be awarded to the Plaintiff by the finder of fact against the various defendants,

280. Costs and disbursements of this action,

281. Punitive damages as authorized by law,

282. Injunctive relief to enjoin the Diocese defendants from asserting any of the defenses waived as to abuse victims in its 2007 public comments, and from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for

283. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

Gregg Meyers

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Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT

John Doe #66)
v.)
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-2053)

John Doe #66A)
v.)
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-3293)

John Doe #53)
v.)
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-4913)

Settlement Agreement

See Terms attached on EXH. #1

In a mediation conducted on this ________ day of ________________, 2006, the above named parties agreed to the following terms:

1. ________________________________ shall pay to ________________________ $__________;
2. Plaintiff/Respondent will execute a general release dismissing all claims on account of the matters raised in the above captioned lawsuit;
3. Plaintiff/ Respondent will cooperate in having a dismissal with prejudice entered by the court; and
4. The parties shall split the mediation fees ____.

______________________________	______________________________
By: ______________________ (Print Name)	By: ______________________ (Print Name)
Its: ______________________	Its: ______________________
Dated: ______________	Dated: ______________

EXHIBIT "4"

P.06/09 HOV-01-2006 16:29

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create settlement class, subject to Court approval of:
   (a) ACTUAL VICTIMS OF DIOSECE ABUSE
   (b) SPOUSAL &/or Parent claims deriving from victims abused

2. Class settlement FUND will be for $12,000,000 FUNDED AS FOLLOWS:
   (a) $5,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with $7,000,000 limits once the $5,000,000 Letter of Credit has been drawn down to $1,000,000.

3. DETAILS of claims process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

4. Court shall be asked to approve attorneys' fees for class counsel at between \$950,000 & \$2.5 million, subject to Defendants obtaining credit to secure the obligation.

5. Mr. T Redacted* shall be paid ______

Mr. S Redacted* shall be paid ______

Mr. N Redacted* shall be paid ______

Mr. M Redacted* shall be paid ______

* COLLECTIVELY paid \$460,000 to be divided among the 4 gentlemen above after accepted on appeal to.

6. If the Court fails to approve settlement class &/or provision of class settlement, the compromise settlement with the individuals in "5." above shall not be effected & shall proceed to settlement in the amounts set out in "5." above with appropriate general releases &/or dismissals with prejudice executed in favor of defendants.

~~[illegible]~~

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7. These terms are in the form of an offer by Defendants & shall be acted upon with reasonable promptness by Plaintiffs/Claimants named in "5." above.

James Heaney, Attorney

ON BEHALF OF DEFENDANTS

Attorney for and with authority of the Diocese of Charleston

June 14, 2006

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF RICHLAND)

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 the plaintiff, Jane Doe 12, (hereinafter "Plaintiff") to support her Complaint against defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Defendants") 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 focuses exclusively on matters of legal malpractice and legal ethics;

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

C. I have authored three published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;

D. I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice and ethics, and I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and

E. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

My opinion is based on review of the following documents:

A. Complaint captioned Jane Doe 12 v. The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin; former Administrator

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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, Case No. 12-CP-10-_____ (blank line in original);

B. 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;

C. 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;

D. 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;

E. 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;

F. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-____ (blank line in original);

G. 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;

H. 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;

I. 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;

J. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

K. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

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Attachment B - 000002

L. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636, and exhibits attached thereto including:

i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;

ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;

iii. Affidavit of Angela Pittard, with attached timesheets;

iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

M. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

N. Transcript of July 13, 2007, hearing before Judge Goodstein.

O. Order Approving Settlement, dated July 30, 2007, and filed July 30, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636

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

4. Based on my experience, education, training, knowledge of the standard of care for lawyers, and on my review of the above-listed documents, it is my opinion that Defendants engaged in negligent acts and omissions in their representation of the Plaintiff including the following:

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5. It appears from the above-referenced documents that Defendants represented a class of persons of which Plaintiff was a member. Whether an unnamed class member becomes a client upon the filing of a class action or upon certification of the class is a much-debated issue; however, class certification is generally regarded as creating an attorney-client relationship if one did not already exist. Furthermore, prior to class certification, class counsel owes fiduciary duties to unnamed class members upon the filing of a class action, regardless of whether breach of those duties is regarded as malpractice or professional negligence. Defendants owed to Plaintiff and other unknown class members the same duties surrounding the allegations in this case that they owed to the named plaintiffs in the class action. Those duties included competent, diligent, and loyal pursuit of Plaintiff's interests in the litigation against the Diocese and related defendants, and reasonable communication starting with notice by publication.

6. It appears Defendants failed to protect Plaintiff's interest in the class action in several ways. Statements by Richter at the July 13, 2007, hearing indicated that any class member that did not receive notice (a group that includes Plaintiff) 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 are entitled to notice but did not receive it, such as Plaintiff. 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

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group of class members, like Plaintiff, 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, Defendants failed to protect the interests of the broader group, of which Plaintiff is a member, either by not addressing their rights at the hearing or by addressing them at the hearing but making no effort to secure their rights in a final order. Defendants then acted directly adverse to Plaintiff and this group when Defendant Haller filed a motion in 2012 to enforce the class-action settlement, purportedly on behalf of Plaintiff and others whom Haller knew to be represented by other counsel. Haller took a position in the motion that is adverse to Plaintiff and others outside the notice zone and advantageous to Defendants.

6. It appears that Defendants engaged in additional acts and omissions that were both disadvantageous to Plaintiff and advantageous to Defendants themselves, including consenting to the dismissal of the Charleston County cases without client consent in furtherance of Defendants' efforts to obtain a favorable order regarding their fees, which fees themselves were unethical in several ways, including that they sought and received a fixed fee simultaneously with a common-fund recovery pool available to claimants, and that they were based on blatantly false attorney time records. Defendants also reduced the extent of notice to class members to the exclusion of nearly the entire country outside of South Carolina, despite identifying (and ultimately obtaining certification of) a nationwide class, and authorized the claims arbitrator to adjust awards so that the total claims would not exceed the remainder of the pool after payment of Defendants' $2.5 million fee. Because a significant increase in the number of claimants responding to notice could jeopardize Defendants' fees, this reduction in notice favored Defendants' own interests to the detriment of all class members, but particularly Plaintiff

and other class members outside the notice zone of South Carolina and neighboring cities. Defendants thus not only favored their own interests above their clients', including Plaintiff's, but also provided the Diocese with an argument in its defense against subsequent claims by class members outside the notice zone, including Plaintiff, sacrificing their clients' rights in favor of the opposing party. Defendants also agreed to reduce their clients' recovery but not their own fees, if the claims exceeded the pool, and agree to possibly reducing the claimants' pool by $100,000, which would be contributed toward a settlement between the Diocese and several opted-out class members, all to the detriment of the class members including Plaintiff, and to the financial benefit of Defendants themselves. Haller's 2012 motion to enforce the settlement now attempts to force Plaintiff and other class members outside the notice zone to be bound by the bad deal Defendants struck on their behalf in 2007.

7. It further appears that Defendants engaged in a broad scheme to generally obtain results favorable to the Diocese, with whom Defendant Richter had a life-long affiliation and for whom Richter continued to perform official services during the pendency of the class action, without the knowledge or consent of his clients. The scheme appears to have included:

A. forum shopping, requiring Defendants to consent to the dismissal of the Charleston County cases, which they did without the knowledge or consent of their clients and to the detriment of their clients, including Plaintiff;

B. misrepresenting to the Dorchester County court that the action had not been settled when it had, in order to obtain a favorable forum and complex case designation; and

C. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review, and further sacrificing clients'

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opportunity for post-claim review by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal, or suit and that, by participating in the claims process, claimants expressly waive the right to appeal.

8. It further appears that Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-class-representative clients, including agreeing to subject some clients to a damages matrix and claim scrutiny to which class representatives were not subjected, settling the claims of the class representatives prior to class certification and court approval of the class settlement, and expressly agreeing to settlement terms for the class representatives regardless of court approval of the class settlement.

9. It further appears that the amount of Defendants' fee was improper and unreasonable in amount, timing, and source. The payment structure favored Defendants' own interest above those of their clients, including Plaintiff. Defendants' fee petition, affidavits and billing records overstate work performed and misrepresent the nature of the case. Defendants describe the case as hotly contested and aggressive, and the defense formidable and substantial, depicting a time-intensive case requiring the highest skills of the most competent counsel; yet the documents indicate contrary circumstances: little discovery (some paper requests from class counsel but no evidence of responses received nor of requests received from opposing counsel), no depositions, few motions, and after mediation no client disputes, few hearings, and no animosity or contention except on the issue of Defendants' collection of their fee. Defendants' billing records show 3385.5 total hours spent by lawyers and staff at Richter & Haller; however

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many of the time entries are clearly false in that they are nonsensical and/or impossible, including:

A. each and every entry on all 68 pages of billing records is a round, even-hour increment or an entry of ".5" hours;

B. countless round-number or .5-hour time entries at "12:00:00 AM"—including multiple tasks by the same person at the same time—while other entries indicate exact times;

C. a 10-hour time entry for "Oversight and Review" by "LER" on the 30th day of each month for 3 and a half years, including the same 10-hour time entry for "Oversight and Review" by "LER" just nine days after the first activity in the case in July 2003;

D. a 2-hour time entry for "Bookkeeping" on the 30th day of each month;

E. a 3-hour time entry for "Photocopying / Monthly" at irregular intervals but always exactly 3 hours, including one such entry when no other work had been performed in the previous month;

F. three 5-hour time entries (one each for "DKH," "LER," and "Clerk") for "Legal Research" on the 30th day of each month, including January 30, 2007, within 2 days of the end of the case (and after which no further time is recorded except 7 hours of faxing by "Staff" and 14 hours of emailing by "DKH" & "LER" over the next 2 days);

G. time entries on days that do not exist: February 30, 2004, and February 30, 2005;

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H. a 16-month period, from September 2003 through December 2004, when only 5.5 hours of specific work is entered, yet 426 hours is entered in the same repeated, identical, rote entries of "Oversight and Review," "Bookkeeping," "Legal Research," and "Photocopying / Monthly" described hereinabove;

I. 3 .5-hour time entries for drafting 3 Certificates of Service at the same time on the same day (this set of entries occurs multiple times);

J. 12 *consecutive* 1-hour time entries by "LER" for work on 12 different documents, all at specific times beginning at "07:38:38 AM" on "10/26/06" but extending consecutively over a period of approximately 1 hour and 49 minutes ending at "09:27:30 AM," with many 1-hour entries within less than a minute of each other;

K. numerous sets of entries similar to the 12 described in the immediately preceding subparagraph (J), such as 3 consecutive 1-hour time entries by "LER" for work on 2 documents, all at specific times beginning at "03:54:19 PM" but extending consecutively over a period of 1 minute and 13 seconds;

L. entries of exactly 20 hours for drafting each discovery document;

M. multiple instances of more than one 20-hour time entry for the same person ("DKH") on the same day;

N. 27.5 hours (in 55 increments of .5 each, all at "12:00:00 AM") in one day by "DKH" for emailing to "David K. Haller";

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O. 60 hours (10 by "LER" and 50 by "DKH") for amending complaints that ultimately contained very little amendment, including one which apparently changed only the county in the caption and the date at the end;

P. multiple instances of one person ("DKH" in some instances, "LER" in others) of billing more than 24 hours in a day;

Q. 568.5 hours of entries appended to the end of the (otherwise chronological) timesheets, for dates ranging from 2004 through 2007, 500 hours of which is in whole multiples of 10 and expressed in date ranges rather than in dates and times, including 3 130-hour single entries by "DKH" for one- and two-week time periods in June and October 2006; and

R. one of the above-referenced 130-hour single entries by "DKH" for the eight-day time period of October 4-11, 2006, during which period "DKH" had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

Defendants stated to the court that the above entries were "by far conservative" estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus Defendants appear to have made false statements to a tribunal in support of a fixed fee that was unreasonable and put Defendants in a position potentially adverse to their own clients, including Plaintiff, without taking appropriate steps to deal with the conflict of interests created thereby.

7. As a result, it is my opinion that Defendants' conduct 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 Plaintiff.

8. 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, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 31st day of July, 2018

Notary Public

My Commission Expires : My Commission Expires October 18, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-23-1843

John Doe 193,)
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop Of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC.)
)
Defendants.)

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Injunctive Relief
UTPA

Jury Trial Requested

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. John Doe 193 is an adult citizen and resident of South Carolina who, as a child and a student at Our Lady of the Rosary Church, in Greenville SC, operated by the Diocese of Charleston, was sexually abused by a priest of the Diocese of Charleston, Father Michael Kaney.

2. Plaintiff had no recollection of the abuse until the June, 2010, when he first began to recall the abuse and related it to a mental health professional. The recollections are

corroborated by circumstantial evidence and an expert has established the abuse and the fact of the repressed memories.

3. The pseudonym John Doe 193 is used for the Plaintiff due to the sexual abuse injury, which is the subject of this complaint.

4. The Bishop of Charleston, a Corporation Sole, is the formal title of the various entities comprising the Catholic Church throughout South Carolina, including in Greenville County, known generally as the Diocese of Charleston. It is referred to in this complaint as the Diocese. The Diocese does business in Greenville County and Charleston County, owns property in Greenville County and Charleston County, and has its headquarters in Charleston County. In Greenville County the Diocese operated Our Lady of Rosary Church, a Catholic Church operating in Greenville, S.C. The acts associated with the abuse of the Plaintiff and the negligent supervision of Kaney took place in part in Greenville County, and in part in Charleston County, where decisions were made about Kaney's assignments and the degree of supervision he required, which as applied by the Diocese Defendants was generally inadequate.

5. On information and belief, Michael Kaney was removed from the priesthood for his sexual misconduct, a decision made in Charleston County. No effort was made to locate the victims of Michael Kaney, including the Plaintiff. In 1986 Michael Kaney was placed on indefinite leave by the Diocese of Charleston for his sexual misconduct. He moved to Houston, Texas. A 1986 article in the Houston Chronicle notes him as being "on indefinite leave from the Diocese of Charleston in South Carolina."

6. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County, South Carolina but doing business in Greenville County. He is sued individually in his official capacity. He is

a party necessary for complete relief.

7. All persons working for the Diocese, anywhere in South Carolina, are subordinate to the Bishop of Charleston.

8. Prior to the tenure of Bishop Guglielmone, from October 2007, to March 2009, no person held the title of Bishop of Charleston. Under the rules by which the Diocese of Charleston is governed, the Diocese of Charleston was administered by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina who, during his tenure as administrator, did business in Greenville County. Msgr. Laughlin is sued in his official capacity.

9. Prior to the tenure of Administrator Laughlin, from July 1999 to August 2007, the Bishop of Charleston was Robert J. Baker, presently a resident of, and citizen of, Alabama. During his tenure, he did business in Greenville County. He is sued in his official capacity.

10. In this complaint, the Diocese, the Bishop defendants, and the Administrator are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

11. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Greenville County, and specifically elicited, through advertising placed in the Greenville News, participation by members in the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

12. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Greenville County, and specifically elicited, through advertising placed in the Greenville News, participation by members in the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

13. Richter & Haller, LLC, at all times pertinent to this complaint, had its principal place of business in Charleston county, did business in South Carolina, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, Richter & Haller, LLC did business in Greenville County, and specifically elicited, through advertising placed in the Greenville News, participation by members in the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

14. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the "Richter defendants" unless otherwise particularly specified.

15. The Court has jurisdiction over the parties to this action.

16. The Court has jurisdiction over the subject matter of this action.

17. Venue of this action is proper in Greenville County.

18. The Diocese defendants are already aware of the identity of John Doe 193, as they have already rejected his request for assistance with the effects of his abuse. Other defendants will be informed of the identity of the Plaintiff upon their agreement to reciprocate in providing information in discovery, upon their agreement to maintain the Plaintiff's identity as

confidential in the public record, and upon their actual performance of participating in reciprocal discovery as opposed to just promising reciprocal discovery without actually providing discovery.

19. The Plaintiff fits the definition used in a collusive 2006 class settlement in that he was born on or before August 30, 1980, and as a minor, was sexually abused by an agent or employee of the Diocese of Charleston. The Plaintiff has not previously made a claim that was adjudicated, resolved, or released.

20. John Doe 193 was situated similarly to other individuals ostensibly within that definition of a class first pled by the Richter defendants in 2005, settled by the Richter defendants as a class in 2006, and certified as a class in 2007 by a South Carolina court as part of a class action involving individuals who were sexually abused by persons employed by the Bishop of Charleston. That class action was collusive. In addition, the Plaintiff received no notice of the class action, and at the time of the class action he had no recollection of his own abuse, thus the Plaintiff had no opportunity to be heard or participate in the litigation, either in person or through counsel, or to opt out of the class action and thereby preserve his own claim.

21. At no time has during the time period of the 2006 class action settlement did John Doe 193 have a recollection of his abuse. The Richter defendants in 2006 were aware that among abuse victims, some were unable to recall their sexual abuse into adulthood, a deficiency among abuse victims known to the Richter defendants but ignored by the Richter defendants.

22. Before the 2006 class settlement was reached in the 2005 class action, the Richter defendants had undertaken representation of another adult sexual abuse victim who had, as put by the Richter defendants, "repressed, or dissociated, the memories of" his childhood abuse. Despite that awareness, the Richter defendants defined the class in the 2005 class action so as

to include John Doe 193.

23. In the 2006 class action settlement the Richter defendants colluded with the Diocese defendants so as to abandon the interests of those persons within the class definition and to protect the Diocese defendants by the collusive class action.

24. In 2005 a class action was first alleged by the Richter defendants on behalf of persons sexually abused by persons affiliated with the Diocese of Charleston.

25. In April, 2006, the Richter defendants filed suit in Jasper County for an adult sexual abuse victim who had repressed the memories of his childhood abuse. That suit was filed against a Diocese other than the Diocese of Charleston, and against a Bishop other than the Bishop of Charleston. By their own account, class counsel were extensively affiliated with the Diocese of Charleston.

26. The class action settlement with the Bishop of Charleston was arrived at during a mediation held in June, 2006, in which the Richter defendants participated on behalf of class members. In this complaint, the class action settlement achieved in 2006 from the 2005 class action is referred to as "the 2005 class action."

27. At the time of the 2006 mediated settlement agreement, the Richter Defendants were aware that some sexual abuse victims repress memories of their childhood sexual abuse.

28. The 2006 mediated settlement agreement was approved by the Dorchester County judge who presided over the class action proceedings. By 2009 the class members had been identified and an arbitration had determined awards to various class members. By 2009 those awards had been paid.

29. By order of the South Carolina Supreme Court issued March 19, 2009, the 2005 class action was ordered to be concluded in six months, or by September 19, 2009.

30. The trial court overseeing the class action ignored the March 19, 2009 order of the South Carolina Supreme Court, and took no action by September 19, 2009 to review the distributions to class members or to make a post-award review of class counsel's fee.

31. The class action was closed on September 19, 2009 by virtue of the March 19, 2009 Supreme Court order.

32. Since September 20, 2009, the Dorchester County trial court has had no jurisdiction over the class action.

33. In 2012, Defendant Haller, acting on behalf of no client from the 2005 class action, as all client claims had been resolved, but acting instead on behalf of himself and the Richter defendants, filed a pleading in the closed Dorchester County class action case. The pleading was not accompanied by any motion to reopen the closed class action case. As such, the pleading ignored the March 19, 2009 order of the Supreme Court, which closed the class action on September 19, 2009.

34. The Richter defendants continue to act as if the class action remains perpetually an open matter, because they believed that their friend, the shopped-for class action judge, would undertake their bidding in any respect. As to the 2012 motion filed by Defendant Haller, the Richter defendants believed the shopped-for judge would ignore the order of the South Carolina Supreme Court and issue additional rulings in the closed, 2005 class action, as Defendant Haller requested.

35. On January 24, 2013, the Dorchester County trial judge who had presided over the class action signed an order which stated, in its entirety, "I hereby recuse myself from hearing any further matter on the above-captioned case." The caption on that order was the first of the cases which comprised the class action.

36. Judge Goodstein had been asked to recuse herself by a motion in 2008. She recused herself in 2013.

37. All defendants colluded in the 2005 class action so as to permit the Diocese defendants, starting in 2009 and continuing into 2013, to maintain that the class action precluded any and all claims for abuse, by preventing the Plaintiff from either participating in the class action or being able to remove himself from the class action by opting out. Being within the putative definition of the 2005 class action as the Defendants agreed to define the class of sexual abuse victims, the Plaintiff ostensibly was formerly represented by, until he was abandoned by, the Richter defendants, who served as class counsel.

38. Alternatively, and at minimum, the Richter defendants assumed fiduciary duties as to the Plaintiff by defining the class, with the knowing cooperation of the Diocese defendants, so as to ostensibly include the Plaintiff, and by making in that class definition no exception for any person who had no recollection of his childhood sexual abuse by any person affiliated with the Diocese defendants.

39. Each Defendant was aware that persons within the class definition of the 2005 class action might have repressed memory. Despite that, the Richter defendants made no allowance in the class action definitions for instances of repressed memory, and did so as part of their collusion with the Diocese defendants to cause the Plaintiff special harm in the form of the effort to preclude him from making any claim against the Diocese, particularly any claim outside the class action. The representation of the Plaintiff by the Richter defendants in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

40. This action is not alleged as a class action. It involves as a Plaintiff a person who was,

until he was abandoned by his class counsel, the Richter defendants, a putative member of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court.

41. But for the Richter defendants having breached the duties each of them owed to the Plaintiff by abandoning the Plaintiff in the class action, done in agreement with and full complicity with the other Defendants, the Plaintiff would have been protected from any preclusive effect of the 2005 class action and the 2006 class action settlement.

Nature of Wrongdoing

42. Between 1965 and 1967, when John Doe 193 was between 12 and 14 years of age, he was sexually abused by Michael Kaney.

43. The day after the sexual abuse, John Doe 193 reported the abuse to a nun who also worked for the Diocese defendants. The nun's response was to slap him. Without any investigation, and to retaliate against the Plaintiff for telling the truth about Michael Kaney, the nun admonished the Plaintiff not to be disrespectful, told him not to tell lies about priests (even though he was telling the truth), and the nun called his parents to report, falsely, that John Doe 193 had lied about a priest. The call to his parents was made by the nun to further the retaliation against the Plaintiff, and to get his parents to also discipline the Plaintiff.

44. In fact, John Doe 193 was reporting the truth, but he was made by the nun to apologize to the priest who had molested him. By that method, Michael Kaney was given assurance by the nun that he could continue to molest children without any effective oversight.

45. From that report the Diocese Defendants knew, or should have known, that Michael Kaney was dangerous to children, and that the Plaintiff was sexually abused as a child by Michael Kaney. The Diocese Defendants should have had a record that the abuse had been

reported, unless the record has been destroyed as one of the Diocese Defendants' systematic methods for concealing sexual abuse.

46. This Complaint sets out various causes of action built around four different levels of disregard for others and corruption. First, the disregard by the Diocese Defendants in operating a system which actively disregarded and concealed the risks to children and families for sexual assault of children by their priests and other employees, and which then actively, and fraudulently, concealed the abuse that had happened and concealed the dangers to children the Diocese Defendants solicited into danger. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy, in exchange for a legal fee to class counsel, relief for the Diocese defendants in the form of a layer of what was hoped, by those corrupt lawyers, would be protection for the Diocese from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese defendants. Third, the corruption of particular lawyers who in serving as class counsel assumed a duty to act for sexual abuse victims, including the Plaintiff, but who then acted in a professionally negligent way, willfully and wantonly abandoning their client so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese Defendants in exchange for their cooperation in trying to both limit relief to victims and protect the Diocese Defendants from future cases, and from claims by this Plaintiff and other sexual abuse victims. The danger to the Diocese Defendants of future cases was that future cases might be brought by lawyers actually adverse to the Diocese Defendants, as opposed to the lawyers who entered into the collusive class agreement with them. Fourth, overt misrepresentations of fact by the lawyers and Diocese Defendants, to the court which approved the 2006 class action settlement, and fraudulent concealment of that misrepresentation

continuing to the present.

47. Class action counsel were so confident in their ability to manipulate the state court judge they and counsel for the Diocese had selected and maneuvered the class cases before, and in gaining the cooperation of the supposedly adverse Diocese Defendants that the Richter defendants submitted blatantly false and inflated time records to justify their large fee without objection to those false and inflated time records by the Diocese Defendants. In exchange for class counsel's cooperation to disadvantage all members of the class from making any claim other than through the 2006 class settlement, which capped victim recovery to an acceptable limit, the Diocese Defendants (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention that any of the time records submitted by the Richter defendants were false, (c) agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee, (d) agreed to make no objection to an unethical fixed fee for class counsel while class counsel simultaneously obtained only variable compensation for class members, (e) agreed to make no objection to the fee being awarded before any member of the class member was even identified, and before any class member claimant had submitted a claim or was paid, (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law, and (g) agreed to seek no post-award fairness hearing under SCRCP 23.

48. In turn, the Richter Defendants agreed to assist the Diocese Defendants in overtly misrepresented to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement, and once the court relied on that representation the Richter defendants enabled the Diocese Defendants to ignore the representations that had been made. Alternatively, if class counsel claims he was did not participate in the overt

misrepresentations to the court by the Diocese Defendants, class counsel's representation of the class feel below the applicable standard of care in that class counsel failed to secure by order those concessions supposedly made by the Diocese defendants. Class counsel failed to secure those concessions by written order even though class counsel was fully aware the Diocese Defendants are untrustworthy and would comply only with orders it could be compelled to honor. Class counsel either was complicit in the misconduct of the Diocese Defendants or was negligent in being outmaneuvered and hoodwinked by the Diocese Defendants.

49. The duplicity by the Diocese defendants was disclosed to this Plaintiff only after 2011, when the Diocese asserted to his representative that the class action precluded him from any relief even though he had no notice of the class action, and no recollection of his own sexual abuse, at the time of the class action.

50. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the Plaintiff is regarded as being bound by the *res judicata* effect of the collusive class action to which the Diocese was party. As alleged more fully below, Plaintiff ostensibly falls within a class defined in that action, but all of the Defendants were aware that in adopting that class definition without exclusions for persons who had no memory of their childhood abuse, claims by such persons might be compromised. Defendants colluded so as to attempt to make any recovery by the Plaintiff impossible. All Defendants cooperated together to better protect the Diocese by the way the class was defined, as well as the manner in which notice was given, and the Defendants cooperated so as to actively mislead the court in seeking approval for the limited notice that was proposed with the false promise by the Diocese, known to have been false by the Richter defendants or acquiesced in by the Richter defendants, that the Diocese would protect the interests of persons such as the Plaintiff who received no notice

and who later made claims.

51. Until 2011 the Plaintiff had no information that the Defendants had cooperated to make false promises to the class action court or that the Plaintiff's interest had been compromised by a collusive class action.

52. Until May 19, 2009, when the South Carolina Supreme Court ordered that the proceedings in the 2005 class action be concluded by September 19, 2009, the Richter defendants were charged with correcting the known deficiencies in the class definition and the class action notice. The Richter defendants took no steps to correct either deficiency. Had they done so it would have interfered with their collusion with the Diocese that was intended to protect the Diocese and to obtain for the Richter defendants the fixed fee they had arranged to obtain, at the expense of their client class members and the putative members of the class.

53. Similarly, until September 19, 2009, the date the South Carolina Supreme Court ordered that the proceedings in the 2005 class action be concluded, the Diocese Defendants were aware that various persons within the class would not recall the abuse and had received no notice, but did nothing to clarify overt misrepresentations by the Diocese Defendants to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

54. As a person who reported abuse when he was a child, the Diocese Defendants each knew, or should have known, about the Plaintiff and his abuse by Michael Kaney.

55. Until 2011, the Plaintiff was unaware of (a) any class settlement by the Diocese Defendants, (b) that the Diocese Defendants claimed to have waived charitable immunity for any person in the class definition, (c) that the Diocese Defendants claimed to have waived the statute of limitations for any person in the class definition. Plaintiff was unaware of any of

those things because, by agreement of all Defendants, plaintiff got no notice of any of those things, and had no opportunity to preserve his claim by opting out of the 2005 class action.

56. In its order approving the class action, the state court may have provided for absent members of the class, such as the Plaintiff. However, beginning in 2009 the Diocese Defendants began to contend the court's order does not mean what it says, and starting in 2009 the Diocese Defendants began to argue that none of them has a duty to any absent class member who is within the class definition but who received no notice of the class settlement or the various waivers of defenses by the Diocese Defendants. In doing so the Diocese Defendants perpetuate the fraud the Diocese Defendants intended to achieve in 2007 through the class action and through cooperation with the Richter defendants.

57. Plaintiff is an absent member of a class who, by design among Defendants, received no notice of the class action and had no opportunity to opt out of the collusive class action. As such, Plaintiff should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of his interests. Not only was the Plaintiff's representation by the Richter defendants inadequate, and fell below the applicable standard of care, and the state court order appears to contemplate that any person who failed to get notice would not properly be bound by any *res judicata* effect, as set forth more fully below. Any of those grounds is a sufficient basis to relieve the Plaintiff of the *res judicata* effect of the class action.

58. If the Diocese agrees, or the court finds, that the Plaintiff is not precluded by the class action from bringing claims against the Diocese Defendants, either because the class action court's rulings leave room for persons not receiving notice, or due to inadequate representation by class counsel, or because the Defendants in the class action were aware that not all class

members would get notice of the class proceedings and the class action orders preserve the Plaintiff's Due Process rights and his claims, then the causes of action against the Richter defendants who, for a fee, abandoned their client, and those who conspired against the Plaintiff through the class action, are irrelevant because Plaintiff can make his claims against the Diocese Defendants. However, if the court finds that the plaintiff is precluded for any reason from pursuing his claims against the Diocese Defendants, including the *res judicata* effect of the class action, charitable immunity (which the Diocese Defendants waived for those within the class definition), or by the statute of limitations (which the Diocese Defendants waived for those within the class definition), then the causes of action alleged against the Diocese Defendants for sexual abuse are irrelevant, and claims are properly made against those who conspired against the Plaintiff, as well as against the Richter defendants who failed to properly represent the Plaintiff in the representation of the Plaintiff that the Richter defendants undertook.

59. In March, 2009, the South Carolina Supreme Court ordered that all proceedings in the class action be concluded by September 19, 2009. The class action is concluded.

60. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No change is sought as to the class action. This action seeks an interpretation as to the preclusive effect of the class action as applied to the Plaintiff.

For a First Cause of Action:
Negligence and Gross Negligence by Diocese Defendants

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

62. The defendant Bishop of Charleston employed Michael Kaney as a priest.

63. In his capacity as priest, Michael Kaney was placed by the Diocese Defendants in a position of trust and confidence, and had access to the Plaintiff and other children. In that capacity, Michael Kaney sexually molested the Plaintiff and many other children.

64. Prior to the Plaintiff being molested, the Diocese Defendants became aware that Michael Kaney was dangerous to children. After knowing he was dangerous, the Diocese Defendants moved Michael Kaney from place to place within South Carolina, and thereby facilitated his access to young people whom he could sexually molest. The Plaintiff was molested after Kaney was known to be dangerous to children.

65. Alternatively, the Diocese Defendants operated various schools, activities, and churches that were intended to, and did, attract children and families. The Diocese Defendants encouraged people, including plaintiff and his parents, to use their facilities, and to attend the various activities and functions offered on its premises. In making that invitation, the Diocese Defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers, and from known dangers such as Michael Kaney, by representing to the public, and to the Plaintiff, nothing to the contrary. The Diocese Defendants particularly owed a duty to the Plaintiff, who was a minor, and his Parents, who were charged with looking after his interests, a greater degree of care because as a child the Plaintiff relied on the Diocese Defendants for his safety within the Diocese, was unable to fully appreciate risks and danger and protect himself from Michael Kaney. The Diocese Defendants falsely represented to its invitees, and their parents or guardians, including the Plaintiff, that its facilities and its priests were safe, and that persons would be would be protected from harm when using its facilities and when interacting with its personnel.

66. After he was moved to Greenville, S.C., Michael Kaney molested the Plaintiff.

67. The Diocese defendants negligently supervised Michael Kaney. The Bishop of Charleston was grossly negligent in supervising Michael Kaney. Moving Kaney without proper warning to children and parents was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, Plaintiff was sexually abused by Michael Kaney and had no recollection of the sexual abuse until June, 2010.

68. The Diocese defendants were negligent in failing to warn the Plaintiff or his parents about Michael Kaney. The Bishop of Charleston performed that duty in a grossly negligent manner.

69. The Diocese Defendants knew, or should have known, that Michael Kaney was a pedophile. Despite that knowledge, the Diocese Defendants, made no effort, or no competent effort, to ascertain how many children Michael Kaney had molested, and no effort, or no competent effort, to locate victims of Michael Kaney. If the Diocese Defendants did make such an effort, those Defendants assumed the duty but performed it negligently. The predecessors of Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

70. The Diocese Defendants' failure to do so was negligent, and grossly negligent on behalf of the presiding Bishop from the time of the Plaintiff's abuse to the present, including the gross negligence by Bishop Guglielmone, Bishop Baker, Rev. Monsignor Laughlin, and the Bishops who preceded them.

71. As a result of the negligence and gross negligence by the Diocese Defendants in failing to either prevent abuse or identify abuse victims by its agent or employee Michael Kaney, the problems for the Plaintiff were first caused, and then exacerbated, by the delay of the Diocese Defendants in rectifying the abuse by Kaney.

72. As set forth more fully below, the Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese Defendants, among other things, accounts for the delay in this action being brought against the Diocese Defendants. The most recent act of fraudulent concealment by the Diocese defendants as to the Plaintiff was in 2011, discovered by the plaintiff only after it was made in 2011. This action is brought within three years of that most recent act of fraudulent concealment, and fraudulent conduct, by the Diocese defendants, and within three years of its discovery by the Plaintiff.

73. The Plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese Defendants, and gross negligence of Bishops Guglielmone and Baker, and Administrator Rev. Monsignor Laughlin, in failing to perform a proper review for Kaney's victims, or in performing that duty in a negligent manner.

For a Second Cause of Action:
Fraudulent Concealment by Diocese Defendants

74. Allegations above are incorporated into this cause of action as if fully set forth.

75. The Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children.

76. The Diocese Defendants each had a duty to discover and to disclose to Plaintiff or his parents their knowledge that Michael Kaney was known to have a sexual interest in children. That duty arises from (a) the preexisting fiduciary relationship between the Plaintiff and the Diocese Defendants, which relationship the Diocese Defendants solicited; (b) from the parents

of the Plaintiff having expressly reposed their trust and confidence in the Diocese Defendants so as to entrust the Plaintiff into the presence of Michael Kaney, which placed the Plaintiff in a vulnerable position with Michael Kaney. That position of trust and confidence was implicit from those circumstances of Plaintiff being entrusted to the presence of Michael Kaney, as well as from the nature of the dealings between the Plaintiff, his parents, and the Diocese Defendants, who promoted to the Plaintiff's parents that the Plaintiff should leave the Plaintiff in the presence of Michael Kaney, (c) from the essential nature of the Diocese Defendants and their inducement to the Plaintiff's parents to have the Plaintiff participate in activities with Michael Kaney as being beneficial to the Plaintiff, or at least not harmful to him, (d) from the secrecy provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese Defendants to discover, but then to maintain secrecy about, "other persons solicited" by any person such as Michael Kaney, who commits the "unspeakable crime" of sexually abusing a child, and (e) by the undertaking which the Diocese Defendants assumed, negligently (and in the case of the individuals included in the designation of the "Diocese Defendants," grossly negligently), during 2005 - 2010, to locate victims such as the Plaintiff.

77. The Plaintiff was sexually abused by Michael Kaney after 1962.

78. Concerning each of (a) the undisclosed dangers Michael Kaney represented to the Plaintiff, and (b) assisting to repair the damage done to the Plaintiff by Michael Kaney, the Diocese Defendants were obligated to the Plaintiff to engage with him or his parents on his behalf in perfect good faith and with full disclosure.

79. Instead of full disclosure, the Diocese Defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including

Michael Kaney. In its own operations, the Diocese required secrecy and concealment, and it has enlisted its agents and employees to further conceal its knowledge of abuse so as to limit its exposure for the Diocese defendants being held responsible for sexual abuse of children.

80. Specifically, the Diocese Defendants created a culture of secrecy that caused the nun to whom the Plaintiff reported to immediately, and without investigation, dismiss and challenge the Plaintiff, and to reject and humiliate him as a child for having reported his sexual abuse by Kaney.

81. Administrative practices adopted by the Diocese Defendants under the Code of Canon law established a practice of secrecy as to sexual abuse. All references to the Code of Canon law refer to the Code of Canon law approved in 1983.

82. The Diocese Defendants established an archive (required by Canon 486 of the Code of Canon law), accessible only by the Bishop of Charleston and chancellor of the Diocese of Charleston (limited accessibility is required by Canon 487). Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop of Charleston or the moderator of the curia (required by Canon 488). Canon 489 requires that the Diocese of Charleston was also to create for administrative purposes a Secret Archive. In that Secret Archive Canon 489 requires that "documents are to be kept secret" and "protected most securely." Canon 489, Section 2 states: "Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained."

83. The administrative practices for secrecy required by the Code of Canon law and the "Instruction," alleged below, are arbitrarily adopted administrative practices and are separate

and apart from the religious practices protected by the First Amendment of the United States Constitution.

84. Only the Bishop of Charleston is to have the key to the secret archive, and documents are not to be removed from the archive (a restriction required by Canon 490). The Bishop of Charleston was authorized to include in the secret archive any matter which can be regarded as scandalous.

85. The administrative practices of the Diocese of Charleston is to consider topics of sexual abuse to be scandalous, hence secretive.

86. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Michael Kaney's sexual abuse of the Plaintiff and other children, were regarded as scandalous, and were maintained in the Secret Archive.

87. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Michael Kaney's sexual abuse of children including Plaintiff when he was a child, because they were regarded as scandalous, were maintained in the Secret Archive and were destroyed as called for by the Code of Canon Law in the routine administrative practice by the Diocese Defendants to destroy evidence of known criminal activity.

88. In 1962 the Diocese defendants expanded on the administrative secrecy required concerning sexual abuse, publishing an "Instruction" which was to be stored in the Secret Archive. (Required by the "Instruction," at page 1). In the "Instruction," matters involving priests who "solicit or provoke" ("Instruction," p. 1 ¶ 1) a penitent "toward impure and obscene matters" ("Instruction," p. 1 ¶ 1), "which is also silence" ("Instruction," ¶ 11) and deemed "a secret of the Holy Office" ("Instruction," p. 3 ¶ 11), "under the penalty of excommunication" ("Instruction," p. 3 ¶ 11). These are administrative practices related to secrecy, not to practices

protected by the First Amendment. The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." ("Instruction," p. 4 ¶ 12. See also, "Instruction," p. 5 ¶ 23 and "Instruction," p. 6 ¶ 28).

89. Plaintiff fits within the meaning of "penitent" referred to in the "Instruction."

90. The 1962 "Instruction" states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." "Instruction," p. 15, ¶ 71. "The worst crime" is also defined as "any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex." "Instruction," p. 16, ¶ 73. These provisions are analogous to civil and criminal law statutes which regulate conduct, not to practices included within the First Amendment protections for religious observance.

91. Nothing about the Catholic faith requires that children be sexually abused or the sexual abuse of children be concealed.

92. Michael Kaney was, and the Plaintiff is, male. The conduct by Michael Kaney towards the Plaintiff qualified under the 1962 "Instruction" as "the worst crime."

93. Among other things, the 1962 Instruction directs the Diocese Defendants to assume the duty of locating "other persons solicited by the same confessor" ("Instruction," p. 7 ¶ 29). In this instance, the "Instruction" calls for the Diocese Defendants to locate other persons solicited by Michael Kaney for sexual contact. The "Instruction" at p. 9 ¶ 37 also refers to an "Instruction of the Holy Office, February 20, 1867," in directing the manner of interrogation for persons with information about solicitations or those solicited for sexual contact.

94. The Diocese Defendants assumed the administrative duty to locate victims as defined in the 1962 "Instruction," but the Diocese Defendants performed that duty in a grossly negligent manner. The Diocese Defendants failed to locate the Plaintiff, failed to locate many

other abuse victims, and made no competent inquiry to locate them. The Diocese Defendants purposefully avoided making the type of inquiry that would have elicited discovery of the Plaintiff. Among other things, the nun to whom the Plaintiff reported his abuse failed to make a proper record of the abuse, or the record of it was discarded as scandalous.

95. The 1962 "Instruction" was approved as an administrative practice by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 "Instruction."

96. In the Appendix to the 1962 "Instruction" are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the Plaintiff. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff," according to page 17 of the 1962 "Instruction." By this means the administrative practice of secrecy is encouraged, but even backed by excommunication, the secrecy provisions of the administrative practices are arbitrarily adopted administrative practices with no doctrinal significance to protected First Amendment activities.

97. "Whatever type of pretext" overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the 1962 "Instruction" for complying with civil authority, and any interpretation otherwise is void as contrary to the law of South Carolina.

98. Unless the Pope himself has specifically approved otherwise, administrative secrecy was and is to be maintained not only by the Plaintiff, but also by every member of the Diocese Defendants, and by even witnesses to sexual abuse. That administrative secrecy is to be made

despite any law, court order, or oath which would otherwise require disclosure of sexual abuse. Under the 1962 "Instruction," the highest obligation, higher than any law, oath, or court order, is to maintain the administrative practice of secrecy for the benefit of the Diocese Defendants, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese Defendants can all be expected to be obedient to the administrative secrecy called for in the 1962 "Instruction," to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese Defendants have, to date, done so.

99. The call for secrecy in the administrative practices derived from the 1962 "Instruction" and the Code of Canon law constitutes spoliation of evidence, as well as fraudulent concealment. Among the spoliation was evidence related to Michael Kaney's known sexual interest in children, and the sexual abuse of the Plaintiff he reported as a child.

100. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the Diocese Defendants as to Michael Kaney's sexual abuse of the Plaintiff. Consistent with that obligation of secrecy, the Diocese Defendants made no effort to either prevent sexual abuse of the Plaintiff, or to ascertain that the Plaintiff was a victim of the abuse by Michael Kaney.

101. In 2006 the Diocese Defendants sought a new level of deception and manipulation to limit the damage to the Diocese Defendants from its taking responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its history of abuse and concealment. The Diocese Defendants engaged with other Defendants to conspire to evade accountability, as set forth below, and to try to prevent the Plaintiff from making any claim.

The acts of civil conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse. The conspiracy cause of action concerns the Plaintiff's deliberate exclusion from the class, and preventing the Plaintiff from being able to protect his claim, so hinges on the proper interpretation of the orders in the class action, and whether the actions of the Richter defendants constituted merely greed, fraud, and self-interest, as opposed to professional negligence, in excluding from the class action, by design, the Plaintiff and many others who were within the class definition. If there was professional negligence, then the acts of professional negligence predominate, and the damages from the exclusion are properly paid by the Richter defendants. If the actions do not rise to professional negligence, and the Richter defendants and Diocese Defendants were merely corrupt, then the damages for the exclusion are properly shared among all Defendants for their conspiratorial actions in excluding the Plaintiff by design. And if the Plaintiff is not precluded from his claims against the Diocese Defendants by the *res judicata* effect of the class action, and the Richter defendants were merely corrupt, then the Plaintiff requires no relief for either professional negligence by the Richter defendants or conspiracy involving the Richter defendants, and can seek relief against the Diocese Defendants.

102. This cause of action presumes that the plaintiff is not precluded in making this claim by the 2005 collusive class action involving the Diocese Defendants, and can make his claim for (a) lack of Due Process in those proceedings, (b) lack of competent representation sufficient to bind this Plaintiff, (c) the collusive nature of the class settlement, or (d) because by their terms the class action orders do not apply to the Plaintiff.

103. The Plaintiff is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese Defendants in actively maintaining secrecy and thus failing to perform a proper review for Kaney's victims, including the Plaintiff, or in performing that duty in a negligent manner.

For a Third Cause of Action:
Civil Conspiracy by All Defendants

104. Allegations above, other than claims for relief above, are incorporated into this cause of action as if fully stated. This cause of action presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect, despite insufficient Due Process from the collusive class action which was designed by all Defendants to limit the Plaintiff's ability to state his claim, so this cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese Defendants related to sexual abuse, and presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

105. Defendants have conspired with others to injure the Plaintiff, and by those actions have caused special damage to the Plaintiff.

106. As set forth below in detail, the Defendants have acted in concert in numerous ways, which reflect the joint assent with minds to injure the Plaintiff, and Defendants have taken overt acts to pursue the common design to injure the plaintiff.

107. Some actions that have been taken have been legal; other actions were legal but violated professional standards in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the Plaintiff by making sure he and other putative class members could neither participate in the state court class action nor opt out of it, and by those means could be prevented from bringing his own action.

108. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the lawyers who purported to represent the Plaintiff, the Richter defendants, agreed to act against the Plaintiff's interests, and collaborated against the Plaintiff's interest and in the interest of the Diocese Defendants, to whom class counsel had connection and allegiances. This cause of action presumes that class counsel was not merely professionally negligent, and outmaneuvered by the Diocese Defendants, but actively collaborated with the Diocese Defendants.

109. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, the lawyers who purported to represent the Plaintiff, the Richer defendants, agreed to abandon the Plaintiff, and to define the class so as to include him despite being well aware of their being adult individuals, such as the Plaintiff, who were sexually abused as children who as an adult did not recall his childhood abuse. The Richter defendants defined the class action classes so as to ostensibly include the Plaintiff, and created no exception for his known status. Additionally, the Richter defendants purported to secure benefits for the Plaintiff but then failed to secure those benefits by written order. This cause of action presumes that those acts were not professionally negligent actions but conscious undertakings by the Richter defendants to disadvantage the Plaintiff from making a claim against the Diocese, so as to not jeopardize the fee the Richter defendants made as the highest priority of the 2006 class action settlement.

110. By purporting to undertake his representation in how the class was defined, but make no provision for the Plaintiff, the Richter defendants breached a duty to the Plaintiff that the Richter defendants assumed, either through the attorney-client relationship or the fiduciary

duty assumed by class counsel when he elects to bring a class action and defined a class so as to include the Plaintiff.

111. The Richter defendants have publicly denied undertaking any duty to absent members of the classes they defined, reflecting either their degree of professional ignorance of the obligations of class counsel or their intention to align with the interests of the Diocese, or both. This cause of action assumes not the professional negligence of the Richter defendants but the intention of the Richter defendants to align themselves with the interest of the Diocese Defendants as the quid pro quo for the Diocese Defendants collaborating by silence on their fee as class counsel.

112. The Richter defendants elected to abandon their putative class member clients who had repressed memory of their childhood abuse so as to prevent the Plaintiff, and others similarly situated, from being able to act when their memories were recovered by making claims against the Diocese Defendants. As the class allegations acknowledged, the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, filed in Charleston County, and in the identical John Doe #53 Complaint redundantly filed in Dorchester County as case 06-CP-18-1636.

113. If "too many" of those hundreds of victims participated in the class action, including the Plaintiff, the Richter defendants would jeopardize the large fee the Diocese Defendants had agreed to enable them to get, and if the 2006 class settlement was jeopardized the Diocese Defendants might not get the ostensible protection from future suits it was colluding with the Richter defendants to obtain at the lowest possible cost. Consequently, defining the class so as to ostensibly include the Plaintiff without securing any benefit for him was either professional negligence or intentional conduct by the Richter defendants to defeat

the Plaintiff's ability to make a claim against the Diocese. As noted, this cause of action presumes that the Richter defendants were not professionally negligent but intentionally acted with the Diocese Defendants to limit the Plaintiff's ability to claim against the Diocese Defendants, with whom the Richter defendants shared an illicit interest in defeating the Plaintiff's potential claims.

114. For the Richter defendants, both their class counsel fee, and the interests of the Diocese Defendants, were more important to them than were the interests of their absent putative class member clients such as the Plaintiff.

115. In exchange for the Richter defendants abandoning the Plaintiff and all of their other putative class member clients who as adults had no memory of childhood sexual abuse, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request, (e) agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known, (g) acquiesced in the unethical conduct of the Richter defendants abandoning all class members who as adults did not recall their childhood sexual abuse, and (h) agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from those Charleston County

judges that might exert independent scrutiny of the class action, to a state court judge in Dorchester County known to have extensive social and professional ties to the Richter defendants, in the aspiration and expectation that a more pliable oversight would be received for the class settlement from that judge.

116. In the 2006 class settlement the Diocese Defendants undertook a duty to the classes as identified, including the Plaintiff to identify abuse victims, such as the Plaintiff, who had reported his sexual abuse to a nun. To get approval of the class settlement, the Diocese Defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to the hand-picked judge in Dorchester County. In circumventing the requirement in SCRCP 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester County judge, the Defendants violated judicial norms and rules as well as professional standards. The Diocese Defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case pending simultaneously in circuit court in both Charleston County and Dorchester County. As the Dorchester County version of the class action had already been settled before filing through the 2006 class settlement, the Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge. The Diocese Defendants also agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

Details of the Civil Conspiracy Among Defendants

117. In 2003, the Richter defendants were associated by one or more lawyers to assist in representing a victim of sexual abuse in a claim to be asserted against, *inter alia*, The Diocese Defendants.

118. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the remainder of 2003 and all of 2004.

119. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The Bishop of Charleston, et al., 05-CP-10-2053.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

120. That John Doe 66 complaint made no class action allegations.

121. In August 2005, the Richter defendants filed another individual action in the Charleston County Court of Common Pleas, styled *John Doe #66A v. The Bishop of Charleston, et al., 05-CP-10-3293.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

122. The John Doe 66A complaint made no class action allegations.

123. In October 2005, the Richter defendants met personally with then-Bishop Baker.

124. As a result of that meeting, in December, 2005, the Richter defendants filed a class action complaint in the Charleston County Court of Common Pleas, styled *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193.* No

complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

125. In February 2009 the Diocese Defendants published to the public through their press spokesman the lie that the Charleston County John Doe 53 complaint was one of three individual cases filed in Charleston, as opposed to it being a complaint which alleged a class action. The representation that it was an individual suit was a lie by the Diocese Defendants in furtherance of the routine and consistent practice by the Diocese Defendants to engage in fraudulent concealment of sexual abuse matters, and to further the agreement among defendants to cause harm to the Plaintiff.

126. Rule 23(d)(1) SCRCP requires "as soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained."

127. From December 2005 until June 2006, neither the Richter defendants, as class counsel, nor the Diocese Defendants, as a defendant in a case alleging a class, made any effort to seek class certification for the class alleged in the December class action complaint in Charleston County. In that time the public records show there were no motion hearings held in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, and sent out hearing notices, the Defendants collaborated to ask that the motions be continued rather than heard.

128. In June 2006, the Defendants met in a mediation conference. At that time, no class action had been certified, and no class was alleged for spouses or parents of sexual abuse victims.

129. At that mediation conference, which took place over two days, the Defendants purported to settle all claims of all class members in two classes, as the classes were defined by the 2006 class settlement agreement of the parties.

130. Ostensibly included in the classes as defined in the mediation was the Plaintiff. By defining the classes so as to ostensibly include the Plaintiff, and by purporting to settle his claim, the Richter defendants assumed professional obligations to him, including fiduciary duties towards him, and created a constructive attorney-client relationship, if not an actual attorney-client relationship, with the Plaintiff.

131. The agreement reached in that mediation is attachment A to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the 2006 class settlement agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the Plaintiff through the class definitions making no exception for his repressed memory. The Defendants intended to include the Plaintiff in the class definition.

132. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 class settlement reached during a mediation of the Charleston cases.

133. The typewritten version of the 2006 class settlement agreement was approved by The Holy See (also known as The Vatican) in January 2007.

134. The 2006 class settlement agreement was funded by approval of The Holy See (also known as The Vatican).

135. As reflected in the attached handwritten version of the 2006 class settlement agreement, the Defendants agreed that the individual plaintiffs in the pending actions filed in

Charleston County and the purported class representative from the Charleston case which alleged a class, would split $460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese Defendants would pay only $460,000 to resolve the pending Charleston cases, which were the only cases then pending.

136. Claims of absent class members were proposed to be resolved on terms materially different than the terms which the purported class representative or representatives received. Instead of a cash payment the same, or similar to, what the purported class representative or representatives were to receive, absent class members were to be required to first relinquish their right to bring suit and then and only then submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive from the defined maximum amount available for all such claims, minus the fee for class counsel. Class members had to relinquish all rights for review to qualify for the arbitration, which was binding arbitration.

137. As alleged below, not fewer than seven devices were chosen by overt agreement among the Defendants to further the conspiracy against this Plaintiff, along with other absent putative members of the classes, from being included in any recovery for the class, to limit the class recovery from being "too much," and to prevent this Plaintiff from later being able to make a claim for his childhood sexual abuse.

138. If the 2006 class settlement included "too many" claimants, under the 2006 class settlement agreement the Diocese Defendants would be entitled to withdraw from the agreement. Class counsel would jeopardize his class counsel fee if there were "too many" claimants and the Diocese Defendants withdrew. The Diocese Defendants wanted the 2006 class settlement agreement to be approved so they could later argue, as they in fact have

argued, and have argued specifically as to this Plaintiff, John Doe 1993, that despite his lack of recollection of his childhood sexual abuse until after 2006, that no other sexual abuse claims for sexual abuse prior to 2006 could be made against the Diocese Defendants if those claims were brought after the 2006 class settlement approval.

139. The Diocese Defendants knew that the 2006 class settlement agreement had been negotiated and reached with an "adverse" attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese for his repressed memory client. The Richter defendants wanted to assure themselves of a large fee in the class action without jeopardizing that fee by getting too many class claimants against class counsel Richter's own Diocese and these Diocese Defendants. So all Defendants conspired to create methods to be able to limit the number of class members who could make claims under the 2006 class settlement agreement, to limit the amount those class member claimants would recover, and to protect the Diocese Defendants from any future claims, even for those childhood abuse victims prior to 2006 who repressed memories of their sexual abuse until after the 2006 class settlement was concluded. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge-Shopping to Pick the Judge

140. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver the 2006 class settlement agreement from the Charleston class action to be presided over not by any judge in Charleston County, where the putative class case was filed and the class case settlement was reached, but to "shop" for a judge they selected to make those determinations. An independent judge in Charleston County was not

desired to make those determinations. A judge more likely to overlook court rules and accept fraudulent filings was desired.

141. Instead of complying with SCRCP 23, and submitting the attached 2006 class action settlement to a judge in Charleston County for approval under SCRCP 23, the Defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese Defendants accept service of, newly filed class action cases in Dorchester County. The Richter defendants filed on August 15, 2006 in Dorchester County cases 06-CP-18-1310 and 06-CP-18-1311. After those two cases were filed the Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193*, was redundantly re-filed in Dorchester County on October 6, 2006, with the same caption (other than the changed county name from "Charleston" to "Dorchester" and the case being assigned the different case number for Dorchester County of 06-CP-18-1636), and with the identical allegations. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending and already settled Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to avoid independent judges in Charleston County and to shop for the desired judge in Dorchester County.

142. This procedural maneuver agreed to among the Defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose when it was used in 2006.

143. Filing duplicative class actions to have the same case pending simultaneously in two different venues is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court and to the Plaintiff, ostensibly included in each of the duplicative complaints through the class definition used in each of those complaints. The Plaintiff was deprived of Due Process through the conduct of the Defendants.

144. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending, and all were included within the 2006 class settlement agreement.

145. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement among the Defendants, simultaneously pending in two separate counties.

146. Dorchester County was chosen by agreement of the Defendants so as to "judge shop" for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, any pre-award fairness hearing, and any post-award fairness hearing. The shopped-for judge was expected to tolerate factual misrepresentations and fraudulent filings by the Defendants, an expectation that was rewarded when fraudulent filings were made, by agreement among the Defendants, and the pliable, shopped-for judge took no action concerning those fraudulent filings, either before the fraudulent nature of those filings was explicitly disclosed or after the fraudulent nature of those filings was disclosed.

147. The Defendants all agreed with this strategy of seeking a pliable state court judge, and consented to the "judge shopping" so as to avoid having to submit the class allegations, and proposed class action settlement, for approval by any judge in Charleston County. The Defendants feared completely objective judicial oversight by any of the judges in Charleston County.

148. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the shopped-for judge designate the cases as complex, and assign the cases to the shopped-for judge. That designation was improper under the rules at the time, as set forth in more detail below, as Defendants joined together to misrepresent facts to the shopped-for judge in order to obtain complex case designation. Alternatively, the shopped-for judge was informed of the false representations of fact when the request for complex case status was made, and the shopped-for judge agreed to permit the false representations of fact.

149. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the 2006 class settlement. If the same request had been made and granted in Charleston, only a single judge would have presided over all aspects of the settlement. But the Defendants feared that any Charleston judge would exert independent oversight of the 2006 class settlement, and Defendants sought to avoid independent oversight.

150. Other than to shop for a particular judge, there was no legitimate reason to redundantly file case 2005-CP-10-4913 as case 2006-CP-18-1636.

151. As soon as the shopped-for judge assigned the Dorchester actions to herself, the Defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

152. No motion was filed in Charleston to approve the 2006 class settlement reached in the Charleston cases. All Defendants consented to not filing such a motion.

153. SCRCP 23 was not complied with as to the 2006 class settlement reached in the Charleston class action. All Defendants consented to not complying with SCRCP 23 in Charleston County, and all Defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge in Dorchester County.

154. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases. Nor was any notice given to the Charleston County judge that the parties sought a voluntary dismissal without prejudice of any case that alleged a class.

Conspiracy Technique Two: Using Complex Case designation Improperly.

155. In October 2006, the Defendants sought complex case designation of the Dorchester County class action cases.

156. At that time, the Charleston cases were still pending.

157. The July 26, 2006 order of the South Carolina Supreme Court which at that time enabled complex case designation, approved of a particular form for use with motions to seek complex case designation. Among other things, that motion required the Defendants to represent that certain facts applied to the action for which complex case status was sought. The form states:

> We certify that we have made a good faith effort to settle this case and ***thus far have been unable to do so***. We realize that if this case should be settled after

> being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.

158. At that time, the Charleston cases were still pending, and a class settlement had been reached in those cases which, if approved, would resolve all cases.

159. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases.

160. By agreement among the Defendants, no notice was given to the Administrative judge for Charleston County, judge Jefferson, that when the Defendants sought a voluntary dismissal without prejudice of the pending Charleston County cases that one of those cases alleged a class.

161. Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached at the time the Defendants sought complex case designation. Alternatively, the Defendants disclosed to the shopped-for judge that they fraudulently sought complex case designation, under a false representation of facts, and the shopped-for judge agreed to overlook the false application. As a second alternative, Defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

162. Complex case status was approved, despite a settlement having been reached before the first Dorchester County case had been filed.

Conspiracy Technique Three: Agreeing to an unethical attorney's fee for class counsel.

163. The 2006 class action settlement reached in the Charleston class action cases included simultaneous negotiation of a common fund, and variable, recovery for the class and a fixed

fee amount for class counsel, with the fee to class counsel be paid prior to the claims period and to take priority over recovery to the class member claims.

164. As set forth in the affidavit of Michael Virzi, attachment B to this complaint and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese Defendants to agree to it. Plaintiff at no time consented to the Richter defendants negotiating such a settlement, and it was not disclosed to him.

165. At page 13, paragraph 6B, in the typed version of the 2006 class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure set forth in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

166. Representation of the Plaintiff by the Richter defendants in proposing an unethical fee was inadequate, and did not comply with applicable professional standards. Alternatively, that representation breached a fiduciary duty to the Plaintiff.

167. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits the Diocese Defendants and the Holy See were willing to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid before any class member could make a claim, and paid before any class member could be or would be paid.

168. The Richter defendants sacrificed the interests of absent putative class members, such as the Plaintiff, in exchange for the fixed fee they negotiated for themselves. The Diocese

Defendants agreed to that class counsel fee as the price of obtaining the illicit cooperation of the Richter defendants in structuring the 2006 class settlement resolution that provided only a fraction of the relief the Richter defendants would agree to accept in a case against a Diocese other than Richter's own Diocese, the Diocese Defendants.

Conspiracy Technique Four: Disclosing to the Class neither the Settlement terms for the Class Representatives nor the Settlement for Persons who Opted Out of the Class

169. The fourth technique to conspire against the Plaintiff was to make no disclosure to him, or other class members, of either the superior settlement terms agreed to by the Diocese Defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who opted out of the class settlement.

170. The Defendants have all taken the position that the agreement with those persons who opted out of the class action was part of the class action. As part of the class action, the Defendants should have informed class members of those terms as an option to the class recovery.

171. Neither the class representatives nor the opt-out abuse victims had to submit their claims to binding arbitration. Their claims were given specific dollar amounts prior to their having to relinquish their right to maintain their respective claim. Each knew precisely what their recovery would be before consenting to resolve his or her claim.

172. In addition, the terms for the opt-out abuse victims exceeded the low bar of recovery the Richter defendants agreed to set for class member recoveries, to further protect Richter's own Diocese. The opt-out victims received more than was received by any comparable abuse victim who stayed in to participate in the 2006 class settlement. In addition to the fee approved by the Court, the Richter defendants charged class members who participated in the 2006 class settlement an additional fee to go through the arbitration

mechanism of the 2006 class settlement. The court approved fixed fee was not disclosed to participating class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing because no post-award fairness hearing was held. The shopped-for judge agreed to not have any post-award fairness hearing so as to not jeopardize class counsel's fee recovery in the 2006 class settlement.

173. No notice was given to any class member, including the Plaintiff, about the terms of the opt-out settlements. Had the Plaintiff begun to recover the memories of his childhood abuse, and had the Plaintiff been given notice of the terms available for the class, and the terms negotiated by the opt-out abuse victims, and the terms applicable to the class representatives, he could have exercised a choice to receive one or the other recoveries or to opt out and preserve his claim against the Diocese Defendants. The Plaintiff was abandoned by his attorneys, the Richter defendants, with the collaboration of the Diocese Defendants. Alternatively, the fiduciary duties assumed by class counsel to the Plaintiff, by Defendants agreeing to define the class so as to ostensibly include the Plaintiff, were breached by all Defendants in this action when they agreed to define the class in a way that did not exclude those who by 2006 had not recalled their own childhood sexual abuse. As alleged below, the abandonment by the Plaintiff was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the Plaintiff, or was a breach of the fiduciary duty assumed by the Richter defendants towards the Plaintiff. In this cause of action those duties were consciously abandoned in cooperation with the Diocese Defendants so as to not interfere (from class counsel's perspective) with the fee class counsel

obtained, and so as to not interfere (from the perspective of the Diocese Defendants) with the protection the 2006 class settlement enabled them to assert.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create A Means of Limiting Total Recovery for Compensating Victims

174. In the "General Terms of Settlement" agreed to in the 2006 class settlement of the Charleston class action case, there are seven essential terms of the settlement agreement.

175. The first general term in the 2006 class settlement was that there would be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

176. The second general term in the 2006 class settlement was to provide a $12 million settlement fund without risk that the fund would under any circumstances be exceeded. The effect of that provision was to compromise the interests of sexual abuse victims, to prevent the Diocese from being unable to withdraw from the settlement, and to protect the Diocese Defendants by depressing or eliminating any other recovery for any other potential claimant, such as the Plaintiff.

177. The third general term in the 2006 class settlement was "Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims."

178. The fourth term in the 2006 class settlement was that the court would be asked to approve a fixed fee for class counsel "between $950,000 & $2.5 million."

179. The fifth general term in the 2006 class settlement was to establish that four individuals would allocate among themselves $460,000.

180. The sixth general term in the 2006 class settlement was that the four individuals would be paid whether or not the court approved a class settlement.

181. The seventh general term in the 2006 class settlement was that the seven terms are an offer from the Diocese and "shall be acted upon with reasonable promptness" by the four individuals who would allocate $460,000 among them.

182. The four individuals referred to in the 2006 class settlement agreement accepted the offer from the Diocese, and allocated among themselves $460,000. None of those individuals received more than $160,000. It is not yet known what portion was allocated to legal fee for class counsel.

183. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class. Their claims were resolved upon acceptance, in 2006.

184. On information and belief, those four individuals accepted that offer shortly after the June 14, 2006 mediation. At least one of them had accepted it by June 16, 2006.

185. The two classes preliminarily certified in an order signed January 19, 2007, excluded persons who have "previously had any similar claim adjudicated, resolved, or released."

186. After June, 2006, those individuals who purportedly represented the classes in the 2006 class settlement, whose claims had been "resolved" in 2006, did not in 2007 qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006 or after class approval in 2007. Nevertheless, by cooperation and agreement among the Defendants they were falsely designated as class representatives in subsequent Dorchester County cases, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition of the class.

187. In addition to not meeting the class definition, the class representatives received a different settlement than did class members, and excluded themselves from the arbitration

process later articulated for the class members. In doing so they were guided by the Richter defendants as class counsel.

188. In the handwritten version of the 2006 class settlement, when the parties reserved details for later specificity ("Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims"), those details were reserved so the Defendants could work backwards from the settlement fund, minus class counsel's fixed fee, to enable adjustments to be made to the notice to the class and the recovery to the class members, so the recovery to class members would not be "too much." Neither the fee for the Richter defendants nor the finality desired by the Diocese Defendants would be jeopardized by having "too many" sexual abuse victims served by the 2006 class settlement agreement.

189. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the Plaintiff, was to preserve class counsel's fixed fee and to get payment of class counsel's fixed fee. That is why the fee is fixed, and why the fixed fee takes priority over the recoveries of the class members who participate in making claims under the 2006 class settlement agreement. The highest priority of the Diocese Defendants, after their willingness to pay class counsel's fixed fee, was to either exclude persons such as Plaintiff, or to try to limit as best they could the possibility of any future recovery to persons such as Plaintiff, so that within the relatively modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims by the same counsel against another Diocese, the Diocese could argue a *res judicata* benefit from the 2006 class settlement without having to

pay meaningful relief to class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all Defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, for notice to be designed to not inform all persons within the class definitions of the settlement itself, and for persons who did not in 2006 recall their childhood abuse to be included in the class definitions despite their lack of recollection in 2006.

190. The Diocese Defendants knew in 2006 that repressed memory claims had a different timetable for recovery than cases without repressed memory. The Diocese Defendants also knew, or should have known, that the systematic administrative practices of deceit and deception about sexual abuse practiced by the Diocese Defendants exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

191. The Diocese Defendants knew that juries in Charleston County had placed a high value on the intangible nature of sexual abuse claims.

192. To try to limit future sexual abuse claims, the Diocese Defendants elected to consent to the 2006 class settlement, hoping that settlement would define a class so as to alter enable them to argue to exclude the Plaintiff by means of *res judicata.* In that manner the Diocese Defendants could achieve a possible protection for the Diocese at a fraction of the cost of a proper settlement with all sexual abuse victims. The Diocese Defendants realized they could capitalize on the close ties to the Diocese Defendants of the Richter defendants, and the willingness of the Richter defendants to sacrifice, for a fee, the interests of this Plaintiff, and to enabled the Diocese Defendants to try to minimize recoveries to all sexual abuse victims yet still get a class approved.

193. All Defendants needed to avoid meaningful court oversight of the 2006 class settlement to achieve their collective goals of limiting the interests of absent members of the class, so all Defendants agreed to "judge shop" to avoid oversight by any Charleston judge, and to obtain a lax oversight by the shopped-for judge they desired.

194. When the Defendants realized that "too many" victims, such as the Plaintiff, might come forward, either within in the class action or later in time outside of the class action, they changed, by agreement, the notice to the class proposed to the shopped-for judge, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

195. The Defendants also agreed to misrepresent to the shopped-for judge, but to not submit in written form, a proposal to address persons, such as the Plaintiff, who were absent members of the class because they got no notice or, in the instance of this Plaintiff, because he got no notice and because in 2006 he had no begun to recover the memories of his childhood sexual abuse. The Defendants represented to the shopped-for judge that relief would be offered to the Plaintiff and others, when in fact the Defendants had no intention of providing relief to the Plaintiff or others.

196. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiff. All Defendants took deliberate action to permit victims to be identified by the Diocese Defendants, rather than insisting on giving meaningful notice to putative class members, or to provide for those who in 2006 had not recalled their childhood sexual abuse. Doing so was also negligence by the Defendants, but this cause of

action presumes that the conduct was intentional, so as to exclude the possibility of this Plaintiff being able to make a claim for his childhood sexual abuse.

197. Paying class counsel his fixed fee before any notice to the class, before any class claimant had been identified, and before any claims had been submitted, was another way of limiting the recovery to the class.

198. By design of all Defendants, the class had no opportunity for input or comment on the proposed fixed fee, to be paid ahead of all class claims, as the fixed fee was approved without notice to the class and before the class members were known.

199. No Defendants disclosed that the Richter defendants were submitting fraudulent information to the shopped-for judge, or that the Diocese Defendants had agreed to overlook the fraudulent information submitted by the Richter defendants to the shopped-for judge to support the fee class counsel claimed. No Defendant disclosed that the Diocese Defendants had agreed to make no mention of those various fraudulent time entries by the Richter defendants. Nor had any of the Defendants disclosed that they had agreed they would request no post-award fairness hearing.

200. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the psychological injury caused, was another way to limit the recovery to the class.

201. The Defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as the Plaintiff, made no exception in the class definition for persons such as the Plaintiff who in 2006 had no recollection of his childhood abuse, and then set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, all as means calculated

to harm the Plaintiff by excluding him from making any recovery even after he recovered memories of his childhood sexual abuse.

202. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter defendants would be paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese Defendants to abandon clients such as the Plaintiff, impair the Plaintiff's ability to make future possible claims, and to generally depress the recoveries to sexual abuse victims, to serve the interests of the Diocese defendants.

203. The Richter defendants abandoned absent class members such as the Plaintiff, who in 2006 had no memory of his childhood abuse, by making no provision for the Plaintiff and by failing to obtain in a written order the relief the Richter defendants claimed to have achieved for absent class members such as the Plaintiff. All other defendants cooperated with that abandonment by class counsel. Unless the order approving the class settlement means what it says at page 4, where the court appears to have accommodated absent class members by ruling, "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," and the Plaintiff is not precluded from bringing his claims against the Diocese Defendants, the 2006 class settlement through its notice and arbitration structure caused damage to the Plaintiff. Unless the Plaintiff is not bound by the *res judicata* effect of the class action, he has been specially harmed by the conspiracy engaged in by the Defendants.

Conspiracy Technique Six: Providing False Information to the Court

204. The sixth technique used to cause special harm to the Plaintiff was Defendants cooperated in filing with the court false information. When false information was filed by one

Defendant, all other Defendants acquiesced, despite knowing the filing was false. Even after the information was identified as false, no action was taken to protect the Plaintiff, unless the order means that persons who received no notice are not barred by *res judicata*.

205. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as case 2005-CP-10-4913 through the 2006 class settlement. The identical case as re-filed in Dorchester County was collusive, and was filed in Dorchester County only to avoid oversight by any Charleston judge and pursuant to the defendants' agreed upon plan to shop for a particular Dorchester County judge.

206. As noted above, the claim that class representatives in Dorchester County met the definition of the class and could serve as adequate representatives were each false, and known by all Defendants to be false when made in any of the Dorchester County class complaints.

207. Patently false information about the procedural history of the class action was included by the Richter defendants in the Motion to Certify Classes and for Preliminary Approval of Class Settlement, and acquiesced in by other Defendants.

208. Patently false information has also been given to the Charleston County Court and to the public by the Diocese Defendants.

209. All Defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston class action.

210. By agreement of all Defendants, SCRCP 23 was not complied with in dismissing the Charleston class action. Plaintiff was given no notice of the dismissal, or about the Charleston class settlement, or about the settlement provided those who opted out of the class settlement.

Nor was notice of the Charleston county class action case dismissal was given to any other ostensible class member.

211. False information was filed in Dorchester County about the class representatives and their adequacy as class representatives. All Defendants acquiesced in that false information to the court.

212. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese Defendants made no mention of the false information filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese Defendants getting the benefit they have claimed entitles the Diocese Defendants to *res judicata* protection of the class settlement, and was the means by which the Defendants conspired to try to eliminating claims by persons such as the Plaintiff from being able to make any claim against the Diocese.

213. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among Defendants, false time records by the Richter defendants (including individual lawyers billing in a single day compilations of 30, 40, 51.5, 60, 80, and even 92 hours; and billings for multiple "February 30" days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

214. The Diocese Defendants agreed to remain silent as to these false statements, except where they overtly participated in them.

215. If the Plaintiff is barred from claims against the Diocese Defendants by the *res judicata* effect of the class action, or the charitable immunity defense waived as to persons in

the class definition, or the statute of limitations waived as to persons in the class definition, or for any other reason, then duties to him in the class action were breached by the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy of the Defendants.

Conspiracy Technique Seven: Making no Provision for those whose memories of childhood sexual abuse was repressed, and obtaining no written order for absent class members who got no notice.

216. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was to make no provision for the Plaintiff in the class definition, and in not following up with a written order to secure representations made on the record to the shopped-for judge about relief supposedly available to absent members of the class who go no notice. This cause of action assumes those failures by the Richter defendants were intentional, not merely professionally negligent, to protect the Diocese Defendants from future claims in exchange for class counsel's fixed fee.

217. By agreement of all defendants, the class definition did not exclude the Plaintiff, and no provision was made for those who in 2006 had repressed the memory of their childhood sexual abuse.

218. Unless the order approving the class settlement means what it says and this Plaintiff is not bound by the *res judicata* effect of the class settlement, the Defendants have conspired so as to cause special damage to the Plaintiff.

219. All Defendants in 2006 were well aware that many victims repress their memory of childhood sexual abuse. All Defendants in 2006 were conscious that choosing t define the classes so as to include this Plaintiff served the interests of the Diocese at the expense of persons such as the Plaintiff.

220. The Richter defendants abandoned the Plaintiff as a putative member of the class in agreeing to make no accommodation for his repressed memories. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the Plaintiff in defining the classes so as to ostensibly include him, but making no provision for his repressed memories.

221. The Diocese defendants conspired with the Richter defendants to submit for court approval by the shopped-for judge the 2006 class settlement agreement that was calculated to omit absent members of the class such as the Plaintiff, and all persons situated similarly to them. The Diocese has contended that the 2006 class settlement agreement bars the Plaintiff from being able to make any claim due to the *res judicata* effect of the class action, without having to compensate him for Michael Kaney's sexual abuse.

222. The Diocese defendants conspired with the Richter defendants in failing to submit for court approval by the shopped-for judge any order which provided that the absent members of the class could obtain relief consistent with the 2006 class settlement agreement. That failure was calculated to prevent the Plaintiff, and all persons situated similarly to him, from having any recovery against the Diocese Defendants. The Diocese Defendants have contended that the 2006 class settlement agreement bars the Plaintiff from being able to make any claim due to the *res judicata* effect of the class action, without having to compensate him for Michael Kaney's sexual abuse.

223. No effort was made to protect absent members of the class, such as the Plaintiff, by how the class was defined or any order which comprehensively embodied how persons who got no notice would be treated. Notice was known to be insufficient for the persons within the class definition, and the Defendants all claimed on the record to the shopped-for judge that

relief was provided for the Plaintiff and others. Those representations were false, and were no embodied in any written order.

224. If the Plaintiff is are barred from claims against the Diocese by the *res judicata* effect of the class action, or by charitable immunity (which was waived as to those within the class definition), or by the statute of limitations (which was waived as to those within the class definition), or for any other reasons, then duties to the Plaintiff in the class action were breached by the civil conspiracy among the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy among the Defendants.

225. The parties failed to embody in any order in the class action any protections for the Plaintiff as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the Plaintiff from being able to make a claim, while retaining the argument that all absent class members were barred by *res judicata*. The conduct by all Defendants demonstrate that the representation of the class by class counsel was inadequate, but this cause of action presumes not just that class counsel was professionally negligent but consciously abandoned the Plaintiff so as to not jeopardize class counsel's fixed fee and so as to protect his own Diocese from the greater relief that even class counsel himself insisted on from a Diocese other than his own. The defendants conspired specifically to defeat the interests of persons such as the Plaintiff, to cause him special harm by giving him not even a chance at notice of the class action, or the ability to opt out, or the ability to protect his claims from the prohibitions of the class action.

226. The injury to the Plaintiff from the conspiracy engaged in by the defendants harmed the Plaintiff in a manner different from other causes of action. The Plaintiff was improperly excluded from the class action, but unique to the conspiracy cause of action are the damages

from the Plaintiff being unable to influence the corrupt course of the class action, and its corrupt features, because he was unable to participate in the class action or opt out of the class action. Plaintiff was deprived of the opportunity to influence the class suit, and to try to assist himself and other abuse victims from not being limited to the corrupted procedures and manipulations of the class suit. Among other things, the Plaintiff was unable to participate to influence the miniscule recovery allocated for parent and spousal claims because they were not brought for the class using the common law "loss of services" cause of action. However, if the Plaintiff is not deemed precluded from stating his claims against the Diocese for any reason, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the Diocese Defendants to defeat his claims was ineffectual, and this cause of action will be abandoned in favor of the other causes of action against the Diocese.

227. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiff was damaged, and is entitled to actual and punitive damages from the Defendants as a result.

For a Fourth Cause of Action:
Professional Negligence by the Richter Defendants

228. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the res judicata effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese, and the Richter defendants were merely professionally negligent in excluding the Plaintiff from having a preserved claim.

229. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a copy of an affidavit of Michael Virzi

specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants. The original of this affidavit has been filed with a court in another, similar, case.

230. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, the proposed group whose claims were settled on June 14, 2006, in the Charleston class action mediation was a class specified as "actual victims of Diocese abuse."

231. Plaintiff was a putative member of that class as it was defined in the proposed settlement, despite his having, in 2006, no memory of his childhood sexual abuse.

232. When the 2006 class settlement agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese Defendants, the illicit agreement by Defendants on "judge shopping" had been accomplished, and the 2006 class settlement arrived at in the mediation of Charleston cases was now claimed to be a proposed settlement of all prior cases, both the Charleston cases listed in the 2006 class settlement and the Dorchester County class actions.

233. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the Plaintiff. Since in 2006 the Plaintiff had no memory of his childhood abuse, the notice was ineffective in giving notice to the plaintiff, so as to enable him to either participate or to opt out.

234. The Richter defendants assumed a duty to the Plaintiff in each of the filings in (a) the Charleston case which alleged a class action, (b) in that June 14, 2006 class settlement agreement of the Charleston case which alleged a class action, and (c) in its October 6, 2006 Dorchester County filings alleging a class action defined so as to include the Plaintiff.

235. On the record to the shopped-for judge the Defendants agreed that relief would be provided for absent members of the class who got no notice of the class settlement. Those representations were false. This cause of action presumes the Richter Defendants were professionally negligent in failing to provide a written order to secure the representations made on the record.

236. On January 19, 2007, the proposed class definitions that included the Plaintiff was approved without objection from the Diocese defendants.

237. In their Charleston and Dorchester County class action cases against the Diocese Defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the Plaintiff. In abandoning the Plaintiff, the Richter defendants performed in a professionally negligent manner the duty they had assumed to absent putative class members such as the Plaintiff.

238. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they abandoned the Plaintiff and acted so as to harm his interest, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the Plaintiff reasonably informed, failed to provide him with information with respect to obtaining his informed consent, failed to consult with him about the means for accomplishing his objectives, represented him without his consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal, as set forth in the affidavit of Michael Virzi.

239. No provision of any type, at any point, was made in the orders of the shopped-for judge overseeing the class action to protect absent putative class members who in 2006 had no recollection of their childhood sexual abuse.

240. Any court approval of the 2006 class settlement was deficient in terms of protecting the Plaintiff because the court overseeing the class action had been shopped-for by the Defendants, and had been given, by agreement of the Defendants, fraudulent information on which to base decisions.

241. The Richter Defendants abandoned their absent putative class member clients such as the Plaintiff by failing to secure in a written order the provisions which supposedly gave him mild protection in the form of the modest recovery of the class action.

242. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court, and failing to protect the Plaintiff's interest in the written orders.

243. The Plaintiff was abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action or after the class action and jeopardize the fixed fee the Richter defendants had negotiated for themselves at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

244. Having "too many" claimants also was believed to not be in the interest of the Diocese Defendants, and because of class counsel's conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese Defendants more than the interests of putative class members such as the Plaintiff.

245. As a result of his attorneys, the Richter defendants, abandoning the Plaintiff, he had no opportunity to participate in the class action, or to opt-out of the class and pursue either the more favorable terms available to those other persons who opted out or pursue his claim independently. The acts and omissions of the Richter defendants have caused damage to the Plaintiff, assuming the Plaintiff is prevented from his claims against the Diocese for any reason. A barrier was created to those claims that would not have existed but for the negligent conduct of the Richter defendants.

246. Plaintiff is entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

For a Fifth Cause of Action:
Breach of Fiduciary Duty by the Richter Defendants

247. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the res judicata effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese, and the Richter defendants were merely professionally negligent in excluding the Plaintiff from having a preserved claim.

248. The Richter defendants chose to agree to define the classes in the class actions so as to have neither a geographical limit on the classes or to accommodate in any way those who, as the Richter defendants knew, repressed the memory of their childhood sexual abuse.

249. All Defendants agreed on how the classes were defined.

250. In choosing to define the classes so as to include the Plaintiff, despite his lack of recollection in 2006, the Richter defendants each assumed fiduciary obligations to the Plaintiff, who was an absent putative member of one of the classes they defined.

251. As an alternative to the Fourth Cause of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to the Plaintiff as an absent member of their respective putative class.

252. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiff by failing to secure for him even the modest relief of the class action when he was able to recall the childhood abuse and pursue his claim for relief, or to preserve his ability to make his claim independent of the modest relief obtained by the Richter defendants for sexual abuse victims.

253. The state court judge overseeing the class action was shopped-for by all Defendants.

254. The state court judge was not asked to preserve in any written order any rights for absent members of the class who had no memory in 2006 of their childhood sexual abuse, or to protect the rights of those persons.

255. The Richter defendants claimed to protect the Plaintiff but then failed to do so. The Richter defendants were negligent in failing to do so, and were out maneuvered by the Diocese Defendants, who had made representations on the record but then succeeded in keeping those representations from being embodied in any court order.

256. Once the Richter defendants were paid their court-approved fee, they were ineffectual in securing the rights of the Plaintiff to preserve his ability to make a claim.

257. The Richter defendants in its 2005 Charleston class action filing, and in the 2006 class settlement agreement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the Plaintiff.

258. On January 19, 2007, the class definitions that included the Plaintiff was approved without objection from the Diocese defendants.

259. The Richter defendants contend that they had no obligations to absent class members, indicating conclusively their lack of understanding of the obligations undertaken by class counsel.

260. The Richter defendants each breached their fiduciary duties to the Plaintiff, and as a result, the Plaintiff has been refused any compensation by the Diocese Defendants, who have used the 006 class settlement as a shield. The Richter defendants were negligent in failing to protect the Plaintiff's interest.

261. Having "too many" claimants also was believed by the Richter defendants to not be in the interest of the Diocese Defendants, and to protect their own interest in their fixed fee the Richter defendants had to also act to protect the interests of the Diocese more than the interests of the Plaintiff. The Richter defendants have close and longstanding ties and involvement with the Diocese Defendants. Those involvements were never disclosed to the class, or to the Plaintiff. To promote the interests of the Diocese Defendants in trying to later enable the Diocese defendants to argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the Plaintiff their own interest in their fixed fee, the Richter defendants failed to secure in any written orders any protections for absent members of the class such as the Plaintiff, even though the class compensation that among the lowest-known victim compensation.

262. As a result of the Richter defendants abandoning the interests of the Plaintiff, and breaching the fiduciary duties the Richter defendants owed to him, the Plaintiff has been damaged by having his claims against the Diocese Defendants interfered with, and a barrier created to those claims that would not have existed but for the negligent conduct of the Richter defendants.

263. Plaintiff is entitled to actual and punitive damages as a result of the fiduciary duties to them that were breached by the Richter defendants.

For a Sixth Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty by Diocese Defendants

264. Allegations above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiff is unable, for any reason, to make his claim for childhood sexual abuse against the Diocese.

265. The Diocese Defendants aided and abetted the breach of fiduciary duty by the Richter defendants.

266. In pleading a class action the Richter defendants assumed a fiduciary duty to the Plaintiff of which the Diocese was aware.

267. In the conduct to "shop for' the Dorchester County judge, to define the class, and to limit notice, as alleged above, the Diocese Defendants participated with the Richter defendants in limiting the ability of the Plaintiff to make his claim against the Diocese for childhood sexual abuse.

268. The Diocese Defendants joined with the Richter defendants in making representations on the record to the shopped-for judge that supposedly protected the interest of the Plaintiff into either his being able to bring his claim at a later time or in being able to participate, at minimum, in the intentionally depressed recovery available to class members in

the 2006 class settlement. The Defendants then failed to secure those representations in any written order, enabling the Diocese Defendants to deny the representations, and act as if those representations had never been made.

269. The Diocese Defendants knowingly participated in the breach of the fiduciary duty owed to the Plaintiff by the Richter defendants.

270. The Plaintiff has been damaged by the aiding and abetting by the Diocese Defendants and is entitled to actual and punitive damages as a result.

For a Seventh Cause of Action
Unfair and Deceptive Trade Practices by the Richter Defendants

271. Allegations of paragraphs above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiff is precluded, for any reason, from maintaining his claims against the Diocese Defendants.

272. The Richter defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

273. In practicing law in Charleston County the Richter defendants each engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Richter defendants advertised and offered for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. In electing to bring a class action complaint for sexual abuse victims of the agents and employees of the Diocese Defendants, the Richter defendants specifically offered a service to the people of South Carolina, and purported to alter the legal rights of the public as to that sexual abuse, including the Plaintiff's rights.

274. In making that invitation, the Richter defendants assumed the duty to ensure that its offer of services did not disadvantage the Plaintiff, and assumed the duty that its services would be free of unfair and deceptive trade practices.

275. In 2006 the Richter defendants entered into a class settlement agreement with the Diocese for victims of sexual abuse by agents and employees of the Diocese Defendants. The class settlement was ostensibly to address the known history of priests and other employees who sexually abused minors, but as effectuated by the Richter defendants, the primary purpose of that class action was to enrich the Richter defendants at the expense of sexual abuse victims and, through unfair and deceptive trade practices, to protect not his clients but the Diocese Defendants from (a) future claims for sexual abuse, and (b) to depress the value of sexual abuse claims against the Diocese Defendants.

276. Unfair and deceptive trade practices were pursued in furtherance of the class action, as alleged above, including false representations to the court, violations of professional standards, judge-shopping, collusive conduct, abuse of court rules and procedures, and actions which violate professional standards, as pleaded with specificity above.

277. The public interest was affected by the 2006 class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved by the court predicated on either false representations made to the Court about how the person such as the Plaintiff would be accommodated, or through a shopped-for judge who was aware that the representations being made were false.

278. Among the false statements made at the time by the Defendants was Bishop Baker's public statement that the proposed class resolution was "for those individuals who were abused

within the Diocese of Charleston by clergy or laity over a number of decades." At the time that claim was made, all Defendants were aware that the 2006 class settlement proposed relief about which only persons in and around South Carolina were to be informed, and that no provision had been made for persons, such as the Plaintiff, who in 2006 had no recollection of his childhood sexual abuse. In its public statements, acquiesced in by the Richter defendants, the Diocese Defendants overtly misrepresented the reach of the proposed 2006 class settlement. No party disclosed that in fact the 2006 class settlement agreement was designed, as its first priority, to obtain a fee for class counsel, with all other relief to clients secondary to that fee, and that the 2006 class settlement agreement was designed so as to omit relief to many persons who had been sexually abused, and was designed to provide among the worst recovery for sexual abuse victims in any case nationwide, was designed to depress the value of sexual abuse claims against class counsel's own Diocese, and was designed by class counsel to protect the Diocese Defendants from future claims, and to inhibit the Plaintiff from being able to make a claim after his recollections of abuse were recovered after the 2006 class action concluded, in 2009.

279. A circuit court judge to approve the class settlement was "shopped for" and selected by the Richter defendants, with collaboration of the Diocese defendants. The Richter defendants did not want any Charleston County judge to preside over the 2006 class settlement agreement, out of concern that the judge might be fully independent.

280. The Diocese defendants were negligent in assessing the damage done by sexual abuse by their employees and the number of persons affected by that abuse. Alternatively, the Diocese knew the number of victims would far exceed the numbers it reported to the court as

its expectations for number of victims, and consciously misrepresented that number to the court and to the public.

281. The Diocese defendants were aware that the Richter defendants were willing to recover only modest relief for victims in exchange for a substantial fixed fee that took priority over the recoveries to the victims, and would not be subject to the control or influence of the Richter defendants.

282. The Richter defendants had extensive and life-long ties to the Diocese Defendants, and was known to the Diocese defendants to be willing to compromise the interests of the absent class members, including the Plaintiff, in exchange for a fixed fee payment.

283. With the cooperation of the Diocese Defendants, the Richter defendants conceived of a plan to commit a fraud on the Court and the public by representing to the court and the public, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, and with no protections for persons who in 2006 did not recall their childhood sexual abuse, while giving only geographically limited notice to the class and in affirmatively misrepresenting to the court the relief which would be available to the Plaintiff. As long as their fee was paid, and paid first, before any class member had received notice and before any class member had made a claim, the Richter defendants were expected to by the Diocese defendants, and were in fact willing, to abandon the interests of absent class members and instead to accommodate the interest of the Diocese Defendants at the expense of the absent members of the class they represented.

284. All Defendants collaborated to submit false information to the Court, and no Defendant objected when any of the false information was submitted by any of them or by

their experts. Part of the collaborative agreement among the Defendants was to remain silent while false information was submitted.

285. To gain court approval of the class settlement from the shopped-for judge without disclosing his actual intention to compromise the interest of the absent class members such as the Plaintiff, the Richter defendants made overtly false representations of fact to the court. 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 notice procedure. That "understanding" communicated to the Court was never placed in any written order by the shopped-for judge and, of course, there is no such "understanding" that the Diocese Defendants agree to, nor is there any way to enforce the "understanding." It was falsely represented to the shopped-for judge overseeing the 2006 class settlement that if "someone pops back up who should have gotten notice who didn't get notice," the Diocese represented, with the Richter defendants:

> 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.

286. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. The representation is false, and is contained in no written orders of the court, so is unenforceable, as the Richter defendants, who were acting in the interests of the Diocese Defendants, intended it would be. The representation was made in a hearing in the class action proceedings for which no other interested parties were given notice. Only in 2009 was the transcript disclosed in the course of other litigation over the collusive class action proceedings.

287. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were 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 the Richter defendants. In fact, the Richter defendants were aware, and had alleged, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves. The Richter defendants were also aware that abusive victims, such as the Plaintiff, repressed memories of their childhood sexual abuse and in 2006 could reasonably be expected not to recall childhood abuse. At the time of the 2007 hearing in which those false representations were made, the Richter defendants represented — against a Diocese other than class counsel's own — an adult whose childhood memories of sexual abuse had been repressed. For that single client class counsel recovered over $4 million, as opposed to the maximum relief which could be obtained by any member of the class of $200,000 ($160,000 after the additional fee class counsel applied to abuse victims).

288. To get approval that protected the Diocese from, among other things, the Plaintiff's sexual abuse claim, the Richter defendants falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Richter defendants and the Diocese Defendants assured the court, on page 14 of the same transcript, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

289. The Richter defendants, on pages 16 - 17 of that same transcript, summarized to the shopped-for judge, falsely, that the supposed position of the Diocese as "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 entirely false. When the Plaintiff communicated with the Diocese, the Plaintiff's request for compensation was rejected. As the Richter defendants intended in 2007 would occur after the class action was concluded, which is why the Richter defendants submitted to the shopped-for judge who oversaw the 2006 class settlement no written orders to embody the "understanding."

290. Nor did the Richter defendants disclose that the representations were false when the shopped-for judge observed, as to the Diocese, 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."

291. The Richter defendants intended on July 13, 2007, to create the false impression with the court that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend relief to that victim. In making the false representation that they made no effort to embody in any court order, the Richter defendants were operating in the interest of the Diocese Defendants, not in the interest of absent members of the class. The Richter defendants intended that the shopped-for judge would rely on the statement, and the court did rely on the statement. However, the court did not embody the understanding in its order, and the Diocese Defendants refuse to comply with the "understanding." That representation by the Richter defendants was false when made, and was known to have been false when made.

292. As to this Plaintiff, the Diocese concealed until 2011 the falsity of class counsel's representations to the shopped-for judge. The true position of the Diocese has been, starting in 2009 the Diocese Defendants have deprived other sexual abuse victims of any relief, using the

class action suit as the rationale for doing so. That fraudulent concealment by the Diocese became known to the Plaintiff only in 2011.

293. The shopped-for judge who oversaw the 2006 class action settlement relied on the statements by the Richter defendants, and silence by the Diocese, to extend in the court's order of July 30, 2007 approving the class settlement, at page four, this statement:

> 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.

Emphasis added. While one might expect that the order's language would reflect the conduct of the Diocese Defendants or what a court would enforce, in fact the shopped-for judge reflecting only what the Diocese has "stated" has proven to be an unenforceable order, as the Richter defendants intended in 2007.

294. Along with the Richter defendants, the Diocese defendants intended that the shopped-for judge overseeing the 2006 class settlement would rely on their collective statements, silences, and conduct to form the impression recorded in the court's 2007 order, even though the impression was false and neither the Richter defendants nor the Diocese had any intention, in 2007 or since, of honoring the assurances given to the shopped-for judge overseeing the 2006 class settlement.

295. When this Plaintiff began in 2010 to recall his childhood sexual abuse, and informed the Diocese in 2011 of the abuse, the Diocese of course (and as the Richter defendants intended in 2007), refused to honor the assurances given to the trial court by the Richter defendants, and which the Court noted in its July 30, 2007 order at page 4 without actually ordering. Instead,

the Diocese asserted the defenses it had waived for class members, claimed as to this Plaintiff the *res judicata* effect of the class action which the Diocese Defendants had disclaimed, and acted exactly contrary to the assurances to the Court by the Richter defendants, and the public statement by then Bishop Robert Baker in January, 2007, that the Diocese intended a just resolution for every person who had been abused within the Diocese of Charleston.

296. The false statements by the Richter defendants, and the irregular conduct in the course of the class action by the Richter defendants, and the Richter defendants acting in the interest of the Diocese Defendants rather than in the interests of the absent members of the class, constitute unfair and deceptive trade practices which have damaged the Plaintiff.

297. The Richter defendants made their false representations to the shopped-for judge overseeing the 2006 class settlement for the purpose of gaining that court's approval of a class settlement with only limited notice to the class and with no protections for absent members of the class. When the 2007 order mentioned the "understanding" but appeared not to have ordered it, the Richter defendants did nothing to seek modification of the order.

298. The Richter defendants committed fraud on the Court, on the public, on this Plaintiff, and on all sexual abuse victims born before August 30, 1980, the definition used in the 2006 class settlement. In doing so the Richter defendants also engaged in unfair and deceptive acts and practices in violation of South Carolina law, which have disadvantaged the Plaintiff. In doing so the Richter defendants were acting in the interests of the Diocese Defendants, not in the interests of the Plaintiff they purported to represent.

299. All of the conduct by the Richter defendants, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the 2007 representations made to the Court by

the Richter defendants and acquiesced in by the Diocese Defendants. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action, many of whom had not recalled their abuse by the 2009 conclusion of the class action or the earlier deadline of the class claims procedure, have since been refused relief by the Diocese when they made a claim for relief.

300. The disregard by the Richter defendants for absent members of the class, the misconduct throughout the class action, and the disingenuous representations by the Richter defendants to the shopped-for judge who had been hand-picked to oversee the 2006 class settlement agreement are unfair and deceptive acts or practices that affected the relief awarded in the class action, and affected the Plaintiff by disabling his claim against the Diocese for his childhood sexual abuse.

301. The conduct by the Richter defendants is part of an intentional effort to mislead the Court, and to act against the interests of the absent members of the class and instead to act in the interest of the Diocese Defendants, with whom the Richter defendants are entwined.

302. The Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Richter defendants. Specifically, the Plaintiff was unable to obtain the relief promised by the Richter defendants, was unable to preserve his claim after he was abandoned by the Richter defendants, and due to the misconduct of the Richter defendants, to date has been unable to maintain his claim against the Diocese. As a result the Plaintiff is entitled to recover actual damages, trebled as provided by law, for the unfair and deceptive trade practices of the Richter defendants, with costs and disbursements and attorneys fees as provided by statute.

303. The secretive and disingenuous conduct by the Richter defendants, and the misconduct displayed during the class action, is offensive to public policy, is immoral, unethical, and oppressive. The Richter defendants made a calculated business decision to advance ahead of their class member clients' interests, and the interests of the absent members of the class, first the Richter defendants' own financial interests, then the interests of the Diocese Defendants.

304. The Richter defendants collaborated with the Diocese Defendants to design a compensation program for sexual abuse victims which specifically, and intentionally, excluded many victims, reduced the financial recovery for victims, depressed the financial recovery for other victims, and cut off the ability of absent members of the class to make claims. Each of those goals by the Richter defendants was illicit, and was an unfair and deceptive trade practice for an action which purported to bring a benefit to a class. For those reasons the Richter defendants collaborated with the Diocese Defendants to "shop" for a hand-picked judge to oversee the 2006 class settlement so as to avoid independent scrutiny of the 2006 class settlement. The Richter defendants engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the Plaintiff.

305. The Richter defendants took no appeal from the July 30, 2007 order, and sought no modification of that order, or for any subsequent order of the shopped-for judge who oversaw the 2006 class settlement.

306. The Richter defendants are bound by the July 30, 2007 order in the class action, and by the representations made to the court to obtain that order. Those terms abandon the absent class members such as the Plaintiff.

307. As intended by the Richter defendants in 2007 as the *quid pro quo* for their fee, when the Diocese was contacted in 2011 by the Plaintiff, who had received no notice of the class action and until 2010 had not recalled his childhood sexual abuse, the Diocese refused him relief and asserted against victims who did not get notice, exactly as the Richter defendants had assured the shopped-for judge they would not, the *res judicata* effect of the class settlement, as well as the defenses it had waived on the record for persons within the class definition. As was known by the Richter defendants at the time, the Diocese had no intention of including other victims who "for whatever reason" received no notice, and would undertake no relief for victims the Diocese Defendants were not compelled to undertake.

308. The Richter defendants intended the collusive class action to terminate liability of the Diocese, to limit overall compensation paid to abuse victims, and to do so at a fraction of the recovery a truly adversarial counsel might have demanded. The Richter defendants acted in the interest of themselves and the Diocese, ahead of its ostensible clients, such as the Plaintiff.

309. The unfair and deceptive acts and practices of the Richter defendants have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese Defendants have repeatedly refused (as intended by the Richter defendants) relief for multiple persons who have came forward having not gotten notice of the collusive 2006 class settlement. The practices engaged in by the Richter defendants, violating professional standards and court rules, violating legal ethics, making misrepresentations to the court, and (in collaboration with the Diocese Defendants)

making misrepresentations to the public were all done to advance the Richter defendants' own interests.

310. The Richter defendants calculated that their personal and professional connections to the shopped-for judge would permit false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, the Richter defendants were correct, as even after evidence of the false practices were laid before the shopped-for judge no inquiry was made.

311. The Richter defendants further calculated that their political status as persons who formerly held political office and with political connections to the South Carolina Supreme Court and the court's mechanisms for enforcing professional standards of conduct would cause even the South Carolina Supreme Court to look away from the false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, it is not yet known if the Richter defendants will prove correct. To date, the South Carolina Supreme Court has not less than twice declined to exhibit the slightest interest in the misconduct of the 2006 class settlement oversight, and may well ignore it all in the future.

312. The Plaintiff is neither politically connected nor a personal friend of any powerful person, and has no choice but to rely on the theoretical interest that a judge is supposed to have as to misrepresentations to the court, and on the prohibitions of the Unfair Trade Practices Act.

313. The false and deceptive practices of the Richter defendants will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Richter defendants in compromising the interests of absent members of the class they purported to represent has been actually repeated, as well as has the potential for repetition, in the form of the sexual abuse victims who got no notice of the

2006 class settlement and who have requested, and been denied, relief, as the Richter defendants intended.

314. The Richter defendants should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to the conduct of the Charleston or Dorchester County cases in which any of the Diocese Defendants were supposedly adverse parties.

315. The 2006 collusive class settlement was achieved without a single motion having been argued, and without a single court ruling on any aspect of any of the Charleston cases then pending at the time of the 2006 class settlement. The parties had successfully sought to have the court continue each hearing the court proposed to engage on the supposed issues of the case. That settlement was collusive, and placed the interests of the Richter defendants ahead of the interests of those who became class members and ahead of absent members of the class.

316. The Richter defendants violated the UTPA willfully, in that each of them knew or should have known that their conduct was a violation of S.C. Code § 39-5-20, and they purported to obtain relief for the Plaintiff that in fact they did not obtain in any written order.

317. The Plaintiff has suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Richter defendants. The Plaintiff ought to have been entitled to either (a) the relief the Richter defendants maintained, falsely, to the court in 2007 would be available to the Plaintiff, or (b) should be able to maintain his own action against the Diocese

Defendants. Conduct by the Richter defendants was willful, and each of the Richter defendants knew, or should have known, that his conduct was unfair and deceptive.

318. The plaintiff is entitled to treble damages as a result of the conduct of the Richter defendants in the conduct of the 2006 class settlement which affected the Plaintiff's interests, as well as to actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

Demand for Jury Trial

319. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

320. Actual damages to be awarded to the plaintiff by the finder of fact against the various defendants, trebled as authorized by law for the appropriate cause of action,

321. Costs and disbursements of this action,

322. Attorneys fees as authorized by law,

323. Punitive damages as authorized by law, and for

324. Injunctive relief to enjoin the Diocese defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for

325. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

Gregg Meyers, SC Bar No. 9908
Jeff Anderson & Associates, P.A.
366 Jackson Street
St. Paul MN 55101
651-227-9990
Gregg@andersonadvocates.com

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

John Doe #66
v.
The bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
CASE NO.: 2005-CP-10-2053

John Doe #66A
v.
The bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
CASE NO.: 2005-CP-10-3293

John Doe #53
v.
The bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
CASE NO.: 2005-CP-10-4913

Settlement Agreement

See Terms attached on EXH. #1

In a mediation conducted on this ________ day of ________________, 2006, the above named parties agreed to the following terms:

1. ______________________________ shall pay to ________________________ $__________;
2. Plaintiff/Respondent will execute a general release dismissing all claims on account of the matters raised in the above captioned lawsuit;
3. Plaintiff/ Respondent will cooperate in having a dismissal with prejudice entered by the court; and
4. The parties shall split the mediation fees ______________________________.

______________________________	______________________________
By: ______________________ (Print Name)	By: ______________________ (Print Name)
Its: ______________________	Its: ______________________
Dated: ______________	Dated: ______________

EXHIBIT " 4 "

Attachment A - 000001

Attachment A - 000001

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create settlement class, subject to Court approval of:
   (a) ACTUAL VICTIMS OF DIOSECE ABUSE
   (b) SPOUSAL &/or Parent claims deriving from victims abused

2. Class settlement FUND will be for $12,000,000 FUNDED AS FOLLOWS:
   (a) $5,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with $7,000,000 limits once the $5,000,000 Letter of Credit has been drawn down to $1,000,000.

3. DETAILS of claims process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

Attachment A - 000002

4. Court shall be asked to approve attorneys' fees for class counsel at between $950,000 & $2.5 million, subject to Defendants obtaining credit to secure the obligation.

5. Mr. T Redacted* shall be paid ______

Mr. S Redacted* shall be paid ______

Mr. N Redacted* shall be paid ______

Mr. M Redacted* shall be paid ______

* COLLECTIVELY paid $460,000 to be divided among the 4 gentlemen above after accepted as agreed to.

6. If the Court fails to approve settlement class &/or provision of class settlement, the compromise settlement with the individuals in "5." above shall not be affected & shall proceed to settlement in the amounts set out in "5." above with appropriate general releases &/or dismissals with prejudice executed in favor of defendants.

~~7. [illegible]~~

Attachment A - 000003

Attachment A - 000003

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7. These terms are in the form of an offer by Defendants & shall be acted upon with reasonable promptness by Plaintiffs/Claimants named in "5." above.

James Bixby, Attorney

June 14, 2006

ON BEHALF OF DEFENDANTS

Attorney for and with authority of the Diocese of Charleston

Attachment A - 000004

P.09/09

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF RICHLAND)

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 the plaintiff, Jane Doe 12, (hereinafter "Plaintiff") to support her Complaint against defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Defendants") 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 focuses exclusively on matters of legal malpractice and legal ethics;

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

C. I have authored three published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;

D. I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice and ethics, and I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and

E. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

My opinion is based on review of the following documents:

A. Complaint captioned Jane Doe 12 v. The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin; former Administrator

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Attachment B - 000001

Attachment B - 000001

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, Case No. 12-CP-10-_____ (blank line in original);

B. 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;

C. 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;

D. 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;

E. 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;

F. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-____ (blank line in original);

G. 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;

H. 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;

I. 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;

J. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

K. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

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Attachment B - 000002

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L. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636, and exhibits attached thereto including:

i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;

ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;

iii. Affidavit of Angela Pittard, with attached timesheets;

iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

M. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

N. Transcript of July 13, 2007, hearing before Judge Goodstein.

O. Order Approving Settlement, dated July 30, 2007, and filed July 30, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636

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

4. Based on my experience, education, training, knowledge of the standard of care for lawyers, and on my review of the above-listed documents, it is my opinion that Defendants engaged in negligent acts and omissions in their representation of the Plaintiff including the following:

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Attachment B - 000003

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5. It appears from the above-referenced documents that Defendants represented a class of persons of which Plaintiff was a member. Whether an unnamed class member becomes a client upon the filing of a class action or upon certification of the class is a much-debated issue; however, class certification is generally regarded as creating an attorney-client relationship if one did not already exist. Furthermore, prior to class certification, class counsel owes fiduciary duties to unnamed class members upon the filing of a class action, regardless of whether breach of those duties is regarded as malpractice or professional negligence. Defendants owed to Plaintiff and other unknown class members the same duties surrounding the allegations in this case that they owed to the named plaintiffs in the class action. Those duties included competent, diligent, and loyal pursuit of Plaintiff's interests in the litigation against the Diocese and related defendants, and reasonable communication starting with notice by publication.

6. It appears Defendants failed to protect Plaintiff's interest in the class action in several ways. Statements by Richter at the July 13, 2007, hearing indicated that any class member that did not receive notice (a group that includes Plaintiff) 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 are entitled to notice but did not receive it, such as Plaintiff. 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

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Attachment B - 000004

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group of class members, like Plaintiff, 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, Defendants failed to protect the interests of the broader group, of which Plaintiff is a member, either by not addressing their rights at the hearing or by addressing them at the hearing but making no effort to secure their rights in a final order. Defendants then acted directly adverse to Plaintiff and this group when Defendant Haller filed a motion in 2012 to enforce the class-action settlement, purportedly on behalf of Plaintiff and others whom Haller knew to be represented by other counsel. Haller took a position in the motion that is adverse to Plaintiff and others outside the notice zone and advantageous to Defendants.

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6. It appears that Defendants engaged in additional acts and omissions that were both disadvantageous to Plaintiff and advantageous to Defendants themselves, including consenting to the dismissal of the Charleston County cases without client consent in furtherance of Defendants' efforts to obtain a favorable order regarding their fees, which fees themselves were unethical in several ways, including that they sought and received a fixed fee simultaneously with a common-fund recovery pool available to claimants, and that they were based on blatantly false attorney time records. Defendants also reduced the extent of notice to class members to the exclusion of nearly the entire country outside of South Carolina, despite identifying (and ultimately obtaining certification of) a nationwide class, and authorized the claims arbitrator to adjust awards so that the total claims would not exceed the remainder of the pool after payment of Defendants' $2.5 million fee. Because a significant increase in the number of claimants responding to notice could jeopardize Defendants' fees, this reduction in notice favored Defendants' own interests to the detriment of all class members, but particularly Plaintiff

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and other class members outside the notice zone of South Carolina and neighboring cities. Defendants thus not only favored their own interests above their clients', including Plaintiff's, but also provided the Diocese with an argument in its defense against subsequent claims by class members outside the notice zone, including Plaintiff, sacrificing their clients' rights in favor of the opposing party. Defendants also agreed to reduce their clients' recovery but not their own fees, if the claims exceeded the pool, and agree to possibly reducing the claimants' pool by $100,000, which would be contributed toward a settlement between the Diocese and several opted-out class members, all to the detriment of the class members including Plaintiff, and to the financial benefit of Defendants themselves. Haller's 2012 motion to enforce the settlement now attempts to force Plaintiff and other class members outside the notice zone to be bound by the bad deal Defendants struck on their behalf in 2007.

7. It further appears that Defendants engaged in a broad scheme to generally obtain results favorable to the Diocese, with whom Defendant Richter had a life-long affiliation and for whom Richter continued to perform official services during the pendency of the class action, without the knowledge or consent of his clients. The scheme appears to have included:

A. forum shopping, requiring Defendants to consent to the dismissal of the Charleston County cases, which they did without the knowledge or consent of their clients and to the detriment of their clients, including Plaintiff;

B. misrepresenting to the Dorchester County court that the action had not been settled when it had, in order to obtain a favorable forum and complex case designation; and

C. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review, and further sacrificing clients'

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opportunity for post-claim review by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal, or suit and that, by participating in the claims process, claimants expressly waive the right to appeal.

8. It further appears that Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-class-representative clients, including agreeing to subject some clients to a damages matrix and claim scrutiny to which class representatives were not subjected, settling the claims of the class representatives prior to class certification and court approval of the class settlement, and expressly agreeing to settlement terms for the class representatives regardless of court approval of the class settlement.

9. It further appears that the amount of Defendants' fee was improper and unreasonable in amount, timing, and source. The payment structure favored Defendants' own interest above those of their clients, including Plaintiff. Defendants' fee petition, affidavits and billing records overstate work performed and misrepresent the nature of the case. Defendants describe the case as hotly contested and aggressive, and the defense formidable and substantial, depicting a time-intensive case requiring the highest skills of the most competent counsel; yet the documents indicate contrary circumstances: little discovery (some paper requests from class counsel but no evidence of responses received nor of requests received from opposing counsel), no depositions, few motions, and after mediation no client disputes, few hearings, and no animosity or contention except on the issue of Defendants' collection of their fee. Defendants' billing records show 3385.5 total hours spent by lawyers and staff at Richter & Haller; however

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many of the time entries are clearly false in that they are nonsensical and/or impossible, including:

A. each and every entry on all 68 pages of billing records is a round, even-hour increment or an entry of ".5" hours;

B. countless round-number or .5-hour time entries at "12:00:00 AM"—including multiple tasks by the same person at the same time—while other entries indicate exact times;

C. a 10-hour time entry for "Oversight and Review" by "LER" on the 30th day of each month for 3 and a half years, including the same 10-hour time entry for "Oversight and Review" by "LER" just nine days after the first activity in the case in July 2003;

D. a 2-hour time entry for "Bookkeeping" on the 30th day of each month;

E. a 3-hour time entry for "Photocopying / Monthly" at irregular intervals but always exactly 3 hours, including one such entry when no other work had been performed in the previous month;

F. three 5-hour time entries (one each for "DKH," "LER," and "Clerk") for "Legal Research" on the 30th day of each month, including January 30, 2007, within 2 days of the end of the case (and after which no further time is recorded except 7 hours of faxing by "Staff" and 14 hours of emailing by "DKH" & "LER" over the next 2 days);

G. time entries on days that do not exist: February 30, 2004, and February 30, 2005;

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H. a 16-month period, from September 2003 through December 2004, when only 5.5 hours of specific work is entered, yet 426 hours is entered in the same repeated, identical, rote entries of "Oversight and Review," "Bookkeeping," "Legal Research," and "Photocopying / Monthly" described hereinabove;

I. 3 .5-hour time entries for drafting 3 Certificates of Service at the same time on the same day (this set of entries occurs multiple times);

J. 12 *consecutive* 1-hour time entries by "LER" for work on 12 different documents, all at specific times beginning at "07:38:38 AM" on "10/26/06" but extending consecutively over a period of approximately 1 hour and 49 minutes ending at "09:27:30 AM," with many 1-hour entries within less than a minute of each other;

K. numerous sets of entries similar to the 12 described in the immediately preceding subparagraph (J), such as 3 consecutive 1-hour time entries by "LER" for work on 2 documents, all at specific times beginning at "03:54:19 PM" but extending consecutively over a period of 1 minute and 13 seconds;

L. entries of exactly 20 hours for drafting each discovery document;

M. multiple instances of more than one 20-hour time entry for the same person ("DKH") on the same day;

N. 27.5 hours (in 55 increments of .5 each, all at "12:00:00 AM") in one day by "DKH" for emailing to "David K. Haller";

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Attachment B - 000009

Attachment B - 000009

O. 60 hours (10 by "LER" and 50 by "DKH") for amending complaints that ultimately contained very little amendment, including one which apparently changed only the county in the caption and the date at the end;

P. multiple instances of one person ("DKH" in some instances, "LER" in others) of billing more than 24 hours in a day;

Q. 568.5 hours of entries appended to the end of the (otherwise chronological) timesheets, for dates ranging from 2004 through 2007, 500 hours of which is in whole multiples of 10 and expressed in date ranges rather than in dates and times, including 3 130-hour single entries by "DKH" for one- and two-week time periods in June and October 2006; and

R. one of the above-referenced 130-hour single entries by "DKH" for the eight-day time period of October 4-11, 2006, during which period "DKH" had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

Defendants stated to the court that the above entries were "by far conservative" estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus Defendants appear to have made false statements to a tribunal in support of a fixed fee that was unreasonable and put Defendants in a position potentially adverse to their own clients, including Plaintiff, without taking appropriate steps to deal with the conflict of interests created thereby.

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Attachment B - 000010

7. As a result, it is my opinion that Defendants' conduct 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 Plaintiff.

8. 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, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 31st day of July, 2012

Notary Public

My Commission Expires : My Commission Expires October 18, 2020

Attachment B - 000011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-4175

Father Doe 194,

Plaintiff,

v.

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

Defendants.

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Injunctive Relief
UTPA

Jury Trial Requested

FILED
2013 JUL 17 AM 11:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Father Doe 194 is an adult citizen and resident of Minnesota who at one time was stationed with the military in the Charleston area and had a child who participated in activities sponsored by the Defendant Diocese of Charleston. His child, who is referred to as John Doe 194, was sexually abused by Frederick Hopwood, a priest of the Diocese of Charleston.

2. The pseudonym Father Doe 194 is used for the Plaintiff due to the sexual abuse injury to his child, John Doe 194, which is the subject of this complaint.

3. The Bishop of Charleston, a Corporation Sole, is the formal title of the various entities comprising the Catholic Church throughout South Carolina, including in Charleston County, known generally as the Diocese of Charleston. It is referred to in this complaint as the Diocese. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. The acts associated with the abuse of the Plaintiff and the negligent supervision of Hopwood took place in part in Charleston County, where decisions were made about Hopwood's assignments and the degree of supervision he required, which as applied by the Diocese Defendants was generally inadequate.

4. On information and belief, Frederick Hopwood entered a plea of guilty to charges of sexual misconduct with minors. No effort was made to locate the victims of Frederick Hopwood, including the Plaintiff or his child.

5. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County, South Carolina but doing business in Charleston County. He is sued individually in his official capacity. He is a party necessary for complete relief.

6. All persons working for the Diocese, anywhere in South Carolina, are subordinate to the Bishop of Charleston.

7. Prior to the tenure of Bishop Guglielmone, from October 2007, to March 2009, no person held the title of Bishop of Charleston. Under the rules by which the Diocese of Charleston is governed, the Diocese of Charleston was administered by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina who, during his tenure as administrator, did business in Greenville County. Msgr. Laughlin is sued in his official capacity.

8. Prior to the tenure of Administrator Laughlin, from July 1999 to August 2007, the Bishop of Charleston was Robert J. Baker, presently a resident of, and citizen of, Alabama. During his tenure, he did business in, and resided in, Charleston County. He is sued in his official capacity.

9. In this complaint, the Diocese, the Bishop defendants, and the Administrator are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

10. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically solicited, through advertising placed in the Post and Courier newspaper, participation by members of the public into a 2006 class action that was not at that time disclosed to be a collusive class action settlement, but which was in fact a collusive settlement.

11. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically solicited, through advertising placed in the Post and Courier newspaper, participation by members of the public into a 2006 class action that was not at that time disclosed to be a collusive class action settlement, but which was in fact a collusive settlement.

12. Richter & Haller, LLC, at all times pertinent to this complaint, had its principal place of business in Charleston county, did business in South Carolina, and in that capacity engaged

in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, Richter & Haller, LLC did business in Charleston County, and specifically solicited, through advertising placed in the Post and Courier newspaper, participation by members of the public into a 2006 class action that was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

13. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the "Richter defendants" unless otherwise particularly specified.

14. The Court has jurisdiction over the parties to this action.

15. The Court has jurisdiction over the subject matter of this action.

16. Venue of this action is proper in Charleston County.

17. The Diocese defendants are already aware of the identity of John Doe 194, and of Father Doe 194, as they have already rejected a request to assist with the effects of the abuse of John Doe 194. Other defendants will be informed of the identity of the Plaintiff upon their agreement to reciprocate in providing information in discovery, upon their agreement to maintain as confidential with respect to the public record the identity of the Plaintiff and his child, and upon their actual performance of participating in reciprocal discovery as opposed to just promising reciprocal discovery without actually providing discovery.

18. The Plaintiff fits the definition used in a collusive 2006 class settlement in that he was the parent of a child born on or before August 30, 1980, and as a minor, was sexually abused by an agent or employee of the Diocese of Charleston, in this instance Frederick Hopwood.

19. The Plaintiff has not previously made a claim that was adjudicated, resolved, or released.

20. Father Doe 194 was situated similarly to other individuals ostensibly within that definition of a class first settled by the Richter defendants as a class in 2006, and certified as a class in 2007 by a South Carolina court as part of a class action involving individuals who were sexually abused by persons employed by the Bishop of Charleston, or parents and spouses of those persons. That class action was collusive. In addition, because he lived outside of South Carolina the Plaintiff received no notice of the class action, thus the Plaintiff had no opportunity to be heard or participate in the litigation, either in person or through counsel, or to opt out of the class action and thereby preserve his own claim.

21. Defendant Haller, on behalf of the Richter Defendants, has admitted that the members of the class who live out of state, received no Due Process in the 2006 class action. No effort was made to give the Plaintiff notice.

22. In the 2006 class action settlement the Richter defendants colluded with the Diocese defendants so as to abandon the interests of those persons within the class definition and to protect the Diocese defendants by the collusive class action.

23. In 2005 a class action was first alleged by the Richter defendants on behalf of persons sexually abused by persons affiliated with the Diocese of Charleston.

24. In April, 2006, the Richter defendants filed suit in Jasper County for an adult sexual abuse victim who had repressed the memories of his childhood abuse. That suit was filed against a Diocese other than the Diocese of Charleston, and against a Bishop other than the Bishop of Charleston. By their own account, class counsel were extensively affiliated with the Diocese of Charleston.

25. At no time was the class informed of the extensive affiliation of class counsel with the Diocese of Charleston.

26. The class action settlement with the Bishop of Charleston was arrived at during a mediation held in June, 2006, in which the Richter defendants participated on behalf of class members. In this complaint, the class action settlement achieved in 2006 from the 2005 class action is referred to as "the 2006 settlement."

27. At the time of the 2006 settlement, the Richter Defendants were aware that some sexual abuse victims and their parents lived outside of South Carolina.

28. The 2006 settlement was approved by a Dorchester County judge who presided over the class action proceedings during 2006 to 2013. By 2009 the class members had been identified and an arbitration had determined awards to various class members. By March, 2008 those awards had been paid.

29. By order of the South Carolina Supreme Court issued March 19, 2009, the 2005 class action was ordered to be concluded in six months, or by September 19, 2009.

30. The trial court overseeing the class action ignored the March 19, 2009 order of the South Carolina Supreme Court, and took no action by September 19, 2009 to review the distributions to class members or to make a post-award review of class counsel's fee.

31. The Dorchester County trial judge who oversaw the class action had extensive social and professional ties with class counsel.

32. At no time were those extensive social and professional ties disclosed to the class.

33. In 2012, class counsel, acting on behalf of no class member from the 2005 class action, as all class member claims had been resolved, but acting instead on behalf of himself and the Richter defendants, filed a pleading in the closed Dorchester County class action case.

34. On January 24, 2013, the Dorchester County trial judge who had presided over the class action signed an order which stated, in its entirety, "I hereby recuse myself from hearing

any further matter on the above-captioned case." The caption on that order was the first of the cases which comprised the class action.

35. The Dorchester County trial court who presided over the class action had been asked to recuse herself by a motion in 2008. That motion was denied. She recused herself in 2013.

36. All defendants colluded in the 2005 class action so as to permit the Diocese defendants, starting in 2009 and continuing into 2013, to maintain the position that the class action precluded any and all claims for abuse, and the Diocese defendants have refused the Plaintiff any relief for the injury he sustained when his child was sexually abused by Frederick Hopwood.

37. The defendants cooperated among themselves in the 2006 class settlement to prevent the Plaintiff from either participating in the class action or being able to remove himself from the class action by opting out. Being within the putative definition of the 2005 class action as the Defendants agreed to define the class of sexual abuse victims, the Plaintiff ostensibly was formerly represented by, until he was abandoned by, the Richter defendants, who served as class counsel.

38. Alternatively, and at minimum, the Richter defendants assumed fiduciary duties as to the Plaintiff by defining the class, with the knowing cooperation of the Diocese defendants, so as to ostensibly include the Plaintiff, and by making in that class definition no exception for any person who resided in Minnesota and who was sexually abused by a priest of the Diocese of Charleston.

39. Each Defendant was aware that persons within the class definition of the 2005 class settlement might reside out of state. Class counsel elected to cooperate to serve the objectives of the Diocese defendants at the expense of the class members they represented, and did so by

making no allowance for out of state class members in the class action definition, or in the notice given to the class, or in the orders they sought from the Dorchester County trial court that oversaw the class action. These actions were taken to cause the Plaintiff special harm in the form of precluding him from making any claim against the Diocese, particularly any claim outside the class action. The representation of the Plaintiff by the Richter defendants in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

40. This action is not alleged as a class action. It involves as a Plaintiff a person who was, until he was abandoned by his class counsel, the Richter defendants, a putative member of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court.

41. But for the Richter defendants having breached the duties each of them owed to the Plaintiff by abandoning the Plaintiff in the class action, which was done in agreement with and full complicity with the other Defendants, the Plaintiff would have been protected from any preclusive effect of the 2005 class action and the 2006 class action settlement.

Nature of Wrongdoing

42. The Plaintiff's child was exposed to Frederick Hopwood through his participation in events sponsored by the Diocese of Charleston, and was sexually abused by Frederick Hopwood.

43. Hopwood was known by the Diocese defendants to have a sexual interest in young boys and had a long history of sexually molesting young boys to which he had access because Hopwood was a priest. That knowledge was not communicated to the Plaintiff.

44. The Diocese Defendants knew, or should have known, that Frederick Hopwood was

dangerous to children, and that the Plaintiff's child was sexually abused by Frederick Hopwood.

45. This Complaint sets out various causes of action built around four different levels of disregard for others, and corruption.

a. First, the disregard by the Diocese Defendants in operating a system which actively disregarded and concealed the risks to children and families for sexual assault of children by their priests and other employees, and which then actively, and fraudulently, concealed the abuse that had happened and concealed the dangers to children the Diocese Defendants solicited into danger.

b. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy, in exchange for a legal fee to class counsel, relief for the Diocese defendants in the form of a layer of what was hoped, by those corrupt lawyers, would be protection for the Diocese from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese defendants.

c. Third, the corruption of particular lawyers who in serving as class counsel assumed a duty to act for sexual abuse victims, including the Plaintiff, but who then acted in a professionally negligent way, willfully and wantonly abandoning their client so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese Defendants in exchange for their cooperation in trying to both limit relief to victims and protect the Diocese Defendants from future cases, and from claims by this Plaintiff and other sexual abuse victims. The danger to the Diocese Defendants of future cases was that future cases might be brought by lawyers actually adverse to the Diocese Defendants, as opposed to the lawyers who were affiliated with the Diocese defendants and entered into the collusive class agreement with them.

d. Fourth, overt misrepresentations of fact by the lawyers and Diocese Defendants, to the court which approved the 2006 class action settlement, and fraudulent concealment of that misrepresentation, continuing to the present.

46. Class action counsel were so confident in their ability to manipulate the state court judge they and counsel for the Diocese had selected and maneuvered the class cases before, and in gaining the cooperation of the supposedly adverse Diocese Defendants, that the Richter defendants submitted blatantly false and inflated time records to justify their large fee without objection to those false and inflated time records by the Diocese Defendants. In exchange for class counsel's cooperation to disadvantage all members of the class from making any claim other than through the 2006 class settlement, which capped victim recovery to an acceptable limit, it was later discovered that the Diocese Defendants:

a. agreed to take no position on whether the class should be certified,

b. agreed not to mention that any of the time records submitted by the Richter defendants were false,

c. agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee,

d. agreed to make no objection to an unethical fixed fee for class counsel while class counsel simultaneously obtained only variable compensation for class members,

e. agreed to make no objection to the fee being awarded before any member of the class member was even identified, and before any class member claimant had submitted a claim or was paid,

f. agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law, and

g. agreed to seek no post-award fairness hearing under SCRCP 23.

47. In turn, the Richter Defendants agreed to assist the Diocese Defendants in overtly misrepresenting to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement, and once the court relied on that representation the Richter defendants enabled the Diocese Defendants to ignore the representations that had been made. Alternatively, if class counsel claims he was did not participate in the overt misrepresentations to the court by the Diocese Defendants, class counsel's representation of the class fell below the applicable standard of care in that class counsel failed to secure by order those concessions supposedly made by the Diocese defendants. Class counsel failed to secure those concessions by written order even though class counsel was fully aware the Diocese Defendants are untrustworthy and would comply only with orders it could be compelled to honor.

48. Class counsel either was complicit in the misconduct of the Diocese Defendants or was negligent in being outmaneuvered by the Diocese Defendants.

49. The duplicity by the Diocese defendants was disclosed to this Plaintiff only in 2012, when the class action was asserted to preclude him from any relief even though he had been given no notice of the class action at the time of the class action.

50. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the Plaintiff is regarded as being bound by the *res judicata* effect of the

collusive class action to which the Diocese was party. As alleged more fully below, Plaintiff ostensibly falls within a class defined in that action, but all of the Defendants were aware that in adopting that class definition without exclusions for persons who lived out of state and were to be by design given no notice, that claims by such persons might be compromised. Defendants colluded so as to attempt to make any recovery by the Plaintiff impossible. All Defendants cooperated together to better protect the Diocese by the way the class was defined, as well as the manner in which notice was given, and the Defendants cooperated so as to actively mislead the court in seeking approval for the limited notice that was proposed with the false promise by the Diocese, known to the Richter defendants to have been false when made by the Diocese and acquiesced in by the Richter defendants, that within the minimal relief offered within the class action the Diocese would protect the interests of persons such as the Plaintiff who received no notice and who later made claims.

51. Until 2012 the Plaintiff had no information about a class action or that the Defendants had cooperated to make false promises to the class action court or that the Plaintiff's interest had been compromised by a collusive class action.

52. Until May 19, 2009, when the South Carolina Supreme Court ordered that the proceedings in the 2005 class action be concluded by September 19, 2009, the Richter defendants were charged with correcting the known deficiencies in the class definition and the class action notice. The Richter defendants took no steps to correct either deficiency. Had they done so it would have interfered with their collusion with the Diocese that was intended to protect the Diocese and to obtain for the Richter defendants the fixed fee they had arranged to obtain, at the expense of their client class members and the putative members of the class.

53. By 2012 the Richter defendants had been sued a number of times by persons whose

claims for sexual abuse were compromised by their professional work as lawyers, and to protect their own interests they filed a motion on behalf of a class that no longer exists, and ostensibly on behalf of clients adverse to them, to seek for themselves protections from the Dorchester County trial court overseeing the class action. After the Dorchester County trial court received that motion, the trial judge recused herself.

54. Before another Dorchester County judge at a hearing held April 12, 2013, the Richter defendants admitted that abuse victims, such as this Plaintiff, who lived outside of South Carolina got in the class action no Due Process from the notice given in the class action.

55. In that hearing, class counsel stated, on the record at page 32 of the transcript, that persons living out of the area of the limited notice given in the class action, "never got their due process rights of notice and an opportunity to be heard."

56. Similarly, until September 19, 2009, the date the South Carolina Supreme Court ordered that the proceedings in the 2005 class action be concluded, the Diocese Defendants were aware that various persons within the class had received no notice, but did nothing to clarify overt misrepresentations by the Diocese Defendants to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

57. The Diocese Defendants each knew, or should have known, about the Plaintiff and his child's abuse by Frederick Hopwood. When Hopwood was convicted of sexual abuse the Diocese Defendants should have, but did not, make an effort to locate other victims of Hopwood.

58. Until 2012, the Plaintiff was unaware of

a. any class settlement by the Diocese Defendants,

b. that the Diocese Defendants claimed to have waived charitable immunity for any person in the class definition,

c. that the Diocese Defendants claimed to have waived the statute of limitations for any person in the class definition.

59. Plaintiff was unaware of any of those things because, by agreement of all Defendants, the Plaintiff got no notice of any of those things, and had no opportunity to preserve his claim by opting out of the 2005 class action.

60. In its order approving the class action, the state court appeared to have provided for absent members of the class, such as the Plaintiff. However, beginning in 2009 the Diocese Defendants began to contend, successfully, that the court's order of July 31, 2007 does not mean what it says, and starting in 2009 the Diocese Defendants began to argue that none of them has a duty to any absent class member who is within the class definition but who received no notice of the class settlement or the various waivers of defenses by the Diocese Defendants. In doing so the Diocese Defendants perpetuate the fraud the Diocese Defendants intended to achieve in 2007 through the class action, and either through cooperation with the Richter defendants or through outmaneuvering the Richter Defendants, to limit recovery for persons known to have been sexually abused by persons affiliated with the Diocese Defendants.

61. Plaintiff is an absent member of a class who, by either design among Defendants, or by conduct by class counsel that fell below the standard of care, received no notice of the class action and had no opportunity to opt out of the collusive class action. As such, Plaintiff should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of his interests. The Plaintiff's representation in the class action by the Richter defendants was inadequate, and fell below the applicable standard of care as set forth more fully below. Any of those grounds is a sufficient basis to relieve the Plaintiff

of the *res judicata* effect of the class action.

62. If the Diocese agrees, or the court finds, that the Plaintiff is not precluded, by the class action, from bringing claims against the Diocese Defendants, either because the class action court's rulings leave room for persons not receiving notice, or due to inadequate representation by class counsel, or because the Defendants in the class action were aware that not all class members would get notice of the class proceedings and the class action orders preserve the Plaintiff's Due Process rights and his claims, then the causes of action against the Richter Defendants alone, other than the Conspiracy cause of action, are irrelevant. However, if the court finds that the Plaintiff is precluded for any reason from pursuing his claims against the Diocese Defendants, including the *res judicata* effect of the class action, charitable immunity (which the Diocese Defendants waived for those within the class definition), or by the statute of limitations (which the Diocese Defendants waived for those within the class definition), then causes of action against the Diocese Defendants alone, other than the Conspiracy cause of action, are irrelevant, and claims are properly made against those who conspired against the Plaintiff, and against the Richter Defendants for failing to properly represent the Plaintiff in the representation of the Plaintiff that the Richter Defendants undertook.

63. In March, 2009, the South Carolina Supreme Court ordered that all proceedings in the class action be concluded by September 19, 2009. In 2013 the South Carolina Supreme Court was informed that the class action had never been formally closed, that the Dorchester County trial judge had recused herself from further proceedings, and on April 30, 2013, the S.C. Supreme Court assigned the class action to another circuit judge to "hear and dispose of any remaining matters."

64. In this action, no review is sought of the decisions of the state court in approving the

insufficient notice given to the class. No changes are sought as to the orders affecting the class action. As to the class action, this action seeks only an interpretation as to the preclusive effect of the class action as applied to the Plaintiff.

For a First Cause of Action:
Negligence and Gross Negligence by Diocese Defendants

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

66. The defendant Bishop of Charleston employed Frederick Hopwood as a priest.

67. In his capacity as priest, Frederick Hopwood was placed by the Diocese Defendants in a position of trust and confidence, and had access to the Plaintiff's child and other children. In that capacity, Frederick Hopwood sexually molested the Plaintiff's child and many other children.

68. Prior to the Plaintiff being molested, the Diocese Defendants became aware that Frederick Hopwood was dangerous to children. After knowing he was dangerous, the Diocese Defendants moved Frederick Hopwood from place to place within South Carolina, and thereby facilitated his access to young people whom he could sexually molest. The Plaintiff's child was molested after Hopwood was known to be dangerous to children, which created an injury to the Plaintiff.

69. Alternatively, the Diocese Defendants operated various schools, activities, and churches that were intended to, and did, attract children and families, including the Plaintiff's child. The Diocese Defendants encouraged people, including Plaintiff and his child, to use their facilities, and to attend the various activities and functions offered on the premises of the Diocese. In making that invitation, the Diocese Defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers, and from known dangers such as

Frederick Hopwood, by representing to the public, and to the Plaintiff, nothing to the contrary. The Diocese Defendants particularly owed a duty to the Plaintiff, who was charged with looking after his child's interests, a greater degree of care because the Plaintiff relied on the Diocese Defendants for his child's safety within the Diocese, and his child was unable to fully appreciate risks and danger and protect himself from Frederick Hopwood. The Diocese Defendants falsely represented to its invitees, and their parents or guardians, including the Plaintiff, that its facilities and its priests were safe, and that persons would be protected from harm when using its facilities and when interacting with its personnel.

70. The Diocese defendants negligently supervised Frederick Hopwood. The Bishop of Charleston was grossly negligent in supervising Frederick Hopwood. Moving Hopwood without proper warning to children and parents was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, Plaintiff was injured when his child was sexually abused by Frederick Hopwood.

71. The Diocese defendants were negligent in failing to warn the Plaintiff about Frederick Hopwood. The Bishop of Charleston performed that duty in a grossly negligent manner.

72. The Diocese Defendants knew, or should have known, that Frederick Hopwood was a pedophile. Despite that knowledge, the Diocese Defendants made no effort, or no competent effort, to ascertain how many children Frederick Hopwood had molested, and no effort, or no competent effort, to locate victims of Frederick Hopwood. If the Diocese Defendants did make such an effort, those Defendants assumed the duty but performed it negligently. The predecessors of Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

73. The Diocese Defendants' failure to do so was negligent, and grossly negligent on behalf of the presiding Bishop from the time the Plaintiff's child was abused to the present, including the gross negligence by Bishop Guglielmone, Bishop Baker, Rev. Monsignor Laughlin, and the Bishops who preceded them.

74. As a result of the negligence and gross negligence by the Diocese Defendants in failing to either prevent abuse or identify abuse victims by its agent or employee Frederick Hopwood, the problems for the Plaintiff from his child's abuse were first caused, and then exacerbated, by the delay of the Diocese Defendants in rectifying the abuse by Hopwood.

75. As set forth more fully below, the Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese Defendants, among other things, accounts for the delay in this action being brought against the Diocese Defendants. The most recent act of fraudulent concealment by the Diocese defendants as to the Plaintiff was in 2012, discovered by the plaintiff only in 2012. This action is brought within three years of that most recent act of fraudulent concealment, and fraudulent conduct, by the Diocese defendants, and within three years of its discovery by the Plaintiff.

76. The Plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese Defendants, and gross negligence of Bishops Guglielmone and Baker, and Administrator Rev. Monsignor Laughlin, in failing to perform a proper review for Hopwood's victims, or in performing that duty in a negligent manner.

For a Second Cause of Action:
Fraudulent Concealment by Diocese Defendants

77. Allegations above are incorporated into this cause of action as if fully set forth.

78. The Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children.

79. The Diocese Defendants each had a duty to discover and to disclose to Plaintiff their knowledge that Frederick Hopwood was known to have a sexual interest in children. That duty arises from

a. the preexisting fiduciary relationship between the Plaintiff and the Diocese Defendants, which relationship the Diocese Defendants solicited;

b. from the Plaintiff having expressly reposed his trust and confidence in the Diocese Defendants so as to entrust putting the Plaintiff's child into the presence of Frederick Hopwood, which placed the Plaintiff's child in a vulnerable position with respect to Frederick Hopwood. That position of trust and confidence was implicit from those circumstances of Plaintiff entrusting his child to be in the presence of Frederick Hopwood, as well as from the nature of the dealings between the Plaintiff and the Diocese Defendants, who promoted to the Plaintiff that he should leave his child in the presence of Frederick Hopwood,

c. from the essential nature of the Diocese Defendants and their inducement to the Plaintiff to have his child participate in activities with Frederick Hopwood as being beneficial to the Plaintiff's child, or at least not harmful to his child,

d. from the secrecy provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese Defendants to discover, but then to maintain secrecy about, "other persons solicited" by any person such as Frederick Hopwood, who commits the "unspeakable crime" of sexually abusing a child, and

e. by the undertaking which the Diocese Defendants assumed, negligently (and in the case of the individuals included in the designation of the "Diocese Defendants," grossly negligently), during 2005 - 2012, to locate victims such as the Plaintiff.

80. The Plaintiff's child was sexually abused by Frederick Hopwood after 1962.

81. Concerning each of (a) the undisclosed dangers Frederick Hopwood represented to the Plaintiff, and (b) assisting to repair the damage done to the Plaintiff by Frederick Hopwood, the Diocese Defendants were obligated to the Plaintiff to engage with him in perfect good faith and with full disclosure.

82. Instead of full disclosure, the Diocese Defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including Frederick Hopwood. In its own operations, the Diocese required secrecy and concealment, and it has enlisted its agents and employees to further conceal its knowledge of abuse so as to limit its exposure for the Diocese defendants being held responsible for sexual abuse of children.

83. Specifically, the Diocese Defendants created a culture of secrecy that caused the Diocese to make no inquiry for victims of Hopwood after it was known that Hopwood had sexually abused children.

84. This complaint concerns actions and inactions by the Diocese Defendants within the course and scope of their role within South Carolina by each of the Diocese Defendants which violated South Carolina law and resulted in the sexual abuse of the Plaintiff's child. The

allegations do not involve religious belief, and in this Complaint the court is not called upon to involve itself in, or to interpret, religious beliefs of the Catholic Church or any of the Defendants but to assess their actions and inactions against the requirements of South Carolina law.

85. The actions and inactions of the Defendants are governed, in part, by the administrative practices required by the internal operating procedures of the Diocese Defendants.

86. Administrative practices adopted by the Diocese Defendants under the Code of Canon law established a practice of secrecy as to sexual abuse. All references to the Code of Canon law refer to the Code of Canon law approved in 1983.

87. The Diocese Defendants operated with an archive.

88. The archive is required by Canon 486 of the Code of Canon law.

89. The archive is, in part, accessible only by the Bishop of Charleston and chancellor of the Diocese of Charleston.

90. Having an archive with limited access is required by Canon 487.

91. Documents in that limited access archive may not be removed from the archive except for a brief time, and only by permission of either the Bishop of Charleston or the moderator of the curia.

92. That restriction on documents within the limited access archive is required by Canon 488.

93. Canon 489 requires that the Diocese of Charleston was also to create for administrative purposes a Secret Archive.

94. In that Secret Archive Canon 489 requires that "documents are to be kept secret" and "protected most securely."

95. Canon 489, Section 2 states: "Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained."

96. The administrative practices for secrecy required by the Code of Canon law and the "Instruction," alleged below, are arbitrarily adopted administrative practices and are separate and apart from the religious practices protected by the First Amendment of the United States Constitution. Review of those provisions is sought only to the extent those provisions govern action of the Diocese Defendants.

97. Only the Bishop of Charleston is to have the key to the secret archive, and documents are not to be removed from the archive, a restriction required by Canon 490.

98. The Bishop of Charleston was authorized to include in the secret archive any matter which can be regarded as scandalous.

99. The administrative practices of the Diocese of Charleston is to consider topics of sexual abuse to be scandalous, hence secretive.

100. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Frederick Hopwood's sexual abuse of the Plaintiff's child and other children, were regarded as scandalous, and were maintained in the Secret Archive.

101. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Frederick Hopwood's sexual abuse of children including Plaintiff's child, because those matters were regarded as scandalous, were maintained in the Secret Archive and were destroyed as called for by the Code of Canon law in the routine

administrative practice by the Diocese Defendants to destroy evidence of known criminal activity.

102. The Diocese Defendants operate under the authority of the Holy See, which is based in Rome, Italy.

103. In 1962 the Diocese defendants expanded on the administrative secrecy required concerning sexual abuse. The Holy See published an "Instruction" which applied to the Diocese Defendants.

104. By its terms, at p. 1, the "Instruction" was to be stored in the Secret Archive. In the "Instruction," matters involving priests who "solicit or provoke" ("Instruction," p. 1 ¶ 1) a penitent "toward impure and obscene matters" ("Instruction," p. 1 ¶ 1), is deemed "a secret of the Holy Office" ("Instruction," p. 3 ¶ 11), "under the penalty of excommunication" ("Instruction," p. 3 ¶ 11). The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." ("Instruction," p. 4 ¶ 12. See also, "Instruction," p. 5 ¶ 23 and "Instruction," p. 6 ¶ 28).

105. These are administrative practices related to actions and inactions of secrecy about criminal and tortious conduct, not provisions about beliefs protected by the First Amendment.

106. Plaintiff's child fit within the meaning of "penitent" referred to in the "Instruction."

107. The 1962 "Instruction" states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." "Instruction," p. 15, ¶ 71. "The worst crime" is also defined as "any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex." "Instruction," p. 16, ¶ 73.

108. Nothing about the Catholic faith requires that children be sexually abused or that sexual abuse of children be concealed.

109. Frederick Hopwood and the Plaintiff's child are each male. The conduct by Frederick Hopwood towards the Plaintiff's child qualified under the 1962 "Instruction" as "the worst crime."

110. Among other things, the 1962 Instruction directs the Diocese Defendants to assume the duty of locating "other persons solicited by the same confessor" ("Instruction," p. 7 ¶ 29). In this instance, the "Instruction" calls for the Diocese Defendants to act so as to locate other persons solicited by Frederick Hopwood for sexual contact. The "Instruction" at p. 9 ¶ 37 also refers to an "Instruction of the Holy Office, February 20, 1867," in directing the manner of interrogation for persons with information about solicitations or those solicited for sexual contact.

111. The Diocese Defendants assumed the administrative duty to locate Hopwood's victims as defined in the 1962 "Instruction," but the Diocese Defendants performed that duty in a grossly negligent manner. The Diocese Defendants failed to locate the Plaintiff or his child, failed to locate many other Hopwood abuse victims, and made no competent inquiry to locate them. The Diocese Defendants purposefully avoided making the type of inquiry that would have elicited discovering the Plaintiff or his child as victims of Hopwood.

112. The 1962 "Instruction" was approved as an administrative practice by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 "Instruction." It applied to the Diocese Defendants.

113. In the Appendix to the 1962 "Instruction" are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the Plaintiff. In essence, the oath provides

for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff," according to page 17 of the 1962 "Instruction." By this means the administrative practice of secrecy is encouraged, but even backed by excommunication, the secrecy provisions of the administrative practices are arbitrarily adopted administrative practices with no doctrinal significance to protected First Amendment activities.

114. Nothing about reporting sexual abuse of children infringes on religious belief. "Whatever type of pretext" overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the 1962 "Instruction" for complying with civil authority, and any interpretation otherwise is void as contrary to the law of South Carolina and against public policy.

115. Unless the Pope himself has specifically approved otherwise, administrative secrecy was and is to be maintained not only by the Plaintiff and his child, but also by every member of the Diocese Defendants, and by even witnesses to sexual abuse. That administrative secrecy is to be made despite any law, court order, or oath that would otherwise require disclosure of sexual abuse. Under the 1962 "Instruction," the highest obligation, higher than any law, oath, or court order, is to maintain the administrative practice of secrecy for the benefit of the Diocese Defendants, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese Defendants can all be expected to be obedient to the administrative secrecy called for in the 1962 "Instruction,"

to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese Defendants have, to date, done so.

116. The call for secrecy in the administrative practices derived from the 1962 "Instruction" and the Code of Canon law constitutes spoliation of evidence, as well as fraudulent concealment. Among the spoliation was evidence related to Frederick Hopwood's known sexual interest in children, and the sexual abuse of the Plaintiff's child.

117. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the Diocese Defendants as to Frederick Hopwood's sexual abuse of the Plaintiff's child. Consistent with that obligation of secrecy, the Diocese Defendants made no effort to either prevent sexual abuse of the Plaintiff's child, or to ascertain that the Plaintiff's child was a victim of abuse by Frederick Hopwood.

118. In 2006 the Diocese Defendants sought a new level of deception and manipulation to limit the damage to the Diocese Defendants from its taking responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its history of abuse and concealment. The Diocese Defendants engaged with other Defendants to conspire to evade accountability, as set forth below, and to try to prevent the Plaintiff or his child from making any claim. The acts of civil conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse.

119. The conspiracy cause of action concerns the Plaintiff's deliberate exclusion from the class, and preventing the Plaintiff from being able to protect his claim, so hinges on the proper interpretation of the orders in the class action, and whether the actions of the Richter defendants constituted merely greed, fraud, and self-interest, as opposed to professional negligence, in excluding from the class action, by design, the Plaintiff and many others who were within the class definition. If there was professional negligence, then the acts of professional negligence predominate, and the damages from the exclusion are properly paid by the Richter defendants. If the actions do not rise to professional negligence, and the Richter defendants and Diocese Defendants were merely corrupt, then the damages for the exclusion are properly shared among all Defendants for their conspiratorial actions in excluding the Plaintiff by design. And if the Plaintiff is not precluded from his claims against the Diocese Defendants by the *res judicata* effect of the class action, and the Richter defendants were merely corrupt, then the Plaintiff requires no relief for the professional negligence by the Richter defendants, and can seek relief against the Diocese Defendants.

120. This cause of action presumes that the Plaintiff is not precluded in making this claim by the 2005 collusive class action involving the Diocese Defendants, and can make his claim for

a. lack of Due Process in those proceedings as to this Plaintiff,
b. lack of competent representation so as to not bind this Plaintiff to the class action,
c. the collusive nature of the class settlement, or
d. because by their terms the class action orders do not apply to the Plaintiff.

121. To date the terms of the class action order have been interpreted to not apply to the Plaintiff or to any other parent of an abuse victim who resides out of state, meaning the Plaintiff would be excluded from relief and barred from making a claim.

122. The Plaintiff is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese Defendants in actively maintaining secrecy and thus failing to perform a proper review for Hopwood's victims, including the Plaintiff, or in performing that duty in a negligent manner.

For a Third Cause of Action:
Civil Conspiracy by All Defendants

123. Allegations above, other than claims for relief above, are incorporated into this cause of action as if fully stated. This cause of action presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect, despite insufficient Due Process from the collusive class action which was designed by all Defendants to limit the Plaintiff's ability to state his claim, so this cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese Defendants related to sexual abuse, and also presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

124. Defendants have conspired with others to injure the Plaintiff, and by those actions have caused special damage to the Plaintiff.

125. As set forth below in detail, the Defendants have acted in concert in numerous ways, which reflect the joint assent with minds to injure the Plaintiff, and Defendants have taken overt acts to pursue the common design to injure the plaintiff.

126. Some actions that have been taken have been legal; other actions were legal but violated professional standards in rules of court and South Carolina law; other actions were

false or fraudulent. The object of the conspiracy was to damage the Plaintiff by making sure he and other putative class members could neither participate in the state court class action nor opt out of it, and by those means could be prevented from bringing his own action.

127. In exchange for an amount of money deemed sufficient by corrupt lawyers as a fee, the lawyers who purported to represent the Plaintiff, the Richter defendants, agreed to act against the Plaintiff's interests, and then collaborated with the Diocese defendants to work against the Plaintiff's interest and in the interest of the Diocese Defendants.

128. Class counsel had, but did not disclose to the class, connection and allegiances to the Diocese defendants.

129. This cause of action presumes that class counsel was not merely professionally negligent, and outmaneuvered by the Diocese Defendants, but actively collaborated with the Diocese Defendants.

130. Specifically, in exchange for an amount of money as a fee deemed to be sufficient, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, the lawyers who purported to represent the Plaintiff, the Richer defendants, agreed to abandon the Plaintiff, and to define the class so as to include him, despite proposing notice to the class that was known to be insufficient to actually provide notice to the Plaintiff. The Richter defendants defined the class action classes so as to ostensibly include the Plaintiff, purported to secure benefits for the Plaintiff but then failed (a) to secure those benefits by written order, and (b) failed to give notice calculated to reach the Plaintiff, and instead gave notice that could not possible reach the Plaintiff. This cause of action presumes that those acts were not professionally negligent actions but conscious undertakings by the Richter defendants to disadvantage the Plaintiff from making a claim against the Diocese, so as to not jeopardize

the fee for themselves that the Richter defendants made the highest priority of the 2006 class action settlement.

131. By purporting to undertake his representation in how the class was defined, but making no provision for the Plaintiff, the Richter defendants breached a duty to the Plaintiff that the Richter defendants assumed, either through the attorney-client relationship or through the fiduciary duty South Carolina law imposes on any counsel who elects to bring a complaint that alleges a class action, and the fiduciary duty South Carolina law imposes on any counsel who elects to define a class so as to include the Plaintiff.

132. The Richter defendants have publicly denied undertaking any duty to absent members of the classes they defined, reflecting either their degree of professional ignorance of the obligations of class counsel or their intention to align with the interests of the Diocese, or both. This cause of action assumes not the professional negligence of the Richter defendants but the intention of the Richter defendants to align themselves with the interest of the Diocese Defendants as the *quid pro quo* for the Diocese Defendants collaborating by silence on their fee as class counsel.

133. The Richter defendants elected to abandon their putative class member clients who lived outside of South Carolina so as to prevent the Plaintiff, and others similarly situated, from being able to make claims against the Diocese Defendants. As the class allegations acknowledged, the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, filed in Charleston County, and in the identical John Doe #53 Complaint redundantly filed in Dorchester County as case 06-CP-18-1636 for the purpose of judge-shopping.

134. If "too many" of those hundreds of victims participated in the class action, including the Plaintiff, the Richter defendants would jeopardize the large fee the Diocese Defendants had agreed to enable them to get, and if the 2006 class settlement was jeopardized the Diocese Defendants might not get the ostensible protection from future suits it was colluding with the Richter defendants to obtain at the lowest possible cost. Consequently, defining the class so as to ostensibly include the Plaintiff without securing any benefit for him was either professional negligence or intentional conduct by the Richter defendants to defeat the Plaintiff's ability to make a claim against the Diocese. As noted, this cause of action presumes that the Richter defendants were not professionally negligent but intentionally acted with the Diocese Defendants to limit the Plaintiff's ability to claim against the Diocese Defendants, with whom the Richter defendants shared an illicit interest in defeating the Plaintiff's potential claims.

135. For the Richter defendants, both their class counsel fee, and the interests of the Diocese Defendants, were more important to them than were the interests of their absent putative class member clients such as the Plaintiff.

136. In exchange for the Richter defendants abandoning the Plaintiff and all of their other putative class member clients who lived out of state, the Diocese defendants agreed with the Richter defendants to

a. maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCP 23,
b. agreed to take no position on class certification,

c. agreed to make only the weakest possible argument about the fee sought by the Richter defendants,

d. agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request,

e. agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class,

f. agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known, and

g. agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from those Charleston County judges that might exert independent scrutiny of the class action, to a state court judge in Dorchester County known to have extensive social and professional ties to the Richter defendants, in the aspiration and expectation that a more pliable oversight would be received for the class settlement from that judge.

137. In the 2006 class settlement the Diocese Defendants undertook a duty to the classes as identified, which included the Plaintiff, to identify abuse victims, such as the Plaintiff. To get approval of the class settlement, the Diocese Defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement away from independent judges in Charleston County to a judge in Dorchester County who was hand-

picked by the Richter defendants because of the expectation that judge would apply a more pliable oversight of the class action.

138. In circumventing the requirement in SCRCP 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester County judge, the Defendants violated judicial norms and rules as well as professional standards.

139. The Diocese Defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case pending simultaneously in circuit court in both Charleston County and Dorchester County.

140. As the Dorchester County version of the class action had already been settled before filing through the 2006 class settlement, the Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge.

141. The Diocese Defendants also agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

Details of the Civil Conspiracy Among Defendants

142. In 2003, the Richter defendants were associated by one or more lawyers to assist in representing a victim of sexual abuse in a claim to be asserted against, *inter alia*, The Diocese Defendants.

143. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the remainder of 2003 and all of 2004.

144. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The Bishop of Charleston, et al., 05-CP-10-2053.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

145. That John Doe 66 complaint made no class action allegations.

146. In August 2005, the Richter defendants filed another individual action in the Charleston County Court of Common Pleas, styled *John Doe #66A v. The Bishop of Charleston, et al., 05-CP-10-3293.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

147. The John Doe 66A complaint made no class action allegations.

148. In October 2005, the Richter defendants met personally with then-Bishop Baker.

149. As a result of that meeting, in December, 2005, the Richter defendants filed a class action complaint in the Charleston County Court of Common Pleas, styled *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

150. In February 2009 the Diocese Defendants published to the public through their press spokesman that the Charleston County John Doe 53 complaint was one of three individual cases filed in Charleston, as opposed to the Diocese acknowledging to the public that it was a complaint which alleged a class action. The representation that it was an individual suit was a lie by the Diocese Defendants in furtherance of the routine and consistent practice by the Diocese Defendants to engage in fraudulent concealment of sexual abuse matters, and to further the agreement among defendants to cause harm to the Plaintiff.

151. Rule 23(d)(1) SCRCP requires "as soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained."

152. From December 2005 until June 2006, neither the Richter defendants, as class counsel, nor the Diocese Defendants, as a defendant in a case alleging a class, made any effort to seek class certification for the class alleged in the December class action complaint in Charleston County.

153. In that time period of December 2005 to June 2006, the public records show there were no motion hearings held in any of the three cases mentioned above. When the Charleston County court twice attempted to schedule pending motions, and sent out hearing notices, the Defendants collaborated to ask that the motions be continued rather than heard.

154. In June 2006, the Defendants met in a mediation conference. At that time, no class action had been certified, and no case then pending alleged a class for spouses or parents of sexual abuse victims.

155. At that mediation conference, which took place over two days, the Defendants purported to settle all claims of all class members in two classes, as the classes were defined by the 2006 class settlement agreement of the parties.

156. Ostensibly included in one of the classes as defined in the mediation was the Plaintiff. By defining the classes so as to ostensibly include the Plaintiff, and by purporting to settle his claim, the Richter defendants assumed professional obligations to him, including fiduciary duties towards him, and created a constructive attorney-client relationship, if not an actual attorney-client relationship, with the Plaintiff.

157. The agreement reached in that mediation is attachment A to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the 2006 class settlement agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the Plaintiff through the class definitions making no exception for his residing in Minnesota. Each Defendant intended to include the Plaintiff in the class definition.

158. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 class settlement reached during a mediation of the Charleston cases.

159. In January, 2007 the typewritten version of the 2006 class settlement agreement was approved by The Holy See.

160. The 2006 class settlement agreement was funded by approval of The Holy See.

161. As reflected in the attached handwritten version of the 2006 class settlement agreement, the Defendants agreed that the individual plaintiffs in the pending actions filed in Charleston County and the purported class representative from the Charleston case which

alleged a class, would split $460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese Defendants would pay only $460,000 to resolve the pending Charleston cases, which were the only cases then pending.

162. Claims of absent class members were proposed to be resolved on terms materially different than the terms received by the purported class representative or representatives. Instead of a cash payment the same, or similar to, what the purported class representative or representatives were to receive, absent class members were to be required to first relinquish their right to bring suit and, then and only then, submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive from the pre-defined maximum amount available for all such claims and each such claim, minus the additional fee for class counsel. Class members had to relinquish all rights for review to qualify for the arbitration, which was binding arbitration. Only the persons included in the 2006 agreement knew in advance what amount they would receive for a settlement.

163. As alleged below, not fewer than seven devices were chosen by overt agreement among the Defendants to further the conspiracy against this Plaintiff, along with other absent putative members of the classes, from being included in any recovery for the class, to limit the class recovery from being "too much," and to prevent this Plaintiff from later being able to make a claim for his childhood sexual abuse.

164. If the 2006 class settlement included "too many" claimants, under the 2006 class settlement agreement the Diocese Defendants would be entitled to withdraw from the agreement. Class counsel would jeopardize his class counsel fee if there were "too many" claimants and the Diocese Defendants withdrew.

165. The Diocese Defendants wanted the 2006 class settlement agreement to be approved so they could later argue, as they in fact have argued, and have argued specifically as to this Plaintiff and his child, that no other sexual abuse claims for sexual abuse prior to 2006 could be made against the Diocese Defendants if those claims were brought after the 2006 class settlement approval.

166. The Diocese Defendants knew that the 2006 class settlement agreement had been negotiated and reached with an "adverse" attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese for another client. The Richter defendants wanted to assure themselves of a large fee in the class action without jeopardizing that fee by getting too many class claimants against class counsel Richter's own Diocese and these Diocese Defendants. So all Defendants conspired to create methods to be able to limit the number of class members who could make claims under the 2006 class settlement agreement, to limit the amount those class member claimants would recover, and to protect the Diocese Defendants from any future claims, for those childhood abuse victims prior to the conclusion of the 2006 class action settlement.

167. The 2006 class settlement agreement among Defendants established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge-Shopping to Pick the Judge

168. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver the 2006 class settlement agreement from the Charleston class action to be presided over not by any judge in Charleston County, where the putative

class case was filed and the class case settlement was reached, but to "shop" for a judge they selected to make those determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to unwittingly overlook breach of court rules and fraudulent filings was desired.

169. Instead of complying with SCRCP 23, and submitting the attached 2006 class action settlement to a judge in Charleston County for approval under SCRCP 23, the Defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese Defendants accept service of, newly filed class action cases in Dorchester County that were already settled before being filed.

170. The Richter defendants filed on August 15, 2006 in Dorchester County cases 06-CP-18-1310 and 06-CP-18-1311.

171. After those two cases were filed, on October 6, 2006, the settled Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193*, was redundantly re-filed in Dorchester County, with the same caption (other than the changed county name from "Charleston" to "Dorchester" and the case number being a case number for Dorchester County, 06-CP-18-1636).

172. The allegations of the John Doe 53 class complaint in Dorchester County were identical to the John Doe 53 class complaint in Charleston County.

173. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending and already settled Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in

Dorchester County, and as the means to avoid independent judges in Charleston County and to shop for the desired judge in Dorchester County.

174. This procedural maneuver agreed to among the Defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose, when it was used in 2006.

175. Filing duplicative class actions to have the same case pending simultaneously in two different venues is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court (by all Defendants) and to the Plaintiff (by the Richter Defendants). The Plaintiff was ostensibly included among the Dorchester County complaints through the class definition used in one or more of those complaints.

176. The 2006 class action in Dorchester County deprived the Plaintiff of Due Process through the conduct of the Defendants.

177. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending, and all were included within the 2006 class settlement agreement.

178. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, and service of that case was accepted, the John Doe 53 class action was, by agreement among the Defendants, simultaneously pending in two separate counties.

179. Dorchester County was chosen by agreement of the Defendants so as to "judge shop" for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a more pliable, and less demanding, oversight of any

questionable elements of the class action, including class certification, class notice, attorneys fees, any pre-award fairness hearing, and any post-award fairness hearing. The shopped-for judge was expected to unwittingly tolerate factual misrepresentations and fraudulent filings by the Defendants, an expectation that was rewarded when fraudulent filings were made, by agreement among the Defendants, and the pliable, shopped-for judge took no action concerning those fraudulent filings, either before the fraudulent nature of those filings was explicitly disclosed or after the fraudulent nature of those filings was explicitly disclosed.

180. The Defendants all agreed with this strategy of seeking a pliable state court judge, and consented to the "judge shopping" so as to avoid having to submit the class allegations, and proposed class action settlement, for approval by any judge in Charleston County. The Defendants feared completely objective judicial oversight by any of the judges in Charleston County.

181. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the shopped-for judge designate the cases as complex, and assign the cases to the shopped-for judge, as requested by all Defendants. That designation was improper under the rules at the time, as set forth in more detail below, as Defendants joined together to misrepresent facts to the shopped-for judge in order to obtain complex case designation.

182. Alternatively, the shopped-for judge was informed of the false representations of fact when the request for complex case status was made, and the shopped-for judge agreed to permit the false representations of fact. This Complaint presumes the shopped-for judge was misled by Defendants rather than actively participating in misconduct of Defendants.

183. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the 2006 class settlement. If the same request had been made and granted in Charleston, only a single judge would have presided over all aspects of the settlement. But the Defendants feared that any Charleston judge might require complex case designation to actually meet the criteria of the pertinent Supreme Court order that governed complex case designation, and the Defendants feared that any Charleston judge would exert independent oversight of the 2006 class settlement. The Defendants each sought to avoid truly independent judicial oversight.

184. Other than to shop for a particular judge, there was no legitimate reason to redundantly file Charleston case 2005-CP-10-4913 as Dorchester case 2006-CP-18-1636.

185. As soon as the shopped-for judge assigned the Dorchester actions to herself, the Defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

186. No motion was filed in Charleston to approve the 2006 class settlement reached in the Charleston cases. All Defendants consented to not filing such a motion.

187. SCRCP 23 was not complied with in the pending Charleston County cases as to the 2006 class settlement reached in the Charleston class action. All Defendants consented to not complying with SCRCP 23 in Charleston County, and all Defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge in Dorchester County.

188. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases. Nor was any notice given to the Charleston County judge that the parties to the Charleston County cases sought a voluntary dismissal without prejudice of any case that alleged a class.

Conspiracy Technique Two: Using Complex Case designation Improperly.

189. In October 2006, the Defendants sought complex case designation of the Dorchester County class action cases.

190. At that time, the Charleston cases were still pending.

191. The July 26, 2006 order of the South Carolina Supreme Court, which at that time enabled complex case designation, approved of a particular form for use with motions to seek complex case designation. Among other things, that approved form required the Defendants to represent that certain facts applied to the action for which complex case status was sought. The form states, with emphasis added:

> We certify that we have made a good faith effort to settle this case and ***thus far have been unable to do so***. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.

192. At that time, the Charleston cases were still pending, and a class settlement had been reached in those cases which, if approved, would resolve all cases.

193. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases.

194. By agreement among the Defendants, no notice was given to the Administrative judge for Charleston County at that time, Judge Jefferson, that when the Defendants sought a voluntary dismissal without prejudice of the pending Charleston County cases that one of those cases alleged a class of plaintiffs.

195. Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached at the time the Defendants sought complex case designation. Alternatively, the Defendants disclosed to the shopped-for judge that they fraudulently sought

complex case designation, under a false representation of facts, and the shopped-for judge agreed to overlook the false application. As a second alternative, Defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status. This Complaint presumes that the shopped-for judge in Dorchester County was unwittingly misled by the Defendants.

196. Complex case status was approved, despite a settlement having been reached before the first Dorchester County case had been filed.

Conspiracy Technique Three: Agreeing to remain silent about an unethical attorney's fee for class counsel.

197. The 2006 class action settlement reached in the Charleston class action cases included simultaneous negotiation of a common fund, and variable, recovery for the class and a fixed fee amount for class counsel, with the fee to class counsel be paid prior to the claims period, from the common fund recovery, and to take priority over recovery to the class member claims.

198. As set forth in the affidavit of Michael Virzi, attachment B to this complaint and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese Defendants to agree to it, and to raise no objection to it. At no time was the proposed fee disclosed to the Plaintiff, and the Plaintiff at no time consented to the Richter defendants negotiating such a settlement, or such a fee.

199. At page 13, paragraph 6B, in the typed version of the 2006 class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure set forth in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

200. The Defendants agreed among themselves that the Richter Defendants would not disclose, and the Diocese Defendants would remain silent about, the fee provision being unethical.

201. Representation of the Plaintiff by the Richter defendants in proposing an unethical fee was inadequate, and did not comply with applicable professional standards. Alternatively, that representation breached a fiduciary duty to the Plaintiff that South Carolina law imposes on any attorney who files a complaint that alleges a class action.

202. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits the Diocese Defendants and the Holy See were willing to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid before any class member could make a claim, and paid before any class member could be or would be paid.

203. The Richter defendants sacrificed the interests of absent putative class members, such as the Plaintiff, in exchange for the fixed fee they negotiated for themselves. The Diocese Defendants agreed to maintain silence as to that class counsel fee as the price of obtaining the illicit cooperation of the Richter defendants in structuring the 2006 class settlement resolution to provide only a fraction of the relief the Richter defendants would agree to accept in a case against a Diocese other than Richter's own Diocese, the Diocese of Charleston.

Conspiracy Technique Four: Disclosing to the Class neither the Settlement terms for the Class Representatives nor the Settlement for Persons who Opted Out of the Class

204. The fourth technique to conspire against the Plaintiff was to make no disclosure to him, or other class members, of either the superior settlement terms agreed to by the Diocese

Defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who opted out of the 2006 class settlement.

205. The Defendants have all taken the position that the agreement with those persons who opted out of the class action was part of the class action. As part of the class action, the Defendants should have informed class members of those terms as an option to the class recovery.

206. Neither the class representatives nor the opt-out abuse victims had to submit their claims to binding arbitration. Their claims were given specific dollar amounts prior to their having to relinquish their right to maintain their respective claim. Each knew precisely what their recovery would be before consenting to resolve his or her claim.

207. In addition, the terms for the opt-out abuse victims exceeded the low bar of recovery the Richter defendants agreed to set for class member recoveries, later known to have been set low to further protect Richter's own Diocese, the Diocese of Charleston. The opt-out victims received more than was received by any comparable abuse victim who participated in the 2006 class settlement.

208. The shopped-for judge approved a fee to the Richter Defendants of $2.5 million, which was the fee for all counsel involved in the class action complaint.

209. The Richter Defendants charged the class more than $2.5 million, even though the shopped-for judge had approved only $2.5 million.

210. In addition to the fee approved by the Court, the Richter defendants charged class members who participated in the 2006 class settlement an additional fee to go through the arbitration mechanism of the 2006 class settlement. The court approved fixed fee of $2.5 million was not disclosed to participating class members, was not reviewed by the shopped-for

judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing because no post-award fairness hearing was held.

211. Either the shopped-for judge was unaware that a post-award fairness hearing was proper or the shopped-for judge agreed to not have any post-award fairness hearing so as to not jeopardize class counsel's fee recovery in the 2006 class settlement. This complaint presumes the shopped-for judge was unwittingly maneuvered by the Defendants into having no post-award fairness hearing.

212. No notice was given to any class member, including the Plaintiff, about the terms of the settlement for persons who opted-out of the 2006 class settlements. Had the Plaintiff been given notice of the terms available for the class, and the terms negotiated by the opt-out abuse victims, and the terms applicable to the class representatives, he could have exercised a choice to receive one or the other recoveries, attempted to influence those recoveries, or to opt out and preserve his claim against the Diocese Defendants. The Plaintiff was abandoned by his attorneys, the Richter defendants, with the collaboration of the Diocese Defendants. Alternatively, the fiduciary duties South Carolina law imposed on the Richter Defendants when they elected to allege a class in a complaint whose definition included the Plaintiff were breached by Defendants agreeing to define the class so as to ostensibly include the Plaintiff, but then give only notice that could not possibly reach the Plaintiff. As alleged below, the abandonment by the Plaintiff was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the Plaintiff, or was a breach of the fiduciary duty imposed by South Carolina law on the Richter Defendants and assumed by the Richter defendants towards the Plaintiff. In this cause of action those duties were consciously abandoned in cooperation with the Diocese Defendants so as to not interfere

(from class counsel's perspective) with the fee class counsel obtained, and so as to not interfere (from the perspective of the Diocese Defendants) with the protection the 2006 class settlement enabled them to assert.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Limit Total Recovery for Victims and to Depress the Value of Victim Claims

213. In the "General Terms of Settlement" agreed to in the 2006 class settlement of the Charleston class action case, there are seven essential terms of the settlement agreement.

214. The first general term in the 2006 class settlement was that there would be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

215. The second general term in the 2006 class settlement was to provide a $12 million settlement fund without risk to the Diocese that the fund would under any circumstances be exceeded. The effect of that provision, when combined with the notice to only the in-state victims, was to compromise the interests of sexual abuse victims. By avoiding "too many" victims, the Diocese was unable to withdraw from the settlement, but the operation of the 2006 class settlement operated to protect the Diocese Defendants by either eliminating, or depressing, any other recovery for any other potential claimant, such as the Plaintiff.

216. The third general term in the 2006 class settlement was "Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims."

217. The fourth term in the 2006 class settlement was that the court would be asked to approve a fixed fee for class counsel "between $950,000 & $2.5 million."

218. The fifth general term in the 2006 class settlement was to establish that four individuals would allocate among themselves $460,000.

219. The sixth general term in the 2006 class settlement was that the four individuals would be paid whether or not the court approved a class settlement.

220. The seventh general term in the 2006 class settlement was that the seven terms are an offer from the Diocese and "shall be acted upon with reasonable promptness" by the four individuals who would allocate $460,000 among them.

221. The four individuals referred to in the 2006 class settlement agreement accepted the offer from the Diocese, and allocated among themselves $460,000. None of those individuals received more than $160,000. It is not yet known what portion was allocated to a legal fee for class counsel.

222. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class. Their claims were resolved upon acceptance, in 2006.

223. On information and belief, those four individuals accepted that offer shortly after the June 14, 2006 mediation. At least one of them had accepted it by June 16, 2006.

224. The two classes preliminarily certified in an order signed January 19, 2007, excluded persons who have "previously had any similar claim adjudicated, resolved, or released."

225. After June, 2006, those individuals who purportedly represented the classes in the 2006 class settlement, whose claims had been "resolved" in 2006, did not in 2007 qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006 or after class approval in 2007.

226. Nevertheless, by cooperation and agreement among the Defendants those individuals were falsely designated as class representatives in subsequent Dorchester County cases, falsely

put forth in the Dorchester County cases as class representatives, and falsely approved as class representatives even though they did not meet the definition of the class.

227. In addition to not meeting the class definition, the class representatives received a different settlement than did class members, and excluded themselves from the arbitration process later articulated for the class members. In doing so they were guided by the Richter Defendants as class counsel.

228. In the handwritten version of the 2006 class settlement, when the parties reserved details for later specificity ("Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims"), those details were reserved so the Defendants could work backwards from the settlement fund, minus class counsel's fixed fee, to enable adjustments to be made to the notice to the class and the recovery to the class members, so the recovery to class members would not be "too much." Neither the fee for the Richter Defendants nor the finality desired by the Diocese Defendants would be jeopardized by having "too many" sexual abuse victims making claims under the 2006 class settlement agreement.

229. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of class members, because the highest priority of the Richter Defendants, ahead of the interests of their clients or ostensible class members such as the Plaintiff, was to preserve class counsel's fixed fee and to get payment of class counsel's fixed fee. That is why the fee to class counsel is fixed, that is why the fixed fee to class counsel takes priority over the recoveries of the class members who participate in making claims under the 2006 class settlement agreement, and that is why class counsel insisted on being paid his fee before any class member had even been identified.

230. The highest priority of the Diocese Defendants, after their willingness to pay class counsel's fixed fee and to collude with class counsel to remain silent as to the unethical aspects of the fee, was to either exclude persons such as Plaintiff, or to try to limit as best they could the possibility of any future recovery to persons such as Plaintiff, so that within the relatively modest limits of the class settlement fund proposed (which resolved sexual abuse claims for a fraction of the cost of similar claims by the same counsel against a Diocese other than class counsel's own Diocese, the Diocese of Charleston), the Diocese could get the class approved then later argue a *res judicata* benefit from the amount paid for the 2006 class settlement without having to pay meaningful relief to all persons who had been sexually abused. That is among the reasons that the Diocese Defendants were prepared to remain silent about class counsel's fee being fixed but the recovery to the class to be variable, and why all Defendants proposed to the shopped-for judge a notice designed to not inform all persons within the class definitions of the settlement.

231. The Diocese Defendants knew, or should have known, that the history of systematic administrative practices of deceit and deception about sexual abuse practiced by the Diocese Defendants exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

232. The Diocese Defendants knew that juries in Charleston County had placed a high value on the intangible nature of sexual abuse claims.

233. To try to limit future sexual abuse claims, the Diocese Defendants elected to consent to the 2006 class settlement, hoping that settlement would define a class so as to later enable them to argue to exclude the Plaintiff by means of *res judicata*. In that manner the Diocese

Defendants could achieve a possible protection for the Diocese at a fraction of the cost of a proper settlement with all sexual abuse victims. The Diocese Defendants realized they could capitalize on the close ties the Richter Defendants had to the Diocese Defendants, and the willingness of the Richter defendants to sacrifice, for a fee, the interests of this Plaintiff, and to enabled the Diocese Defendants to try to minimize recoveries to all sexual abuse victims yet still get a class settlement approved.

234. All Defendants needed to avoid meaningful court oversight of the 2006 class settlement to achieve their collective goals of limiting the interests of absent members of the class, so all Defendants agreed to "judge shop" to avoid oversight by any Charleston judge, and to obtain a unwittingly lax oversight by the shopped-for judge they desired.

235. When the Defendants realized that "too many" victims, such as the Plaintiff, might come forward, either within in the class action or later in time outside of the class action, they changed, by agreement, the notice to the class proposed to the shopped-for judge, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

236. The Defendants also agreed to misrepresent to the shopped-for judge, but to not submit in written form, a proposal to address persons, such as the Plaintiff, who were absent members of the class because they got no notice of the 2006 class settlement. The Defendants collectively represented to the shopped-for judge that relief would be offered to the Plaintiff and others, when in fact the Defendants had no intention of providing relief to the Plaintiff or others.

237. Because the Richter Defendants had no intention of providing relief to the Plaintiff or others, the Richter Defendants failed to secure in any written order those supposed benefits for class members who got no notice.

238. Because the Diocese Defendants had no intention of providing relief to the Plaintiff or others, the Diocese Defendants refused to treat the Plaintiff as each represented to the shopped-for judge the absent class members who got no notice would be treated.

239. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiff. All Defendants took deliberate action to permit victims to be identified by the Diocese Defendants, rather than insisting on giving meaningful notice to putative class members. Doing so was also negligence by the Defendants, but this cause of action presumes that the conduct was intentional, and was done so as to exclude the possibility of this Plaintiff being able to make a claim for his childhood sexual abuse.

240. Paying class counsel his fixed fee before any notice to the class, before any class claimant had been identified, and before any claims by class members had been submitted, was another way of limiting the recovery to the class and of suppressing the value of any later claims that could be brought against the Diocese Defendants.

241. By design of all Defendants, the class had no opportunity for input or comment on the proposed fixed fee, to be paid ahead of all class claims, as the fixed fee was approved without notice to the class and before the class members were known.

242. No Defendants disclosed to the class that the Richter defendants were submitting fraudulent information to the shopped-for judge, or that the Diocese Defendants were colluding by agreeing to overlook the fraudulent information submitted by the Richter defendants to the shopped-for judge to support the fee class counsel claimed. No Defendant disclosed that the

Diocese Defendants were colluding to make no mention of those various fraudulent time entries by the Richter defendants. Nor had any of the Defendants disclosed to the class that they had colluded so as to agree to request no post-award fairness hearing.

243. To date, no Defendant has requested a post-award fairness hearing for the 2006 class settlement.

244. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the extent of psychological injury caused, was another way to limit the recovery to the class, and to lower to value of any claim for sexual abuse against the Richter Defendants' own Diocese.

245. The Defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as the Plaintiff, and then set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, all as means calculated to harm the Plaintiff by excluding him from making any recovery.

246. The Defendants all calculated that the shopped-for judge would be an unwitting participant in defeating claims by persons such as the Plaintiff, and would approve the mechanisms to do so that were sought by the colluding Defendants.

247. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter Defendants would be paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese Defendants to abandon clients such as the Plaintiff, impair the Plaintiff's ability to make his claim in the future, and to generally depress the recoveries to sexual abuse victims, to serve the interests of the Diocese defendants. Alternatively, the Richter Defendants were out

maneuvered by the Diocese Defendants, who used the Richter Defendants for their own purposes.

248. The Richter Defendants colluded to serve the interests of the Diocese Defendants. Alternatively, the Richter Defendants were out maneuvered by the Diocese Defendants.

249. The Richter Defendants abandoned absent class members such as the Plaintiff, by making no provision for the Plaintiff and by failing to obtain in any written order the relief the Richter Defendants claimed on the record to have achieved for absent class members such as the Plaintiff.

250. All other Defendants cooperated with that abandonment by class counsel of the Plaintiff.

251. Unless the orders which approved the class settlement mean what they say, specifically in the July 30, 2007 order at page 4, where the court appears to have accommodated absent class members such as the Plaintiff by ruling, "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," so in other words unless the Plaintiff is not precluded from bringing his claims against the Diocese Defendants, the 2006 class settlement through its notice and arbitration structure caused damage to the Plaintiff. Unless the Plaintiff is not bound by the *res judicata* effect of the class action, he has been specially harmed by the conspiracy engaged in by the Defendants.

Conspiracy Technique Six: Providing False Information to the unwitting Court

252. The sixth technique used to cause special harm to the Plaintiff was that the Defendants cooperated in filing false information with the unwitting shopped-for Dorchester County judge. When false information was filed by one Defendant, all other Defendants

acquiesced, despite knowing the filing was false. Even after the information was identified as false, no action was taken to protect the Plaintiff, unless the class action order means that persons who received no notice are not barred by *res judicata.*

253. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as case 2005-CP-10-4913 through the 2006 class settlement. The identical case, re-filed in Dorchester County, was collusive, and was filed in Dorchester County only to avoid oversight by any Charleston judge and pursuant to the Defendants' agreed upon plan to shop for a particular Dorchester County judge.

254. As noted above, the claim that class representatives in Dorchester County met the definition of the class and could serve as adequate representatives were each false, and known by all Defendants to be false when made in any of the Dorchester County class complaints.

255. Patently false information about the procedural history of the class action was included by the Richter defendants in the Motion to Certify Classes and for Preliminary Approval of Class Settlement, and acquiesced in by other Defendants.

256. Patently false information has also been given to the Charleston County Court and to the public by the Diocese Defendants.

257. All Defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston class action.

258. By agreement of all Defendants, SCRCP 23 was not complied with in dismissing the Charleston class action. Plaintiff was given no notice of the dismissal, or about the Charleston class settlement, or about the settlement provided those who opted out of the class settlement.

Nor was notice of the Charleston county class action case dismissal given to any other ostensible class member.

259. False information was filed in Dorchester County about the class representatives and their adequacy as class representatives. All Defendants acquiesced in that false information to the court.

260. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese Defendants made no mention of the false information filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese Defendants getting the benefit they have claimed entitles the Diocese Defendants to *res judicata* protection of the class settlement, and was the means by which the Defendants conspired to try to eliminate claims by persons such as the Plaintiff from making any claim against the Diocese.

261. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among Defendants, false time records by the Richter defendants (including individual lawyers billing in a single day compilations of 30, 40, 51.5, 60, 80, and even 92 hours; and billings for multiple "February 30" days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

262. The Diocese Defendants agreed to remain silent as to these false statements, except where they overtly participated in them.

263. If the *res judicata* effect of the class action bars the Plaintiff from making claims against the Diocese Defendants, or the Plaintiff is barred from those claims by the charitable

immunity defense (otherwise waived as to persons in the class definition), or the Plaintiff is barred form those claims by the statute of limitations (waived as to persons in the class definition), or the Plaintiff's claims against the Diocese are barred for any other reason, then duties to him in the class action were breached by the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy of the Defendants.

Conspiracy Technique Seven: Obtaining no written order for absent class members who got no notice.

264. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was to include the Plaintiff in the class definition, claim on the record to have protected the Plaintiff, but then fail to follow up with seek a written order to secure representations made on the record to the shopped-for judge about relief supposedly available to absent members of the class members who got no notice. This cause of action assumes those failures by the Richter defendants were intentional, not merely professionally negligent, to protect the Diocese Defendants from future claims in exchange for class counsel's fixed fee.

265. By agreement of all defendants, the class definition did not exclude the Plaintiff.

266. Unless the order approving the class settlement means what it says and this Plaintiff is not bound by the *res judicata* effect of the class settlement, the Defendants have conspired so as to cause special damage to the Plaintiff.

267. The Richter defendants abandoned the Plaintiff as a putative member of the class in agreeing to change the notice requested from the shopped-for judge to provide no notice to the Plaintiff. Either the Plaintiff was a client of the Richter Defendants, or the law of South Carolina imposed on the Richter defendants a fiduciary duty to the Plaintiff when they chose to plead a class action which included him, and the Richter defendants assumed a duty to the

Plaintiff when it negotiated a class settlement which included the Plaintiff in the class definition negotiated with the Diocese Defendants.

268. The Richter Defendants originally proposed notice that might reach the Plaintiff.

269. All Defendants then agreed among themselves to modify that proposed notice and conspired together to submit for court approval by the shopped-for judge a proposed notice that was calculated to omit absent members of the class such as the Plaintiff, and all persons situated similarly to the Plaintiff.

270. Class counsel Defendant Haller, on behalf of the Richter Defendants, has admitted that all persons, such as the Plaintiff, who resided outside the zone of the limited notice given in the class action, did not receive Due Process in the class action. Referring to those persons such as the Plaintiff for whom no notice was given, class counsel Haller stated on April 12, 2013, "they never got their due process rights of notice and an opportunity to be heard."

271. Class counsel Haller was among the Richter Defendants who were obligated in the class action to protect the due process rights of the Plaintiff, among others.

272. Class counsel Haller's remarks acknowledge and admit that class counsel failed to protect the Due Process rights of the Plaintiff, among others, a breach of the standard of care.

273. It was the obligation of the Richter Defendants to assure that class members, such as the Plaintiff, received Due Process in the class action.

274. The Diocese has contended, and continues to contend, that the 2006 class settlement agreement bars the Plaintiff from being able to make any claim due to the *res judicata* effect of the class action, without having to compensate him for Hopwood's sexual abuse.

275. The Diocese has made the same contention as to other absent members of the class.

276. The Diocese defendants conspired with the Richter defendants in failing to submit for court approval by the shopped-for judge any order which provided relief or exclusion for absent members of the class who got no notice. This cause of action presumes that failure was calculated to prevent the Plaintiff, and all persons situated similarly to him, from having any recovery against the Diocese Defendants. Other causes of action presume that class counsel was simply professionally negligent, and was out-maneuvered by the Diocese Defendants.

277. No effort was made to protect absent members of the class, such as the Plaintiff, either by how the class was defined, by the notice given to the class, or by any order which embodied how persons who got no notice would be treated. Notice was known to be insufficient for the persons within the class definition, and the Defendants all claimed on the record to the shopped-for judge that relief would be provided, for the Plaintiff and others, who got no notice. Those representations were false, and were embodied in no written order.

278. If the Plaintiff is are barred from making claims against the Diocese by the *res judicata* effect of the class action, or by charitable immunity (which was waived as to those within the class definition), or by the statute of limitations (which was waived as to those within the class definition), or for any other reasons, then duties to the Plaintiff in the class action were breached by the civil conspiracy among the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy among the Defendants.

279. As an overt act taken in furtherance of the common plan among the Defendants to reduce the number of class claimants, the parties failed to embody in any order in the class action any protections for the Plaintiff, and others similarly situated. That failure has operated to eliminate claims by the Plaintiff, among others, by enabling the argument that all absent class members were barred by *res judicata.* The conduct by all Defendants demonstrate that

the representation of the class by class counsel was inadequate, but this cause of action presumes not just that class counsel was professionally negligent but consciously abandoned the Plaintiff so as to not jeopardize class counsel's fixed fee and so as to protect his own Diocese from the greater relief that even class counsel himself insisted on, in another case, from a Diocese other than his own.

280. The defendants conspired specifically to defeat the interests of persons such as the Plaintiff, to cause him special harm by giving him not even a chance at notice of the class action, or the ability to opt out, or the ability to protect his claims from the prohibitions of the class action.

281. The injury to the Plaintiff from the conspiracy engaged in by the Defendants harmed the Plaintiff in a manner different from other causes of action. The Plaintiff was improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the Plaintiff being unable to influence the corrupt course of the class action, and its corrupt features, because he was unable to participate in the class action or opt out of the class action. Plaintiff was deprived of the opportunity to influence the class suit, and to try to assist himself and other abuse victims from not being limited to the corrupted procedures and manipulations of the class suit. Among other things, the Plaintiff was unable to participate to influence the modest recoveries permitted in the class action, including the miniscule recovery allocated for parent and spousal claims because they were not brought for the class using the common law "loss of services" cause of action. The conduct of the Defendants was, by agreement, designed to limit recoveries of subsequent sexual abuse victims making claims against the Diocese Defendants.

282. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiff was damaged, and is entitled to actual and punitive damages from the Defendants as a result.

For a Fourth Cause of Action: Professional Negligence by the Richter Defendants

283. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese, and that the Richter defendants did not intentionally cooperate with the Diocese Defendants to exclude the Plaintiff but were merely professionally negligent in excluding the Plaintiff from relief.

284. The Richter Defendants claimed no prior experience in handling a class action.

285. The Richter Defendants had no prior experience in handling a class action.

286. The Richter Defendants were unaware, and have affirmatively denied, that South Carolina law imposes fiduciary duties to absent members of a class on any lawyer who files a complaint which alleges a class. South Carolina law imposes such a duty, about which the Richter defendants were unaware.

287. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a copy of an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants. The original of this affidavit has been filed with a court in another, similar, case.

288. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, the proposed group whose claims were settled on June 14, 2006, in the Charleston class action mediation was a class specified as "spousal &/or parent claims deriving from victims abused."

289. Plaintiff was a putative member of that class as it was defined in the proposed settlement.

290. When the 2006 class settlement agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese Defendants, the illicit agreement by Defendants on "judge shopping" had been accomplished, and the 2006 class settlement arrived at in the mediation of Charleston cases was now claimed to be a proposed settlement of all prior cases, both the Charleston cases listed in the 2006 class settlement and the Dorchester County class actions.

291. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the Plaintiff.

292. The Richter defendants assumed a duty to the Plaintiff in each of the filings in (a) the Charleston case which alleged a class action, (b) in that June 14, 2006 class settlement agreement of the Charleston case which alleged a class action, and (c) in its October 6, 2006 Dorchester County filings alleging a class action defined so as to include the Plaintiff.

293. The October 2006 Motion by class counsel was styled, "Motion to Certify Classes and For Preliminary Approval of Class Settlement." That motion proposed nationwide notice of the class settlement.

294. The January, 2007 Motion by class counsel was also styled, "Motion to Certify Classes and For Preliminary Approval of Class Settlement." That revised motion removed the

proposed nationwide notice of the class settlement that had been made in the motion of October, 2006.

295. On the record before the shopped-for judge in Dorchester County, at a hearing held July 13, 2007, the Diocese Defendants agreed that relief would be provided for absent members of the class who got no notice of the class settlement. Those representations were false, but this cause of action presumes the Richter Defendants were not intentionally falsifying that representation but were professionally negligent in failing to seek a written order to secure the representations made on the record.

296. On January 19, 2007, the proposed class definitions that included persons such as the Plaintiff, who lived outside of South Carolina, with notice proposed to be given only in a geographically limited area, none of which would be given in the state in which the Plaintiff resided, was approved without objection from the Diocese Defendants.

297. In their Charleston and Dorchester County class action cases against the Diocese Defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the Plaintiff, and by operation of South Carolina law fiduciary obligations to the Plaintiff were imposed on the Richter Defendants. The Richter Defendants breached those obligations to the Plaintiff. In abandoning the Plaintiff, the Richter defendants performed in a professionally negligent manner the duty they had assumed, and the duties which South Carolina law imposed, to absent putative class members such as the Plaintiff.

298. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they abandoned the Plaintiff and acted so as to harm his interest, they failed to provide competent representation, failed to act

with reasonable promptness and diligence, failed to keep the Plaintiff reasonably informed, failed to provide him with information with respect to obtaining his informed consent, failed to consult with him about the means for accomplishing his objectives, represented him without his consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal, as set forth in the affidavit of Michael Virzi.

299. No provision of any type, at any point, was made in the orders of the shopped-for judge overseeing the class action to protect absent putative class members who in 2006 had no recollection of their childhood sexual abuse.

300. The Richter Defendants abandoned their absent putative class member clients, such as the Plaintiff, by failing to secure in a written order the provisions which supposedly gave the Plaintiff mild protection in the form of the modest recovery of the class action.

301. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the Court, by failing to secure in any written order protection for the Plaintiff's interest, by failing to give notice reasonably calculated to reach the Plaintiff.

302. The Plaintiff was abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action or after the class action and jeopardize the fixed fee the Richter Defendants had negotiated for themselves, at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

303. Having "too many" claimants also was believed to not be in the interest of the Diocese Defendants, and because of class counsel's conflicts of interest, which were not

disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese Defendants more than the interests of putative class members such as the Plaintiff.

304. As a result of his attorneys, the Richter defendants, abandoning the Plaintiff, he had no opportunity to participate in the class action, or to opt-out of the class and pursue either the more favorable terms available to those other persons who opted out or pursue his claim independently. The acts and omissions of the Richter defendants have caused damage to the Plaintiff, assuming the Plaintiff is prevented from his claims against the Diocese for any reason. A barrier was created to the Plaintiff's claims that would not have existed but for the negligent conduct of the Richter defendants.

305. Plaintiff is entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

For a Fifth Cause of Action:
Breach of Fiduciary Duty by the Richter Defendants

306. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese, and the Richter Defendants did not intentionally exclude the Plaintiff but were merely professionally negligent in excluding the Plaintiff from having a preserved claim.

307. The Richter defendants agreed to define the classes in the class actions so as to have no geographical limit on the classes.

308. All Defendants agreed on how the classes were defined.

309. In choosing to define the classes so as to include the Plaintiff, the Richter defendants each assumed, and South Carolina law imposed, fiduciary obligations from the Richter Defendants to the Plaintiff, who was an absent putative member of one of the classes they defined.

310. As an alternative to the Fourth Cause of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to the Plaintiff as an absent member of their respective putative class.

311. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiff by:

a. failing to give him notice of the 2006 class settlement,

b. failing to secure for him even the modest relief of the class action,

c. failing to preserve his ability to make his claim independent of the modest relief obtained by the Richter defendants for sexual abuse victims, and

d. agreeing to a structure which worked to significantly depress the value of claims against the Diocese Defendants, to which class counsel had extensive loyalties and entanglements which were not disclosed to the class.

312. The state court judge overseeing the class action was shopped-for by all Defendants.

313. The state court judge was not asked to preserve in any written order any rights for absent members of the class who got no notice of the 2006 class settlement.

314. The Richter Defendants assumed the duty to protect the Plaintiff but then failed to do so. The Richter defendants were negligent in failing to do so, and were out maneuvered by the Diocese Defendants, who had made representations on the record but then succeeded in keeping those representations from being embodied in any court order.

315. Once the Richter Defendants were paid their court-approved fee, they were ineffectual in securing the rights of the Plaintiff to preserve his ability to make a claim.

316. The Richter defendants in its 2005 Charleston class action filing, and in the 2006 class settlement agreement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the Plaintiff, and those duties were imposed by South Carolina law upon the Richter Defendants.

317. On January 19, 2007, the class definitions that included the Plaintiff was approved without objection from the Diocese defendants.

318. The Richter defendants contend that they had no obligations to absent class members, indicating conclusively their lack of understanding of the obligations undertaken by class counsel and imposed on class counsel by South Carolina law.

319. The Richter defendants each breached their fiduciary duties to the Plaintiff, and as a result, the Plaintiff has been refused any compensation by the Diocese Defendants, who have used the 2006 class settlement as a shield. The Richter defendants were negligent in failing to protect the Plaintiff's interest.

320. Having "too many" claimants also was believed by the Richter defendants to not be in the interest of the Diocese Defendants, and to protect their own interest in their fixed fee the Richter defendants had to also act to protect the interests of the Diocese more than the interests of the Plaintiff. The Richter defendants have close and longstanding ties and involvement with the Diocese Defendants. Those involvements were never disclosed to the class, or to the Plaintiff. To promote the interests of the Diocese Defendants in trying to later enable the Diocese defendants to argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the

Plaintiff their own interest in their fixed fee, the Richter defendants failed to secure in any written orders any protections for absent members of the class such as the Plaintiff, even though the class compensation was among the lowest-known compensation for sexual abuse victims.

321. As a result of the Richter defendants abandoning the interests of the Plaintiff, and breaching the fiduciary duties the Richter defendants owed to him, the Plaintiff has been damaged by having his claims against the Diocese Defendants interfered with, and a barrier created to those claims that would not have existed but for the negligent conduct of the Richter Defendants.

322. Plaintiff is entitled to actual and punitive damages as a result of the fiduciary duties to them that were breached by the Richter defendants.

For a Sixth Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty by Diocese Defendants

323. Allegations above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiff is unable, for any reason, to make his claim for childhood sexual abuse against the Diocese.

324. The Diocese Defendants aided and abetted the breach of fiduciary duty by the Richter defendants.

325. In pleading a class action the Richter defendants assumed, and South Carolina law imposed, a fiduciary duty to the Plaintiff of which the Diocese was aware.

326. In the conduct to "shop for' the Dorchester County judge, to define the class, and to limit notice, as alleged above, the Diocese Defendants participated with the Richter defendants in limiting the ability of the Plaintiff to make his claim against the Diocese for childhood sexual abuse.

327. The Diocese Defendants joined with the Richter defendants in making representations on the record to the shopped-for judge that supposedly protected the interest of the Plaintiff into either his being able to bring his claim at a later time or in being able to participate, at minimum, in the intentionally depressed recovery available to class members in the 2006 class settlement. The Defendants then failed to secure those representations in any written order, enabling the Diocese Defendants to deny the representations, and act as if those representations had never been made.

328. The Diocese Defendants knowingly participated in the breach of the fiduciary duty owed to the Plaintiff by the Richter defendants.

329. The Plaintiff has been damaged by the aiding and abetting by the Diocese Defendants and is entitled to actual and punitive damages as a result.

For a Seventh Cause of Action
Unfair and Deceptive Trade Practices by the Richter Defendants

330. Allegations of paragraphs above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiff is precluded, for any reason, from maintaining his claims against the Diocese Defendants.

331. The Richter Defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

332. In practicing law in Charleston County the Richter Defendants each engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Richter Defendants advertised and offered for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina and other states. In electing to bring a class action complaint for sexual abuse victims of the agents and employees of the Diocese Defendants, and the parents and spouses of those victims, the Richter Defendants specifically offered a service to the

people of South Carolina, and other states, and purported to alter the legal rights of the public as to that sexual abuse, including the Plaintiff's rights.

333. In making that invitation, the Richter Defendants assumed the duty to ensure that its offer of services did not disadvantage the Plaintiff, and assumed the duty that its services would be free of unfair and deceptive trade practices.

334. In 2006 the Richter Defendants entered into a class settlement agreement with the Diocese for victims of sexual abuse by agents and employees of the Diocese Defendants. The 2006 class settlement was ostensibly to address the known history of priests and other employees who sexually abused minors, but as effectuated by the Richter Defendants, the primary purpose of that class action was to enrich the Richter Defendants at the expense of sexual abuse victims and, through unfair and deceptive trade practices, to protect not his clients but the Diocese Defendants from future claims for sexual abuse by absent class members.

335. Unfair and deceptive trade practices were pursued in furtherance of the class action, as alleged above, including false representations to the court, violations of professional standards, judge-shopping, collusive conduct, abuse of court rules and procedures, and actions which violate professional standards, as pleaded with specificity above.

336. The public interest was affected by the 2006 class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved by the court predicated on false representations made to the unwitting Court about how the person such as the Plaintiff who got no notice would be accommodated.

337. Among the false statements made at the time by the Defendants was Bishop Baker's public statement that the proposed class resolution was "for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades." At the time that claim was made, all Defendants were aware that the 2006 class settlement proposed relief about which only persons in and around South Carolina were to be informed, and that no provision had been made for persons, such as the Plaintiff, who resided out of state. In its public statements, acquiesced in by the Richter defendants, the Diocese Defendants overtly misrepresented the reach of the proposed 2006 class settlement. No party disclosed that in fact the 2006 class settlement agreement was designed, as its first priority, to obtain a fee for class counsel, with all relief to clients secondary to that fee, and that the 2006 class settlement agreement was designed so as to omit and preclude relief to many persons who had been sexually abused, and was designed to provide among the worst recoveries for sexual abuse victims in any case nationwide, and was designed by class counsel to protect the Diocese Defendants from future claims.

338. A circuit court judge to oversee and approve the class settlement was "shopped for" and selected by the Richter Defendants, with collaboration of the Diocese defendants. The Richter defendants did not want any Charleston County judge to preside over the 2006 class settlement agreement, out of concern that the judge might be fully independent.

339. The Diocese Defendants were negligent in assessing the damage done by sexual abuse by their employees and the number of persons affected by that abuse. Alternatively, the Diocese Defendants knew the number of victims would far exceed the numbers it reported to the court as its expectations for number of victims, and consciously misrepresented that number to the court and to the public.

340. The Diocese Defendants were aware that the Richter Defendants were willing to recover only modest relief for victims in exchange for a substantial fixed fee that took priority over the recoveries to the victims.

341. The Richter Defendants had extensive and life-long ties to the Diocese Defendants, and was known to the Diocese Defendants to be willing to compromise the interests of the absent class members, including the Plaintiff, in exchange for a fixed fee payment.

342. With the cooperation of the Diocese Defendants, the Richter Defendants conceived of a plan to commit a fraud on the Court and the public by representing to the Court and the public, falsely, a rationale upon which the Court could approve a class settlement defined with no geographic limits, while giving only geographically limited notice to the class and in affirmatively misrepresenting to the Court the relief which would be available to persons such as the Plaintiff, who got no notice. As long as their fee was paid, and paid first, before any class member had received notice and before any class member had made a claim, the Richter Defendants were expected to by the Diocese defendants, and were in fact willing, to abandon the interests of absent class members and instead to accommodate the interest of the Diocese Defendants at the expense of the absent members of the class the Richter Defendants represented.

343. All Defendants collaborated to submit false information to the unwitting shopped-for Dorchester County trial court, and no Defendant objected when any of the false information was submitted by any of them or by their experts. Part of the collaborative agreement among the Defendants was to remain silent while false information was submitted.

344. To gain court approval of the class settlement from the shopped-for judge without disclosing his actual intention to compromise the interest of the absent class members such as

the Plaintiff, the Richter Defendants made overtly false representations of fact to the court. 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 notice procedure. That "understanding" communicated to the Court was never placed in any written order by the shopped-for judge and no such "understanding" exists that the Diocese Defendants agree to. Nor is there any way to enforce the claimed "understanding" because it is not embodied in any order.

345. It was falsely represented to the shopped-for judge overseeing the 2006 class settlement that if "someone pops back up who should have gotten notice who didn't get notice," the Diocese represented, with the Richter defendants:

> 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.

346. That representation by the Diocese Defendants to the Court appears on page 3 of a transcript dated July 13, 2007. The representation was either false when made, and known to have been false when made, or it was at that time true but is contained in no written orders of the court, so is unenforceable. The Richter defendants, who were acting in the interests of the Diocese Defendants rather than the Plaintiff, intended the representation to be unenforceable or would have secured the representation by an order. The representation was made in a hearing in the class action proceedings for which no notice had been given to any of the other parties who were known by their prior appearances to be interested in the class proceeding. Only in

2009 was the transcript disclosed in the course of other litigation over the collusive class action proceedings.

347. In that same transcript of July 13, 2007, the Diocese Defendants represented to the Court, falsely, that there were 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 the Richter Defendants. In fact, the Richter Defendants were aware, and had alleged, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves. It was also known that other parents and spouses had not been located.

348. To get approval that protected the Diocese from, among other things, the Plaintiff's parent's claim, the Defendants falsely represented to the Court, on page 14 of the same transcript, that when an absent class member did not get notice, and later identified himself or herself, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

349. The Richter defendants, on pages 16 - 17 of that same transcript, summarized to the shopped-for judge, falsely, that the supposed position of the Diocese as "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 Defendants, but were entirely false. When the Plaintiff and his child communicated with the Diocese, the Plaintiff's request for compensation was rejected, as the Richter Defendants knew or should have known in 2007 would occur after the class action was concluded, which is among the reasons why the Richter

Defendants submitted to the shopped-for judge who oversaw the 2006 class settlement no written orders to embody the "understanding."

350. Nor did the Richter Defendants disclose that the representations were false when the shopped-for judge observed, as to the Diocese, 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."

351. The Richter Defendants intended on July 13, 2007, to create the false impression with the Court that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend relief to that victim. In making the false representation that they made no effort to embody in any court order, the Richter Defendants were operating not in the interest of the Plaintiff and other absent members of the class, but in the interest of the Diocese Defendants. The Richter Defendants intended that the shopped-for judge would rely on the statement, and the court did rely on the statement. However, the court did not embody the understanding in its order, and the Diocese Defendants refuse to comply with the "understanding." That representation by the Richter defendants was false when made, and was known to have been false when made.

352. As to this Plaintiff, the Defendants concealed until 2012 the falsity of the representations to the shopped-for judge. The true position of the Diocese has been, starting in 2009, but known to the Plaintiff only in 2012, to deprive other sexual abuse victims of any relief, using the class action suit as the rationale for doing so. That fraudulent concealment by the Diocese became known to the Plaintiff only in 2012.

353. The shopped-for judge who oversaw the 2006 class settlement relied on the statements by the Richter Defendants, and silence by the Diocese, to extend in the court's order of July 30, 2007 approving the class settlement, at page four, this statement:

> 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.

Emphasis added. While one might expect that the order's language would reflect the conduct of the Diocese Defendants or what a court would enforce, in fact the shopped-for judge reflected only what the Diocese has "stated," which has proven to date to be an unenforceable order, as the Richter Defendants intended in 2007.

354. Along with the Richter Defendants, the Diocese Defendants intended that the shopped-for judge overseeing the 2006 class settlement would rely on their collective statements, silences, and conduct to form the impression recorded in the court's 2007 order, even though the impression was false and neither the Richter Defendants nor the Diocese Defendants had any intention, in 2007 or since, of honoring the assurances given to the shopped-for judge overseeing the 2006 class settlement.

355. When this Plaintiff in 2012 informed the Diocese of Hopwood's abuse of his child, the Diocese (as the Richter defendants intended in 2007), refused to honor the assurances given to the trial court by the Richter Defendants, and which the Court noted in its July 30, 2007 order at page 4 without actually ordering. Instead, the Diocese asserted the defenses it had waived for class members, claimed as to this Plaintiff the *res judicata* effect of the class action which the Diocese Defendants had disclaimed, and acted exactly contrary to the assurances to

the Court by the Richter Defendants, and contrary to the public statement by then Bishop Robert Baker in January, 2007, that the Diocese intended a just resolution for every person who had been abused within the Diocese of Charleston.

356. The false statements by the Richter Defendants, and the irregular conduct in the course of the class action by the Richter Defendants, and the Richter Defendants acting in the interest of the Diocese Defendants rather than in the interests of the absent members of the class, constitute unfair and deceptive trade practices which have damaged the Plaintiff.

357. The Richter Defendants made their false representations to the shopped-for judge overseeing the 2006 class settlement for the purpose of gaining that unwitting court's approval of a class settlement with only limited notice to the class and with no protections for absent members of the class. When the 2007 order mentioned the "understanding" but appeared not to have ordered it, the Richter Defendants did nothing to seek modification of the order.

358. The Richter Defendants committed fraud on the Court, on the public, on this Plaintiff, and on all sexual abuse victims of the Diocese Defendants who were born before August 30, 1980, and their parents and spouses, the definitions used in the 2006 class settlement, who were given no notice of the class action, and whose relief was limited by the class action. In doing so the Richter Defendants also engaged in unfair and deceptive acts and practices in violation of South Carolina law, which have disadvantaged the Plaintiff. In doing so the Richter Defendants were acting in the interests of the Diocese Defendants, not in the interests of the absent Plaintiff whose interests they purported to represent.

359. All of the conduct by the Richter Defendants, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the 2007 representations made to the Court by

the Richter Defendants and acquiesced in by the Diocese Defendants. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action, have since been refused relief by the Diocese when they made a claim for relief.

360. The disregard by the Richter Defendants for absent members of the class, the misconduct throughout the class action, and the disingenuous representations by the Richter Defendants to the unwitting judge who had been hand-picked by the Defendants to oversee the 2006 class settlement agreement are unfair and deceptive acts or practices that affected the relief awarded in the class action, and affected the Plaintiff by disabling his claim against the Diocese for his childhood sexual abuse.

361. The conduct by the Richter defendants is part of an intentional effort to mislead the Court, and to act against the interests of the absent members of the class and instead to act in the interest of the Diocese Defendants, with whom the Richter Defendants are entwined.

362. The Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Richter Defendants. Specifically, the Plaintiff was unable to obtain the relief promised by the Richter Defendants, was unable to preserve his claim after he was abandoned by the Richter Defendants, and due to the misconduct of the Richter Defendants, to date has been unable to maintain his claim against the Diocese. As a result the Plaintiff is entitled to recover actual damages, trebled as provided by law, for the unfair and deceptive trade practices of the Richter Defendants, with costs and disbursements and attorneys fees as provided by statute.

363. The secretive and disingenuous conduct by the Richter Defendants, and the misconduct displayed during the class action, is offensive to public policy, is immoral, unethical, and oppressive. The Richter Defendants made a calculated business decision to

advance ahead of their class member clients' interests, and ahead of the interests of the absent members of the class, first the Richter Defendants' own financial interests, then the interests of the Diocese Defendants.

364. The Richter Defendants collaborated with the Diocese Defendants to design a compensation program for sexual abuse victims which specifically, and intentionally, excluded many victims, reduced the financial recovery for victims, depressed the financial recovery for other victims, and cut off the ability of absent members of the class to make claims. Each of those goals by the Richter Defendants was illicit, and was an unfair and deceptive trade practice for an action which purported to bring a benefit to a class. For those reasons the Richter Defendants collaborated with the Diocese Defendants to "shop" for an unwitting hand-picked Dorchester County judge to oversee the 2006 class settlement so as to avoid independent scrutiny of the 2006 class settlement that a Charleston County judge would impose. The Richter Defendants engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the Plaintiff.

365. The Richter Defendants took no appeal from the July 30, 2007 order, and sought no modification of that order, or for any subsequent order of the unwitting shopped-for judge who oversaw the 2006 class settlement.

366. The Richter Defendants are bound by the July 30, 2007 order in the class action, and by the representations made to the court to obtain that order. Those terms abandon the absent class members such as the Plaintiff.

367. As intended by the Richter Defendants in 2007 as the *quid pro quo* for their fee, when the Diocese was contacted in 2012 by the Plaintiff, who had received no notice of the class action, the Diocese refused him relief and asserted against victims who did not get notice, exactly as the Richter defendants had assured the shopped-for judge they would not, the *res judicata* effect of the class settlement, as well as the defenses it had waived on the record for persons within the class definition. As was known by the Richter Defendants in 2007 both at the time of the July 13, 2007 hearing, and subsequently, in a hearing held August 9, 2007 (for which other persons who had appeared in the class action also did not receive notice) when starting at p. 57 of the transcript the Diocese asked for clarification, the Diocese Defendants had no intention of including other victims (or their parents or spouses) who "for whatever reason" received no notice, and would undertake no relief for victims the Diocese Defendants were not compelled to undertake.

368. The Richter Defendants intended the collusive class action to terminate liability by the Diocese for abuse victims, their spouses and their parents, to limit overall compensation paid to abuse victims, spouses and parents, and to do so at a fraction of the recovery a truly adversarial counsel might have demanded. The Richter Defendants acted in the interest of themselves and the Diocese, ahead of its ostensible clients, such as the Plaintiff.

369. The unfair and deceptive acts and practices of the Richter Defendants have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese Defendants have repeatedly refused relief (as intended by the Richter Defendants) for multiple persons who have come forward having not gotten notice of the collusive 2006 class settlement. The practices engaged in by the Richter Defendants, violating professional standards and court rules, violating legal ethics,

making misrepresentations to the court, and (in collaboration with the Diocese Defendants) making misrepresentations to the public were all done to advance the Richter Defendants' own interests.

370. The Richter Defendants calculated that their personal and professional connections to the unwitting shopped-for judge would permit false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, the Richter Defendants were correct, as even after evidence of the false practices were laid before the shopped-for judge no inquiry was made, and no post-award fairness hearing was held.

371. The Plaintiff is neither politically connected nor a personal friend of any powerful person, and has no choice but to rely on the theoretical interest that a judge is supposed to have as to misrepresentations to the court, and on the prohibitions of the Unfair Trade Practices Act.

372. The false and deceptive practices of the Richter Defendants will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Richter Defendants in compromising the interests of absent members of the class they purported to represent has been actually repeated, as well as has the potential for repetition, in the form of the sexual abuse victims who got no notice of the 2006 class settlement and who have requested, and been denied, relief, as the Richter Defendants intended and enabled the Diocese Defendants to do.

373. The Richter Defendants should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to the conduct of the Charleston or

Dorchester County cases in which any of the Diocese Defendants were supposedly adverse parties.

374. The 2006 collusive class settlement was achieved without a single motion having been argued, and without a single court ruling on any aspect of any of the Charleston cases then pending at the time of the 2006 class settlement. The parties had successfully sought to have the Charleston court continue each hearing the Charleston court proposed to engage on the supposed issues of the case. That settlement was collusive, and placed the interests of the Richter Defendants ahead of the interests of those who became class members and ahead of absent members of the class.

375. The Richter Defendants violated the UTPA willfully, in that each of them knew or should have known that their conduct was a violation of S.C. Code § 39-5-20, and they purported to obtain relief for the Plaintiff that in fact they did not obtain in any written order.

376. The Plaintiff has suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Richter Defendants. The Plaintiff ought to have been entitled to either (a) the relief the Richter defendants maintained, falsely, to the court in 2007 would be available to the Plaintiff, or (b) should be able to maintain his own action against the Diocese Defendants. The Plaintiff's relief should not be restricted to the low maximum amount the Richter Defendants used to protect the Diocese. Conduct by the Richter Defendants was willful, and each of the Richter Defendants knew, or should have known, that his conduct was unfair and deceptive.

377. The plaintiff is entitled to treble damages as a result of the conduct of the Richter Defendants in the conduct of the 2006 class settlement which affected the Plaintiff's interests,

as well as to actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

Demand for Jury Trial

378. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

379. Actual damages to be awarded to the Plaintiff by the finder of fact against the various defendants, trebled as authorized by law for the appropriate cause of action,

380. Costs and disbursements of this action,

381. Attorneys fees as authorized by law,

382. Punitive damages as authorized by law, and for

383. Injunctive relief to enjoin the Diocese Defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," for a proper compensation of an abuse victim or his parent or spouse, and for

384. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

Gregg Meyers

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Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON John Doe #66 v. The bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity CASE NO.: 2005-CP-10-2053 John Doe #66A v. The bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity CASE NO.: 2005-CP-10-3293 John Doe #53 v. The bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity CASE NO.: 2005-CP-10-4913	IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT **Settlement Agreement** See Terms attached on EXH. #1

In a mediation conducted on this ________ day of __________________, 2006, the above named parties agreed to the following terms:

1. ______________________________ shall pay to ______________________ $____________;
2. Plaintiff/Respondent will execute a general release dismissing all claims on account of the matters raised in the above captioned lawsuit;
3. Plaintiff/ Respondent will cooperate in having a dismissal with prejudice entered by the court; and
4. The parties shall split the mediation fees ______________________________________.

______________________________	______________________________
By: ____________________________ (Print Name)	By: ____________________________ (Print Name)
Its: ____________________________	Its: ____________________________
Dated: ________________	Dated: ________________

EXHIBIT " 4 "

Attachment A - 000001

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create settlement class, subject to Court approval of:

   (a) ACTUAL VICTIMS OF DIOSECE ABUSE

   (b) SPOUSAL +/or Parent claims deriving from victims abused

2. Class settlement FUND will be for $12,000,000 FUNDED AS FOLLOWS:

   (a) $5,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with $7,000,000 limits once the $5,000,000 Letter of Credit has been drawn down to $1,000,000.

3. DETAILS of claims process in settlement class action shall be developed + include a payment matrix based on nature + severity of claims.

4. Court shall be asked to approve attorneys' fees for class counsel at between $950,000 + $2.5 million, subject to Defendants' obtaining credit to secure the obligation.

5. Mr. T Redacted * shall be paid ________

Mr. S Redacted * shall be paid ________

Mr. N Redacted * shall be paid ________

Mr. M Redacted * shall be paid ________

* COLLECTIVELY paid $460,000 to be divided among the 4 gentlemen above after accepted as agreed to.

6. If the Court fails to approve settlement class +/or provision of class settlement, the compromise settlement with the individuals in "5." above shall not be effected + shall proceed to settlement in the amounts set out in "5." above with appropriate general releases +/or dismissals with prejudice executed in favor of defendants.

~~7. Class of action [illegible]~~

Attachment A - 000003

5

7. These terms are in the form of an offer by Defendants & shall be acted upon with reasonable promptness by Plaintiffs/Claimants named in "5." above.

James Dooley, Attorney

ON BEHALF OF DEFENDANTS

Attorney for and with authority of the Diocese of Charleston.

June 14, 2006

Attachment A - 000004

Attachment A - 000004

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

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 the plaintiff, Jane Doe 12, (hereinafter "Plaintiff") to support her Complaint against defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Defendants") 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 focuses exclusively on matters of legal malpractice and legal ethics;

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

C. I have authored three published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;

D. I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice and ethics, and I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and

E. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

Attachment B - 000001

My opinion is based on review of the following documents:

A. Complaint captioned Jane Doe 12 v. The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin; former Administrator

MJV

Attachment B - 000001

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, Case No. 12-CP-10-_____ (blank line in original);

B. 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;

C. 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;

D. 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;

E. 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;

F. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-____ (blank line in original);

Attachment B - 000002

G. 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;

H. 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;

I. 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;

J. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

K. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

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L. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636, and exhibits attached thereto including:

i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;

ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;

iii. Affidavit of Angela Pittard, with attached timesheets;

iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

M. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

N. Transcript of July 13, 2007, hearing before Judge Goodstein.

O. Order Approving Settlement, dated July 30, 2007, and filed July 30, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636

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

4. Based on my experience, education, training, knowledge of the standard of care for lawyers, and on my review of the above-listed documents, it is my opinion that Defendants engaged in negligent acts and omissions in their representation of the Plaintiff including the following:

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5. It appears from the above-referenced documents that Defendants represented a class of persons of which Plaintiff was a member. Whether an unnamed class member becomes a client upon the filing of a class action or upon certification of the class is a much-debated issue; however, class certification is generally regarded as creating an attorney-client relationship if one did not already exist. Furthermore, prior to class certification, class counsel owes fiduciary duties to unnamed class members upon the filing of a class action, regardless of whether breach of those duties is regarded as malpractice or professional negligence. Defendants owed to Plaintiff and other unknown class members the same duties surrounding the allegations in this case that they owed to the named plaintiffs in the class action. Those duties included competent, diligent, and loyal pursuit of Plaintiff's interests in the litigation against the Diocese and related defendants, and reasonable communication starting with notice by publication.

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6. It appears Defendants failed to protect Plaintiff's interest in the class action in several ways. Statements by Richter at the July 13, 2007, hearing indicated that any class member that did not receive notice (a group that includes Plaintiff) 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 are entitled to notice but did not receive it, such as Plaintiff. 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

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group of class members, like Plaintiff, 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, Defendants failed to protect the interests of the broader group, of which Plaintiff is a member, either by not addressing their rights at the hearing or by addressing them at the hearing but making no effort to secure their rights in a final order. Defendants then acted directly adverse to Plaintiff and this group when Defendant Haller filed a motion in 2012 to enforce the class-action settlement, purportedly on behalf of Plaintiff and others whom Haller knew to be represented by other counsel. Haller took a position in the motion that is adverse to Plaintiff and others outside the notice zone and advantageous to Defendants.

6. It appears that Defendants engaged in additional acts and omissions that were both disadvantageous to Plaintiff and advantageous to Defendants themselves, including consenting to the dismissal of the Charleston County cases without client consent in furtherance of Defendants' efforts to obtain a favorable order regarding their fees, which fees themselves were unethical in several ways, including that they sought and received a fixed fee simultaneously with a common-fund recovery pool available to claimants, and that they were based on blatantly false attorney time records. Defendants also reduced the extent of notice to class members to the exclusion of nearly the entire country outside of South Carolina, despite identifying (and ultimately obtaining certification of) a nationwide class, and authorized the claims arbitrator to adjust awards so that the total claims would not exceed the remainder of the pool after payment of Defendants' $2.5 million fee. Because a significant increase in the number of claimants responding to notice could jeopardize Defendants' fees, this reduction in notice favored Defendants' own interests to the detriment of all class members, but particularly Plaintiff

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and other class members outside the notice zone of South Carolina and neighboring cities. Defendants thus not only favored their own interests above their clients', including Plaintiff's, but also provided the Diocese with an argument in its defense against subsequent claims by class members outside the notice zone, including Plaintiff, sacrificing their clients' rights in favor of the opposing party. Defendants also agreed to reduce their clients' recovery but not their own fees, if the claims exceeded the pool, and agree to possibly reducing the claimants' pool by $100,000, which would be contributed toward a settlement between the Diocese and several opted-out class members, all to the detriment of the class members including Plaintiff, and to the financial benefit of Defendants themselves. Haller's 2012 motion to enforce the settlement now attempts to force Plaintiff and other class members outside the notice zone to be bound by the bad deal Defendants struck on their behalf in 2007.

7. It further appears that Defendants engaged in a broad scheme to generally obtain results favorable to the Diocese, with whom Defendant Richter had a life-long affiliation and for whom Richter continued to perform official services during the pendency of the class action, without the knowledge or consent of his clients. The scheme appears to have included:

A. forum shopping, requiring Defendants to consent to the dismissal of the Charleston County cases, which they did without the knowledge or consent of their clients and to the detriment of their clients, including Plaintiff;

B. misrepresenting to the Dorchester County court that the action had not been settled when it had, in order to obtain a favorable forum and complex case designation; and

C. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review, and further sacrificing clients'

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opportunity for post-claim review by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal, or suit and that, by participating in the claims process, claimants expressly waive the right to appeal.

8. It further appears that Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-class-representative clients, including agreeing to subject some clients to a damages matrix and claim scrutiny to which class representatives were not subjected, settling the claims of the class representatives prior to class certification and court approval of the class settlement, and expressly agreeing to settlement terms for the class representatives regardless of court approval of the class settlement.

9. It further appears that the amount of Defendants' fee was improper and unreasonable in amount, timing, and source. The payment structure favored Defendants' own interest above those of their clients, including Plaintiff. Defendants' fee petition, affidavits and billing records overstate work performed and misrepresent the nature of the case. Defendants describe the case as hotly contested and aggressive, and the defense formidable and substantial, depicting a time-intensive case requiring the highest skills of the most competent counsel; yet the documents indicate contrary circumstances: little discovery (some paper requests from class counsel but no evidence of responses received nor of requests received from opposing counsel), no depositions, few motions, and after mediation no client disputes, few hearings, and no animosity or contention except on the issue of Defendants' collection of their fee. Defendants' billing records show 3385.5 total hours spent by lawyers and staff at Richter & Haller; however

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many of the time entries are clearly false in that they are nonsensical and/or impossible, including:

A. each and every entry on all 68 pages of billing records is a round, even-hour increment or an entry of ".5" hours;

B. countless round-number or .5-hour time entries at "12:00:00 AM"—including multiple tasks by the same person at the same time—while other entries indicate exact times;

C. a 10-hour time entry for "Oversight and Review" by "LER" on the 30th day of each month for 3 and a half years, including the same 10-hour time entry for "Oversight and Review" by "LER" just nine days after the first activity in the case in July 2003;

D. a 2-hour time entry for "Bookkeeping" on the 30th day of each month;

E. a 3-hour time entry for "Photocopying / Monthly" at irregular intervals but always exactly 3 hours, including one such entry when no other work had been performed in the previous month;

F. three 5-hour time entries (one each for "DKH," "LER," and "Clerk") for "Legal Research" on the 30th day of each month, including January 30, 2007, within 2 days of the end of the case (and after which no further time is recorded except 7 hours of faxing by "Staff" and 14 hours of emailing by "DKH" & "LER" over the next 2 days);

G. time entries on days that do not exist: February 30, 2004, and February 30, 2005;

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H. a 16-month period, from September 2003 through December 2004, when only 5.5 hours of specific work is entered, yet 426 hours is entered in the same repeated, identical, rote entries of "Oversight and Review," "Bookkeeping," "Legal Research," and "Photocopying / Monthly" described hereinabove;

I. 3 .5-hour time entries for drafting 3 Certificates of Service at the same time on the same day (this set of entries occurs multiple times);

J. 12 *consecutive* 1-hour time entries by "LER" for work on 12 different documents, all at specific times beginning at "07:38:38 AM" on "10/26/06" but extending consecutively over a period of approximately 1 hour and 49 minutes ending at "09:27:30 AM," with many 1-hour entries within less than a minute of each other;

K. numerous sets of entries similar to the 12 described in the immediately preceding subparagraph (J), such as 3 consecutive 1-hour time entries by "LER" for work on 2 documents, all at specific times beginning at "03:54:19 PM" but extending consecutively over a period of 1 minute and 13 seconds;

L. entries of exactly 20 hours for drafting each discovery document;

M. multiple instances of more than one 20-hour time entry for the same person ("DKH") on the same day;

N. 27.5 hours (in 55 increments of .5 each, all at "12:00:00 AM") in one day by "DKH" for emailing to "David K. Haller";

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O. 60 hours (10 by "LER" and 50 by "DKH") for amending complaints that ultimately contained very little amendment, including one which apparently changed only the county in the caption and the date at the end;

P. multiple instances of one person ("DKH" in some instances, "LER" in others) of billing more than 24 hours in a day;

Q. 568.5 hours of entries appended to the end of the (otherwise chronological) timesheets, for dates ranging from 2004 through 2007, 500 hours of which is in whole multiples of 10 and expressed in date ranges rather than in dates and times, including 3 130-hour single entries by "DKH" for one- and two-week time periods in June and October 2006; and

R. one of the above-referenced 130-hour single entries by "DKH" for the eight-day time period of October 4-11, 2006, during which period "DKH" had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

Defendants stated to the court that the above entries were "by far conservative" estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus Defendants appear to have made false statements to a tribunal in support of a fixed fee that was unreasonable and put Defendants in a position potentially adverse to their own clients, including Plaintiff, without taking appropriate steps to deal with the conflict of interests created thereby.

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7. As a result, it is my opinion that Defendants' conduct 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 Plaintiff.

8. 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, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 31st day of July, 2012

Notary Public

My Commission Expires : My Commission Expires October 18, 2020

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