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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 19 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

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JAN 03 2017

SC Court of Appeals

Case No: 2011-CP-40-1998
Appellate Case No.: 2016-000772

Jones G. Herring, ... Respondent,

v.

Gilbert S. Bagnell and Bagnell and Eason, LLC, ...Appellants.

RECORD ON APPEAL

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2011CP4001998**

Jones G Herring

Gilbert S Bagnell

PLAINTIFF(S)

Bagnell and Eason LLC

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 4 day of Feb, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 4 February 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas Neal Truslow

Richard R. Gleissner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeannette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jones G. Herring,

Plaintiff,

vs.

Gilbert S. Bagnell and
Bagnell & Eason, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-40-01998

ORDER

RICHLAND COUNTY
FILED
2016 FEB - 4 AM 10:17
JEANNETTE W. NICBRIDGE
C.C.P. & G.S.

Plaintiff Jones G. Herring ("Plaintiff") brought this action on March 24, 2011, seeking damages for negligence, fraud, constructive fraud, breach of fiduciary duty, and misrepresentation. Defendant Gilbert S. Bagnell ("Bagnell") and Defendant Bagnell & Eason, LLC, ("Bagnell & Eason") (collectively, "Defendants") failed to answer Plaintiff's complaint in a timely fashion, and as a result, a default judgment was entered on June 14, 2011. On October 31, 2011, the trial court held a hearing to determine damages in accordance with Rule 55(b)(2), SCRPC. The only evidence presented at the hearing was testimony from Plaintiff. Following the hearing, the trial court took the matter under advisement and left the record open to allow for the presentation of supplemental evidence. Thereafter, Plaintiff submitted an affidavit concerning his damages, and the Court signed an order in favor of the Plaintiff on November 23, 2011, awarding Plaintiff \$254,306.77 in actual damages and \$250,000.00 in punitive damages. Defendants appealed the trial court's order to the South Carolina Court of Appeals.

The Court of Appeals remanded this matter for a determination of damages based on the evidence presented. *Herring v. Bagnell*, 2014 WL 2968929 at *1 (Ct. App. June 30, 2014). The parties waived any right to have the damages hearing before a jury. On August 26, 2015, the Court held a damages hearing on Plaintiff's claims against Defendants. Present at the hearing were Douglas Neal Truslow, Esquire, counsel for Plaintiff, and Richard R. Gleissner, counsel for Defendants. Based upon the testimony, evidence, and the record before the Court, the Court makes the following findings of fact and conclusions of law.

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FINDINGS OF FACT

1. By late 1998 or early 1999, Plaintiff had incurred consumer debt around \$100,000.00, a substantial portion of which was with Citibank/CitiFinancial and/or its affiliates ("Citi"). At that time, Plaintiff's consumer debt carried an interest rate of 24% or higher, plus additional costs for late fees and penalties. Plaintiff acknowledged that he was insolvent. Plaintiff, however, wanted to avoid bankruptcy if possible. Accordingly, Plaintiff sought assistance through Consumer Credit Counseling Service ("CCCS"). CCCS assisted Plaintiff, as well as his creditors, by negotiating and restructuring Plaintiff's consumer debt obligation by extending the payment time at a reduced rate of interest. Plaintiff and his consumer debt creditors, including Citi, reached a formal written agreement ("Agreement") by which Plaintiff was to repay all of his then existing debt at a lowered interest rate. Under the Agreement, Plaintiff would make payments to CCCS, who would then make the payments to the holders of the respective debt obligations. The debt was to be paid in full by 2005. Pursuant to the Agreement, Plaintiff's consumer creditors, including Citi, agreed that upon full payment, Plaintiff's debt would not be adversely reported on his credit. This Agreement allowed Plaintiff to realize the benefits of credit at lower interest rates, avoid taxes associated with loan forgiveness, avoid letters and phone calls at work and at home demanding repayment, and ultimately, be able to purchase a home.

2. After entering into the Agreement in 1999, Plaintiff sold his home, lived frugally, rented a cheap apartment, often ate only one meal per day, and took a second job to earn money to pay off his debt. Plaintiff was able to pay off his entire consumer debt by 2005 as required by the Agreement. Thereafter, however, Citi failed to honor the Agreement by continuing to seek payment from Plaintiff.

3. Plaintiff's disputes with Citi involved two credit obligations: (1) a credit account Plaintiff maintained at Citi's location on Knox Abbott Road in Cayce, South Carolina ("Knox Abbott Account"); and (2) a credit account Plaintiff had at Citi's location in Charlotte, North Carolina ("Charlotte Account").

4. Plaintiff testified that these accounts originally had interest rates about 24%. Pursuant to the Agreement, however, these accounts' interest rates were reduced to about 8% while Plaintiff paid off the remaining balances.

5. Sometime in, or around, September of 2004, Plaintiff and Citi agreed that the remaining balance on the Knox Abbott Account was \$1,810.00. In, or around, May of 2005, Plaintiff paid

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the outstanding balance for the Knox Abbott Account in full. Nonetheless, CCCS continued to make payments on the Knox Abbott Account in excess of \$1,200.00. Although the Knox Abbott Account was satisfied in full, Citi placed negative marks against Plaintiff's credit. Citi also had its collection personnel, and at least one of its lawyers, seek out payments from Plaintiff that were not due. Furthermore, Citi reported "income" for Plaintiff for 2005 on the IRS Form 2009-C. Apparently, the "income" was the amount of the debt Plaintiff did not pay because of the negotiations with CCCS referred to as loan forgiveness. Plaintiff, however, had, by this point, paid his debt in full.

6. Plaintiff eventually sought the assistance of the South Carolina Department of Consumer Affairs ("SCDCA") in an effort to resolve his dispute with Citi regarding the amount owed and any overpayments. SCDCA was unable to obtain any response from Citi. Accordingly, SCDCA recommended that Plaintiff obtain an attorney as he possibly had a meritorious claim against Citi.

7. In the beginning of 2006, Plaintiff received an IRS Form 1099-C for a forgiveness of debt in 2005 of \$7,238.34. This amount later was corrected to a lesser amount of \$3,619.17. As a result of this putative additional income, Plaintiff's taxable income was at a higher level. As a result, he was unable to receive an educational tax credit on behalf of his son. The excess income resulted in Plaintiff not realizing \$1,805.00 in a tax refund in 2006 and having to pay an additional \$800.00 in his son's college tuition.

8. Sometime in, or around, 2008, Plaintiff sought to purchase a home from the estate of his father. As a result of Plaintiff's poor credit score caused, in part, by Citi placing negative marks on his credit, Plaintiff was unable to qualify for favorable interest terms or waiver of closing costs. As a result, Plaintiff testified that he will likely pay an additional \$7,342.99 in closing costs and interests over the term of the loan.

9. Plaintiff testified that from 2006 through 2009, he had a viable complaint against Citi related to unfair consumer debt and collection practices, and that his actual damages were at least \$100,000.00, plus \$28,000.00 of other consequential damages. Plaintiff testified that in 2006, he had at least a "banker's box" of detailed documentation. The documentation included: 1) Plaintiff's original consumer debt; 2) the Agreement; 3) a detailed log of activities; 4) Citi's activities related to continually seeking payment from Plaintiff after his debt had been satisfied; and 5) credit reports, checks, and other related records evidencing the Agreement and his

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consequential damages of at least \$28,000.00. Plaintiff also had letters from a local branch of Citi proving that Plaintiff had paid his debts in full and that none of his debt actually forgiven was taxable income. Plaintiff, moreover, testified that he had documented information reflecting that Citi was engaged in predatory lending and collection practices nationally. Plaintiff, furthermore, had documentation showing that he could not acquire the available lower rates (at less than 24%) on consumer credit because of Citi's inaccurate reports that Plaintiff had not paid his debt and therefore, was a bad credit risk.

10. In January and/or February 2006, and upon recommendation by an acquaintance, Plaintiff met with Bagnell. Bagnell represented to Plaintiff that he possessed considerable experience and skill in trying unfair debt collection cases and that he had investigated the matter. According to Bagnell, Citi was engaged in dual record keeping and had otherwise engaged in extensive illegal, predatory lending and collection practices. Defendants encouraged Plaintiff to engage them to initiate lawsuits both personally and as a class action representative against Citi. On May 17, 2006, Plaintiff and Defendants entered into a written contract of engagement. Bagnell informed Plaintiff that the law firm of McGowan, Hood and Felder, LLC ("McGowan Hood"), was co-counsel on the case. McGowan Hood is listed as co-counsel on the contract.

11. In conjunction with Plaintiff having entered into a formal contract of legal representation with Defendants, Bagnell required Plaintiff to provide all of his original documents in the banker's box detailing the transactions related to Plaintiff's debt since 1998, as well as documentation concerning Citi's wrongful acts and his resulting damages. The documents Plaintiff provided to Bagnell were Plaintiff's only copies. Bagnell explained that he would return the copies to Plaintiff but failed to do so despite repeated requests. Bagnell opined that Plaintiff had at least \$100,000.00 in actual damages. Plaintiff was inexperienced in the law and relied upon Bagnell's advice, as his attorney.

12. On October 13, 2006, Bagnell wrote a letter to an attorney who had been demanding money from Plaintiff for payment of an alleged Citi debt. Bagnell referred to 15 U.S.C. § 1692(e) concerning abusive, deceptive and unfair debt collections practices in the letter. Bagnell stated specifically that "[o]ur investigation suggests that CitiFinancial maintains a double set of books." In this letter, Bagnell appears to support and corroborate the historical, underlying facts and claims asserted by Plaintiff.

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13. In 2007 and 2008, Bagnell assured Plaintiff that he had filed a lawsuit on Plaintiff's behalf and that he and McGowan Hood were actively pursuing the case on Plaintiff's behalf. Bagnell orally asserted that Plaintiff's damages were at least \$100,000.00 independent of other consequential damages of \$28,000.00.

14. Between 2008 and 2011, Plaintiff made repeated attempts to meet with Bagnell to obtain legal updates concerning his case and a copy of the files and documents that he previously had provided Bagnell. Plaintiff also associated other counsel in an attempt to retrieve his files from Defendants, but to no avail. Plaintiff, furthermore, attempted to obtain the documents from Citi but similarly was unsuccessful. Thereafter, Plaintiff attempted to obtain his documents from the United Way and SCCPA but, again, was unsuccessful. Plaintiff eventually sought the assistance of the South Carolina Bar in an attempt to obtain his file and pursue his case with other counsel.

15. In 2009, when the Bar's efforts proved unsuccessful, Plaintiff filed a grievance against Bagnell with the Office of Disciplinary Counsel (ODC). Bagnell failed to respond to a subpoena from ODC for Plaintiff's documents and Defendants' file. Bagnell did not cooperate with ODC or Plaintiff. Without his necessary documents, Plaintiff could not find another attorney to take his case. Plaintiff, thus, could not proceed in his claims against Citi without his files. Plaintiff contacted McGowan Hood and learned that it never had been involved in Plaintiff's case despite Bagnell's assurances to the contrary.

16. Plaintiff then learned that Bagnell had been suspended from the practice of law on October 9, 2009. In an Opinion filed July 18, 2011, the Supreme Court found that: (a) Bagnell committed numerous acts of misconduct that harmed Plaintiff; (b) Bagnell's conduct undermined the administration of justice and harmed the legal profession; and (c) Plaintiff was financially prejudiced by Bagnell's actions. *See In re Bagnell*, 393 S.C. 382, 713 S.E.2d 304 (2011). Bagnell was disbarred. *Id.* at 386, 713 S.E.2d at 306.

17. In its disbarment Order, the South Carolina Supreme Court found that Bagnell abandoned Plaintiff and caused him prejudice. *Id.* The clear and convincing evidence in this matter convinces the Court of the same.

18. Bagnell sold his home for a significant amount of money, left the State of South Carolina and moved to New York after realizing a substantial settlement in an unrelated case. Despite Bagnell's suspension from the practice of law, Bagnell and Eason continued to hold itself out as being an active law firm, and Mr. Eason failed to advise Plaintiff that Bagnell had been

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suspended from the practice of law. Furthermore, Bagnell and Eason maintained no record of the case and asserted that it had no obligation to assist Plaintiff.

19. Following his disbarment, Bagnell claimed that he provided Plaintiff with all of his documents. Plaintiff denies that Bagnell provided the documentation and avers that the statute of limitations governing his claim has expired.

20. On November 21, 2011, Bagnell filed a Memorandum Regarding Damages that included an affidavit wherein Bagnell explained that "Herring provided me [an] electronic file [of his documents] in disc form when he first discussed the matter with me."¹ Bagnell also stated that "in January 2011, when my files were delivered to me out of storage (where I had not been able to access them), I promptly forwarded the electronic records to Mr. Herring and he acknowledged receipt of those records."² Bagnell admitted that he did not provide Plaintiff the original paper files because he was unable to locate them.³ Bagnell attached the disc to his Memorandum Regarding Damages. This electronic file contains about 280 pages of documents.⁴ Although it is unclear whether Plaintiff received this electronic file in January 2011, the memorandum and disc were filed with the Richland County Clerk of Court on November 21, 2011. Plaintiff, thus, did receive an electronic copy of at least some of his files (if not all). Although Plaintiff was provided with a substantial amount of original documents (in electronic

¹ *Affidavit of Gilbert Bagnell attached to Defendant's Memorandum Regarding Damages* (November 18, 2011).

² *Id.*

³ *See id.*

⁴ Numerous documents were included on this disc, including, but not limited to: a 1099-C showing cancellation of \$7,238.34 in debt, dated November 9, 2005; a corrected 1099-C showing cancellation of \$3,619.17 in debt, dated November 9, 2005; a fax, dated November 6, 2006, sent by Herring to a representative with Citi contesting the 1099-C cancellation of debt; various statements showing amounts due; documents related to the underlying agreement between Herring and CCCS; disclosure statements/agreements with Commercial Credit Corporation; letters from the South Carolina Department of Consumer Affairs to Citi concerning complaints filed by Herring against Citi; Herring's complaint against Citi filed with the Department of Consumer Affairs; a letter Herring sent to a representative of Citi indicating that he had overpaid on his accounts; the respective response from that representative; a Citi account balance statement showing that Herring's account was paid in full; various Citi account statements; a CCCS credit information sheet; a CCCS family budget sheet; various faxes Herring sent to Citi contesting remaining balances; periodic reports sent by CCCS to Herring; and an Equifax Credit Report.

form), it was not until he spent at least three years trying to obtain them directly from Bagnell and over five years since Plaintiff entered into the legal representation agreement with Bagnell.⁵

21. Plaintiff provided credible testimony concerning damages related to: (a) an excess amount Plaintiff paid to Citi; (b) Plaintiff's inability to receive a certain tax refund; (c) additional expenses Plaintiff paid in tuition; and (d) additional closing costs and interest Plaintiff paid.

CONCLUSIONS OF LAW

1. The Court possesses both subject matter and personal jurisdiction. Venue is proper in Richland County.

2. Defendants are in default, and thus, are deemed to have admitted the truth of Plaintiff's allegations and to have conceded liability on Plaintiff's claims of negligence, fraud, constructive fraud, breach of fiduciary duty, and misrepresentation. See *Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). By defaulting, Defendants, however, have not admitted the *amount* of liability in damages. See *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981) ("a defendant in default admit[s] liability but [does] not admit the damages as set forth in the prayer for relief."). Plaintiff must prove his damages by the preponderance of the evidence. See *Jackson v. Midlands Human Resources Ctr.*, 296 S.C. 529, 529, 374 S.E.2d 505, 506 (Ct. App. 1988). During the damages hearing, defense counsel is entitled to cross-examine witnesses and object to evidence presented. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978). The issue before the Court is the amount of Plaintiff's actual and, if applicable, punitive damages.

3. To recover damages, "the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). Accordingly, "the existence or amount of damages cannot be left to conjecture, guess or speculation." *Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 391, 162 S.E.2d 705, 708 (1968). Plaintiff, thus, is required to prove by the preponderance of the evidence, and with reasonable certainty, the amount of damages caused by Defendants' negligence.

4. Under South Carolina law, the liability for negligence and breach of fiduciary duty against an attorney and law firm acting within their scope of practice is most properly defined as an action for legal malpractice. See *Smith v. Hastie*, 367 S.C. 410, 412-13, 626 S.E.2d 13, 14

⁵ Herring and Bagnell entered into the legal representation agreement on May 17, 2006.

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(Ct. App. 2005). "A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach." *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012). Although, through their default, Defendants have admitted the facts giving rise to Plaintiff's legal malpractice claim, Plaintiff must still prove, by the preponderance of the evidence, his amount of damages.

5. Defendants argue that Plaintiff has been unable to establish his damages. Specifically, Defendants allege that the damage caused to Plaintiff by the Defendants' fraud, constructive fraud, and misrepresentation appears to be none. The Court disagrees.

6. Defendants argue that Plaintiff failed to present adequate evidence that Defendants' failure to bring an action against Citi, as either a class action or as one for the breach of the Fair Credit Reporting Act or Fair Debt Collection Practices Act resulted in any quantifiable harm. Defendants specifically contend that Plaintiff failed to present evidence as to the ability to bring an action on his causes of actions against Citi. Defendants, however, fail to recognize that by defaulting on Plaintiff's cause of action against Defendants, they admitted that Plaintiff possessed the ability to bring a cause of action against Citi. In other words, Plaintiff alleged, among other things, that Defendants were negligent in not bringing a cause of action within the requisite statute of limitations, and because of Defendants' negligence, Plaintiff lost his ability to successfully bring a claim against Citi. Accordingly, since Defendants defaulted on Plaintiff's claims against them, they admitted the veracity and underlying success of Plaintiff's claims against Citi. As such, the only issue before the Court is the amount of damages caused by Defendants' failure to bring an action against Citi on behalf of Plaintiff.

7. Plaintiff contends that since Bagnell asserted that Plaintiff's claim was worth at least \$100,000.00 in actual damages and \$28,000.00 in other consequential damages, Plaintiff is entitled to such damages in this matter. The record, however, fails to reflect how Plaintiff, and through his counsel, Bagnell, arrived at such numbers. Unfortunately, Plaintiff no longer has possession of the documents that allegedly supported such damages. Nonetheless, damages awarded may not be speculative. Accordingly, Plaintiff is not entitled to \$100,000.00 in actual damages and \$28,000.00 in other consequential damages simply because Bagnell, his attorney, stated his claim was worth that much. Mere testimony from a party or his attorney concerning a

case's worth is insufficient to satisfy the preponderance of the evidence standard. *See Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85-86 (Ct. App. 2008) ("[I]n order for damages to be recoverable[,] the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy."); *Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C. 556, 561, 274 S.E.2d 287, 289 (1981) ("Whether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount of damages based on the proof, and such proof must be by preponderance of the evidence."); *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 240, 246 S.E.2d 880, 881 (1978) ("[I]n a tort action[,] the amount stated in the prayer for relief often bears little relation to the amount which the plaintiff is entitled to recover. The prayer in an action may not serve as a substitute of proof. The plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence.").

8. Plaintiff, however, as part of his legal malpractice claim against Defendants, is entitled to the actual damages caused by Citi in its failure to follow the terms of the Agreement it entered into with Plaintiff. As admitted by Defendants' default, Plaintiff would have been successful in seeking those damages from Citi.⁶ Defendants' failure, moreover, to bring such a cause of action against Citi prevented Plaintiff from receiving those damages. Plaintiff's uncontroverted testimony and supporting affidavits prove, by the preponderance of the evidence, that Citi's breach of the underlying Agreement caused Plaintiff to suffer the following actual damages: (1) at least \$1,200.00 in overpayment to Citi; (2) \$1,805.00 in a tax refund Plaintiff would have received had Citi not improperly reported to the IRS that Plaintiff had incurred income when, in fact, Plaintiff had not; (3) \$800.00 in additional tuition expenses Plaintiff incurred because of his putative "increased income" causing him to not qualify for an education tax credit; and (4) \$7,342.99 in additional closing costs and interest that Plaintiff has, and will continue to have, to pay because of negative reports on his credit.

9. Plaintiff also is entitled to punitive damages because of the egregious manner in which Bagnell conducted himself as an attorney of the State of South Carolina. Bagnell undermined the pursuit of justice and tarnished the esteem of the legal profession. Punitive damages may be awarded when a plaintiff proves by "clear and convincing evidence the defendant's misconduct

⁶ Although Defendants believed that Plaintiff also would have received a much higher amount of damages because of Citi's unfair collection practices.

was willful, wanton, or in reckless disregard of the plaintiff's rights." *Welch v. Epstein*, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). "Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964). "The trial judge is vested with considerable discretion over the amount of a punitive damages award[.]" *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 149, 494 S.E.2d 449, 458 (Ct. App. 1997). Although courts "possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416, 123 S. Ct. 1513, 1519 (2003).

10. In *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574, 116 S. Ct. 1589, 1598 (1996), the United States Supreme Court held that "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *Gore* established three guideposts "that indicate whether the due process requirement of fair notice has been met." *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009). Under *Gore*, courts are to consider: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the harm, or potential harm, suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages award and civil penalties authorized or imposed in comparable cases. See *Gore*, 517 U.S. at 574-75, 116 S. Ct. at 1598-99.

11. *Mitchell, Jr.* articulated a new test courts are to use in determining whether, and how much, to award in punitive damages. 385 S.C. at 587, 686 S.E.2d at 185. Under *Mitchell, Jr.*, courts are to consider the following factors: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the amount of punitive damages award; and (3) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. *Id.* at 587-88, 686 S.E.2d at 185-86.

12. "[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Gore*, 517 U.S. at 575, 116 S. Ct. at 1599. "This principle reflects the accepted view that some wrongs are more blameworthy than

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others.” *Id.* In determining the reprehensibility of a defendant’s conduct, the court should consider whether:

- (1) the harm caused was physical as opposed to economic;
- (2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others;
- (3) the target of the conduct had financial vulnerability;
- (4) the conduct involved repeated actions or was an isolated incident; and
- (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm, 538 U.S. at 419, 123 S. Ct. at 1521.

13. In determining the appropriate ratio between the actual or potential harm to plaintiff and the amount of a punitive damages award, courts may consider: “the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant’s ability to pay.” *Mitchell, Jr.*, 385 S.C. at 588, 686 S.E.2d at 185. “[I]n practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” *State Farm*, 538 U.S. at 425, 123 S. Ct. at 1524.

14. In considering the difference between the amount of punitive damages awarded and civil penalties authorized or imposed in comparable cases, courts may consider: “the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant’s conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.” *Id.* at 588–89, 686 S.E.2d at 186.

15. Defendants’ conduct has been manifestly reprehensible. Defendants represented to Plaintiff that they would bring a cause of action against Citi on Plaintiff’s behalf. Defendants also represented that they had associated local counsel to help pursue Plaintiff’s claim. Plaintiff provided Defendants his file of documents in hopes of pursuing such claim. Defendants informed Plaintiff that Plaintiff would receive copies of his documentation. Plaintiff, however, after repeated attempts, never received such documentation. Plaintiff attempted to contact Defendants numerous times in-person, via telephone, email, and mail, including certified mail. Defendants, however, failed to respond to Plaintiff. The statute of limitations governing Plaintiff’s claims against Citi eventually ran. Plaintiff is now unable to bring his causes of action against Citi. Plaintiff first contacted Defendants in early 2006. Plaintiff, thus, has spent the past nine years seeking a resolution in this matter. The duration of Defendants’ egregious conduct in

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this matter is troubling. Defendants' conduct reflects poorly on the legal profession's reputation. The harm resulting from Defendants' conduct largely is unquantifiable. Due to Defendants' failure to return Plaintiff's documents and Defendants allowing the statute of limitations to run, Plaintiff now is unable to bring any causes of action against Citi.

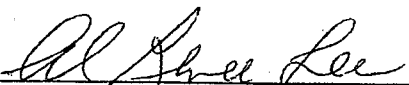
16. A punitive damages award in this matter will discourage other attorneys from acting in a similarly egregious manner. Plaintiff testified in the previous October 31, 2011, damages hearing that Defendants had informed him that, in 2005 or 2006, Defendants realized a fee in excess of thirty million dollars in an unrelated case.⁷ Thus, it appears that Defendants are jointly and severally capable of paying a sum of \$100,000.00 in punitive damages. An award of \$100,000.00, moreover, has a single digit ratio (8.97:1) between Plaintiff's punitive damages award and Plaintiff's actual damages award. Plaintiff, thus, is entitled to punitive damages against Defendants, jointly and severally, equaling \$100,000.00.

17. The Court is deeply troubled by Defendants' behavior and its impact upon the public's perspective of the legal profession. As determined by the South Carolina Supreme Court in Bagnell's disbarment proceedings, Bagnell "abandoned the practice of law, prejudicing [Plaintiff] and the administration of justice." *In re Bagnell*, 393 S.C. 382, 386, 713 S.E.2d 304, 306 (2011).

ORDER

For the reasons stated above, it is therefore **ORDERED** that Plaintiff is entitled to actual damages in the amount of \$11,147.99 and punitive damages in the amount of \$100,000.00:

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
February 1, 2016

⁷ Plaintiff admitted into evidence, as Plaintiff's Exhibit 5, the Transcript of Record from the previous damages hearing. During the previous hearing, as noted in its Transcript of Record, Plaintiff was asked whether Bagnell left South Carolina "[a]fter telling [Plaintiff] he had gotten a \$30 million fee and a \$10 million fee on some related cases," to which Plaintiff responded, "[m]y understanding." Transcript of Record at 22:7-9 (October 31, 2011).

aw
#12

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4001998

Jones G Herring

Gilbert S Bagnell

PLAINTIFF(S)

Bagnell and Eason LLC

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 16 March 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas Neal Truslow

Richard R. Gleissner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. H. G. G. G.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jones G. Herring,

Plaintiff,

vs.

Gilbert S. Bagnell and
Bagnell & Eason, LLC,

Defendants:

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-40-01998

ORDER

RICHLAND COUNTY
FILED
2016 MAR 16 AM 9:08
JEANETTE W. MCBRIDE
C.C.P. & G.S.

This matter comes before the Court on Defendants' Motion to Reconsider, Alter, Amend, and/or Clarify judgment pursuant to Rule 52(b), SCRCP, and Rule 59(e), SCRCP. This matter came before the Court on August 26, 2015, as a damages hearing on Plaintiff's claims against Defendants. On February 1, 2016, the Court awarded damages in favor of Plaintiff in the amount of \$11,147.99 in actual damages and \$100,000.00 in punitive damages. Defendants filed this motion on February 15, 2016.

After careful consideration of the motion made, memoranda submitted, and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendants' Motion to Reconsider, Alter, Amend, and/or Clarify judgment in this matter. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

Although the Court denies Defendants' Motion, the Court takes this additional opportunity to respond to arguments Defendants made in their Rule 52, SCRCP, and Rule 59, SCRCP, Motion. In their Motion, Defendants argue that the Court, in its February 1, 2016, Order "conflate[d] the Defendants' admission of liability with what evidence is necessary to show the proximately related damages." Defendants' Motion at 1. Defendants argue that through their default they admitted only their negligence in allowing Plaintiff's statute of limitations to expire on his underlying causes of action against Citi—they did not admit that

Plaintiff's damages were compensable. Defendants then cite several cases¹ in support of their contention that "adequate evidence [must be] presented establishing the harm to Plaintiff caused by Citi would have been recovered 'but for' the negligence of Defendant." Defendants' Motion at 2. The cases cited by Defendants, however, all involved defendant attorneys who did not default on the claims brought against them. Those cases, therefore, are not dispositive on the issues presented in the instant matter. In this case, Plaintiff, in his complaint, alleged, among other things, that Defendants were negligent in not bringing a cause of action within the requisite statute of limitations, and because of Defendants' negligence, Plaintiff lost his ability to successfully bring a claim against Citi. Since Defendants defaulted on Plaintiff's claims against them, they admitted the veracity and underlying success of Plaintiff's claims against Citi. Accordingly, Defendants have conceded that "but for" their negligence, Plaintiff "most probably" would have been successful on his underlying claims against Citi. As such, the only issue before the Court was the amount of damages caused by Defendants' failure to bring an action against Citi on behalf of Plaintiff.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
March 14, 2016

¹ Defendants cite the following cases: *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); *Brown v. Theos*, 345 S.C. 626, 550 S.E.2d 304 (2001); *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988); *Floyd v. Kosko*, 285 S.C. 390, 329 S.E.2d 459 (Ct. App. 1985).

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Jones G. Herring

Plaintiff(s)

vs.

Gilbert S. Bagnell and Bagnell and Eason,
LLC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

COPY

2011 CP 400 1998

(Please Print)

Submitted By: Douglas N. Truslow

Address: P.O. Box 1465, Columbia, SC 29202

SC Bar #: 5642

Telephone #: 803-256-6276

Fax #: 803-256-7659

Other:

E-mail:

douglastruslow@truslowl

aw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☒ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20-CP- ☐ Notice/File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

Date: March 23, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
JONES G. HERRING,	)	Docket No.:
	)	
Plaintiff,	)	
	)	
Vs.	)	
	)	
GILBERT S. BAGNELL and	)	COMPLAINT
BAGNELL AND EASON, LLC,	)	(Jury Trial)
	)	
Defendants.	)	
	)	

FILED
2011 MAR 24 PM 12:25
JEANETTE W. McBRIDE
C.C.P. & G.S.

Plaintiff herein, complaining of Defendants, would respectfully show unto this Court:

1. Plaintiff is a citizen and resident of Richland County, South Carolina.
2. Defendant Gilbert S. Bagnell (hereinafter "Bagnell") was at all pertinent times a citizen and resident of Richland County, South Carolina and practiced law with Bagnell and Eason, LLC.
3. Defendant Bagnell and Eason, LLC is and/or was a limited liability corporation organized and existing pursuant to the laws of South Carolina and did business at all pertinent times herein, in Richland County.
4. This Court has jurisdiction over the parties and subject matter herein.

FOR A FIRST CAUSE OF ACTION
(Negligence)

5. Each and every allegation herein is repeated as if verbatim.
6. On or about May 17, 2006 Plaintiff entered into a contract of employment with Defendants as his attorney to represent him in a legal matter. The legal matter related to the issuance of incorrect 1099-C taxes, misrepresenting credit history and failure to refund over payments on Plaintiff's accounts. Plaintiff was repeatedly told by Defendant Bagnell, which is attributable to the other Defendant, that he had an excellent case and that the damage to Plaintiff was in excess of \$90,000.00. Defendant Bagnell repeatedly

assured Plaintiff that Defendants would be able to recover in excess of \$100,000.00 for Plaintiff's damages, plus legal fees and that he had recently obtained a verdict and/or settlement in excess of \$30,000,000.00 on a similar case. He assured Plaintiff that he had a meritorious case and would be successful and that Defendants would promptly and professionally handle his case.

7. Plaintiff alleges that he did in fact have a meritorious case and that he would have been successful in the matter had it been timely pursued.
8. Defendants, through Defendant Bagnell, repeatedly assured him that he had an ongoing case that was being actively pursued. However, Defendants allowed the relevant statute of limitations to expire, which was first discovered by Plaintiff within the last three (3) years.
9. Plaintiff alleges that Defendants were negligent and grossly negligent in allowing the relevant statute of limitations to expire and that he has damages in excess of \$90,000.00 as a proximate result, which loss is attributable to Defendants and for which he seeks actual and punitive damages.

FOR A SECOND CAUSE OF ACTION

(Fraud)

10. Each and every allegation herein is repeated as if verbatim.
11. Defendants, through Defendant Bagnell, repeatedly represented to Plaintiff that they had associated a separate, well respected law firm to pursue the case and that the case was actively being pursued; Defendants knew or should have known at the time that the representations being made were false or made with reckless regard to the truth or falsity; that Defendants intended Plaintiff to act and/or rely upon same; Plaintiff was ignorant of the falsity of Defendants' representations; Plaintiff relied upon the false representations of Defendants; Plaintiff had a right to rely and did rely, the representations were material and Plaintiff was damaged as a proximate result for which he seeks actual and punitive damages.

FOR A THIRD CAUSE OF ACTION

(Constructive Fraud)

12. Each and every allegation herein is repeated as if verbatim.
13. The acts of Defendants were fraudulent because they were done so as to deceive and/or mislead Plaintiff either and/or both public and private confidences and injured Plaintiff, as well as damaging public interests and confidences in the legal system.

FOR A FOURTH CAUSE OF ACTION

(Fiduciary Duty)

14. Each and every allegation herein is repeated as if verbatim.
15. A confidential, fiduciary relationship existed between Plaintiff and Defendants by virtue of the employment of Defendants as Plaintiff's attorney.
16. Defendants breached their fiduciary duties to Plaintiff, so as to damage him.

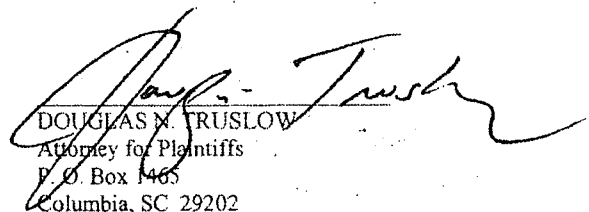
FOR A FIFTH CAUSE OF ACTION

(Misrepresentation)

17. Each and every allegation herein is repeated as if verbatim.
18. Defendants made false representations to Plaintiff; Defendants have a pecuniary interest in making false representations that the case was in fact being pursued; Defendants owed a duty of care to provide truthful information; Defendants breached that duty; Plaintiff relied on the false representation by not, *inter alia*, seeking other counsel before the statute of limitations on his claims expired; Plaintiff's reliance was justified and Plaintiff was damaged as a direct and proximate result in that the time to pursue his meritorious claim has expired.

WHEREFORE, having fully set forth his Complaint herein, Plaintiff prays for judgment against Defendants in an amount in excess of jurisdictional limits of the Court and punitive damages, for the costs of this action, and for such other and further relief as this Court may find proper.

(signature on following page)


DOUGLAS N. TRUSLOW
Attorney for Plaintiffs
P. O. Box 1465
Columbia, SC 29202
(803)256-6276

Columbia, South Carolina
March 23, 2010

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP4001998

Jones G Herring

vs.

Gilbert S Bagnell

Plaintiff

Defendant

CHECK ONE:

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

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

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

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 14 June 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truslow

ATTORNEY(S) FOR THE PLAINTIFF(S)_____
ATTORNEY(S) FOR THE DEFENDANT(S)*Jeanette W McBride*

Clerk of Court

SCRPC APP-24/FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jones G. Herring

vs.

Gilbert S. Bagnell and Bagnell and
Eason, LLC

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-40-1998

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

RICHLAND COUNTY
FILED
2011 JUN 14 PM 3:51
JANETTE W. McBRIDE
C.C.P. G.S.

Plaintiff's Attorney: Douglas N. Truslow, Bar No. 5642 Address: P.O. Box 1465, Columbia, SC 29202 Phone: 803-256-6276 Fax 803-256-7659 E-mail: _____ Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____ Estimated Time Needed: _____		Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		Date submitted: 5/16/11	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JONES G. HERRING,)
Plaintiff,)
Vs.)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2011 JUN 14 PM 3:51
JEANETTE W. McBRIDE
C.C.P. & G.S.

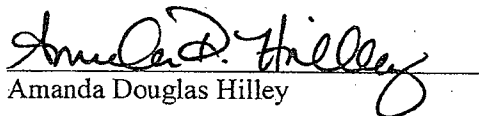
I, Amanda Douglas Hilley, paralegal for Douglas N. Truslow, Esquire, attorney for Plaintiff, certify I have this date served the foregoing document(s) on the individual(s) listed below by placing a copy in the United States Mail (Certified, Restricted Delivery), postage prepaid to the following address:

Randall M. Eason, Esquire
Eason Law Firm, LLC
1201 Main Street, Suite 1980
Columbia, SC 29201

Gilbert S. Bagnell
174 Spring Street
Catskill, NY 12414-1016

DOCUMENT(S):

1. *Affidavit of Default*
2. *Order of Default (proposed)*


Amanda Douglas Hilley

Columbia, South Carolina

May 17, 2011

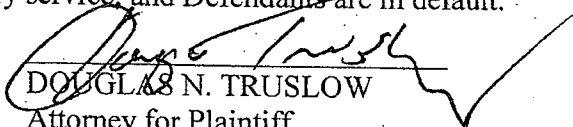
SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JONES G. HERRING,)
Plaintiff,)
Vs.)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Docket No.: 2011-CP-40-1998

AFFIDAVIT OF DEFAULT

Personally appeared before me Douglas N. Truslow who, being duly sworn, states that he is the attorney for Plaintiff and that more than thirty (30) days have elapsed since the service of the Summons and Complaint, exclusive of the date of service, upon Defendants Gilbert S. Bagnell and Bagnell and Eason, LLC; and that no Answer or legally cognizable pleading or appearance has been served upon him as required by the Summons in this action; and that Defendants are not a member of the military service; and Defendants are in default.

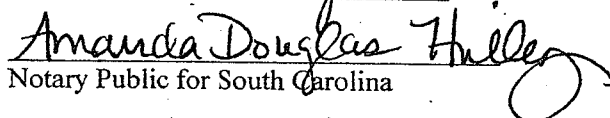

DOUGLAS N. TRUSLOW
Attorney for Plaintiff
Truslow & Truslow
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276
(803) 256-7659

Columbia, South Carolina

May 16, 2011

SWORN TO AND SUBSCRIBED BEFORE ME

this 16 day of May, 2011


Notary Public for South Carolina

My Commission Expires: November 22, 2020

RICHLAND COUNTY
FILED
2011 JUN 14 PM 3:52
JEANETTE W. McBRIDE
C.C.P. & G.S.

SCAN

COPY

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gilbert S. Bagnell
174 Spring St.
Catskill, NY 12414-1016

2. Article Number

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☒ Addressee

B. Received by (Printed Name)

G. Bagnell

C. Date of Delivery

3-30-1

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

7006 2760 0003 3403 0287

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M

UNITED STATES POSTAL SERVICE

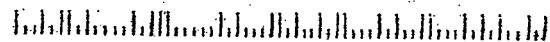


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Douglas N. Truflow, Esq.
PO Box 1465
Columbia, SC 29202

S/c 2011-CP-40-1998



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

Vs.)

GILBERT S. BAGNELL and)

BAGNELL AND EASON, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

CERTIFICATE OF SERVICE

JEANNETTE W. MCBRIDE
C.C.P. & G.S.

2011 APR -5 AM 9:23

RICHLAND COUNTY
FILED

I, Amanda Douglas Hilley, paralegal for Douglas N. Truslow, Esquire, attorney for Plaintiff, certify I have this date served the foregoing document(s) on the individual(s) listed below by placing a copy in the United States Mail (Certified, Restricted Delivery), postage prepaid to the following address:

**Gilbert S. Bagnell
174 Spring Street
Catskill, NY 12414-1016**

DOCUMENT(S):

1. *Summons and Complaint*


Amanda Douglas Hilley

Columbia, South Carolina

March 25, 2011

COPY

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Randall Eason, Esq.
1201 Main St., Suite 1980
Columbia, SC 29201

2. Article Number

(Transfer from service label)

7006 2760 0003 3403 0331

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Erin Clarno

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

Erin Clarno

C. Date of Delivery

4-1-11

D. Is delivery address different from item 1?

- ☐ Yes
- ☐ No

If YES, enter delivery address below:

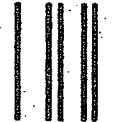
3. Service Type

- ☒ Certified Mail
- ☐ Registered
- ☐ Insured Mail
- ☐ Express Mail
- ☐ Return Receipt for Merchandise
- ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

- ☒ Yes

UNITED STATES POSTAL SERVICE

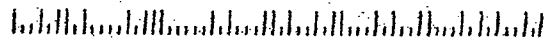


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Douglas N. Truslow
PO Box 1465
Columbia, SC 29202

March 31, 2011 S/c to Eason (2nd attempt)



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

Vs.)

GILBERT S. BAGNELL and)

BAGNELL AND EASON, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

CERTIFICATE OF SERVICE

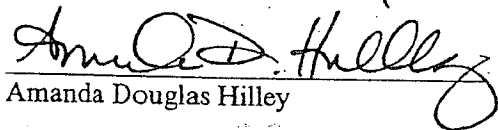
RICHLAND COUNTY
FILED
2011 APR -5 AM 9:23
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I, Amanda Douglas Hilley, paralegal for Douglas N. Truslow, Esquire, attorney for Plaintiff, certify I have this date served the foregoing document(s) on the individual(s) listed below by placing a copy in the United States Mail (Certified, Restricted Delivery); postage prepaid to the following address:

**Randall M. Eason, Esquire
Eason Law Firm, LLC
1201 Main Street, Suite 1980
Columbia, SC 29201**

DOCUMENT(S):

1. *Summons and Complaint*


Amanda Douglas Hilley

Columbia, South Carolina

March 31, 2011

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JONES G. HERRING,)
Plaintiff,)
Vs.)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Docket No.: 2011-CP-40-1998

**AFFIDAVIT OF JONES HERRING
REGARDING DAMAGES**

RICHLAND COUNTY
FILED
2011 NOV 17 PM 3:52
JENNIFER W. McBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, JONES G. HERRING, who being duly sworn, deposes and says (in his words):

I do not know if the Court needs anything else relative to damages since Defendants are in default, but with the caveat that Defendants and Mr. Bagnell in particular have wrongly retained my file (thus substantially impairing and preventing me from more precisely documenting losses) the following sets forth my damages – greater than \$100,000, plus at least another \$28,000.

BACKGROUND

I am an accountant and at all pertinent times was (and am) a long term employee of the State of South Carolina (Budget and Control Board). My wife was and is also a long term employee of the State (Department of Social Services).

Beginning in the 1980s, as my career progressed, I began to work with and socialize with people who were much more affluent, especially when the legislature was in session. As well, I wanted the best for my family (wife and son). The net result was that I (not my wife) was spending far beyond our means. By the mid 1990s, our consumer debt (with Citibank affiliate CitiFinancial) was alarmingly high. I was figuratively “robbing Peter to pay Paul”. My

spending got so bad that the stress was just too much for my wife and she brought an action for divorce. Meanwhile, the debts continued to accrue. By 1998, our consumer debt had grown to approximately \$80,000 and, as I recall, the interest rate was approximately 24% (or higher – at one point, I believe it was 32%), plus there were additions for insurance, late fees, penalties, etc. As a result of all of this, our house had to be sold and in the divorce, I assumed the \$80,000 debt, a significant portion of which was with CitiFinancial.

It soon became apparent that I could not pay the debt and it had in fact grown to \$100,000 – at a 24% interest rate on an \$80,000 loan, interest alone would be \$19,200.

In approximately late 1998 or early 1999, I sought help from United Way Consumer Credit Counseling because it was clear I was unofficially bankrupt/insolvent. Reason told me to file for bankruptcy, but I didn't want to do it if there was a viable alternative. The United Way was able to help me (and help CitiFinancial) in lieu of bankruptcy. We reached a formal, written agreement with CitiFinancial that, in exchange for reducing the interest rate and giving me time to pay, I would pay the entire debt and not file for bankruptcy. I want to stress that there was no loan forgiveness; I paid the entire debt then owing. Also, CitiFinancial specifically agreed that once I paid the debt as agreed, there would be no bad mark on my credit.

Through a lot of sacrifice and in reliance on our agreement, I paid the entire debt to CitiFinancial by 2005. I would like to stress at this point that it would have been much easier and financially beneficial to have filed for Bankruptcy and would have been \$100,000.00 ahead. I felt relieved at the time, but then two things happened – 1) CitiFinancial would not remove the bad mark on my credit and 2) I received a 1099(c) from CitiFinancial for "loan forgiveness". I dealt with the local CitiFinancial branch and they agreed with me (that there was no loan forgiveness and that CitiFinancial was wrong). I would also like to note that I had kept a log of activities of various actions and documentations. The local branch of CitiFinancial agreed with me and wrote letters to the main company. Having not received satisfaction, I then went to the State Consumer Affairs Agency. They tried to reason with CitiFinancial, without success. They (SCCPA) gave me all their records and told me I should sue. They also gave me some documents relative to consumer protection and unfair trade practices.

I then consulted with attorney Ken Allen and he referred me to Gil Bagnell in that he was reportedly very successful in these type cases.

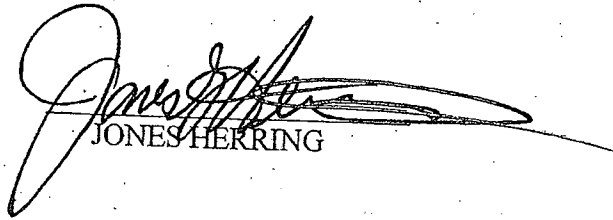
I met with Mr. Bagnell, starting in approximately February 2006. He told me he would look into the matter and "investigate". We then entered into an attorney client relationship and he told me he needed my entire original file to copy. He did not want copies; he insisted on receiving my entire file and said he would give me the copies (which he did not). My file showed that my case was worth at least \$100,000, plus other damages – Mr. Bagnell said that while he could not guarantee it, he believed that I would be entitled to treble damages and legal fees in addition to the \$100,000 and that he had proof of CitiFinancial's gross misbehavior relative to predatory lending and that he was pursuing a "class action" lawsuit on my behalf.

I had to deal with the CitiFinancial 1099(c) falsely reporting income (debt forgiveness) that they would not fully correct. In fact, Mr. Bagnell said that, along with CitiFinancial keeping dual books, listing me as a bad credit risk, continuing to dun me and engaging in other unfair trade practices, that fact would help to prove my case.

Finally, while it does not relate to actual damages (but does relate to punitive damages), Mr. Bagnell and his Defendant law firm continued to represent that they practiced law. For example, in calling the number for Bagnell and Eason on February 12, 2010, the phone was still being answered by the receptionist in the law firm's name and when I asked for Mr. Bagnell's whereabouts, I was told he was "out of town" at the moment. This was well after Mr. Bagnell's suspension in 2009. Also, he emailed me on January 18, 2011 and was still at that time representing himself to be a part of Bagnell and Eason Law Firm. I am also aware that Mr. Bagnell sold his house at Lake Murray in 2009 – which had no mortgage and he netted approximately ¾ of a million dollars on the sale.

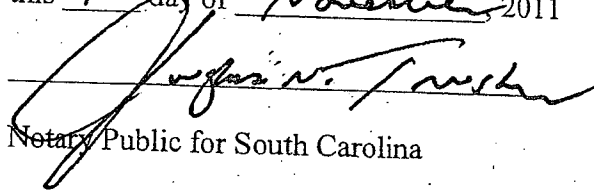
I hope this is what is needed and I want to reiterate that it is precisely because of Mr. Bagnell's withholding of my file that I cannot be more specific relative to damages. I have at a minimum \$100,000 in actual damages. I am also submitting a timeline and an Excel spreadsheet further defining my damages (there is at least another \$28,000 in damages over and above what I have set out herein) which is attached hereto.

(SIGNATURE ON FOLLOWING PAGE.)


JONES HERRING

SWORN TO AND SUBSCRIBED BEFORE ME

this 15th day of November 2011


Notary Public for South Carolina

My Commission Expires: Oct 23, 2012

HERRING DAMAGES/TIMELINE¹

1998	• By this time, I had accrued more than \$80,000 in consumer debt. In my divorce, I accepted responsibility for it.² • Interest rate was at least 24%. • $24\% \times \\$80,000.00 = \\$19,200.00$ per year in interest alone, aside from penalties, late fees, etc. • My gross income at the time was approximately \$50,000.00/per year and from it I had to pay child support, taxes and living expenses. • I was unable to pay the debt as it grew and grew with additional interest, late fees, increased interest rates, penalties and other "add ons" such as insurance, etc. which I was required to pay. I was insolvent – assets of about \$5,000 and debts that were mounting and well above \$80,000.
1998/1999	• The debt had grown to \$100,000 or more. I wanted to pay this debt and not file for bankruptcy if possible. • I went to the United Way Credit Counseling program. They were able to negotiate the future interest rate downward. In essence, in exchange for renegotiating my debt terms, I agreed that I would pay what was owed and not file for bankruptcy. Note: none of the debt was forgiven.
2000-2005	• With much sacrifice, I was able to pay off the debt completely by 2005.³ • Had I known that CitiFinancial was not going to honor its agreement as compared to the sacrifices I was making in good faith, I would have simply filed for bankruptcy from the inception and started over free of the \$100,000 debt. In essence, I would have had \$100,000 more in after tax income (that I paid) had I simply filed for bankruptcy. This establishes my damages at \$100,000 (plus there are other damages that exceed \$28,000).
2005/2006	• Once I paid off the debt, I started getting dunning letters from credit collection agencies on CitiFinancial's behalf, although I had paid my debt in full. Also, I received a 1099(c) from CitiFinancial for over \$7,000 of "debt forgiveness" that I had <u>not</u> received the benefit of – none of the debt was forgiven. • I contact the local branch of CitiFinancial, with whom I had dealt before. They completely agreed with me and wrote several letters to CitiFinancial's home office confirming my position, CitiFinancial and its debt collectors continued to write and call both at work, at home and to my wife. Note: I had kept an activity log of significant dates, names, etc. from the inception (in 1998), as well as all the pertinent back up documentation.

¹ Defendants have all my records so this is as close as I can be.

² The debts were my responsibility and not resulting from any fault on the part of my wife.

³ Sacrifices included living in a place so cheap I was embarrassed to let my son see it; I got a second job; I lived on the bare necessities.

	• I lost my son's college grants and loan capability as a result of the debt still being carried, reported and "excess income" being reported. • I gathered all of my documentation and went to the State of South Carolina Consumer Protection Agency to seek relief. They called, wrote to CitiFinancial and kept a log of their activities that they provided to me; they told me they could not get CitiFinancial to act properly; they told me my damages exceeded \$100,000 and that I should consider suing CitiFinancial, hire an attorney and to give him all of the documentation. • I was told by Consumer Protection (I think it was them) that Defendant Bagnell was considered to be very capable in this field and that I should hire an attorney.⁴ They also provided a document reflecting (and informing me) that I may be entitled to treble damages and fees. An attorney acquaintance (Ken Allen) also recommended Gil Bagnell as an attorney experienced in the area of the law involved. • I was unable to get credit cards with less than a 24% interest rate because CitiFinancial was reporting that I had not paid my debt. Again, I stress that I would have been better off to have filed for bankruptcy had I known that CitiFinancial was not going to honor its obligation to me because with a bankruptcy my credit would have been cleared by this time and I would not have had to pay the \$100,000 that I did in fact pay. • The local CitiFinancial branch provided me with letters reflecting my debt was cleared and that none of my debt had been forgiven, but the national company continued nonetheless. I could not get this problem solved on my own, and I needed an attorney. • I received information (verbally), confirmed and reiterated by Defendants, that CitiFinancial was engaging in predatory lending practices and "cooking the books" -- that it has one set of books showing the true facts and another (for investors and regulators) making it appear they were more profitable. They were using tactics to try to dupe consumers such as me that had also resulted in me overpaying CitiFinancial by \$1,200.
2006	• Since I was unable to work it out on my own and since the State Consumer Protection Agency was likewise unsuccessful, I made an appointment to see Defendant Bagnell. This was in late January or early February, 2006. He said he would investigate the issues. He did so and then told me that CitiFinancial was in fact duping consumers, engaging in other illegal, predatory lending practices and "cooking the books". We formalized our fee agreement on May 17, 2006. In conjunction, Defendants wanted all my records and evidence. I gave Defendants <u>all</u> my records and evidence, including my log of activities that chronologically detailed events, names of persons involved, documents, damages, etc. These were the critical documents and evidence proving that a) I had paid all my debt and b) it established my damages (exceeding \$100,000 by that point in time). Bagnell said he would return copies of everything to me at some point in the future, but he never has. Bagnell and I met a few times and he

⁴ Steve Hamm, but he was extremely ill at the time.

	appeared to be working on my case – at least he said he was.
2007	• As the year progressed, I started becoming concerned about what was being done on my case. Bagnell told me he had filed a lawsuit and was working on the case, but I wasn't getting progress reports or copies of anything. I stress, he had all my documents. • I attempt to buy our family home place. I was compelled to get a loan (at a very high rate) that I would not have had to get, but for CitiFinancial's misconduct. Also, CitiFinancial was still reporting me as a bad debt, which meant my other consumer credit was at a very high rate (24% vs. 10.99%), and I was still being dunned by CitiFinancial for payments that were not owed (I am still being dunned by creditors to this day).
2008-2010	• I made numerous attempts to get my records from Defendants (calls, going to their office, letters via Certified Mail, attorneys, South Carolina Bar, etc.). All efforts were to no avail. • I attempted to get United Way Records and Consumer Protection Records but their retention periods had expired (there is a three year retention period statute). By that point, the local branch of CitiFinancial had closed and no one in their home office could or would help (or would admit to even knowing anything about it). I was at the mercy of Defendants. • I had discussed my concerns with Bagnell (I believe it was in 2007). He told me that I could get other counsel, but that I would have to pay him fees for all the work he had done (which I couldn't afford). I agreed to let him continue, but I wanted a copy of my records. He said he would give them to me, but never would, despite certified letters, calls, etc. • I finally decided that, given that Bagnell wasn't communicating, my only option was to get another attorney. I then contacted McGowan Hood Law Firm and was shocked to find out that, despite the written fee agreement, they were never involved and in fact had written to Bagnell in early 2006 specifically declining to be involved with him. I then made other efforts to salvage my case, but could not do so because Defendants had my entire file and no lawyer would bring a suit without any records. • I also found out that Bagnell had not brought any suit, that my statute of limitations had passed and he had been suspended from the practice of law in 2009 (unrelated to me). I later found out that he had left the State of South Carolina and had taken my files. • My opinion is that my property retained by Defendants (and Defendant Bagnell in particular) was worth, at a minimum, over \$100,000 because a) that is my opinion, b) that was Consumer Affairs opinion (and that I was entitled to treble damages and fees) and c) that is what Defendant Bagnell also told me (that my case was "worth \$100,000, plus treble damages and legal fees").

RECAP Damages

- Paid \$100,000 debt at great sacrifice rather than file bankruptcy \$100,000.00⁵
- Son's college.
- Other credit card debt at 24%.
- Car financing
- Taxes
- Emotional aspect.
- I incurred over \$28,000 in damages, plus the \$100,000 I paid - that I would not have ever paid, had CitiFinancial honored its commitment to me – had I known that CitiFinancial was not going to honor its commitment, I would have filed for bankruptcy in 1998 and have had the \$100,000 of consumer debt erased and I would have been able to have my credit restored by 2005.
- I believe I have other damage caused by Defendants and am preparing a separate spread sheet in Excel.

⁵ This sum is exclusive of treble damages, fees and punitive damages.

ITEM DESCRIPTION	Yearly Salary	Work Hours per Year	Hourly Rate	Hours	ITEM TOTAL	

ESTIMATED MONETARY DAMAGES INCURRED DUE TO CITIFINANCIAL ACTIONS

Loss Wages	\$64,597.00	1,950	\$33.13	150.00	\$4,969.50	(75 hours/year for 2 years)
1099-C - Citi Knox Abbott Dr.					\$3,619.17	
Loss of Educational Tax Credit					\$800.00	
2005 Tax Refund Loss					\$1,805.00	Refund not realized due to 1099-C
Loan Overpayment - Citi Charlotte*					\$1,200.00	Overpayment on Account Citi Charlotte
Interest					\$210.00	8.75% per year for two years-simple
Telephone Expense					\$600.00	Long Distance Charges (est.)
Certified Mail Expense					\$78.75	15 Letters * \$5.25/ letter
Credit Card Additional Interest					\$3,500.00	24% rate vs. 11.99% over 6 years(est.)
(* Citi Charlotte reported a charge-off to Credit Rating Agencies in an amount of \$2,403.77 instead of being paid in full)						

HOME PURCHASE:

Loan Origination Fee	\$332.50					
Tax Service Fee	\$65.00					
Application Fee	\$49.00					
Underwriting Fee	\$395.00					
Closing Fee	\$110.00					
Attorney Fee	\$750.00					
Document Preparation	\$125.00					
Mortgage Insurance	\$11,469.60				\$31.86/month for 30 years	
Excess Mortgage Interest	\$5,516.49					
TOTAL EXPENSES:	\$35,595.01				The total loss, converted to present value exceeds \$28,000	

ADDITIONAL MONETARY DAMAGES INCURRED DUE TO GILBERT BAGNELL'S INACTION

Loss Wages	\$64,597.00	1,950	\$33.13	65.00	\$2,153.45	(65 hours over 6 years)				
Mortgage Interest Expense					\$39,481.12	Loan Interest rate @ 6.125%	1	\$1,200.00	8.75%	\$105.00

Interest on Loan Overpayment	\$625.27	8.75%/year compounded for 5 years	2	\$1,305.00	8.75%	\$114.19
Certified Mail Expense	\$42.00	8 Letters * \$5.25/ letter	3	\$1,419.19	8.75%	\$124.18
			4	\$1,543.37	8.75%	\$135.04
			5	\$1,678.41	8.75%	\$146.86
TOTAL EXPENSES:	\$42,301.84					\$625.27

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JONES G. HERRING,)
Plaintiff,)
Vs.)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Docket No.: 2011-CP-40-1998

**DEFENDANT'S MEMORANDUM
REGARDING DAMAGES**

RICHLAND COUNTY
FILED
2011 NOV 21 AM 9:17
JEANNETTE W. MCBRIDE
C.C.P. & C.S.

On behalf of Gilbert S. Bagnell and Bagnell and Eason, LLC (collectively "Bagnell"), the undersigned files this memorandum in response to the supplemental material filed by the Plaintiff in support of his alleged damages in the above-referenced matter.

FACTS

In this case it is admitted that Bagnell failed to pursue an action for Herring, and the question is what damages may have flowed from this failure.

Herring had a heavy debt load, and rather than filing for bankruptcy chose to use a credit counseling company to resolve the matter. Admirably, he paid off the principal of his debts, through compromises of the other terms of his obligations. As most people would, Herring justifiably felt good that he had honored his obligations by paying off what was owed. Unfortunately, as a result of the compromise of the terms of the obligations, he received a 1099-C that indicated forgiveness of debt, which is a taxable event. Quite simply, the lender treated the write-off of interest owed on the original obligations as a matter that needed to be reported to the IRS.

Angry at this outcome, where the lender treated the debt as partially forgiven when he felt he had paid it in full by paying all of the principal (but not all the interest), Herring contacted Bagnell seeking to bring a class action suit against the lender. As Herring's worksheets show, the tax impact

on him, albeit a significant amount of money, was in the range of \$2,000, an amount that would not have been worth pursuing in a civil action, since the attorney's fees and costs of the action would have exceeded any recovery. Thus, Herring's strategy was not so much to recover the money he had lost, but to punish the lenders for misreporting his compromise as a taxable event. As documented in the complaint, Herring's testimony, and the disciplinary action he filed against Bagnell, Bagnell tried to find a larger firm that would take the case and advance the costs to pursue a class action, but was unable to do so.

An additional problem with the forgiveness of debt issue is whether the 1099-C was, in fact, properly issued (discussed below).

Herring's claim is for damages because Bagnell caused him to miss the statute of limitations in pursuing the above action.

When Herring's hopes to pursue a class action did not work out, Bagnell discussed with him the possibility of pursuing an action for inaccurate credit reporting. As Herring indicates, it appeared that Citi maintained two accounting systems – one for their dealing with borrowers, where he would have been shown as having paid off or compromised his debt, and another summing up their assets, where his debt would be listed under its original, full amount, reflecting an unpaid balance. The result was that rather than reporting that he had compromised the debt and that they had written off some of the interest originally owed, Citi reported that there was an unpaid balance.

By reporting the compromised amount as an unpaid balance, rather than as an amount that was owed but then was written off, Citi may have damaged Herring's credit, giving rise to damages based on the impact on him this reporting may have had.

Herring testified that his credit has not been cleared up, and that the misreporting he complains about continues to this day. Thus, it would be possible for him to pursue the action right now. No statute of limitations has run and thus, no future or prospective damages to his credit should be allowed

against Bagnell.

Herring testified at length as to his inability to do anything due to the loss of his files. He has chosen to supplement his testimony with an affidavit. Rather than demand the opportunity to cross examine him, Bagnell proposes introducing by way of affidavit a copy of the electronic file that he forwarded to Herring as soon as he was able to retrieve it, in January of this year. This is the same electronic file that Herring made light of during his testimony before the court.

Herring chose not to use documents from the electronic file in his possession to mitigate or minimize his damages. Instead, he seeks to recover a windfall against Bagnell. Interestingly, rather than using the documents in the file to bring an action under the Fair Debt Reporting Act – an action that would still be viable, since the reporting continues – Herring instead brought this action against Bagnell, apparently believing that an action against Bagnell had more value than an action on the underlying case on which this malpractice case is based.

DISCUSSION

1. Herring has failed to show any damages for missing the statute of limitations, since he failed to show any actual damages from pursuing an action that would not have been successful.

While Herring insists that he paid his debts “in full”, in fact what he did was pay off the original principal amount in full, and compromise the amount of interest owed and accruing. Pursuant to Tax Code 108 and Tax Reg § 1.1001-1(a), as well as ample case law, when a person compromises a debt by obtaining a modification of the interest owed, that is a taxable event. Thus, Citi acted properly in issuing a 1099-C reflecting that write down. Even though Bagnell might initially have mistakenly believed there was a valid cause of action and sought to find a firm to take on a class action raising the issue as to the effect of this reporting on all those who received 1099-Cs from Citi, it turns out that the tax laws indicate that Herring actually did owe taxes. Thus, even though the statute of limitations may have passed for raising the issue, there was no loss to Herring because he has failed to provide any

evidence or legal authority showing that he would have been successful had the matter been timely pursued. His failure to produce expert testimony in support of his case (as required under SC law, further undercuts his claim for damages, since he needs testimony not just that there was negligence, but also that the negligence proximately caused an actual loss. He has failed to show an actual loss on this issue.

2. Herring has failed to show an actual, quantifiable loss for failure to pursue an action under the Fair Credit Reporting Act.

Herring has speculated that, based on general remarks by Bagnell as to what an action under the Act might be worth, his action would have a definite value. This speculation by Herring falls short of the requirement for proof of actual damages.

Assuming for the moment that Herring would be able to successfully pursue an action for improper credit reporting under the circumstances, it is clear that this is an action that he could take even now. He has had his file in his hands (in electronic form) at least since January 2011, and likely had retained a copy of the electronic file from the start. Based on those documents and his current credit reports, he could take the steps necessary to mount such an action: he could demand the reporting entity correct its reporting, he could apply for credit, and he could show that denial of credit was based on the misreported facts (as opposed to his general credit problems that also show up on his credit report). Then he could hire an attorney, possibly pay the necessary costs associated with an action, and, ultimately, under his view, prevail. If Herring took those steps, he might then be able to demonstrate that he could have obtained more had he sued earlier, or possibly claim interest for the delay in bringing the case caused by Bagnell's failure to pursue the case earlier.

In short, if Herring had a viable credit reporting case, it is one that he still has and can still pursue, so his loss would be from the failure to pursue it earlier, not the entire loss of the action.

The only logical conclusion is that Herring chose not to pursue the credit reporting action because he was advised that the case either had no value or that its value was less than the cost of

pursuing it.

In any case, Herring has had in his possession ample documents from his electronic file that are sufficient to start an action, and that would have been a basis for an expert witness to opine as to the amount of Herring's damages. His decision not to introduce those documents and not to have an expert witness testify as to the actual amount of his damages shows that his claims for damages are based on mere speculation. Similarly, his decision to pursue Bagnell for malpractice rather than to pursue Citi for the actual, ongoing false credit reporting shows that he has been unable to find anyone who believes he has a viable claim against Citi. He is pursuing Bagnell because the true, underlying claim has no value.

It should be noted that, even if Herring's electronic file may be missing some documents from his paper file (though it may be complete), he failed to introduce any expert evidence speaking to the deficiencies of the electronic file – rather he chose not to minimize its existence and the contents he had in hand.

Lastly, Herring has supplied the court with an alleged itemization of damages. The total itemization is for \$35,595.01. The itemization includes (1) lost wages which are completely irrelevant to any malpractice engaged in by Bagnell, (2) an estimate of long distance charges which have no connection to Bagnell's action, (3) speculative future interest charges for credit cards and for a thirty (30) year mortgage when he could correct these problems by addressing the incorrect reporting today and eliminate any impact on future interest charges, and (4) closing costs for refinancing his home that again have nothing to do with the malpractice of Bagnell. Even if Herring was harmed by Bagnell's malpractice, that harm is de minimus and not even close to the \$35,595.01 claimed in the itemization.

CONCLUSION

The circumstances here are difficult. Herring tried to do the right thing by paying off his creditors rather than filing for bankruptcy, and as a result got hit with tax obligations he had not

anticipated. Then he found that his credit remained clouded. He was justifiably angered and disappointed, and tried to seek relief by consulting Bagnell. Bagnell sought to find another firm to take Herring's case, but failed to do so, and then for reasons that remain unclear was unable to return Herring's files until January of 2011. Angered, Herring filed a grievance against Bagnell, and also brought this action. Unfortunately, even though Bagnell's handling of the matter violated ethical rules, the fact is that Herring must demonstrate actual damages, and he has failed to make such a showing. His taxes, it turns out, were properly reported, so he was not damaged by the passing of the statute of limitations on that potential action. His credit is still clouded, so that action remains viable, and his only loss would be the difference between the recovery he could still receive on such an action right now, versus the time value of the money had he brought the action earlier.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Richard R. Gleissner', written over a horizontal line.

Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 787-0505
Facsimile (803) 712-4283

November 18, 2011

AFFIDAVIT OF GILBERT BAGNELL

The undersigned, being duly sworn, deposes as follows:

1. My name is Gilbert Bagnell, I am over the age of 18, and I have personal knowledge of the facts set forth below.
2. Attached hereto is Exhibit A, which is a true copy of an electronic file provided to me by Jones Herring.
3. Mr. Herring informed me that he had scanned the documents relating to his dispute and that this file contained all the relevant documents.
4. This file is identical to the file I used for exploring the viability of his case, and, generally, provided to other law firms in an effort to get them to accept a class action case.
5. Mr. Herring provided me this electronic file in disc form when he first discussed the matter with me. Since he gave me a disc of the file, I assumed that the disc would have been burned from an electronic source, such as a computer memory, such that Mr. Herring would have always have had a copy of the electronic scan of his file.
6. In any case, in January of 2011, when my files were delivered to me out of storage (where I had not been able to access them), I promptly forwarded the electronic records to Mr. Herring, and he acknowledged receipt of those records.
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8. By way of explanation, I did not forward Mr. Herring his original paper files, which seemed identical to the electronic files, because I was unable to locate them. I had closed my office in Columbia (retaining an answering service) and had third parties move my files. At the same time, my wife suffered a serious injury and was unable to walk for an extended period, having multiple surgeries. As a result, I had third parties pack my files in anticipation of a move. I was unable to find Mr. Herring's paper file, and because the storage company went out of business, resulting in my goods being sent to a remote warehouse and reshuffled, where it was impossible to access the goods or search for files. When the files finally were finally delivered to me, I found Mr. Herring's electronic file and promptly forwarded it to him, but his paper file was not among my other legal files. I will forward his paper files after I find them.

FURTHER SAITH AFFIANT NOT.

Gilbert Bagnell

11.18.11 Jessica Casey

JESSICA CASEY
No. 01CA6159707
Notary Public, State of New York
Qualified in Columbia County
My Commission Expires 01/22/2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
JONES G. HERRING,	)	Docket No.: 2011-CP-40-1998
	)	
Plaintiff,	)	
	)	
Vs.	)	DEFENDANT'S MEMORANDUM
	)	REGARDING DAMAGES
GILBERT S. BAGNELL and	)	
BAGNELL AND EASON, LLC,	)	
	)	
Defendants.	)	

On behalf of Gilbert S. Bagnell and Bagnell and Eason, LLC (collectively "Bagnell"), the undersigned files this memorandum in response to the supplemental material filed by the Plaintiff in support of his alleged damages in the above-referenced matter.

FACTS

In this case it is admitted that Bagnell failed to pursue an action for Herring, and the question is what damages may have flowed from this failure.

Herring had a heavy debt load, and rather than filing for bankruptcy chose to use a credit counseling company to resolve the matter. Admirably, he paid off the principal of his debts, through compromises of the other terms of his obligations. As most people would, Herring justifiably felt good that he had honored his obligations by paying off what was owed. Unfortunately, as a result of the compromise of the terms of the obligations, he received a 1099-C that indicated forgiveness of debt, which is a taxable event. Quite simply, the lender treated the write-off of interest owed on the original obligations as a matter that needed to be reported to the IRS.

Angry at this outcome, where the lender treated the debt as partially forgiven when he felt he had paid it in full by paying all of the principal (but not all the interest), Herring contacted Bagnell seeking to bring a class action suit against the lender. As Herring's worksheets show, the tax impact

on him, albeit a significant amount of money, was in the range of \$2,000, an amount that would not have been worth pursuing in a civil action, since the attorney's fees and costs of the action would have exceeded any recovery. Thus, Herring's strategy was not so much to recover the money he had lost, but to punish the lenders for misreporting his compromise as a taxable event. As documented in the complaint, Herring's testimony, and the disciplinary action he filed against Bagnell, Bagnell tried to find a larger firm that would take the case and advance the costs to pursue a class action, but was unable to do so.

An additional problem with the forgiveness of debt issue is whether the 1099-C was, in fact, properly issued (discussed below):

Herring's claim is for damages because Bagnell caused him to miss the statute of limitations in pursuing the above action.

When Herring's hopes to pursue a class action did not work out, Bagnell discussed with him the possibility of pursuing an action for inaccurate credit reporting. As Herring indicates, it appeared that Citi maintained two accounting systems – one for their dealing with borrowers, where he would have been shown as having paid off or compromised his debt, and another summing up their assets, where his debt would be listed under its original, full amount, reflecting an unpaid balance. The result was that rather than reporting that he had compromised the debt and that they had written off some of the interest originally owed, Citi reported that there was an unpaid balance.

By reporting the compromised amount as an unpaid balance, rather than as an amount that was owed but then was written off, Citi may have damaged Herring's credit, giving rise to damages based on the impact on him this reporting may have had.

Herring testified that his credit has not been cleared up, and that the misreporting he complains about continues to this day. Thus, it would be possible for him to pursue the action right now. No statute of limitations has run and thus, no future or prospective damages to his credit should be allowed

against Bagnell.

Herring testified at length as to his inability to do anything due to the loss of his files. He has chosen to supplement his testimony with an affidavit. Rather than demand the opportunity to cross examine him, Bagnell proposes introducing by way of affidavit a copy of the electronic file that he forwarded to Herring as soon as he was able to retrieve it, in January of this year. This is the same electronic file that Herring made light of during his testimony before the court.

Herring chose not to use documents from the electronic file in his possession to mitigate or minimize his damages. Instead, he seeks to recover a windfall against Bagnell. Interestingly, rather than using the documents in the file to bring an action under the Fair Debt Reporting Act – an action that would still be viable, since the reporting continues – Herring instead brought this action against Bagnell, apparently believing that an action against Bagnell had more value than an action on the underlying case on which this malpractice case is based.

DISCUSSION

1. Herring has failed to show any damages for missing the statute of limitations, since he failed to show any actual damages from pursuing an action that would not have been successful.

While Herring insists that he paid his debts “in full”, in fact what he did was pay off the original principal amount in full, and compromise the amount of interest owed and accruing. Pursuant to Tax Code 108 and Tax Reg § 1.1001-1(a), as well as ample case law, when a person compromises a debt by obtaining a modification of the interest owed, that is a taxable event. Thus, Citi acted properly in issuing a 1099-C reflecting that write down. Even though Bagnell might initially have mistakenly believed there was a valid cause of action and sought to find a firm to take on a class action raising the issue as to the effect of this reporting on all those who received 1099-Cs from Citi, it turns out that the tax laws indicate that Herring actually did owe taxes. Thus, even though the statute of limitations may have passed for raising the issue, there was no loss to Herring because he has failed to provide any

evidence or legal authority showing that he would have been successful had the matter been timely pursued. His failure to produce expert testimony in support of his case (as required under SC law, further undercuts his claim for damages, since he needs testimony not just that there was negligence, but also that the negligence proximately caused an actual loss. He has failed to show an actual loss on this issue.

2. Herring has failed to show an actual, quantifiable loss for failure to pursue an action under the Fair Credit Reporting Act.

Herring has speculated that, based on general remarks by Bagnell as to what an action under the Act might be worth, his action would have a definite value. This speculation by Herring falls short of the requirement for proof of actual damages.

Assuming for the moment that Herring would be able to successfully pursue an action for improper credit reporting under the circumstances, it is clear that this is an action that he could take even now. He has had his file in his hands (in electronic form) at least since January 2011, and likely had retained a copy of the electronic file from the start. Based on those documents and his current credit reports, he could take the steps necessary to mount such an action: he could demand the reporting entity correct its reporting, he could apply for credit, and he could show that denial of credit was based on the misreported facts (as opposed to his general credit problems that also show up on his credit report). Then he could hire an attorney, possibly pay the necessary costs associated with an action, and, ultimately, under his view, prevail. If Herring took those steps, he might then be able to demonstrate that he could have obtained more had he sued earlier, or possibly claim interest for the delay in bringing the case caused by Bagnell's failure to pursue the case earlier.

In short, if Herring had a viable credit reporting case, it is one that he still has and can still pursue, so his loss would be from the failure to pursue it earlier, not the entire loss of the action.

The only logical conclusion is that Herring chose not to pursue the credit reporting action because he was advised that the case either had no value or that its value was less than the cost of

pursuing it.

In any case, Herring has had in his possession ample documents from his electronic file that are sufficient to start an action, and that would have been a basis for an expert witness to opine as to the amount of Herring's damages. His decision not to introduce those documents and not to have an expert witness testify as to the actual amount of his damages shows that his claims for damages are based on mere speculation. Similarly, his decision to pursue Bagnell for malpractice rather than to pursue Citi for the actual, ongoing false credit reporting shows that he has been unable to find anyone who believes he has a viable claim against Citi. He is pursuing Bagnell because the true, underlying claim has no value.

It should be noted that, even if Herring's electronic file may be missing some documents from his paper file (though it may be complete), he failed to introduce any expert evidence speaking to the deficiencies of the electronic file – rather he chose not to minimize its existence and the contents he had in hand.

Lastly, Herring has supplied the court with an alleged itemization of damages. The total itemization is for \$35,595.01. The itemization includes (1) lost wages which are completely irrelevant to any malpractice engaged in by Bagnell, (2) an estimate of long distance charges which have no connection to Bagnell's action, (3) speculative future interest charges for credit cards and for a thirty (30) year mortgage when he could correct these problems by addressing the incorrect reporting today and eliminate any impact on future interest charges, and (4) closing costs for refinancing his home that again have nothing to do with the malpractice of Bagnell. Even if Herring was harmed by Bagnell's malpractice, that harm is de minimus and not even close to the \$35,595.01 claimed in the itemization.

CONCLUSION

The circumstances here are difficult. Herring tried to do the right thing by paying off his creditors rather than filing for bankruptcy, and as a result got hit with tax obligations he had not

AFFIDAVIT OF GILBERT BAGNELL

The undersigned, being duly sworn, deposes as follows:

1. My name is Gilbert Bagnell, I am over the age of 18, and I have personal knowledge of the facts set forth below.
2. Attached hereto is Exhibit A, which is a true copy of an electronic file provided to me by Jones Herring.
3. Mr. Herring informed me that he had scanned the documents relating to his dispute and that this file contained all the relevant documents.
4. This file is identical to the file I used for exploring the viability of his case, and, generally, provided to other law firms in an effort to get them to accept a class action case.
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FURTHER SAITH AFFIANT NOT.

Gilbert Bagnell

11.18.11 Jessica Casey

JESSICA CASEY
No. 01CA6159707
Notary Public, State of New York
Qualified in Columbia County
My Commission Expires 01/22/2015

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4001998

Jones G Herring

Gilbert S Bagnell

PLAINTIFF(S)

Bagnell and Eason LLC

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 29th day of November, 2011 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truslow

Richard R. Gleissner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
JONES G. HERRING,)
)
Plaintiff,)
)
vs.)
)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
)
Defendants)
)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Docket No.: 2011-CP-40-1998

ORDER

RICHLAND COURT
FILED
2011 NOV 29 AM 11:33
JEANETTE S. BRIDE
C.C.P. & C.S.

PRESIDING JUDGE: DeAndrea Benjamin
DATE OF HEARING: October 31, 2011
PLAINTIFF'S COUNSEL: Douglas N. Truslow, Esquire
DEFENDANTS' COUNSEL: Richard Gleissner, Esquire

THIS MATTER CAME BEFORE THE COURT for a damages hearing. From the Clerk of Court's files, it appears 1) Defendants are in default for the failure to respond to Plaintiff's Complaint, although they were duly and properly served and 2) Defendants received proper notices for the within damages hearing, but they have failed to appear.^{1, 2}

At the call of the case the Court accepted testimony and evidence relative to actual damages suffered by Plaintiff that were caused by Defendants, as well as testimony and evidence relative to punitive damages.

Based on the testimony, evidence, the Clerk of Court's file and matters of record, the Court makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

¹ At the call of the case, Mr. Gleissner indicated that he had been requested by Defendant Bagnell (within hours before the time set for the hearing) to appear on Defendants' behalf. No excuse for Defendants' failure to appear was submitted, no request for a continuance was made and Defendants' counsel indicated that he was ready to proceed. Furthermore, Defendants did not contest that they were in default and that the only issue to be addressed was an award of actual and punitive damages. Plaintiff was unaware of the circumstances surrounding Mr. Gleissner's involvement until that time and had expected an abbreviated hearing to address damages.

² Mr. Gleissner appears to have performed capably for Defendants, under challenging circumstances.

- 1) This Court has both subject matter and personal jurisdiction, and venue is proper in Richland County.
- 2) Defendants are in default as to liability. Thus, Defendants have been found to have been and are liable to Plaintiff for, *inter alia*, gross negligence, fraud and misrepresentation. The essential issue before the Court relates to an assessment of actual and punitive damages.
- 3) Plaintiff's claim for damages is set forth in detail in his testimony, as supplemented by his affidavit with attachments that are of record.³
- 4) To induce Plaintiff to utilize his services in a case against a consumer credit lender (in which Plaintiff alleged that he had damages exceeding \$100,000.00), Defendant Bagnell ("Bagnell") represented to Plaintiff that he had considerable experience handling cases of the type Plaintiff possessed. He (Bagnell) then represented that he had recently handled a case with similar attributes and had obtained a very financially rewarding settlement. Bagnell invited Plaintiff to verify the terms of the case settlement "on line" (which Plaintiff apparently did). Bagnell also advised Plaintiff that he (Bagnell) would be pursuing a class action lawsuit on Plaintiff's behalf, as he had substantial experience with same. In addition, Bagnell represented to Plaintiff that he (Bagnell) was going to, with their prior/existing approval, associate a separate, well respected law firm (McGowan, Hood & Felder, LLC – hereinafter, "McGowan Hood") to assist him with the case. Further, Bagnell told Plaintiff that he would be working diligently on the case, that it would take considerable time and would be figuratively akin to an iceberg or duck paddling on a pond – with much going on that could not readily be seen on the surface. Bagnell represented to Plaintiff that he could expect to receive treble damages, interest and legal fees, plus other unspecified damages as lead Plaintiff of the Class Action lawsuit that he would be filing on Plaintiff's behalf. In reliance on Bagnell's representations, Plaintiff expended considerable time working on the case.

³ At the conclusion of the presentation of testimony, and given Mr. Gleissner's late appearance, Plaintiff was requested and allowed, without objection, to submit an affidavit (by November 18, 2011) detailing his damages, rather than reconvening a hearing to accept further testimony from Plaintiff relative to damages. Plaintiff's affidavit has been duly and timely submitted and is of record. Though not requested, Bagnell has nonetheless presented an affidavit, computer disc and memorandum (out of time), which have been given appropriate consideration.

- 5) In conjunction with Defendants' representation of Plaintiff, Bagnell requested that Plaintiff turn over to him all his documentation proving his loss of \$100,000.00; that he (Bagnell) would make copies and return the originals to Plaintiff. Plaintiff turned over to Bagnell all his records in reliance on Defendants' representations, but Defendants have never returned to Plaintiff all of his records as of November 18, 2011.
- 6) The parties entered into a written fee agreement on May 17, 2006. The fee agreement indicated that McGowan Hood was associated on Plaintiff's case in conjunction with Defendants herein. Bagnell advised Plaintiff, however, that he (Bagnell) was to be Plaintiff's sole contact and not to bother McGowan Hood.
- 7) Thereafter, Bagnell told Plaintiff that, as a result of having received a fee that exceeded ten million dollars (\$10,000,000.00) on another, similar type of case, he (Bagnell) was going on a much deserved vacation(s) to Europe but that he would start work on the case upon his return in the next month or so and for Plaintiff to just be patient – that he (Bagnell) would notify Plaintiff when anything of substance occurred or needed to be done by him (Plaintiff).
- 8) When a considerable period of time went by without Plaintiff hearing from Defendants, he contacted Bagnell and was assured by Bagnell that he had filed a class action lawsuit on Plaintiff's behalf, that work was progressing slowly but positively and that Plaintiff could expect to obtain a satisfactory verdict or settlement. Bagnell reiterated that Plaintiff should be patient and he, Bagnell, would be in touch with Plaintiff as necessary.
- 9) Plaintiff had little, if any, experience in such matters, and followed his attorney's advice.
- 10) As further time went on, Plaintiff attempted to meet with Bagnell in order to be updated, but Bagnell invented excuse after excuse for not meeting.
- 11) As a consequence of Bagnell not meeting with him, Plaintiff enlisted the assistance of an attorney acquaintance in an attempt to get an update from Defendants. However, Defendants still would not provide any update, nor would they return to Plaintiff any of his documentation necessary to prove a case against the lender.

- 12) When all efforts to obtain from Defendants copies of his files detailing his case and damages against the consumer credit lender were unsuccessful, Plaintiff contacted McGowan Hood because they were ostensibly associated on the case with Defendants. At that time, Plaintiff discovered (was told by McGowan Hood representatives) that, although McGowan Hood had previously been associated with Defendants on a prior, successful Class Action case, they had specifically (in writing) declined to be associated with him further, on this case in particular.⁴
- 13) At that point, Plaintiff enlisted the services of an attorney to assist in obtaining his file from Defendants so that he could pursue his case with other counsel. He then found out that no lawsuit had ever been filed by Defendants; he was more concerned that his statute of limitations was about to expire and he could not otherwise pursue a case without his files. Plaintiff thereafter wrote many Certified Mail letters to Defendants in attempts to get his files, which letters were essentially ignored.
- 14) When Defendants were unwilling to communicate, much less cooperate or return his records that would be needed to pursue a case against the consumer credit lender who had harmed him, Plaintiff sought the assistance of the South Carolina Bar Association. Defendants and Bagnell in particular still would not cooperate or return Plaintiff's files and the statute of limitations passed on Plaintiff's claims against the lender. Plaintiff filed with the South Carolina Bar a formal complaint against Bagnell. Subsequently, Bagnell was suspended from the practice of law for matters unrelated to Plaintiff. Bagnell was thereafter disbarred from the practice of law relating specifically to this matter and because he refused to cooperate with the South Carolina Bar's investigation (see *In re: Bagnell*, Opinion dated July 18, 2011, Opinion 27008).
- 15) Plaintiff has presented a clear case, without contradiction, reflecting that he would have obtained a verdict in excess of one hundred thousand dollars (\$100,000.00) plus other damages, interest and legal fees against the lender referenced herein, but for Defendants' misconduct and gross negligence in, *inter alia*, failing to file a lawsuit within the statute of limitations and failing to provide Plaintiff with his files so that he

⁴ Plaintiff is and was completely unaware of the circumstances that led to McGowan Hood declining to be involved in subsequent litigation with Defendants.

could initiate a lawsuit. Plaintiff has presented detailed information reflecting that he sustained an additional loss of at least \$154,306.77 that has been caused by Defendants' misconduct. Therefore, I find and conclude that Plaintiff has sustained actual damages of \$254,306.77, and he is to be awarded that sum against Defendants, jointly and severally.

- 16) Plaintiff has established by clear and convincing evidence that Defendants have committed not only legal malpractice but also fraud and misrepresentation as well. Simply stated, Defendants' acts have been both gross and egregious. Accordingly, punitive damages are appropriate against Defendants jointly and severally. In that regard, evidence has been presented reflecting that Defendants and Bagnell in particular had been very financially successful legal practitioners. As well, the evidence established that Bagnell had, in 2005 or 2006, reported to Plaintiff that he (Bagnell) and his law firm had realized a fee in excess of thirty million dollars (\$30,000,000.00) in another case. Upon receiving that fee, Defendants essentially abandoned Plaintiff, keeping Plaintiff's records and refusing to return them to Plaintiff under circumstances that reflect they (and Bagnell in particular) were acting intentionally and with gross and deliberate indifference to Plaintiff's interests. In conjunction with his suspension from the practice of law, Bagnell then left the State of South Carolina to live in New York. Accordingly, I find and conclude that punitive damages are appropriate and that the sum of two hundred and fifty thousand dollars (\$250,000.00) is both reasonable and appropriate under the circumstances.⁵ From the evidence, it appears that Defendants are jointly and severally capable of paying that sum of punitive damages and that it is reasonable and is not designed to bankrupt Defendants. Hopefully, the award of punitive damages will act as a deterrent from and against misconduct by others who may be inclined to engage in similar misconduct as Defendants have engaged in in this instance.

⁵ Defendants have neither appeared (except through counsel at the last possible moment), nor have they promptly addressed the issues and the Court's intent is to award punitive damages commensurate with Defendants' wrongdoing, their (assumed) ability to pay, the deterrence value of imposing such damages against one inappropriately engaging in the legal profession, with consideration of punitive damages awarded in other cases in this jurisdiction, the serious, repeated and gross misconduct of Defendants and the relationship between actual damages and punitive damages, among other factors that have been considered and evaluated.

NOW, THEREFORE, Judgment is granted in favor of Plaintiff and against Defendants jointly and severally as follows: two hundred and fifty four thousand, three hundred and six dollars and seventy seven cents (\$254,306.77) actual damages and two hundred and fifty thousand dollars (\$250,000.00) in punitive damages.

AND IT IS SO ORDERED.



DeAndrea Gist Benjamin
Presiding Judge
Fifth Judicial Circuit

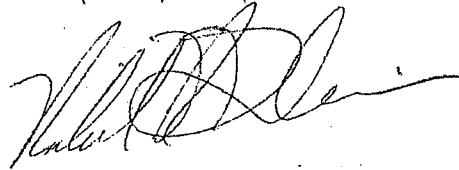
Columbia, South Carolina

11-23, 2011

Richard R. Gleissner
3610 Landmark Drive Suite G
Columbia, SC 29204

RECEIVED

12/5/11

A handwritten signature in dark ink, appearing to be "Richard R. Gleissner", written in a cursive style.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JONES G. HERRING,)
Plaintiff,)
vs.)
GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)
Defendants)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Docket No.: 2011-CP-40-1998

AFFIDAVIT

RICHLAND COUNTY
FILED
2013 JAN 17 AM 9:05
JEANETTE W. McBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, JONES G. HERRING, who being duly sworn, deposes and says:

Defendants defaulted as to liability in this lawsuit. They never sought to reopen the case, nor did they seek any other relief. They simply continued to ignore their legal responsibilities and obligations. Thereafter, a damages hearing date was set for **October 31, 2011**. Defendants were given due notice. They continued to do nothing. However, on the date of the damages hearing, at the last possible moment, Defendants made an appearance through counsel. Neither Defendant otherwise appeared. Upon announcing his presence on behalf of Defendants, their counsel stated that he had not even had time to contact my attorney or notify the Court. Instead, he said that he had come to the Courthouse upon receiving a telephone call from Defendant Bagnell ("Bagnell") requesting his help. Defendants' counsel said he was appearing on a limited basis for the damages hearing. He said he was simply trying to do a favor for Bagnell, with whom he had once practiced law. The hearing then took place.

The Court issued a final Order granting me a damages judgment on **November 23, 2011**. The Order was duly filed and mailed to respective counsel by the Clerk of Court on **November 29, 2011**. The respective attorneys were well aware of the Court's Order, having vetted it and having already received a Form 4 Order prior to its issuance.

Defendants admit that they had received the Order by **December 5, 2011**. Defendant's counsel's law office is in Forest Acres, approximately three miles from the Richland County Courthouse.

Bagnell served a *pro se* "motion for reconsideration". It is postmarked Saturday, **December 17, 2011**. Defendants subsequently filed another motion for reconsideration on **December 19, 2011**. The body of the second motion is essentially the same as the first one. That would seemingly corroborate that it was prepared subsequent to the first one.

Defendants did not file or serve a notice of appeal within thirty days of their receipt of the Order. Instead, Defendants waited until **August 15, 2012** to file a notice of appeal. They only did so after getting an email from my attorney inquiring about the possibility of a settlement and the consequences of the Court's Order. Upon receiving Defendants' notice of appeal, through my attorney, I filed a motion in the South Carolina Court of Appeals to remand the case for a determination as to whether Defendants' appeal was timely. My motion was granted.

As I understand it, the threshold decision for the Court at this juncture is to make a factual determination of whether Defendants' motion for reconsideration was in proper form/timely. If it was not, then the notice of appeal was untimely and the case will be ended – with the Court's November 23, 2011 Order being conclusively final.

If Defendants' motion for reconsideration were determined to be in proper form and timely, then the appeal would continue, with the only remaining issue being for the Court to determine whether Defendants should be required to post an appeal bond.

As it relates to a determination of whether Defendants' motion was timely, it is my understanding that they had ten days from receipt of the Court's Order in which to serve a motion for reconsideration. And, if they did not timely do so, then they still had thirty days time in which to appeal.

Unquestionably, Defendants did not file a notice of appeal within thirty days of receipt of the Court's Order granting me judgment, and it likewise appears that Defendants did not timely file a motion for reconsideration.

My attorney had received the Court's Order on or about December 1 or December 2, 2011. I know this because I was promptly notified and given a copy.

On or about **December 15, 2011**, my attorney received a letter from Defendants' counsel informing him that he had my file associated with Defendants' previous representation of me.

The letter is dated **December 14, 2011**. I was promptly informed of its receipt and given a copy. In the letter, Defendants' counsel inquired as to whether we wanted my "original paper file" that he had in his possession (see Exhibit 1). There was absolutely no mention in the letter or even a hint that any motion for reconsideration was being considered or would be forthcoming. In fact, given the letter's timing and content, as well as the surrounding circumstances and statements previously made by Defendants counsel, it seemed clear that no motion, argument or further litigation was anticipated, especially by Defendants' counsel. I was shocked to learn that Defendants' counsel admitted that he had the file. I stress this for three primary reasons: (1) I had originally engaged Defendants to represent me for purposes of a lawsuit and had given them all my detailed damages documentation, at their request. They were to provide me with copies in return, but did not do so. I tried and tried to get in touch with them, to no avail. I even sent certified letters requesting the contents of my file. Defendants would not respond and I ultimately had to seek the assistance of the S.C. Bar. They were no more successful than I. Bagnell ignored them too. The net result was that my statute of limitations on the lawsuit in which Defendants were supposed to be representing me expired, and I still did not have all my important records – even at the time of the damages hearing. Bagnell was disbarred from the practice of law as a result of his misconduct. This lawsuit ensued. Bagnell/Defendants repeatedly claimed during this lawsuit to have misplaced my file, that it could not be located and that it was consequently unavailable for me to have for purposes of establishing my damages; it is obvious that Defendants had it all along. (2) Defendants argued to the Court at the time of the damages hearing, and even continued to do so through the time of their motion(s), that I did not have sufficient legal documentation of my damages. At the same time, they were withholding the evidence. In that regard, it is significant that in an email to Defendants' counsel dated **November 18, 2011**, my attorney confirmed a statement to the effect that Defendants' counsel did not have my file. If that is correct, then it is even more obvious that Defendants had it all along and were apparently waiting for the Court to issue its Order before returning it. (3) Even though **December 15, 2011** was the "drop dead" date for Defendants to serve upon my attorney a SCRCP 59(e) motion, nothing whatsoever was mentioned in the **December 14, 2011** letter about even the remote possibility of filing such a motion.

On **December 20, 2011**, my attorney received from Bagnell a *pro se* "Motion to Reconsider" (Exhibit 2). I was promptly notified and given a copy. The allegations made by Bagnell are significant, especially in context:

Bagnell has admitted that the last possible day to serve a motion for reconsideration was **December 15, 2011** (see Exhibit 2). And, he claimed that he was filing the motion on the drop dead date because he had not heard from his counsel. While Bagnell has asserted that he mailed the motion to my attorney and the Court for filing on the drop dead date, it is abundantly clear that he did not do so – as established by the **December 17, 2011** postmark on his mailing transmittal envelope (see Exhibit 3), and in conjunction with the other evidence and circumstances set forth herein. Furthermore, it has now been firmly established that what Bagnell was asserting about not having heard from his attorney was **not** true. He had in fact heard from his attorney – on **December 6, 2011**. This is so because it is now known and irrefutable evidence has been produced proving that on that date Defendants' counsel emailed Bagnell and alerted him to the critical legal deadlines (see Exhibit 4). As well, in the email, Defendant's counsel stated that he had not been paid for the legal services he had provided and that he had done just about all he could do for Defendants under the circumstances. Both the lack of a response by Bagnell to that December 6, 2011 email and his claim that he had not heard from Defendants' counsel is telling in the context of these proceedings.

Accepting for the sake of argument the veracity of Bagnell's claim that Defendants did not receive the Court's Order until, **December 5, 2011**, it is beyond question that the absolute last day for service of Defendants' motion was **Thursday, December 15, 2011**. It is also clear that Bagnell did not mail it until **Saturday, December 17, 2011**, even assuming that he was allowed to do so on behalf of the corporate (law firm) Defendant, and especially considering the fact that he had been permanently disbarred from the practice of law. It is clear that Bagnell did not timely mail his motion because a simple reference can be made to the postmark on the transmittal envelope (Exhibit 3).

Despite his claims to the contrary, it is obvious that Bagnell never filed his motion with the Clerk of Court, much less sent a copy to the judge who issued the Order. Also, he never submitted a motion cover sheet that would have been required. He claims to have submitted a filing fee, but the Clerk of Court's records do not appear to support that claim. Furthermore, and significantly, Bagnell's motion and letter of transmittal do not reflect that he even sent a copy to

his presumptive attorney - whom he complained had neglected to communicate with him at critical times. Bagnell's complaint in that regard is now known to have been false e.g. see email of Defendants' counsel dated December 6, 2011, but it is what Bagnell claimed at the time. This too reflects adversely on the veracity of Bagnell's assertions. Bagnell has essentially asserted that the attorney was obligated to represent Defendants without payment for his services, without Bagnell communicating with him in response to his December 6, 2011 email and without a contract of employment describing the scope of the engagement. And, if Bagnell had in fact communicated with Defendants' counsel, that would reflect even more adversely on Defendants because the evidence is abundantly clear that Defendants' counsel opted not to file Bagnell's *pro se* motion. Defendants' counsel's reasons for not doing so would appear quite clear - that, in conjunction with the postmarked letter he would have received, it would prove beyond a doubt that Defendants were untimely. Finally, Defendants' own claims undermine any claim that the second, subsequent motion was timely. Simply put, the circumstances reflect that Defendants are not credible as to any material fact. Defendants have not played by the rules. Bagnell in particular has not played by the rules in the past in this very matter (resulting in his permanent disbarment from the practice of law), and he has continued with the same deceptive pattern of misconduct in this instance. Defendants are entitled to no special treatment simply because they may have practiced law.

Subsequent to receipt of Bagnell's motion, my counsel received from Defendants' counsel a motion for reconsideration in which the same arguments previously submitted by Bagnell were reiterated. That motion was also provided to me upon its receipt. It appeared even further out of time than Bagnell's. I am aware that my counsel then communicated with Defendants' counsel by telephone and email to inquire about the unusual circumstances and question of timeliness, to no avail (see Exhibit 5). From the lack of responsiveness, it appeared to me that Bagnell was overtly attempting to take advantage of his attorney, and figuratively trying to "throw him under the bus" while both ignoring him and not paying him for legal services provided. To me, Bagnell's conduct doesn't even pass the "smell test".

The Clerk of Court's file reflects that the second motion for reconsideration was filed on **December 19, 2011**. Given the filing date, the subsequent date of receipt, the content and all the other circumstances, it appears more out of time than the first one. No accompanying letter of transmittal is contained in the Clerk of Court's records. The motion does not refer to any rule. No

copy of the motion was submitted to the judge – as I understand the Court rules would require. The “Certificate of Service” references pleadings not even remotely related to any issue in this case. No such pleadings set forth in the Certificate of Service were ever served, faxed, e-mailed, hand delivered or mailed in any event. Finally, even if there had been a letter of transmittal to the Clerk of Court, no copy it was even attempted by Defendants to be submitted to me/my attorney. In essence, the second motion is even more of a mess than Bagnell’s out-of-time motion.

I have read Defendants’ recent letter (see Exhibit 8) to the Court relative to timeliness. The circumstances argued are quite odd in that:

1. Defendants claim that they attempted to file the second motion for reconsideration by hand delivery to the Clerk of Court on the drop dead date. They admit that they could not do so because they failed to travel to the Courthouse during normal working hours and that the Courthouse was locked. They claim the doors were locked at 5:05 p.m. I have been in the vicinity of the Courthouse front doors on a number of occasions and I have seen people streaming out at the end of day after 5:00 p.m. My point is that they could have gone in the Courthouse if they really needed to do so. I do not believe the front doors would be “locked” at 5:05 p.m. The fact that they followed a backwards process on the last possible date at the last possible minute, with no copy being served upon my counsel at the same time or prior thereto, is problematic for them, to say the least. This is so because, *inter alia*, the date of service upon my attorney is what was of critical importance. And, it is also noteworthy that my attorney’s office is in close proximity to the Courthouse (just a few blocks walking distance and less than a minute or so away by car). Seemingly, if there was to be hand delivery for filing of Defendants’ motion, service of same would have been effectuated first or, finding the Courthouse locked, they would have taken the pleading to my attorney’s office. They did not do so. Why that was not done has not been explained.
2. Defendants allege that upon discovering that the Courthouse was locked on the drop dead date, and failing to simply then deliver the motion to my attorney’s office (he has a mail slot on his office door for after-hours mail), they then inexplicably went to a much more out of the way location and attempted to serve the motion by placing it in a remote mail collection receptacle - that conspicuously stated on its exterior face that no

mail would be collected on that date after 3:45 p.m. (see Exhibit 6). It is also noteworthy in that regard that the receptacle stated clearly that Defendants still had until 8:00 p.m. that same day (to deliver the motion for mailing for it to be deemed effective) to the Post Office center at 2001 Dixiana Street, which is a short distance away, just off I-77. Instead, Defendants have asserted that they followed a much more convoluted process that would most assuredly cause more confusion and delay. The reason Defendants opted to pursue such a course of action is a mystery.

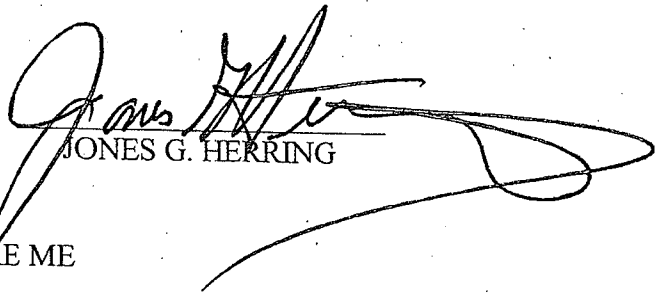
3. Knowing the circumstances, and having been alerted on December 21, 2011 that the motion(s) were at substantial risk of being deemed untimely, Defendants still had until January 5, 2012 to appeal. They inexplicably did not do so. Their failure to act promptly and prudently at that juncture is further evidence supporting the conclusion that the appeal herein is untimely.

For the Court's convenience, I am attaching a timeline of events (see attachment 7).

As an alternative to a finding that Defendants are untimely in their appeal, this whole unseemly issue could be put to bed if Defendants would simply agree to post a bond in the amount of the Judgment. If they were willing to do so, I would abandon my motion and they would be free to continue with whatever appeal Defendants feel is appropriate. If they are unwilling to do so, that fact would be yet another indication that they are not sincere and are only pursuing an unjustifiable course of action to further delay the case's resolution, to my distinct prejudice. In that event, I would ask the Court to find that Defendants' motion for reconsideration (and hence their appeal) is untimely – because it appears to me to in fact be untimely.

Bagnell is apparently now living in New York and he has demonstrated that, aside from his continuing questionable conduct, he has been extraordinarily uncooperative and difficult to even locate. An asset check has been made difficult by the fact that Bagnell has apparently placed assets in the names of others or in corporate names. I am concerned that he is trying to dispose of/hide his assets. An appeal bond will insure that all parties will be adequately protected. The status of the corporate Defendant is unknown, but presumably, it is no longer operating, given Bagnell's disbarment. If Defendants have nothing to hide and are genuine, they

will post a bond, and it will not be necessary for this Court to find and conclude that they are untimely.


JONES G. HERRING

SWORN TO AND SUBSCRIBED BEFORE ME

this 14 day of November, 2012

Amanda Douglas Threlley


Notary Public for South Carolina

My Commission Expires: November 22, 2020

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants)
_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 1

GLEISSNER LAW

Helping Business | Helping People

GLEISSNER LAW FIRM, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
Phone (803)787-0505
Facsimile (803)712-4283
www.GleissnerLaw.com

Richard R. Gleissner, Esquire
*Certified Specialist in Bankruptcy
and Debtor-Creditor Law*
Rick@GleissnerLaw.com

December 14, 2011

Douglas N. Truslow, Esquire
Truslow and Truslow
P.O. Box 1465
Columbia, SC 29202

Re: Herring v. Bagnell
Civil Action Number: 2011-CP-40-1998
Our File Number: 89-1

Dear Doug:

I did not know if you still wanted the original paper file of your client, Mr. Herring. But, since it was doing me no good sitting in my office, I thought I would forward the original file to you.

If you have any questions or if I may of any further assistance, please feel free to contact me. Thank you for all your consideration, understanding and the opportunity to be heard.

Sincerely,



Richard R. Gleissner

RRG/abm

Enclosures

cc: Gil Bagnell (without enclosures)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants)
_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 2

12/20/11

Gilbert S. Bagnell
PO Box 85
Catskill, NY 12414

The Honorable Jeanette McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202

Re.: Herring v. Bagnell, 2011-CP-40-1998

Dear Ms. McBride:

Attached please find a copy of Defendant's Motion to Reconsider in the above case, along with a \$25 motion fee. I am filing this pro se due to my inability to confer with Rick Gleissner today. Please file the motion and forward a copy to Judge Benjamin. I am also providing Plaintiff's attorney with a copy of this motion by copy of this letter.



Gilbert S. Bagnell

cc: Douglas Trusdale, Esq.



STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

)

COUNTY OF RICHLAND

)

DOCKET # 2011-CP-40-1998

HERRING

)

)

V.

)

)

BAGNELL, ET AL.

)

MOTION TO RECONSIDER

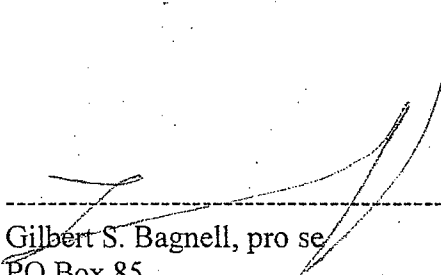
Defendants hereby move pursuant to Rule 59, SCRPC for reconsideration of the Court's order filed November 29, 2011 (a copy of which was received on December 5, 2011) in the above matter based on the following grounds:

1. While the order recites facts taken as admitted due to default, it fails to indicate how the testimony set forth at the damages hearing, together with the matters brought forth on cross examination, and the additional matters set forth in affidavits following the hearing, support the award in the amount stated.
2. Specifically, the order fails to address whether the Plaintiff's proposed class action, relating to the alleged misreporting of forgiveness of debt, could have succeeded if it had been pursued, and if so, what recovery the Plaintiff could have expected beyond credit for taxes he had paid.
3. Additionally, the order fails to address whether the Plaintiff lost the opportunity to pursue an action for misreporting of debt, a matter which he testified is ongoing and which he could pursue now.
4. The order also fails to take into account the fact that, while a central part of the Plaintiff's complaint is that he was unable to obtain his files, he in fact did obtain a computer scan of the bulk of his files, and rather than pursuing his lender at that time, instead chose to pursue the

Defendants. Nor does the order take into account the fact that the Plaintiff elected not to utilize his own files to support his claims for damages.

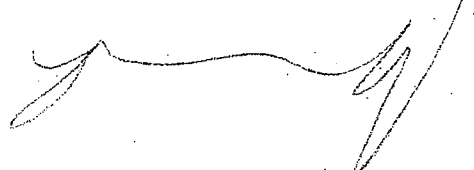
5. The order also fails to reconcile the different claims for damages set forth at the damages hearing and subsequently in the Plaintiff's affidavit – specifically, the itemization of damages set forth in Plaintiff's affidavit in the amount of \$35,595.01, including claims that appear to be irrelevant, including claims for telephone calls, refinance of Plaintiff's house, and speculative future interest charges.
6. In general, other than indicating generally in a footnote that the Court took into account the Defendant's memorandum, affidavit, and the copy of Herring's file attached to the affidavit, the order fails to address specifically any of the matters raised in those items.

For the reasons set forth above Defendants ask the Court to reconsider its order filed November 25 in the above matter.


Gilbert S. Bagnell, pro se
PO Box 85
Catskill, NY 12414

December 15, 2011

*I certify I served this by placing a copy in the
US Mail, Postage Prepaid, on Dec. 15, 2011*



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants)
_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 3

77

Douglas Trusdale Esq
PO Box 1465
Columbia, SC 29202



SECRET

17 JAN 1968

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants)
_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 4

Rick Gleissner

From: Rick Gleissner <rick@gleissnerlaw.com>
Sent: Tuesday, December 06, 2011 10:38 AM
To: Gil Bagnell (gilbagnell@bagnellandeamon.com)
Subject: FW: Order and Judgment
Attachments: doc00495120111206102722.pdf

Gil,

I received the attached yesterday. My reading of the rules is that you have 10 days to move to reconsider and 30 days to appeal. The other side has asked if you wanted to make a counteroffer on their settlement demand.

Gil, I do not think that I am going to be able to invest much more time and money in your case. I still haven't been paid for the first hearing. Please let me know what you would like to do.

Thanks

Rick

Richard R. Gleissner

Gleissner Law Firm, L.L.C.

3610 Landmark Drive, Suite G

Columbia, South Carolina 29204

(803) 787-0505 – Telephone

(803) 712-4283 – Facsimile

(803) 603-2228 – Cell Phone

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants)
_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 5

Douglas N. Truslow

From: Douglas N. Truslow [douglastruslow@truslowlaw.com]
Sent: Wednesday, December 21, 2011 3:57 PM
To: Rick Gleissner
Subject: RE: Herring v. Bagnell, Bagnell and Eason

Rick:

If the pertinent, controlling document was deemed to have been received on the 5th, your motion would seem to me to be timely (assuming Defendants would concede that you had the authority to file the "Motion for Reconsideration" in the first place), but now Bagnell seems to have created a lot of confusion - in looking at Bagnell's Motion and he seemed to suggest that the Order was received by him on December 5th. You filed a pleading on November 18, which seems to have addressed the same issues as set forth in your Motion for Reconsideration. Both of us got a form 4 on November 22nd. I had already drafted an order, and needed to revise it upon getting the form 4. I did it and the judge signed the order on November 23. I think I got the more detailed order on the 1st or 2nd of December. My thought process was that if you represented defendants for a limited purpose, got notice at the same time and sent it to him, the time would start at the earlier date (or from the 23rd), and not when Bagnell received his copy from you, especially if he is to take the position that you only represented defendants for a limited purpose. That was one of the reasons that I urged you to be very careful, especially in defining the terms of your engagement. Bagnell is the one who seems to have created the confusion by asserting that you were not available, not representing defendants, only doing so for a very limited purpose and/or that he was continuing to act pro se (which was the history of the case until you and I met for the first time at the Court house on October 31). At this point, based on what he is now apparently asserting, I can't tell if you represent him or he is representing the defendants or what seems to be the appropriate date. Again, Bagnell is the one who seems to have made what I initially thought was a non issue an issue and he should not be allowed to continue to do so to my client's prejudice. I hope this makes sense. If not, I can give more details but not at this particular moment. And it goes without saying that if Bagnell had handled this appropriately from the inception we would not even be having this discussion.

Sincerely,

Douglas N. Truslow

Truslow & Truslow
ph (803) 256-6276
fax (803) 256-7659

Mailing Address:
P.O. Box 1465
Columbia, SC 29202

Physical Address:
914 Richland St., Suite B-102
Columbia, SC 29201

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that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic or otherwise, which you may have of this communication.

From: Rick Gleissner [mailto:rick@gleissnerlaw.com]
Sent: Wednesday, December 21, 2011 2:50 PM
To: 'Douglas N. Truslow'
Subject: RE: Herring v. Bagnell, Bagnell and Eason

Doug,

I understand why you believe the motion to reconsider is not appropriate or well founded. Why do you believe that the motion is not "timely"? I was under the impression that we had agreed that it was timely made.

Thanks
Rick

From: Douglas N. Truslow [mailto:douglastruslow@truslowlaw.com]
Sent: Wednesday, December 21, 2011 1:05 PM
To: 'Rick Gleissner'
Subject: Herring v. Bagnell, Bagnell and Eason

Rick:

To follow up on our recent t/c (subsequent to December 15), and with all due respect, I wanted to repeat that Plaintiff does not believe Defendants' Motion(s) are appropriate, timely or well founded in any event. I have explained why, so I will not repeat myself, except to say again that there are of course viable alternatives that perhaps should be considered. If your clients believe that their Motion is justified and are willing to explain why, I would be interested in hearing from you (not that I am expecting or demanding that you do so).

Sincerely,

Douglas N. Truslow

Truslow & Truslow
ph (803) 256-6276
fax (803) 256-7659

Mailing Address:
P.O. Box 1465
Columbia, SC 29202

Physical Address:
914 Richland St., Suite B-102
Columbia, SC 29201

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)

BAGNELL AND EASON, LLC,)

Defendants)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 6

UNITED STATES POSTAL SERVICE **COLLECTION TIMES**

Monday - Friday	Saturday	Sunday	Last Collection in this area is at:	
3:45 PM			200 DIXIANA RD/PROCESS CTR	
			Monday-Friday	8:00 PM
			Saturday	8:00 PM
			Sunday	
			Holiday	
Location of Express Mail Drop:			For local information call:	Location ID No.:
2920400021			800-837-8777	2920400021
Date label printed:			04/12/11	

Temporarily with this box, lock, or contents is punishable by fine or imprisonment.

Last Collection in this area is at:
2001 DIXIANA RD/PROCESS CTR

Monday-Friday	Saturday	Sunday	Holiday
8:00 PM	8:00 PM		

ation call: 1-8777

Location ID No.: 2920400021

Date label printed: 04/12/11

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)

BAGNELL AND EASON, LLC,)

Defendants)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 7

Jones Herring v. Gilbert Bagnell, et al.
2011-DR-40-1998
TIME TABLE

3-24-2011	Suit filed and served.
6-14-2011	Defendants default as to liability; damages hearing to be set; Defendants notified.
3-24-2011 through 10-30-2011	No appearance by anyone on behalf of Defendants. Damages hearing set for October 31, 2011. Defendants notified. No response from Defendants.
10-31-2011	Damages hearing; Gleissner appears minutes before the hearing purporting to represent Defendants on a limited basis only. He claims he has not been paid and is appearing solely for the damages hearing.
11-22-2011	Form 4 Order provided to attorneys.
11-23-2011	Formal Order signed.
11-29-2011	Clerk of Court mailed formal Order.
12-2-2011	Receipt by Plaintiff of formal Order.
12-5-2011	Defendants counsel claims this is the date he receive the Court's Order.
12-20-2011	Plaintiff's counsel received Defendant Bagnell's <i>pro se</i> Motion to Reconsider. Bagnell does not copy his ostensible attorney. No motion cover sheet is included. In the body of his motion, Bagnell purports to represent both Defendants (including the corporate Defendant) and asks the Court to reconsider "its Order filed November 25 in the above matter". In this motion, Bagnell claims to have served the motion "by placing a copy in the U.S. Mail, postage prepaid, on December 15, 2011" and to have sent a copy to the Clerk of Court. However, the transmittal envelope establishes that it was not post marked until December 17, 2011 at 11p.m. No such motion or transmittal letter is located in the Clerk of Court's file.
12-21-2011	Plaintiff's counsel received a motion coversheet reflecting that a subsequent motion to reconsider was attached. The body of the motion is the same as the one served by Bagnell out of date. Notably, the second motion for reconsideration does not reference a rule or subsection relied upon, an Order to which it relates or a date of receipt. Furthermore, there was no letter of transmittal and no attempt to copy the Judge issuing the Order is indicated. The Certificate of Service claims that an Amended Answer and Amended Third Party Complaint were being served and although the Certificate of Service uses December 15, 2011 as the date of mailing, it appears that it was not mailed until December 19, 2011 (received by the Court that day with no existing evidence of a mailing cover letter to the Clerk of Court – none is in the Clerk of Court's file, thereby suggesting that none was sent).
12-21-2011	Upon the receipt of the second motion to reconsider (that appears further out of time), respective counsel exchange there emails. No supporting evidence (such as emails, faxes, affidavits, etc.) establishing that service of Defendants'

	motions to reconsider were timely have been produced since that time. In fact, the only record produced since that time (an email from defendants' counsel to Bagnell), tends to support the assertion that the motion(s) were untimely – defendants were not paying their counsel for legal representation.
1-5-2012	Last day to appeal if a Rule 59(e) motion was not timely served. Final “Drop Dead” date.
8-15-2012	Date of Defendants’ Appeal.
10-21-2012	Upon the Court of Appeals remanding the case to determine timeliness, Mr. Gleissner writes a letter indicating that Defendants did not attempt to serve Plaintiff’s counsel personally and only attempted to serve a motion after work hours on the drop dead date by “dropping” a motion in a remote mail receptacle (where he knew there would be no mail collection that day).

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants)
_____)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

EXHIBIT 8

GLEISSNER LAW

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October 26, 2012

The Honorable DeAndrea Gist Benjamin
Circuit Judge, Richland County
Post Office Box 192
Columbia, South Carolina 29202

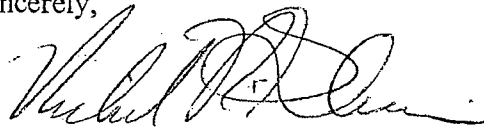
Re: Herring v. Bagnell
Civil Action Number: 2011-CP-40-1998
Our File Number: 89-1

Dear Judge Benjamin:

Please find enclosed a copy of an order that I received from the South Carolina Court of Appeals (the "Court of Appeals") in the above-referenced matter. Mr. Herring filed a motion to remand to determine whether my Rule 59(e) was timely filed. The Court of Appeals has granted that motion to remand. I am enclosing a courtesy copy of Mr. Herring's motion and a copy of my return to the motion as filed with the Court of Appeals. I would appreciate you scheduling a hearing on the remand at your convenience. I do not anticipate the hearing taking very long. I would only have a single witness, my associate, Luke R. Gleissner, Esquire. On the day in question, Luke took the pleadings to the Richland County Courthouse, but arrived at 5:05 p.m. Unfortunately, the doors were locked. When he returned to the office, I drafted the letter to clerk and we dropped the motion to reconsider into the mail box, with postage properly affixed. I do not believe that this testimony will take very long to present.

If you have any questions or if I may of any further assistance in scheduling the hearing, please feel free to contact me. Thank you for all your consideration, understanding and the opportunity to be heard.

Sincerely,



Richard R. Gleissner

RRG/abm

Enclosures

cc: Douglas Truslow, Esquire (with enclosures)
Gil Bagnell (without enclosures)

1 State of South Carolina Court of Common Pleas
2 County of Richland Fifth Judicial Circuit

3
4 Jones G. Herring,) Transcript of Record
5 Plaintiff,) 2011-CP-40-01998
6 vs.)
7 Gilbert S. Bagnell,)
8 Bagnell and Eason, LLC,)
9 Defendants.)

10 August 26, 2015
11 Columbia, South Carolina

12 B E F O R E:

13 The Honorable Alison Renee Lee, Judge

14
15 A P P E A R A N C E S:

16 Douglas Truslow, Esquire
17 Attorney for the Plaintiff

18 Richard Gleissner, Esquire
19 Attorney for the Defendant

20
21 STACY S. JOHNSON
22 CIRCUIT COURT REPORTER
23
24
25

I N D E X

WITNESS

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P R O C E E D I N G S

BAILIFF: Court come to order. All rise.

THE COURT: Good morning, everyone. Be seated, please. Good morning. I apologize for the delay. I had a few things I needed to take care of.

This is Docket Number 2011-CP-40-01998, Jones G. Herring versus Gilbert Bagnell and Bagnell and Eason, LLC. The Plaintiff is represented by Doug Truslow, the Defendant is represented by Richard Gleissner, and we are here on a nonjury trial, I believe, for a damages hearing. Is that correct? Well, it was on the jury roster, but I did have a chance to look at the Supreme Court order that was issued last November where it was remanded for a damages hearing.

Yes, sir.

MR. TRUSLOW: That's correct, Your Honor.

MR. GLEISSNER: Rick Gleissner on behalf of the Defendant. That's correct, Your Honor.

THE COURT: I did not have the opportunity to read all of the information that was contained in the file and I don't know how much of that is really relevant to what I need to look at. I did look at the complaint and then the amended complaint and I skipped over Judge Benjamin's order. And I see that there's a motion to reconsider, so I did not read all of those orders.

1 So I don't know how much background you need to give
2 me before we get started, but I'm happy, you know, to go
3 ahead and hear testimony, whichever you all would prefer.

4 **MR. TRUSLOW:** Your Honor, if we may, it may assist
5 you, and Mr. Gleissner has been a pleasure to deal with
6 both personally and professionally and we think we may be
7 able to streamline this case, which I know you're always
8 glad to hear, Your Honor.

9 **THE COURT:** Yes, I am.

10 **MR. TRUSLOW:** For the record, I'm speaking for --
11 I'm Douglas Truslow. I represent Jones Herring, who's the
12 Plaintiff.

13 Your Honor, this case is a -- I guess you could say a
14 legal malpractice case, but the Defendant has -- Defendants
15 have defaulted, so we're here for a damages case. By way
16 of background, my client will show you and testify that in
17 the late eighties, early nineties he worked for the Budget
18 and Control Board. Quite frankly, he got over his head in
19 that the income he was making was not -- was not sufficient
20 to allow him to live a lifestyle that he was engaging in
21 and he was going -- had many friends in the Legislature and
22 was going out with them and looked up one day after having
23 a dutiful, wonderful wife and a young son and found out
24 that he had \$80,000 in debt. This was over and above his,
25 I think, mortgage. He's had \$80,000 of commercial debt and

1 he was looking at -- between 24 and 32 percent interest at
2 the time. This is -- and he and his wife had divorced, he
3 accepted full responsibility, it was his fault, there was
4 no physical violence or no -- nothing like that, but he was
5 more interested in some -- unfortunately more interested in
6 some things associated with politics and that than he was
7 other responsibilities.

8 In any event, in the divorce he got the debt that was
9 -- ended up being a hundred thousand dollars of commercial
10 debt. He testified before, he'll testify again, that he
11 had this hundred thousand dollar debt, he thought it would
12 be against what he thought was the correct moral thing to
13 do to file for bankruptcy, so he wanted to try to work it
14 out and pay off the debt, he didn't want to have that
15 legacy for himself or his ex-wife, who he still loved and
16 has -- fortunately has a good relationship with now and
17 his son.

18 So he went to the United Way and they have credit
19 counseling and they provided him with a means. They
20 contacted Citibank where his commercial debt was and worked
21 out a deal. He paid -- I want to emphasize he paid all
22 of the debt, all \$100,000. He had a contract with them.
23 What they did was they extended -- they extended the time
24 to pay and put a moratorium on interest or had interest of
25 a very, very low rate and within five years with a lot of

1 sacrifice he paid it off. He lived in an apartment he
2 was too embarrassed to let his son see, got his clothes
3 at Salvation Army, was eating rice and potatoes and got a
4 second job and through tremendous sacrifice stopped --
5 stopped drinking, which was a good thing, and no movies,
6 lived a very austere life and through a lot of sacrifice
7 paid off all the debt. In exchange, he had a contract
8 and an agreement with Citibank that that were going to --
9 that would not affect his credit anymore. If it were
10 gonna affect his credit, he might as well have filed for
11 bankruptcy, wiped it out and in, I think, five or six
12 years -- six years he would have been -- he would have
13 been free to start over. So he paid it. He paid it
14 relying on their representations and their documentation
15 and he was very happy when he had done that.

16 What happened then was he found out that they were --
17 continued to dun him for bills. He was getting calls at
18 home, at work, he was getting calls from lawyers. He --
19 and they reported him. In addition, they reported him as
20 having gotten income that he clearly did not get. There
21 wasn't any interest forgiveness, there wasn't any loan
22 forgiveness. He paid off his entire debt. This became
23 problematic as his son started to college, overstated his
24 income. It affected him and his ability if he were gonna
25 try to buy a house at that point in time or buy a car or

1 do anything that people normally do and he was getting
2 pounded by this.

3 So what he -- what he did was he went to the consumer
4 protection -- state consumer protection, provided his
5 documentation to them. Citibank would not respond, would
6 not respond at all, they ignored him, so they recommended
7 that he seek legal counsel. He checked around with a
8 number of lawyers that he knew and selected a man named
9 Gilbert Bagnell. He provided all of his documentation to
10 Gilbert Bagnell and this becomes important. Mr. Bagnell
11 wanted all of his original documents, said he would scan
12 them, give them back to him and that he would look into it.
13 He looked into it, told him he had a very good case, that
14 Citibank was -- had a dual recordkeeping where they were
15 reporting one thing to their stockholders and anybody that
16 may lend Citibank money and they had another set of books.

17 He, Mr. Bagnell, entered into a contract of employment
18 with Gilbert Bagnell. Mr. Bagnell said that -- and he
19 previously said that he had another firm that had similar
20 experiences and they had documentation as well and that
21 the two of them were going to join together for a lawsuit.
22 So he, Mr. Herring, signed a contract of employment.
23 Mr. Bagnell represented that he had the McGowan law firm,
24 a very reputable law firm, involved and that they were
25 working on the case, but he, Mr. Bagnell, was to be the

1 sole contact. He represented that he was pursuing the
2 case, represented that he filed the lawsuit, that
3 everything was going well.

4 To induce my client to enter into a contract with him,
5 he represented that he had gotten a ten million dollar
6 verdict recently on a case and that he invited my client to
7 look at that online. My client did. The name of the case
8 was Thaxton, T-H-A-X-T-O-N. There were a lot of things
9 online that you could see and verify and it appeared to my
10 client that the information he was being given was correct.
11 He was told to wait, that everything would be done and he
12 kept being assured that he, Mr. Bagnell, was proceeding
13 with the case. He never wrote him a letter indicating that
14 he -- that he was doing nothing or that he didn't have a
15 case.

16 A year, two years go by. My client is asking for
17 meetings, wanting updates. Mr. Bagnell would occasionally
18 call him and say hey, I'm working on your case, his staff
19 would say that he's in New York or he's in Boston, but
20 he'll -- he'll contact you. A lot of time went by. Your
21 Honor, you have in the file and you'll have again letters
22 that my client then wrote, certified letters, phone calls,
23 being assured that -- that Mr. Bagnell was proceeding with
24 the case and then Mr. Bagnell stopped communicating all
25 together. My client then tried to contact his partner,

1 who was Mr. Eason, and Mr. Eason was saying that this was
2 Mr. Bagnell's case and he needed to talk to him, that they
3 were partners. They still had their logo up outside their
4 office, they still maintained an office looking over the
5 Statehouse. What my client did not know at that point in
6 time was that Mr. Eason had been suspended from the
7 practice of law as of October 2009.

8 **MR. GLEISSNER:** I'm sorry, Your Honor. I think he
9 said Mr. Eason.

10 **MR. TRUSLOW:** I'm sorry. Mr. Bagnell. I'm sorry.
11 Mr. Bagnell had been suspended leaving Mr. Eason as the --
12 as the sole person involved. Mr. Eason never advised my
13 client that Mr. Bagnell had been suspended. He had been
14 suspended for reasons that didn't relate to my client. He
15 kept telling him to contact Mr. Bagnell, Mr. Bagnell was
16 not responding, or when he did he said that he would get
17 everything to my client and he didn't. My client expressed
18 that times became critical, that if he wasn't gonna proceed
19 with the case just let him have his file back, let him get
20 another lawyer because he was concerned about the statute
21 of limitations given that it appeared that almost three
22 years were coming up within the next six months and he
23 needed something done or just let him have the file.

24 He didn't get the file. Mr. -- the surviving partner
25 of the law firm, Mr. Eason, did nothing, so my client then

1 went to -- went to the McGowan Hood law firm only to find
2 out that they specifically were not involved, had not been
3 involved, had never involved. While Mr. Bagnell had listed
4 on the contract of employment that they were co-counsel, it
5 was never true and they had, in fact, written Mr. Bagnell
6 and said they would not be involved in any case with him.

7 At that point in time my client tried again to get
8 in touch with Mr. Bagnell, got nowhere. Left with no
9 choice, he enlisted the assistance of counsel to try to
10 get Mr. Bagnell and Mr. Eason to give up the file, just
11 give it to him, and was ignored. Given no choice he went
12 to the Bar, indicated all he wanted was his records first.
13 That got nowhere, so he filed his complaint, his grievance.
14 The Bar tried to contact Mr. Bagnell, he ignored them. He
15 ignored their letters, he ignored even a subpoena. He
16 didn't come to a hearing and you have the -- you have his
17 disbarment order before you. Even after that he would not
18 give the file back.

19 Later, after we had the initial damages hearing before
20 Judge Benjamin, he sent us some -- sent some items at --
21 ironically after the hearing, but they weren't complete,
22 they'd obviously been picked over and things taken out. He
23 previously represented that he had given things, but he --
24 he didn't. He said he had scanned them, but they were not
25 forthcoming, they were of absolutely no use. So my client

1 was left with no ability to proceed with the case against
2 Citibank.

3 And one other thing that I should have mentioned was
4 when this thing first started in 2006 my client had gone to
5 the local Citibank location on Knox Abbott Drive, gotten
6 confirmation from them that there was no -- every single
7 debt had been paid off, Citibank was due nothing, that
8 there wasn't a taxable event, that they were satisfied.

9 So, again, all of that information was provided to
10 Mr. Bagnell and he has refused to give it back or says he
11 doesn't have it, said he lost it, said it was scanned in
12 his computer, but it hadn't ever been produced. So here we
13 are, Your Honor.

14 One last thing -- and I appreciate your patience, but
15 I hope it helps. One last thing. We had argued originally
16 that we thought my client had \$128,000. He clearly had a
17 hundred thousand dollars and he had documentation that it
18 was as much as \$128,000. Mr. Bagnell had represented that
19 it was likely to be trebled and that he would get class
20 action damages, but, quite frankly, it was -- he couldn't
21 -- I don't think it was established that it was certain
22 that it would happen. It was certain that, according to
23 Mr. Bagnell, that he was gonna get his hundred thousand
24 dollars back. He assured him that he was gonna get his
25 \$28,000 back, and the rest or may not.

1 Mr. Gleissner and I discussed the \$254,000 of damages
2 that were awarded and, quite frankly, I think both of us
3 scratched our head about how that came up. Of course, we
4 were thrilled because it was more than we thought that we
5 might otherwise be entitled to, so we didn't -- we didn't
6 see a real problem. Mr. Gleissner being the good lawyer
7 that he is saw a problem and was successful as to the
8 \$254,000. Unfortunately, the Court of Appeals didn't
9 give us any guidance on what was the proper -- the proper
10 amount, so we're -- we're back here.

11 Your Honor, one last thing. When a case goes back on
12 actual damages, it goes back on punitives as well and so --

13 **THE COURT:** That's what I gleaned from the Supreme
14 Court order.

15 **MR. TRUSLOW:** -- that's why we're here. So we don't
16 have any guidance, but we're not gonna be seeking \$254,000.
17 We're gonna -- we think the best thing to do is to limit
18 ourselves to our proof of either a hundred or a hundred and
19 twenty-eight as you find to be appropriate and then leave
20 it at -- leave it at that. Thank you. And we've got the
21 documentation we rely on. I can let Mr. Gleissner speak
22 and then I can ask the Court to consider certain things.
23 I can do it now or later depending on what Mr. Gleissner
24 wants to do.

25 **THE COURT:** Let me hear from Mr. Gleissner and then

1 we can discuss any evidence. Yes, sir.

2 **MR. GLEISSNER:** Well, may it please the Court? I'm
3 Rick Gleissner. I'm here on behalf of Mr. Bagnell and
4 Bagnell and Eason, his former law firm. I -- I listened
5 to Mr. Truslow. I -- we're here on a damages hearing. I
6 -- I disagree with a lot of what he says. I mean, I don't
7 think there's evidence in the record for much of what he
8 says. The question before me at the Court of Appeals was
9 -- I mean, have they proved any damages? And my response
10 to that was no, they haven't proved any damages. I -- you
11 know, I don't think they've proved any damages. I think
12 what you have to do is you have to prove, okay, what was
13 this guy retained for and I think he was retained for
14 bringing a lawsuit. You have to prove, okay, what are the
15 damages in the lawsuit that you didn't win and what's the
16 likelihood of success in winning that lawsuit, and I don't
17 think any of that was -- was shown at the previous trial
18 and at the previous damages hearing.

19 And, Your Honor, I sent to your law clerk a copy of
20 the transcript of record. Here's a paper copy of the
21 transcript of record. I've talked to Mr. Truslow and we
22 think that perhaps by providing you with this transcript
23 we might be able to, you know, move the case along a little
24 quicker.

25 **THE COURT:** Okay.

1 **MR. GLEISSNER:** I look forward to hearing the
2 evidence. I look forward to finding out, you know, what
3 the evidence is. As relates to the file, Your Honor, and
4 the issue relating to the file, I can tell you that after
5 the damages hearing -- the transcript is pretty clear,
6 Your Honor. I got called a half hour before the damages
7 hearing, so that's when I told Mr. Bagnell okay, I'll go
8 to the damages hearing, so I didn't have much time to
9 prepare. So when I got to the damages hearing, I found
10 out -- the first thing I found out was he hadn't produced
11 the file and I was like oh, my God, I don't have a
12 sympathetic client. I'm not -- I'm personally not very
13 sympathetic toward an attorney that basically abandons the
14 client. I mean, he never sent a letter to the guy saying
15 I'm not gonna represent you, he never sent a letter to
16 the guy saying you've got an awful case. He never said
17 anything to the guy, he just abandoned him. I don't have
18 a sympathetic client and I'll be the first one to admit
19 it. I admitted it to the Court of Appeals, I'll admit it
20 to you, this guy didn't do right.

21 Now the question is because of what this guy did and
22 didn't do, what's the damages? And I can tell you that the
23 first thing I did was say all right, we're gonna give him
24 his file and that's all there is to it. And, Your Honor,
25 these -- this three inches of paper that I'm holding in my

1 hand, this is what we produced. We first produced it after
2 the damages hearing because, like I said, I wasn't involved
3 until then. So these three inches of paper -- this is the
4 CD that I provided, this is a printout of the CD that I
5 provided and then I got the original file, the original
6 paper file from Mr. Bagnell, and I gave that original paper
7 file to Mr. Truslow.

8 **THE COURT:** There are a couple --

9 **MR. GLEISSNER:** This was all after the damages
10 hearing, Your Honor.

11 **THE COURT:** Okay. There are a couple of CD's in here,
12 so was it produced twice? One -- they each say Herring
13 file referenced in Bagnell affidavit.

14 **MR. GLEISSNER:** Yes, Your Honor, it was produced
15 twice.

16 **THE COURT:** Okay. I just wanted to make sure it's
17 the same thing.

18 **MR. GLEISSNER:** Yes, Your Honor.

19 **THE COURT:** And that is in the file. It's attached
20 to the memorandum that the Defendant provided regarding
21 damages.

22 **MR. GLEISSNER:** That's correct. Now -- and, Your
23 Honor, I -- again, I don't know the extent to which -- I
24 mean, it seems to me that he's got his -- he may not have
25 all his file, I don't know, but he's got a bunch of files,

1 he's got 279 pages of files, and I'm hoping that today
2 what we'll be able to do is we'll be able to determine
3 with some clarity what the damages are that Mr. Bagnell
4 allegedly caused and whether or not -- what Mr. Bagnell
5 was hired to do, whether or not there was a likelihood of
6 success, so that's what I'm hoping today we'll find out.
7 And I appreciate the Court's understanding and, again,
8 we're just here to find out what the damages are. Thank
9 you, Your Honor.

10 **THE COURT:** And as to exhibits or anything --

11 **MR. TRUSLOW:** Yes, Your Honor. I was gonna talk
12 about that, if I can. But, Your Honor, first of all, we
13 have well-pled claims and a default. The second thing is
14 that we rely to a very large degree under these unique
15 circumstances on the principle of spoliation of evidence;
16 that the lawyer is and has held onto my client's files
17 proving his case and has refused to turn the file over.
18 What Mr. Gleissner says that has -- was turned over after
19 the hearing, first of all, as a threshold issue or problem,
20 it's not evidence. It's -- what he submits and claims that
21 he provided is not evidence. Number two, and he's not here
22 to be subject to cross-examination on the -- to be called
23 as a witness if I chose to call him or if Mr. Gleissner had
24 wanted to call him. Typically he couldn't be called, but
25 there's no -- there's been no proposal, there's been no

1 attempt to set aside the default judgment or allow any
2 other relief. So we -- we rely to a very large degree on
3 the principle of spoliation of evidence that the lawyer
4 has even in the light of a subpoena refused to turn it
5 over, even in the light of disbarment refused to turn it
6 over, and if and when we ever dealt with this issue we
7 would submit that this is not what it -- what Mr. Bagnell
8 through counsel would purport it to be. So I don't know
9 how they're gonna get that in.

10 **THE COURT:** All right.

11 **MR. TRUSLOW:** As far as evidence was concerned -- and
12 I agree with Mr. Gleissner about that. And, again, he's
13 been very -- a pleasure to deal with. I think what we have
14 before you that you can consider is the default judgment
15 order and we have a record on appeal which we can provide
16 to you. And I love this word, I'm glad I learned it in
17 my first year of law school, was nun pro tunc, if we can
18 give this to you because I know you'll want to consider
19 everything. We've got things from both the record or we
20 can provide it in streamline fashion, but the default
21 judgment order, which is in the file; the complaint, which
22 is in the file, the -- we would offer as evidence and it
23 just expedites things, the affidavit of Mr. Herring dated
24 November 17th, Your Honor, with the -- with the exception
25 we're only seeking --

1 **THE COURT:** November 17th what year?

2 **MR. TRUSLOW:** Of 2011. It supplements the transcript
3 and it was offered without objection previously. So we
4 had gotten the transcript and you can see that this was
5 what the court proposed and counsel -- counsel agreed.

6 The next thing we would ask that I think the Court
7 can take judicial notice of is the suspension order of
8 October 9, 2009. And tell me if I'm going too fast or too
9 slow. Then we have the Supreme Court opinion of July 18,
10 2011, the exhibits from the previous hearing of October 31,
11 2011.

12 **THE COURT:** And there were just two exhibits, I think,
13 right, from what I see?

14 **MR. TRUSLOW:** Yes, Your Honor. And there's a --
15 there's a transcript and I think if not we're going to --
16 I think it's already in the file, but if not, I've got
17 another copy of the retainer agreement. I think it's --

18 **THE COURT:** If it's an exhibit, I can get it. If they
19 did not, they would have only -- they wouldn't send the
20 original to the Supreme Court, they would send copies of
21 them -- or on appeal.

22 **MR. TRUSLOW:** My client would only -- my client has
23 what appears to be -- it appears to be a copy, but I don't
24 think the retainer agreement was entered as an exhibit in
25 the last trial.

1 **THE COURT:** Okay. What it says on the exhibit list
2 is two -- there were two letters.

3 **MR. TRUSLOW:** Right. Right. I agree with that. I
4 think that's correct and I have the retainer agreement,
5 which I'm gonna offer into evidence.

6 **MR. GLEISSNER:** I just need to -- I need to see it,
7 Doug. I haven't seen it.

8 **MR. TRUSLOW:** All right. Here's the original. I
9 would also make the point -- and Mr. Gleissner had argued
10 that we had been given what Mr. Bagnell said was the entire
11 file. He hadn't -- he, Mr. Gleissner, hadn't seen this
12 record.

13 **MR. GLEISSNER:** No, I haven't seen the retainer
14 agreement, Your Honor.

15 **MR. TRUSLOW:** So that makes our point. I think
16 that makes our point about whether Mr. Bagnell, in fact,
17 produced to Mr. Gleissner an entire file. We would put
18 a copy in rather than the original. I'll retain the
19 original.

20 **MR. GLEISSNER:** That's Exhibit Number --

21 **MR. TRUSLOW:** The other two exhibits --

22 **THE COURT REPORTER:** That will be Number 3. That's
23 the only exhibit I have.

24 **THE COURT:** I've asked my law clerk to go and track
25 down the exhibits.

1 **THE COURT REPORTER:** Okay. So they'll be 1 and 2.

2 **MR. GLEISSNER:** So I think we should mark Exhibit
3 Number -- and I guess you're going to offer it when
4 Mr. Herring takes the stand?

5 **MR. TRUSLOW:** Yes.

6 **MR. GLEISSNER:** Okay.

7 **MR. TRUSLOW:** Well, unless we can agree to put it in
8 now.

9 (Plaintiff's Exhibits Number 1 through 3 were marked
10 for identification.)

11 **MR. TRUSLOW:** Your Honor, the other two exhibits
12 that we put in, there was an October 13, 2006, letter from
13 Mr. Bagnell that was Exhibit 1 and there were two letters,
14 one's February 13th, 2009, and another one April 2nd, 2009,
15 that were collectively Exhibit 2, and we would offer
16 those. And I understand Mr. Gleissner would prefer the
17 procedure to be to put my client up and authenticate that,
18 and that's fine.

19 **THE COURT:** Sure. And I'm ready to hear testimony at
20 any time.

21 **MR. TRUSLOW:** We call Mr. Herring.

22 **THE COURT:** If you'd step forward, please, and be
23 sworn.

24 JONES G. HERRING,
25 having been duly sworn, testified as follows:

1 **THE COURT:** State your name and spell your last name
2 to make sure we have it correctly.

3 | **THE WITNESS:** Jones G. Herring, H-E-R-R-I-N-G.

4 THE COURT: Thank you. Yes, sir.

5 DIRECT EXAMINATION

6 BY MR. TRUSLOW:

7 Q. All right. Mr. Herring, you have testified previously
8 in this case and submitted an affidavit regarding your
9 damages. Do you stand by your prior testimony?

10 | A. Yes, sir.

11 Q. Would you adopt it and incorporate it by reference?

12 | A. Yes, sir.

13 Q. All right. The one exception is that the court had
14 originally ordered \$254,000 in damages. Are you saying
15 that your damages should be either a hundred thousand or
16 a hundred and twenty-eight?

17 | A. Yes, sir.

18 Q. Plus whatever punitive damages the Court may find to
19 be appropriate under the circumstances?

20 | A. And/or legal fees.

21 Q. All right. I'm sorry to tell you you can't get legal
22 fees in this case, but it is what it is.

23 | A. Okay.

24 Q. Now you heard the -- what I told -- or previewed to
25 the Court at the beginning a few minutes ago. Is what I

1 said correct?

2 A. What you said is correct.

3 Q. All right. Now I want to talk about one thing and
4 just get this out of the way. Did you enter into a
5 contract of employment with Mr. Bagnell to represent you?

6 A. Correct, Bagnell and Eason.

7 Q. All right. Was it a signed contract?

8 A. Signed and dated.

9 Q. And is that the Exhibit 3 that's before the Court?

10 A. I believe so, yes, sir.

11 **MR. TRUSLOW:** And we offer that and Exhibits 1 and 2
12 from the prior trial as evidence at this time, Your Honor.

13 **THE COURT:** Is there any objection to it?

14 **MR. GLEISSNER:** No objection, Your Honor.

15 **THE COURT:** All right. Without objection those will
16 be admitted.

17 (Plaintiff's Exhibit Numbers 1 and 2, letters, and
18 Exhibit Number 3, a retainer agreement, were admitted into
19 evidence.)

20 BY MR. TRUSLOW:

21 Q. With permission of Mr. Gleissner, I'm gonna lead a
22 little at first and then I'll try to stop if he waves his
23 hand or tells me we get to a sensitive part, but in the
24 1980's and 1990's were you working for the State of South
25 Carolina and, specifically, the Budget and Control Board?

1 A. In some capacity, yeah. I was in the State of South
2 Carolina Budget and Control Board. I was assigned to
3 special projects by the governor to different agencies.

4 Q. All right. You were employed by the State?

5 A. Right.

6 Q. As a consequence of that, did you deal with many
7 people that had some expensive habits so to speak while you
8 were working with the Legislature and with -- with others?

9 A. Yes, I was out mainly every night doing things.

10 Q. You were married at the time?

11 A. Yes, I was.

12 Q. And you have one son?

13 A. Correct.

14 Q. And he was, I guess, still in high school?

15 A. He was born in 1985.

16 Q. All right. You're proud of him, of course?

17 A. Yeah.

18 Q. Okay. You ended up getting a divorce; is that
19 correct?

20 A. That is correct.

21 Q. And would you say that the divorce was your fault?

22 A. I didn't contest it. Let's put it that way.

23 Q. All right. You -- you accepted responsibility for
24 running up a tremendous amount of debt?

25 A. Yes.

1 Q. Did you find -- and did -- the debt that you had
2 incurred, did that contribute to your -- to the downfall of
3 your marriage?

4 A. Correct.

5 Q. And did you -- when you got the divorce, did you
6 accept as part of your divorce \$180,000 -- excuse me,
7 \$80,000 of debt?

8 A. I accepted all. We sold the house to get out from
9 that mortgage, had a hundred and six dollars left over,
10 gave that to her, and then I assumed everything else.

11 Q. So you were, I guess, walking bankrupt so to speak?

12 A. Struggling. I had an option to file bankruptcy and I
13 didn't want to do that. I talked to Fred Carter who -- who
14 sent me to United Way and Consumer Credit Counseling, which
15 is a fine organization by the way.

16 Q. So you -- by then were you facing between 24 and
17 32 percent debt with Citibank?

18 A. Yes.

19 Q. Did you seek the assistance after talking to -- I
20 guess that was Mr. Rex Carter, former --

21 A. Fred. Fred Carter.

22 Q. Fred Carter. I'm sorry, Fred Carter. Then you went
23 to Consumer Affairs and to --

24 A. First off, I went to Consumer Affairs and they -- you
25 know, they -- well --

1 Q. I'm sorry, I got it backwards.

2 A. Excuse me. You got it backwards. I went to United
3 Way first to make the payments.

4 Q. Did they assist you in renegotiating the terms of your
5 debt with Citibank?

6 A. Yes, they did.

7 Q. All right. I want to make this as clear as I can.
8 Did you pay every single dime of the money that they
9 claimed you owed plus interest at that point in time?

10 A. I did. I had copies of all the cancelled checks from
11 Consumer Credit Counseling, they gave me copies. I had a
12 signed receipt from Citifinancial showing a zero balance
13 and the original note paid in full.

14 Q. And you had the documentation confirming what your
15 contract or arrangement was with Citibank?

16 A. That's correct.

17 Q. And what they -- what you did was you paid off all the
18 debt plus all the interest, but you got a longer time and
19 they -- they put a moratorium on those high interest rates?

20 A. They cut the interest rate to I think it was about
21 eight percent, that contract with Consumer Credit
22 Counseling will say that, and extended the time to make the
23 payments.

24 Q. In order to pay the debt, did you do the following:
25 You moved into as cheap of an apartment you could find?

1 A. (Nods head.)

2 Q. And was it an apartment so you were embarrassed to let
3 your son see it?

4 A. It was in such a neighborhood that I was even raided
5 by the Richland County Sheriff's Department thinking I was
6 a drug -- it was a drug house. They had the wrong house
7 one night and after that I would not allow my son back
8 there.

9 Q. Were you embarrassed to let your friends or your wife
10 even see where you lived?

11 A. I had no friends come over.

12 Q. I'm sorry?

13 A. I had no friends come to see me.

14 Q. And you were buying your clothes at the Salvation Army
15 and living as cheaply as you could?

16 A. I ate a lunch usually at the Capitol Cafe during lunch
17 and that was it.

18 Q. And you got a second job?

19 A. Yes, I did with the Foundation.

20 Q. And in five years have you been able to -- were you
21 able to, with a tremendous amount of sacrifice, pay off all
22 of that debt to Citibank?

23 A. All -- all the debt to Citibank and others, yeah.

24 Q. And that was as of 2000 -- sometime in 2005?

25 A. Yes, sir, about that time.

1 Q. At that point in time or moving forward to about 2006,
2 did you then get dunned by a series of lawyers and debt
3 collectors for Citibank?

4 A. Citifinancial kept calling and then lawyers and so
5 forth and so on and I paid it in full. I went to the
6 branch on Knox Abbott and had that receipt that said paid
7 in full. I had been drafting my account. The last payment
8 I wrote a check to make sure that I had a record of it
9 being paid in full. I had a copy of that, I had a receipt,
10 they gave me the note and mortgage. The district manager
11 signed the note and mortgage that I paid in full. All that
12 was in my files.

13 Q. So you had confirmation from the local office of
14 Citifinancial --

15 A. Correct.

16 Q. -- that you had met all your obligations?

17 A. Correct.

18 Q. And that you would not be reported as a bad credit
19 risk?

20 A. (Nods head.)

21 Q. And no lawyers would be contacting you?

22 A. Correct. And then they did and that's how I knew
23 something was wrong.

24 Q. Were you just inundated by debt collectors?

25 A. Yes.

1 Q. At your home and at work?

2 A. Yes.

3 Q. Did you try to address the issue?

4 A. I tried.

5 Q. Did you go to the State Consumer Affairs and provide
6 them with the documentation?

7 A. And they were gonna contact them, Citifinancial, and
8 they were ignored. I had letters from the State Consumer
9 Affairs to them. I got copies, again, all in my files.
10 Finally, the guy I was dealing with at Consumer Affairs
11 said we're not being responded to, call an attorney and
12 call us as witnesses.

13 Q. So did you -- you've got friends that were attorneys?

14 A. Yes.

15 Q. One being Ken Allen?

16 A. Ken.

17 Q. And had you -- had he and Consumer Affairs recommended
18 that you get counsel?

19 A. Consumer Affairs did and I went to Ken because I've
20 known Ken for a long time and he recommended Gil Bagnell,
21 who was in the same building I was in at the time, and I
22 did. And he said Gil had expertise for this.

23 Q. Did you provide all the documentation that you had to
24 Mr. Bagnell?

25 A. Banker boxes full of documentation. The cancelled

1 checks alone would fill up one of those folders that
2 Mr. Gleissner has.

3 Q. So you heard Mr. -- and I'm not questioning at all the
4 integrity of Mr. Gleissner.

5 A. Oh, I'm not either. I am not questioning at all. I'm
6 just saying the cancelled checks alone had its own folder.

7 Q. So when Mr. Gleissner tells the Court that Mr. Bagnell
8 has given him files and says this is everything and he
9 shows something about an inch and a half thick, is that --
10 was that your file?

11 A. No. Bagnell told me that he was moving, he took the
12 file, that it was in storage, and he had lost this, they
13 lost that and couldn't find this and couldn't find that,
14 and it was somewhere between here and New York.

15 Q. I'm gonna go backwards, but you -- originally you
16 had gone to Mr. Bagnell, you had banker boxes full of
17 documentation, including the contract to pay off your debt
18 to Citi and acknowledgment of the local Citi that you had
19 paid your debt in full and owed nothing?

20 A. Right.

21 Q. And owed no taxes?

22 A. Right. And phone logs records of who I talked to,
23 when I talked to them, how long I talked to them. All that
24 was in the file.

25 Q. By way of background, you're what I would call an

1 auditor?

2 A. Yeah, I'm an auditor. I started off as an auditor for
3 the Insurance Commission, became a budget analyst and then
4 internal auditor for Budget Control.

5 Q. And you're a Citadel graduate?

6 A. A Citadel graduate, yes.

7 Q. You son's a Citadel graduate?

8 A. My son is, and that's one of the reasons I paid off
9 the debt.

10 Q. Now you hire Mr. Bagnell. Mr. Bagnell tells you he's
11 working on the case, correct?

12 A. Every time I talked to him.

13 Q. He referred to -- did he -- to induce you to do
14 business with him, did he represent to you that he had just
15 gotten a ten million dollar settlement?

16 A. That was discussed.

17 **MR. GLEISSNER:** Your Honor, I'm gonna have to start
18 objecting to the leading of the witness because I don't
19 know if he's getting into the substantive matters or not.

20 BY MR. TRUSLOW:

21 Q. What did Mr. -- what did Mr. Bagnell tell you about
22 recent success -- alleged recent success in a similar case?

23 A. When I brought the files up for him, there was another
24 lady in there, I've forgot her name, but he said that he
25 was in this trial, he was fixing to be awarded, you know,

1 closing up and as soon as that was finished he was gonna
2 get on mine and he was gonna win this -- this case.

3 Q. Did you find that the month before you signed the
4 contract of employment that it -- online you saw that he
5 had gotten a ten million dollar settlement?

6 MR. GLEISSNER: Your Honor, I think we're getting into
7 hearsay if he's gonna start referring to that, if he's
8 gonna start getting into stuff he found on the Internet.

9 THE WITNESS: Well, I --

10 THE COURT: Well, wait.

11 MR. TRUSLOW: I can go backwards. That's okay. I
12 think I'm right, but I can go backwards.

13 BY MR. TRUSLOW:

14 Q. What did Mr. Bagnell tell you about what he had gotten
15 in some Thaxton litigation, how much money, and did you
16 verify it online as well?

17 A. Originally it started when I was talking with Ken
18 Allen, Ken told me about this, then I asked Gil about it
19 and then that's how I confirmed it.

20 Q. And then he said -- he said he did?

21 A. Yeah, and it was proven on -- you know, you saw it on
22 the Internet.

23 Q. Okay. He told it to you and then you confirmed it on
24 -- checking on the Internet?

25 A. And I originally heard it from Ken Allen.

1 Q. All right. So three ways. Now approximately two
2 years go by and you -- and what's -- what's Mr. Bagnell
3 doing besides telling you that he's working on the case?

4 A. Bagnell was in the same building I was in working.
5 I would see him on the elevator, I'd see him on the
6 mezzanine, I'd see him in the garage. I'd say Gil, how's
7 it going? Everything's fine, I'm working on it. I would
8 call his office when I didn't see him and he might not be
9 in or I heard he was -- after that award he had taken a
10 vacation to California one time, taken a vacation to Europe
11 one time. It got to the point where I was just hanging out
12 in the mezzanine at 8:00 in the morning trying to catch him
13 coming into the building. The last time I talked to him,
14 he told me that everything was fine, that he was working on
15 something, but to tell Ken Allen to remind him to get back
16 on it. So I went to Ken and I said Ken, this is what I was
17 told and Ken said I'm not getting involved in it.

18 Q. Why -- why would he ask you to call Ken Allen about a
19 case that Ken Allen wasn't involved in?

20 A. He wanted Ken to remind him. That's what he said.

21 Q. And did that seem strange to you?

22 A. It seemed real strange. That's when I started trying
23 to get my files by other means.

24 Q. All right. Were you successful?

25 A. No.

1 Q. All right. Did you find that Mr. Bagnell had sold his
2 house in Columbia with no mortgage, got \$750,000 and left
3 the State?

4 A. I discovered that later on. When I was trying to find
5 him, I found out he had gone to New York. That's when I
6 found out the files were no longer in the State. This was
7 after I contacted the Bar association.

8 Q. And as part of your investigation, I don't know want
9 to burden the file, but you've got the documents where he
10 sold his house?

11 A. I don't have them personally on me, but we can get
12 them.

13 Q. Your lawyer has them?

14 A. Yeah.

15 Q. All right. Now did you find that in -- did you later
16 find that Mr. Bagnell had been suspended from the practice
17 of law on October 9, 2009, unrelated to you?

18 A. I learned that later.

19 Q. Well, were you still trying to contact him and then
20 later his partner, Mr. Eason?

21 A. I tried to contact Mr. Eason by certified mail, by
22 telephone, and he was not very helpful or pleasant either
23 way.

24 Q. And you said you were in the same building. Is your
25 -- is your office at the corner of Gervais and Main Street

1 looking out over the State capital?

2 A. Yes. I don't know what it's called today, but I still
3 refer to it as the AT&T tower.

4 Q. And did you go up to their office and you could still
5 see even after the suspension that Mr. Bagnell's name was
6 still on it?

7 A. Bagnell and Eason, LLC, was still on the marque.

8 Q. And even after he had been suspended, did you get
9 letters from him on that letterhead?

10 A. And e-mail, yes, sir.

11 Q. The same thing from Mr. Eason?

12 A. Yeah, that's true.

13 Q. All right. In talking to Mr. Eason, what did he tell
14 you?

15 A. He --

16 **MR. GLEISSNER:** Your Honor, I've got to object.

17 Mr. Eason is not a party to this litigation and anything
18 he said would be hearsay testimony.

19 **MR. TRUSLOW:** Your Honor, I'm just trying to speed
20 this along.

21 **MR. GLEISSNER:** Because I don't know how that relates
22 to damages in any event, but anything he said would be
23 objectionable as hearsay. Thank you, Your Honor.

24 **MR. TRUSLOW:** Your Honor, I would respectfully
25 disagree. The lawsuit is against Gilbert Bagnell and

1 Bagnell and Eason, LLC. Mr. Eason was a partner in that
2 law firm and certainly could speak on behalf of the firm.
3 Two other things. You would think that if there's a law
4 firm they would have a statute of limitations calendar,
5 they would have a client calendar and knew somebody was
6 suspended, rather than having to appoint an independent
7 trustee the law firm takes over. Again, the lawsuit is
8 against not only Mr. Bagnell, but Bagnell and Eason and
9 we've got a default judgment.

10 **THE COURT:** As it relates to any conversations that
11 he may have had with Mr. Eason, I'll attribute that to the
12 corporation that he was a partner in.

13 BY MR. TRUSLOW:

14 Q. Go ahead.

15 A. Okay. He stated that he didn't know what Gil was
16 doing, Mr. Bagnell was doing, that he didn't have the
17 files, nor was he gonna get the files, but he would contact
18 Gil trying to get the files for me.

19 Q. Did he say anything about a statute of limitations
20 calendar or a client calendar?

21 A. No, he didn't say anything about anything and that's
22 when I went to the Bar and the lady at the Bar said he
23 should be -- he, Mr. Eason, should be having the files.

24 Q. All right. Did Mr. Eason on behalf of the corporation
25 indicate that he would get you your files or assist you in

1 getting your files?

2 A. No. He just -- other than he would tell Gil to send
3 them to me and that was it. And he was very short, very
4 brisk, wasn't helpful at all. He got kind angry actually.

5 Q. And did he write you -- even write to you using the
6 letterhead of --

7 A. I think we have something in the file to that, I
8 think.

9 Q. And was this after Mr. -- Mr. Bagnell was both
10 suspended and disbarred?

11 A. He -- I can't remember -- without seeing the date, I
12 can't say that. I think it was before he was suspended and
13 disbarred. I might be wrong.

14 **THE COURT:** And I just want to -- I now have in my
15 possession the two exhibits that were introduced in the
16 previous file. I don't know if you need to use those, but
17 I wanted to make you aware of the fact that I have those.

18 **MR. TRUSLOW:** Thank you, ma'am. Thank you.

19 BY MR. TRUSLOW:

20 Q. I'm going backwards, but on October -- I'm showing you
21 Plaintiff's Exhibit 1 and 2, and I think there already in
22 evidence, but I'm showing you Exhibit 1.

23 A. Yeah, that's what they were -- they was sending me
24 trying to get --

25 Q. And that was your copy that was given to you; is that

1 correct?

2 A. Right.

3 Q. All right. If I can, I'm going to -- I'm gonna read,
4 and tell me if I'm reading this correctly, when he writes
5 to the law firm of Mann Bracken he says, "By the way, we
6 have investigated these facts quite carefully".

7 A. Right.

8 Q. Did you believe that he had done that?

9 A. That's what he was telling me he was doing.

10 Q. All right. And did you rely on that representation?

11 A. Yes. He was my attorney.

12 Q. Right. That's what I was gonna ask.

13 A. That's why I hired him.

14 Q. And did he indicate that his investigation at
15 Citifinancial maintained a double set of books?

16 A. Yes, which they did actually.

17 Q. All right. And were you able later to confirm that
18 about Citifinancial's double books?

19 A. That's the only way it was. They couldn't get rid of
20 the home office interest principal because their accounting
21 system so -- because of the new law. They had to charge it
22 off and to charge it off they had to do a 1099-C between
23 their books because of the new Federal income tax laws to
24 my understanding and that became income.

25 Q. And did you see -- did you later -- were you able --

1 after all- this had happened able to confirm this and that
2 Citi had been assessed a five hundred sixty million dollar
3 penalty?

4 A. Right, a class action suit.

5 Q. As well as a ten -- I have the documents, but as well
6 as a ten million dollar and a two hundred and, I think, ten
7 million dollar fines?

8 A. That's right.

9 Q. And Mr. Bagnell said that he had investigated this?

10 A. He said that he had several people that -- several
11 people that he understood had similar things happen
12 specifically with houses.

13 Q. When you were not able to get any assistance from
14 Mr. Bagnell and Mr. Eason or Bagnell and Eason was not
15 able to assist you, we've talked briefly about the Hood
16 law firm. Did you attempt to get anything from the Hood
17 law firm?

18 A. I went and visited the Hood law firm, Jones Andrews
19 specifically, who stated that he remembered the case and he
20 didn't -- he, the company, the Hood law firm, refused to
21 join him. They had on a previous, but on this one they
22 refused to join and sent a letter to that effect according
23 to Jones Andrews.

24 Q. And Mr. Bagnell was representing they were involved
25 but you found out they weren't?

1 A. Correct.

2 Q. And they had had some dispute with Mr. Bagnell?

3 A. Right, but I didn't know that until way after the
4 fact.

5 Q. But you didn't -- okay. And they had written to
6 Mr. Bagnell?

7 A. Right, according to Jones Andrews.

8 Q. At that point in time you're not able to get your
9 records. Did you try to -- the retention, I want to talk
10 to you about retention periods. Did you try to get your
11 records from Consumer Affairs back from --

12 A. It was past their retention file period. The same
13 thing was true with Consumer Credit Counseling.

14 MR. TRUSLOW: And, Your Honor, I can cite a code
15 section, but we're gonna ask you to take judicial notice
16 of the retention period for Consumer Affairs and I'll cite
17 the pertinent statute in a little while.

18 BY MR. TRUSLOW:

19 Q. Did you try to get your records from some other
20 source? If you couldn't get them from Mr. Bagnell,
21 couldn't get them from Mr. Eason -- the McGowan Hood firm
22 had never been involved; is that correct?

23 A. Right.

24 Q. And the retention period has run for Consumer Affairs
25 by statute?

1 A. Right.

2 Q. And did you know what else -- oh, one other thing.
3 Did you try to go to Citifinancial?

4 A. Yeah.

5 Q. You mentioned Knox Abbott Drive.

6 A. They were gone.

7 Q. They had closed up shop in South Carolina or Columbia?

8 A. As far as I know.

9 Q. Sir?

10 A. Around here, the one I dealt with did. They moved one
11 of them to Charlotte.

12 Q. All right. Would your records -- you said you had
13 banker's boxes that could show what had happened to you
14 that you provided to Mr. Bagnell. How were you able --
15 how were you going to be able to prove the extent of your
16 damages without Mr. Bagnell returning your file to you?

17 A. Without the files, I had no documentation to go to
18 court. I had no information. I couldn't prove anything.
19 He had all my original documents. I had no copies of it.
20 He was gonna scan it in and give it back to me. Every time
21 I went up there, "I've got some more to do". I never got
22 my files. All I wanted was my files back. I had Consumer
23 Affairs supporting me, I had the financial board supporting
24 me. I just had to have my files to prove my damages and
25 without the files I couldn't go to court.

1 Q. Do you know -- except for Mr. Bagnell refusing to
2 cooperate with a subpoena from ODC, the Office of
3 Disciplinary Counsel, not attending the disbarment
4 proceeding, do you know why he would not return your file
5 to you except to try to argue that you couldn't prove the
6 case against him?

7 A. I have no idea why he wouldn't. I mean, all I wanted
8 was my files. I couldn't go hire another attorney if I --
9 I seen it happen to other people. One attorney not doing
10 anything and then you go hire another one and then the
11 original attorney wanting to be paid, too. It happened to
12 my sister-in-law and she had to pay two attorneys for the
13 same thing. I wasn't going that route. All he had to do
14 was give me my files and we'd sign anything. That's all I
15 wanted.

16 Q. Did Mr. Bagnell ever write to you and say that he was
17 not gonna take your case and that you didn't have a case?

18 A. Never.

19 Q. Okay.

20 A. Never written, never in person.

21 Q. Okay. Would Mr. Eason even tell you where he was?

22 A. No. To my knowledge, he never gave me an address. He
23 was out of state, went to New York. That's -- that's what
24 I determined.

25 Q. Were you able to find that he -- on your own that he

1 was -- had moved, had sold his house at Lake Murray and
2 moved to the Catskills in New York?

3 A. Yeah, by e-mail that was still under the Bagnell and
4 Eason e-mail account off their own server.

5 Q. All right. And could you see that he -- see his
6 picture where he --

7 A. Found out where he was.

8 Q. -- found a place and had a Tudor mansion in the
9 Catskills?

10 A. That is correct.

11 Q. Sir?

12 A. That is correct. It was on the Internet. I looked it
13 up, pictures. Very nice.

14 **MR. GLEISSNER:** Your Honor, again, I'm gonna have to
15 object to the Internet being a source of information and
16 would ask that the testimony concerning the Tudor mansion
17 be stricken.

18 **THE COURT:** I'm not sure that I'm gathering the
19 relevance of the issue as relates to the particular case.
20 I'm just -- I understand that he may have left town.

21 **MR. GLEISSNER:** Okay.

22 **MR. TRUSLOW:** The particular point was to show that
23 he had -- that -- it goes to punitive damages that he saw
24 -- he saw his picture in front of this building.

25 **MR. GLEISSNER:** And, again, Your Honor, that would be

1 hearsay testimony and it would be inadmissible and I would
2 ask that the Court strike that testimony concerning the
3 hearsay that he received from the Internet.

4 **MR. TRUSLOW:** I think the Court can consider it for
5 what it's worth.

6 **THE COURT:** Yeah, it could very well be hearsay, but
7 I think that at least it shows that -- that he attempted to
8 locate him. I'll put it that way.

9 BY MR. TRUSLOW:

10 Q. Now I had -- excuse me. You're raising your hand?

11 A. Yeah, I don't know how to -- I don't know whether I
12 can ask a question or what, but something you didn't ask
13 that maybe I never shared with you, and I have the
14 documents of this --

15 **MR. GLEISSNER:** Your Honor, I've got to object. I
16 mean, I think --

17 **THE COURT:** I'll sustain that objection.

18 **MR. GLEISSNER:** Thank you, Your Honor.

19 BY MR. TRUSLOW:

20 Q. Okay. I was getting -- I know where you're going
21 and that was gonna be my next question. As part of your
22 investigation and as part of the documentation that you got
23 to show just what Mr. Eason had done and/or Bagnell and
24 Eason, you had some documentation; is that correct?

25 A. I had -- I'm going back to -- whatever documentation

1 I have is about his location in New York. I went to a
2 co-worker whose husband was a PI. I asked him to do some
3 research and he did. He pulled legal documents out of
4 New York showing his residence.

5 **THE COURT:** Okay.

6 **MR. GLEISSNER:** Your Honor, I've got to object.

7 **MR. TRUSLOW:** I wasn't going there.

8 **THE WITNESS:** Oh, you weren't going there?

9 **MR. TRUSLOW:** No.

10 **THE WITNESS:** Okay.

11 **THE COURT:** I'll sustain the objection. He needs to
12 answer the questions that are asked of him.

13 **THE WITNESS:** Okay. I apologize.

14 BY MR. TRUSLOW:

15 Q. As -- to further follow up, I had asked you and you
16 said that -- you had responded about a Citi credit card and
17 a ten thousand dollar settlement -- a ten million dollar
18 settlement.

19 A. Yes.

20 Q. You got that documentation? Citigroup, 215 million,
21 you got that; is that correct?

22 A. I got that.

23 **MR. GLEISSNER:** Your Honor, I don't quite understand
24 either the relevance or the fact of where the documentation
25 came from, so I would object to the line of questioning

1 concerning Citifinancial and documentation on whatever
2 it is. I don't know what it is, so I would object to
3 discussions concerning it.

4 **THE COURT:** In other words, you need to lay -- if
5 you want to try to discuss it, you need to lay a proper
6 foundation.

7 **MR. GLEISSNER:** Thank you, Your Honor.

8 **MR. TRUSLOW:** Your Honor, we were using this to
9 corroborate what Mr. Bagnell had said.

10 BY MR. TRUSLOW:

11 Q. Again, Mr. Bagnell had said that there were lawsuits
12 going on; is that correct?

13 A. I don't remember that. I can't say that for certain.

14 Q. All right. Did you get a 1099 cancellation of debt
15 from Citifinancial --

16 A. Yes, I did.

17 Q. -- for 2005 indicating that you -- that they cancelled
18 \$7,238 of debt?

19 A. Yes. Yes.

20 Q. And was that true or was that not true?

21 A. That's not true. Again, that was a double bookkeeping
22 accounting. I had paid off the local branch, had a paid
23 in full receipt. Remember, we cut the interest rate in
24 half through Consumer Counseling. When Citifinancial took
25 my original contract, they counted the whole amount of the

1 interest as income showing for their records from that
2 point in time from day one and when I paid it off that
3 interest was still remaining on their books at wherever
4 their home office was and my account here in Columbia on
5 Knox Abbott was paid in full, which I have receipts for,
6 showing a zero balance. The note showed paid in full,
7 which was in the banker box that I gave Mr. Bagnell.

8 Q. So you get your 1099 for 2005 and 2006; is that right?

9 A. Right.

10 Q. And you provided all this to Mr. Bagnell?

11 A. Correct.

12 Q. And did he -- so you could do your taxes. Did you ask
13 for the information back from Mr. Bagnell?

14 A. Yeah. I mean, I gave him a copy. I had -- you know,
15 I had the 1099-C.

16 Q. I understand, but the documentation to show that the
17 note -- that Citibank had not cancelled the debt, did you
18 give him that documentation?

19 A. Yes.

20 Q. Did he give that back?

21 A. No, he didn't give me anything.

22 Q. So how could you do a tax return or an amended tax
23 return showing no interest without the documentation?

24 A. The only way to get -- I had to show the \$7,700 as
25 income and there was no way not to show it without a

1 corrected copy of the 1099-C, which Citifinancial refused
2 to provide because I had no documentation to prove anyway,
3 they wasn't gonna do it, so I had to show that as income,
4 which in turn put my income above -- because now I'm
5 divorced and I lost all of the tax credits and so forth for
6 my son's education. Also, I had to pay higher interest
7 rates and borrow money to pay for his education.

8 Q. In addition to the exhibits that I think -- or
9 Exhibit 2 that's in evidence, did you -- which are letters
10 that you wrote to Mr. Bagnell, did you -- and/or Bagnell
11 and Eason, did you also write a certified letter to
12 Mr. Bagnell on September 15, 2008?

13 A. Yes.

14 Q. Did he respond?

15 A. No.

16 Q. You sent a certified letter?

17 A. Right. I found out --

18 Q. Did Mr. Eason or Bagnell and Eason respond?

19 A. No, sir.

20 Q. I'm asking you the same question about your -- it's in
21 evidence as Exhibit 2, the February 13, 2009 and April 2,
22 2009.

23 A. No, sir.

24 Q. Did you call Bagnell and Eason on February 12, 2010,
25 at 12:45?

1 A. Yes.

2 Q. Did the answering service indicate it was still
3 Bagnell and Eason?

4 A. Yes, up in the same building that I was working in.

5 Q. Did the person indicate that the -- that Mr. Bagnell
6 was -- had been suspended and was no longer practicing law?

7 A. No, no.

8 Q. Did Mr. Eason return your call?

9 A. He never returned my call.

10 Q. Did anybody return your call?

11 A. No.

12 Q. The same thing on -- did you call Mr. Eason on
13 February 12, 2010?

14 A. Yes.

15 Q. And did you send this to Randall Eason at Bagnell and
16 Eason, LLP?

17 A. Yes.

18 **MR. TRUSLOW:** I am gonna offer this into evidence.

19 (Plaintiff's Exhibit Number 4 was marked for
20 identification.)

21 BY MR. TRUSLOW:

22 Q. Is this another letter you wrote aside from
23 Mr. Bagnell to Mr. Eason?

24 A. Yeah.

25 **MR. TRUSLOW:** We offer this as Plaintiff's Exhibit

1 Number 4.

2 **THE COURT:** Any objection?

3 **MR. GLEISSNER:** No objection, Your Honor.

4 **THE COURT:** It's admitted.

5 (Plaintiff's Exhibit Number 4, a letter, was admitted
6 into evidence.)

7 BY MR. TRUSLOW:

8 Q. Moving forward, you couldn't get anything from all
9 the people that you've discussed, you tried to get the
10 assistance of a lawyer to help you get records and they
11 wouldn't respond?

12 A. Right.

13 Q. On May 7, 2009, did you have any -- had you already
14 talked to the Bar and asked for assistance in simply
15 getting your records?

16 A. Yes. I can't remember the lady's name.

17 Q. Were they able to get your records?

18 A. No.

19 Q. As a result, did you file a complaint with the Bar on
20 May 7, 2009?

21 A. The Bar?

22 Q. On May 7, 2009.

23 A. With the Bar?

24 Q. With the Bar.

25 A. Yeah.

- 1 Q. And did you explain what had happened there as well?
- 2 A. Correct.
- 3 Q. And were you able to get any response even after that
- 4 from Mr. Bagnell?
- 5 A. No.
- 6 Q. Or Mr. Eason or the firm?
- 7 A. (Shakes head.)
- 8 Q. Did he -- I think you already said this. He did not
- 9 respond to the Bar's subpoena?
- 10 A. Disciplinary counsel, I think.
- 11 Q. All right. That's what I meant.
- 12 A. Yeah, disciplinary counsel.
- 13 Q. And I think we've taken judicial notice of the
- 14 disbarment proceeding.
- 15 A. Right. And he didn't respond to the Supreme Court
- 16 either.
- 17 Q. Did you follow up and write to Mr. Eason again and ask
- 18 for help in finding out about the statute of limitations,
- 19 about a calendar and about your file?
- 20 A. Yes, sir.
- 21 Q. Did you ask him if he had talked to his law partner
- 22 about this?
- 23 A. Yeah.
- 24 Q. Did he disclose to you to his knowledge that his law
- 25 partner had been suspended and, if so, he did respond at

1 all?

2 A. He never acknowledged that Gil was suspended at all,
3 just that he moved.

4 Q. Did you follow up and write to him again on
5 January 11, 2011? To Mr. Eason.

6 A. Yes, sir.

7 Q. And did he respond?

8 A. Not to my knowledge. If he did, it didn't come to my
9 house.

10 **MR. TRUSLOW:** In the affidavits that are already in
11 the record, we -- I think counsel has asked that the
12 transcript from the previous hearing be introduced into
13 evidence, and we said fine, along with the affidavits, and
14 I think they're in the record now, or in evidence. But if
15 not, we would move to have the transcript from before,
16 along with the -- with your affidavits submitted into
17 evidence. I think that's without objection. I'm just
18 trying to do a little housekeeping now.

19 **MR. GLEISSNER:** Okay. So we'll have the transcript
20 marked as Exhibit -- I believe it's Exhibit 4 -- or 5?

21 **THE COURT:** It will be 5.

22 **MR. TRUSLOW:** There was an affidavit --

23 **MR. GLEISSNER:** I think the affidavit's already in the
24 record would be my position. Judge Benjamin allowed a
25 supplemental affidavit after.

1 **THE COURT:** What I have in the file is the affidavit
2 -- I have an affidavit of Jones Herring regarding damages
3 that was filed in the clerk's office on November 17, 2011.

4 **MR. GLEISSNER:** That's the one, Your Honor.

5 **MR. TRUSLOW:** That's it.

6 **THE COURT:** And then I have an affidavit -- I guess
7 it's the same. Or what does it say? I have --

8 **MR. TRUSLOW:** The other affidavit.

9 **THE COURT:** I have the Defendant's memorandum
10 regarding damages. I think that was also filed with the
11 clerk's office. And I also have -- okay. That is -- I
12 have an original and a copy of Mr. Herring's affidavit.

13 (Pleading's Exhibit Number 5, transcript of prior
14 proceeding, was marked and admitted into evidence.)

15 BY MR. TRUSLOW:

16 Q. All right. Now I want to move on to something else
17 and that is the punitive damages. Are you asking that
18 punitive damages be awarded in this case?

19 A. Yes.

20 Q. Given -- especially given the conduct and the
21 disbarment of Mr. Bagnell?

22 A. Yes, I am.

23 Q. At the time he was actively representing you, he had
24 an office in what I call the AT&T building. Is that what
25 you call it?

- 1 A. That's correct.
- 2 Q. Was it nicely appointed?
- 3 A. Yes.
- 4 Q. Did he appear successful?
- 5 A. Yes.
- 6 Q. Did he tell you he had been successful?
- 7 A. I judged him to be successful and heard from others
- 8 that he had been.
- 9 Q. Did he confirm that, that he --
- 10 A. Yes.
- 11 Q. -- had just gotten like a three million dollar fee?
- 12 A. Right.
- 13 Q. And then once this case started, is that when you
- 14 found that he had sold his house? And you have a copy of
- 15 the deed.
- 16 A. Yes.
- 17 Q. And had no mortgage on it?
- 18 A. Correct.
- 19 Q. Sold it for \$750,000?
- 20 A. On Lake Murray.
- 21 Q. And then were you able -- I'm not gonna ask you what
- 22 other people told you. Were you able to on your own find
- 23 out where he was in New York in the Catskills?
- 24 A. Yes, by Internet.
- 25 Q. Also you found out that because he had written to the

1 Court, to this Court, a letter with a return address?

2 A. Right.

3 Q. And then were you able to then find that address and
4 see a picture of it -- of the house --

5 A. Right.

6 Q. -- the mansion or whatever it was called?

7 A. Right.

8 Q. Was it Tudor in design?

9 A. Yes.

10 Q. Now going back to one thing, and then I'm gonna be
11 done, I believe. When you started with Citi, did you feel
12 -- did you believe you had a viable, legitimate case?

13 A. I believed I had a viable --

14 **MR. GLEISSNER:** Your Honor, I've got to object because
15 I don't believe Mr. Herring has been qualified as an expert
16 witness and to the extent that you want to testify as
17 relates to the viability of a legal matter, I believe you
18 need expert testimony.

19 **MR. TRUSLOW:** Let me try it another way. I think
20 you're right. I'll withdraw it and ask it a different way.

21 BY MR. TRUSLOW:

22 Q. Did you have documentation supporting what you've said
23 here today --

24 A. Yes.

25 Q. -- about the viability of the case against Citi?

1 A. Yes, I did.

2 Q. And you provided that to Mr. Bagnell?

3 A. A banker's box plus.

4 Q. And not only telling a lawyer in Atlanta who was
5 trying to seek money from you that he'd investigated the
6 case, did he tell you that he had investigated the case?

7 A. Yes.

8 Q. Did he tell you that you were going to be -- I'm gonna
9 break this down -- tell you you were gonna be successful in
10 your lawsuit?

11 A. Yes, and I believed it as well based on other things.

12 Q. Did he tell you that you would get at least a hundred
13 thousand and he wasn't -- he couldn't guarantee that you'd
14 get treble damages or legal fees?

15 A. I would get my claim plus -- plus we thought legal
16 fees, you know. I mean, I wanted my money plus his fees,
17 and that's what he -- that's what he said.

18 Q. All right. And did you --

19 A. And I believed that and I had -- and the -- for lack
20 of a better term, my counselor at Consumer Affairs said
21 similar and cited code cases to me. Again, which was in
22 the file.

23 Q. Without -- without having the banker's boxes of files
24 and documentation that Mr. Bagnell or Bagnell and Eason had
25 or was supposed to have, were you able to pursue any case

1 against -- against Citi --

2 A. No.

3 Q. -- without the file?

4 A. There's no way. Without evidence, how can I sue
5 somebody? That was my evidence. That was the whole basis
6 of being able to sue. Without that file I couldn't go
7 anywhere.

8 Q. Had you done everything that you could think of to try
9 to get your file from Mr. Bagnell or get it elsewhere so
10 you could pursue a case?

11 A. I did everything I knew to do. I sought counsel from
12 other people what to do, I did what they suggested do. I
13 never got the files other than that folder sitting over
14 there that was incomplete, some of it unintelligible, you
15 can't even read, and then Gil -- according to Gil, some of
16 it was lost.

17 Q. He told you he had lost it?

18 A. In the move.

19 Q. Well, how was he able to purportedly scan things to
20 send to you --

21 A. I have no idea.

22 Q. -- without having --

23 A. I have no idea.

24 Q. When you went to his office, did you see that he had
25 a computer?

1 A. Not only did I see the computer, he introduced me to
2 the lady who was going to scan the documents.

3 Q. Do you know why -- I'm going to go back now. I think
4 I asked you this, but do you know why Mr. Bagnell simply
5 wouldn't return your file or Bagnell and Eason wouldn't --
6 wouldn't return your file and would face -- and then go be
7 disbarred?

8 A. I have no knowledge why. I have suspicion, but that's
9 -- that's just my thoughts.

10 Q. Okay. A couple of technical things and then I think
11 I will be done. Did the Defendants, and Bagnell
12 specifically, represent that they had associated a
13 well-respected law firm to lend and assist?

14 A. Yes, it was in the contract.

15 Q. Okay. And you found out that was untrue?

16 A. Correct.

17 Q. They've never been associated?

18 A. That's correct. Not with my case.

19 Q. Had that ever been communicated to you, that they had
20 not?

21 A. No, not until I met with them.

22 Q. Did Mr. Bagnell and Bagnell and Eason know that when
23 they were telling you that they associated for your case
24 that that was untrue?

25 A. I don't have --

1 **MR. GLEISSNER:** Objection.

2 A. -- you know, knowledge of that.

3 **THE COURT:** Whoa, whoa, whoa.

4 **MR. GLEISSNER:** I don't believe this witness can
5 testify as relates to what Bagnell or Eason or Mr. Bagnell
6 believes.

7 **THE COURT:** Rephrase the question.

8 **MR. TRUSLOW:** I think his point's well-taken because
9 I believe it's in -- from looking at the pleadings there,
10 I can see it's already well-pled and there was a default,
11 so I think it's deemed admitted and I don't think I need
12 to ask any further questions about that. So I'll rely on
13 the pleadings deemed well-pled and I think it's in the
14 fifth cause of action -- no, it's in the second cause of
15 action and the third cause of action. We'll stand by those
16 and I'll sit down and we'll proceed.

17 **THE COURT:** Any cross?

18 **MR. GLEISSNER:** Yes, Your Honor. Do you want to take
19 a break or do you just want me to go forward?

20 **THE COURT:** We can go forward for a little bit unless
21 you need to take a break?

22 **MR. GLEISSNER:** You want me to move now? All right.
23 I'll do it. With the Court's permission, I would like to
24 look the Exhibit Number 3.

25 **THE COURT:** And I have -- I have them here. I've got

1 all of the exhibits.

2 **MR. GLEISSNER:** Okay. I'm looking for the retainer
3 agreement.

4 **THE COURT:** The ones with the yellow stickers are from
5 the previous hearing and the blue-green-ish stickers are
6 from this hearing.

7 CROSS-EXAMINATION

8 BY MR. GLEISSNER:

9 Q. Okay. Now let me let you look at --

10 **MR. GLEISSNER:** Your Honor, we only have one copy of
11 this. With the Court's permission, can I look over his
12 shoulder?

13 **THE COURT:** Sure.

14 **MR. GLEISSNER:** Thank you, Your Honor.

15 BY MR. GLEISSNER:

16 Q. Let's -- let's look at this retainer agreement.

17 A. I'll put on my reading glasses.

18 Q. That's all right. I've got mine on.

19 A. All right. Where are we?

20 Q. All right. Here. The first thing is the client,
21 Jones Herring. That's you?

22 A. Yes, sir.

23 Q. And then it says, "As proposed class representative
24 for Citifinancial customers".

25 A. Right.

1 Q. All right. So was Mr. Bagnell supposed to represent
2 you individually or was he supposed to represent you as
3 a --

4 A. Yes, individually, and he wanted to pursue a class
5 action.

6 Q. Okay. But this doesn't say he's representing you
7 individually. It says the client is Jones Herring as
8 proposed class representative for Citifinancial customers,
9 right?

10 A. That's what that says.

11 Q. That's what this says. And as relates to the matter
12 that they're handling, the matter that they're handling
13 is the investigation and the filing of a class action
14 suit against Citifinancial arising out of accounting
15 discrepancies and customers' accounts, particularly failing
16 to adjust balances due to correct for reduced interest
17 rates leading to overcharging, misreporting of credit and
18 issuances of incorrect 1099's.

19 A. That is correct.

20 Q. That's what it says?

21 A. And that's exactly --

22 Q. It says investigating and filing of a class action
23 suit.

24 A. That's exactly what it says.

25 Q. All right. But now this malpractice action is for

1 you individually, right?

2 A. That is correct.

3 Q. Okay. It's not for a class action?

4 A. It's for me getting my files back. I hired him to
5 -- to sue Citifinancial and this is what he wanted to do.

6 He had my files. I could not proceed without my files.

7 All of my documentations were in there. He represented
8 himself as my attorney as in another letter to the

9 lawyer dunning me, so by the other letter he's -- he's

10 representing himself as my attorney individually. And he

11 kept my files. I could not do anything else without my

12 files. He represented himself as my lawyer to that other

13 lawyer and to other lawyers in the office.

14 Q. All right. So he was going to sue Citifinancial?

15 A. Correct.

16 Q. Okay. Now I didn't see anywhere in this retainer
17 agreement, and I didn't see anywhere in the letters, where
18 he was also providing you with tax advice.

19 A. He wasn't providing me any tax advice, no.

20 Q. And then I don't see anywhere in this retainer
21 agreement or anywhere in the letters where he was supposed
22 to give you bankruptcy advice.

23 A. Not in that, no.

24 Q. So he wasn't supposed to give you bankruptcy advice
25 and he wasn't supposed to give you tax advice. I think

1 in the previous trial transcript it says on Page 6 that
2 Mr. Bagnell was supposed to bring an action under the
3 Unfair Credit Reporting Act and the Fair Debt Collection
4 Practices Act.

5 A. That's -- that's what he was gonna do for me. I know
6 he represented that to me that he was gonna do. Now he was
7 not hired as a bankruptcy attorney, no. He was not hired
8 as a tax attorney, no. But he was hired as an attorney to
9 represent me and give me advice and get my money back. Now
10 he kept my files, he would not give me my files. I could
11 not go forward without my files. Now I think if you're
12 saying I made a mistake in hiring him, that might be true.
13 I should have done more research about him because
14 obviously he didn't do his job and the grievance board
15 agreed with me and so did the Supreme Court. That's just
16 a fact.

17 Q. Okay.. I'm not -- I'm not suggesting anything. I'm
18 just asking you some questions.

19 A. Okay.

20 Q. I'm just trying to find out what you hired Mr. Bagnell
21 for.

22 A. I hired him to sue Citifinancial and get my money
23 based on Consumer Affairs' letter stating this is my case.
24 He came up with this, to do this, and I said if that helps,
25 fine, but I want my money back.

1 Q. Okay. And he was gonna do that?

2 A. On top of it.

3 Q. On top of it. All right. So in the previous
4 transcript it said that he was gonna sue under the Unfair
5 Credit Reporting Act and under the Fair Debt Collection
6 Practices Act.

7 A. That's in the -- in the files. I don't have it
8 because he never gave me my files back.

9 Q. All right.

10 A. I can't prove that, but he never gave it back to me.
11 How can I prove it? He has the original documents.

12 Q. The retainer agreement says class action. You, in
13 fact, provided him with no retainer money; is that correct?

14 A. That is correct.

15 Q. All right.

16 A. He was doing it on a contingency basis.

17 Q. Do you know what the elements of a Fair Credit
18 Reporting Act case are?

19 A. No, sir. I'm not a lawyer. I'm not an attorney.

20 Q. Do you know what damages are recoverable under a Fair
21 Credit Reporting Act case?

22 A. According to, again, this expert over at Consumer
23 Affairs, not only the damages, plus treble -- triple
24 damages. I don't even know the term for it, but that's
25 three times what it was according to them. According to

1 this gentleman, it was -- it's in the file.

2 Q. Okay. Mr. Herring, I apologize for interrupting, but,
3 I mean, you're referring to someone providing you with
4 information that isn't Mr. Bagnell, and that's hearsay, and
5 I have to object to the hearsay and I have to ask you to
6 please refrain from referring to what somebody told you
7 other than Mr. Bagnell and Mr. Eason.

8 **MR. GLEISSNER:** And also, Your Honor, I'd like to
9 strike the discussion of what somebody at Consumer Affairs
10 might have told him.

11 **THE COURT:** I sustain it as to hearsay.

12 **MR. GLEISSNER:** Thank you, Your Honor. Strike the
13 testimony relating to the hearsay, Your Honor?

14 **THE COURT:** Yes. Based on what he testified to, yes.
15 BY MR. GLEISSNER:

16 Q. So now as relates to actual damages recoverable under
17 the Fair Credit Reporting Act, you don't know what actual
18 damages are recoverable under a fair credit reporting case,
19 do you?

20 A. I can answer this by saying my information and my
21 knowledge is in that banker's box of information that
22 Mr. Bagnell still retains. That's the best way I can
23 answer your question because I am not an expert in consumer
24 affairs. I am not an attorney.

25 Q. Okay.

1 A. However, I have worked very closely with Consumer
2 Affairs.

3 Q. Okay. And do you know what are the elements of a
4 Fair Debt Collection Practices Act case?

5 A. No, sir. I'm not an attorney.

6 Q. Okay.

7 A. That's why I hired one.

8 Q. Do you know whether or not a creditor who's acting on
9 their own behalf can be sued under the Fair Debt Collection
10 Practices Act?

11 A. Again, I refer to my banker's box of information that
12 has all my knowledge.

13 Q. Now Mr. Truslow asked you about a 1099-C and he
14 referred to a seven thousand two hundred dollar 1099-C; is
15 that right? Do you remember that discussion?

16 A. It's seven thousand something something. I don't
17 remember the exact dollars.

18 Q. In fact, Citifinancial corrected that.

19 A. No, sir, it did not.

20 Q. They didn't? Well, let me hand you --

21 A. That's a second Citifinancial account.

22 Q. Well, let me hand you a document that came from your
23 file and see if that refreshes your recollection.

24 A. Can I see the other one, please, sir?

25 **MR. TRUSLOW:** Your Honor, if I may? Your Honor, I'm

1 gonna object since the Defendant is in default and they're
2 not offering evidence at this point in time. They can
3 simply cross-examine him.

4 **MR. GLEISSNER:** Well, I'm asking him if this refreshes
5 his recollection.

6 **THE WITNESS:** I asked to see the other one, the
7 original seven thousand one.

8 **MR. TRUSLOW:** The question was --

9 **THE COURT:** One moment. I think he can hand him a
10 document and he can explain or he can ask for whatever
11 information and as I understand in a damages hearing they
12 can come in and they can challenge the damages that are
13 being claimed by the party which would include you being
14 able to produce exhibits or any other evidence related
15 to those damages. While he cannot separately produce
16 testimony, he can certainly challenge any numbers or
17 calculations of damages. So I'm overruling your objection
18 at this particular time and he can talk about that
19 particular document.

20 **MR. TRUSLOW:** He's asking -- I think the question was
21 whether it refreshed his memory --

22 **MR. GLEISSNER:** That's correct.

23 **THE COURT:** Yes.

24 **MR. TRUSLOW:** -- rather than the substance of it.

25 **THE COURT:** Okay.

1 BY MR. GLEISSNER:

2 Q. Does this refresh your recollection as it relates to
3 what the correct amount of the eventual 1099-C was?

4 A. Mr. Gleissner, I will say it again. Without seeing
5 the original seven thousand dollar one, if you have it,
6 I will try to trace the account numbers together. There
7 were two Citifinancial accounts. Both of them issued
8 1099-C's. Now this says corrected, and maybe -- maybe it
9 is, but I did not file a tax return with this number on it.

10 Q. Well, with the Court's permission I'm gonna show him
11 the original as he requested, which is the original 1099-C,
12 which refers to --

13 A. It says the same number.

14 Q. That's the same account number?

15 A. The same account number. That's why I wanted to make
16 sure.

17 Q. And, in fact, that's the seven thousand two hundred
18 thirty-eight dollar and thirty-four sent one that you had
19 discussed during your --

20 A. Original trial, yes.

21 Q. Okay. So now the question is --

22 A. I don't know when I got this, but it is corrected
23 because it has an "X" in the box there. It's just a fact.

24 Q. Okay. Now --

25 MR. TRUSLOW: Can I see that?

1 **MR. GLEISSNER:** Do you want to see both of them?

2 **MR. TRUSLOW:** No, just the cancellation.

3 **MR. GLEISSNER:** And, Your Honor, with the Court's
4 permission I will go ahead and offer into evidence the
5 corrected cancellation of debt statement. I guess it
6 would be Defendant's 1.

7 **THE COURT:** Any objection?

8 **MR. TRUSLOW:** Same objection, Your Honor, but I
9 understand your ruling.

10 **THE COURT:** All right. I'll overrule it. It's
11 admitted.

12 (Defendant's Exhibit Number 1, a 1099-C, was marked
13 and admitted into evidence.)

14 BY MR. GLEISSNER:

15 Q. Now this 1099-C and this corrected 1099-C, that's
16 before Mr. Bagnell was your attorney, right?

17 A. The original 1099-C is what got me on the --
18 investigating why they were dunning me, why they were doing
19 things, because I had paid them in full. That started
20 the process, this whole process, okay? That's when I had
21 to file the tax return that year and include the seven
22 thousand two hundred and something in my income which threw
23 me over with the accountant.

24 Q. Okay. Well, let me ask you to look at the dates that
25 appear on the two 1099-C's. It appears that this original

1 one for \$7,200, it looks like it's got a dated on it of
2 January 25, 2006.

3 A. That's right. Because I had to do the -- I had to do
4 the tax return for 2005 by April the 12th, 2006.

5 Q. Okay. And this corrected one looks like it's got a
6 date of -- what's that? February 17, 2006?

7 A. That's correct. This is the number I used on the tax
8 return, and I didn't bring that copy of the tax return with
9 me, but if you so need it, I have it.

10 Q. So you -- you believe that you used the one from
11 January 25, 2006 on your tax return instead of the one from
12 February 17th?

13 A. That's when it was mailed, yes.

14 Q. Okay.

15 A. Which I probably thought it was a copy of the same
16 thing.

17 Q. But Mr. Bagnell wasn't hired at that point to help you
18 with your taxes, right?

19 A. No, sir.

20 Q. So if there was a mistake done on your taxes, that
21 wasn't Mr. Bagnell.

22 A. Mr. Bagnell, that was after the fact.

23 Q. You say it was after the --

24 A. After the tax return. Mr. Bagnell's job was to sue
25 Citifinancial to recover my funds. That's what the suit

1 was about. Now that was why Mr. Bagnell was retained. He
2 was -- that precipitated my reasoning to going to Consumer
3 Affairs first and not getting any relief and then going --
4 based on their recommendation looking for an attorney and
5 I hired Gil Bagnell. Now that's -- that precipitated all
6 this action.

7 Q. Now I believe that at the prior trial we talked about
8 the procedure to challenge a 1099-C that is adopted by the
9 Internal Revenue Service.

10 A. At that point in time, I did not know anything about
11 that. Now I will tell you this, after that, two years
12 later, I signed up for tax courses. Now that -- I did not
13 know how to challenge that at that time.

14 Q. Okay. But, again --

15 A. And I didn't ask Mr. Bagnell about that. That was
16 what caused me to go hire Mr. Bagnell. I never asked Gil
17 Bagnell to do my tax return.

18 Q. Okay.

19 A. Now I learned three years later how to handle
20 something along that line, but I had to go spend
21 fifty hours in a tax course to learn it.

22 Q. Now you testified that you were, quote, walking
23 bankrupt?

24 A. Yes, sir.

25 Q. That was prior to Mr. Bagnell representing you?

1 A. Yes, sir.

2 Q. Okay. And you testified that you had a horrible
3 rental house and had to have a second job. That was before
4 Mr. Bagnell?

5 A. Yes, sir. It was before I even knew Mr. Bagnell
6 existed.

7 Q. All right. Now your affidavit that you submitted --

8 **MR. GLEISSNER:** And with the Court's permission I'd
9 like to hand up a copy of the affidavit to -- let me make
10 sure that this copy doesn't have any markings on it. I
11 don't think it does, Your Honor.

12 **THE COURT:** Okay.

13 BY MR. GLEISSNER:

14 Q. Now that's the affidavit that you filed after the
15 previous damages hearing; is that right?

16 A. Yes, sir, I believe that's correct.

17 Q. Okay. And I did not have a chance to cross-examine
18 you on that because it was submitted after the damages
19 hearing; is that right?

20 A. You did not cross-examine me on this, that is correct.

21 Q. All right. Now I'm trying to figure out -- you
22 said you were damaged a hundred thousand or a hundred and
23 twenty thousand dollars. You said that during your direct
24 examination today. I'm trying to figure out where -- where
25 that comes from, okay? And in your affidavit you say in

1 the -- in the Herring damages timeline, which begins just
2 after your discussion, okay, where it says -- do you see
3 the Herring damages timeline?

4 A. Yes, sir.

5 Q. All right. You have 1998, 1998 to 1999, and you have
6 2000, 2005 and you talk about the -- I guess what was
7 previously referred to as being walking bankrupt and owing
8 \$80,000 and that it grew to a hundred thousand dollars.

9 A. Yes.

10 Q. Okay.

11 A. That is why I had to go to Consumer Credit Counseling
12 to -- instead of a year to stretch it out.

13 Q. Now is that where the hundred thousand dollars comes
14 from? Your damages of a hundred thousand dollars?

15 A. Yes, sir.

16 Q. Okay. So -- so you are claiming that Mr. Bagnell
17 was supposed to get back for you the money that you spent
18 paying these creditors?

19 A. What I was saying was if I had known Mr. Bagnell
20 wasn't gonna do anything, in other words, at the time the
21 statute of limitations ran out because he would not give me
22 my files back, I had to pay those \$80,000, upwards of a
23 hundred thousand dollars, in liabilities. If I had known
24 then what I know now, I would just have declared bankruptcy
25 and would not have owed anything and I would have saved

1 that eighty to a hundred thousand dollars. That is what
2 I'm saying.

3 Q. Okay.

4 A. Do you see what I'm saying? Do you understand that?

5 Q. Well, I do, but I'm trying to figure this out
6 chronologically because, you know, it's just the way I
7 think.

8 Okay. So in 1998 you entered into this agreement
9 with the United Way subsidiary, Consumer Credit Counseling,
10 LLC.

11 A. Whatever the -- CCC is what it's referred to.

12 Q. Right, CCC. So you entered into this agreement with
13 CCC in 1998. In the year -- and it's a five-year plan.
14 And you make all of these monthly payments to CCC over
15 this five-year plan and then in 2005 all of the hundred
16 thousand dollars' worth of debt are supposed to be paid off
17 as a result of you paying something less than the hundred
18 thousand dollars; isn't that right?

19 A. No, the principal -- paid the principal. The interest
20 -- the principal was being paid, okay?

21 Q. But you weren't paying the interest?

22 A. The interest was being reduced at a great deal.

23 Q. Okay. So the interest is reduced so you could pay it
24 off in that five years? ...

25 A. And the time limit is expanded.

1 Q. All right. So they expanded the time, reduced the
2 interest, and by doing all that stuff you were able to pay
3 the hundred thousand dollars off --

4 A. Eighty.

5 **MR. TRUSLOW:** I object to the form of the question,
6 Your Honor. It was a compound question and he said that
7 they reduced the interest rather than interest rate.
8 That's my objection. They didn't reduce interest.

9 **THE WITNESS:** They reduced the interest rate greatly.
10 I'm sorry. The percentage of interest charged.

11 **THE COURT:** And that's -- and I think that -- clarify
12 the question.

13 **MR. GLEISSNER:** I will try to clarify the question.

14 **THE COURT:** You may need to break it into smaller
15 portions.

16 BY MR. GLEISSNER:

17 Q. So you went to Consumer Credit Counseling, right?

18 A. Right.

19 Q. CCC said we're gonna make this plan and it's going to
20 be agreed to by all the creditors?

21 A. Right.

22 Q. And the plan is we're gonna make your payments over a
23 longer period of time; is that right?

24 A. Correct.

25 Q. And we're gonna reduce the interest rate going forward

1 from every single one of these guys?

2 A. Right.

3 Q. So instead of Citifinancial charging you twenty-seven
4 percent or whatever it was, ten percent, now they're --
5 you're only gonna pay them eight percent?

6 A. I think that's the actual number. I don't remember
7 because it's in the banker's box.

8 Q. All right. And all this was before Gil Bagnell was
9 involved?

10 A. Correct.

11 Q. Okay. So now all that happened before Mr. Bagnell
12 was involved and as part of Mr. Bagnell's job he wasn't
13 supposed to get that money back for you, right? He wasn't
14 gonna get that money back in the lawsuit.

15 A. Mr. Bagnell was supposed to sue Citifinancial for
16 me --

17 Q. Right.

18 A. -- underneath these things you cited, which I'm not
19 expert to discuss, and my understanding I was gonna get
20 over a hundred thousand dollars back. That was based on
21 not only Mr. Bagnell, again, inside the banker's box, a
22 letter from Consumer Affairs.

23 Q. Okay. But you don't --

24 A. I'm not an expert. I can't speak to what -- but I
25 can tell you the letter was in that banker's box from

1 Consumer Affairs.

2 Q. Okay. I mean, it just -- it just --

3 A. Along with other documentation.

4 Q. Okay. Do you remember -- of the hundred thousand
5 dollars, do you remember how much was actually

6 Citifinancial?

7 A. No, sir. It's all in that file. I had the original
8 contract from Consumer Credit Counseling in that banker's
9 box and it was a breakdown per month of how much -- each of
10 the monthly payments how it was distributed.

11 Q. Okay. Let me hand you another document that came
12 from your file to see if that helps you refresh your
13 recollection.

14 All right. This is a page from the credit -- Consumer
15 Credit Counseling Services' agreement.

16 A. That's right.

17 Q. Okay. Is this page related to Commercial Credit?

18 A. That's one of them, yes. These -- these were
19 documents from CCC where they talked to the people out --
20 you know, that I owed as part of this contract. This is
21 just one of several. That's how we accumulated the debt.

22 Q. Okay. And it says total indebtedness, 22,523?

23 A. Right.

24 Q. Okay. Is that how much you owed Consumer --
25 Commercial Credit?

1 A. At one time, yes, and paid them off.

2 Q. Okay.

3 A. And did not have a problem with them, okay? In other
4 words, when I paid them off, I was paid off. Again, that
5 information is in that banker's box that Mr. Bagnell has.
6 Every cancelled check from Consumer Credit Counseling and
7 how it was disbursed and to whom.

8 Q. Do you know how a creditor is supposed to treat the
9 reduction in interest rate pursuant to the IRS code?

10 A. I do now.

11 Q. You do now?

12 A. I didn't at the point in time.

13 Q. Didn't at the point in time?

14 A. But I made a -- I made a point to go learn. I'm an
15 auditor.

16 Q. All right. So --

17 A. I'm not a smart auditor, but I'm an auditor.

18 Q. Now you know that when there's a reduction in the
19 interest rate of more than a quarter percent interest they
20 have to declare that reduction in interest rate on a
21 1099-C?

22 A. If the contract's not paid. This is a modified
23 contract. This is a modified contract to reduce income
24 rate -- interest rate. Now the problem with Citifinancial,
25 when I got the original contract, they said here's the

1 principal and here's how much interest you're gonna pay
2 over the length of the loan, add the two together, they
3 reported that as income. And we had a modified contract.
4 I did not pay the total amount of interest. That was what
5 they did a 1099-C for, but I had a note that said paid in
6 full, signed, stamped, the original note. I had a receipt
7 signed, paid in full, zero. Here's the balance, this is
8 the amount paid, the balance reduced to zero. Again, in
9 the banker's box. Now I can't help that Citifinancial
10 booked their information wrong. I can't help their
11 accounting system wouldn't deduct the interest and the only
12 way to get it off was to issue a 1099-C. Now that isn't my
13 fault, and that's what we were suing about or what I wanted
14 to sue about, but they were doing this to numerous other
15 people according to Gil, Mr. Bagnell, specifically in the
16 housing market.

17 Q. Okay.

18 A. And that's where you come up with the class action
19 suit.

20 Q. Okay.

21 A. But I went to him as an individual. He represented
22 himself as my individual lawyer. Now that's all I can
23 say for certainty. And, of course, we have a letter where
24 it indicates that he's my lawyer in this matter.

25 Q. Okay. Do you know whether or not -- no, I'm sorry.

1 Let me strike that. Do you know under the Unfair Credit
2 Reporting Act whether or not what you alleged to be an
3 incorrect cancellation of debt, 1099-C, whether or not
4 that's recoverable?

5 A. I have no way of -- and, no, I'm not an expert. If I
6 knew that, I would be going to a bankruptcy attorney and
7 asking that question.

8 Q. Do you know whether under the Unfair Debt Collection
9 Practices Act the recovery of an incorrect 1099-C is
10 recoverable?

11 A. I have no way of knowing that. I'm not an attorney.

12 Q. Looking at your Herring affidavit and continuing down
13 your damages timeline --

14 A. What did you want to do with this? I don't want to
15 misplace it.

16 Q. Let me take that back.

17 A. I just didn't want anything to happen to it.

18 Q. All right. Not a problem.

19 Going down this timeline, it then says 2005, 2006,
20 okay, you overpaid Citifinancial 1,200.

21 A. That was one account. That's not -- there's two,
22 okay? There's two Citifinancial accounts.

23 Q. Okay.

24 A. One that was over at Knox Abbott, which issued the
25 seven thousand dollar 1099-Miscellaneous -- I mean, 1099-C,

1 excuse me, and one that was over here on Forest Drive,
2 which was later moved to Charlotte. The account was
3 transferred to Charlotte.

4 Q. Okay. And we saw that the 1099-C for \$7,000 was
5 corrected --

6 A. Well, yeah, that's -- that's what it says, yeah.

7 Q. -- to \$3,600?

8 A. Whatever that number is.

9 Q. All right. And this next thing talks about a twelve
10 hundred dollar overpayment.

11 A. Correct. That's the Citifinancial account in
12 Charlotte.

13 Q. Okay. Did you overpay the other account, too, or just
14 one account?

15 A. No, just that one account.

16 Q. One account. Okay.

17 A. And, again, the documentation for overpayment by
18 cancelled check is in the banker's box along with copies
19 of the cancelled checks of payments along with the
20 telephone logs and who I talked to at Citifinancial in
21 Charlotte. All that documentation, all the original
22 documentation, in is in that banker's box.

23 Q. And you began that dispute with Citifinancial in 2004;
24 is that right?

25 A. Somewhere in that area. I'm not gonna give an exact

1 date because I just don't remember.

2 Q. Okay. Let me hand you from your file a document and
3 see if this assists you in remembering this dispute and
4 when this dispute began.

5 A. Okay.

6 Q. This appears to be a letter of December of 2004 and it
7 says that there was a dispute as relates to the amount of
8 the account. Do you see that?

9 A. Yeah, this is from Mr. Fisher. I've talked to him on
10 many occasions.

11 Q. All right. And it says -- Mr. Fisher says, "It is my
12 opinion the true balance is now -- or is \$1,810 and this
13 was agreed by both parties in approximately September of
14 2004".

15 A. That's exactly what that says, but this is just one
16 piece of paper out of many that's in the banker's box, so
17 you've got to have the rest of this documentation to go
18 along with it and I have not seen it.

19 Q. Okay. So --

20 A. So I'm saying this is true, but I can't tell you what
21 context is it.

22 Q. Okay. So in September of 2004 you agreed that that
23 was the amount that was owed?

24 A. At the Knox Abbott branch.

25 Q. At the Knox Abbott branch?

1 A. Correct.

2 Q. And let me hand you another piece of paper.

3 **MR. GLEISSNER:** Your Honor, with the Court's
4 permission, let me go ahead and get the letter admitted as
5 Defendant's 2.

6 **THE COURT:** Any objection?

7 **THE WITNESS:** Yes. All right. Here. Great. I'm
8 glad you got this.

9 BY MR. GLEISSNER:

10 Q. I'm not hiding anything, Mr. Herring.

11 A. Oh, I know you're not, I know you're not, but on that
12 receipt I had from them -- do you remember me telling you
13 I wrote them a check for the last payment?

14 Q. Yes.

15 A. \$7.09.

16 Q. Yes.

17 A. And that's when I got the paid in full receipt from
18 them on Knox Abbott.

19 Q. Okay. All right. I'm just making sure.

20 **MR. GLEISSNER:** Let's -- let's have this one marked
21 as Exhibit Number 2.

22 **THE COURT:** Any objection?

23 **MR. TRUSLOW:** Your Honor, first off, my objection
24 is similar to before. It's unseemly for them -- for
25 Mr. Bagnell and Bagnell and Eason to withhold documents

1 all this time and then provide them for my client for
2 purposes of cross-examination now. That's my objection.
3 Withhold it and then they cross-examine him. They wouldn't
4 -- I would note further that I had --

5 **THE COURT:** Well, let's -- let's go back. Have the
6 documents been provided to him before today?

7 **MR. GLEISSNER:** Yes, Your Honor. They're on the CD
8 that you have in the file. They were in the CD I provided
9 to Mr. Truslow. They're also in the original paper form
10 file that I produced to Mr. Truslow. Those -- the two
11 inches or three inches or one and a half inches of files,
12 all of that has been previously provided to Mr. Truslow.

13 **THE COURT:** And I understand Mr. Truslow's position
14 that it wasn't provided to him at the time of the original
15 hearing.

16 **MR. TRUSLOW:** Or when my client -- and he's also
17 cross-examined him and is relying on testimony in a
18 previous case and even if what he were to say was correct,
19 it was provided after the hearing was closed and after the
20 testimony, and it just seems --

21 **THE COURT:** And I understand from the Supreme Court
22 they sent it back for re-hearing. I will note your
23 objection and I will accept Exhibit Number 2 -- Defendant's
24 Number 2 and admit that.

25 (Defendant's Exhibit Number 2, a Citifinancial letter,

1 was marked and admitted into evidence.)

2 BY MR. GLEISSNER:

3 Q. Now I've handed you another document that appears to
4 relate to the \$1,810 that was agreed to in the Exhibit
5 Number 2 I'd handed you. Now is that the spreadsheet of
6 payments that were made after the letter of Exhibit
7 Number 2?

8 A. Well, there's no date on this, but I will say that
9 it refers to the same dollar amount on September 4th and
10 that's referenced. There's no date on this memo, but we
11 agreed on September the 4th, 2004, it was eighteen ten.

12 Q. Right.

13 A. And there's a history of payments with the amount
14 paid, amount applied to balance, amount applied to
15 interest, and a running balance owed to get to the \$7.09
16 and that's when I went over there and paid an actual check,
17 handwritten date when I paid it, and the dollar amount.
18 Now why it went from 1205 to 709, I don't remember, but
19 that's what I paid, the 709.

20 Q. You paid the 709?

21 A. And it was paid in full at the branch bank.

22 MR. GLEISSNER: Okay. Let me ask to have the
23 spreadsheets of your payments marked as Exhibit Number 3.

24 THE COURT: Any objection or the same objection?

25 MR. TRUSLOW: No.

1 **THE COURT:** It's admitted.

2 (Defendant's Exhibit Number 3, a spreadsheet, was
3 marked and admitted into evidence.)

4 BY MR. GLEISSNER:

5 Q. Okay. So we appear to have a dispute with
6 Citifinancial and then we appear to have a resolution
7 with Citifinancial and you appear to have paid pursuant
8 to that resolution the full amount that was agreed to
9 pursuant to this letter?

10 A. Right.

11 Q. Okay.

12 A. And, was happy to finish paying the \$7.09 and thought
13 it was done.

14 Q. Did you make any payments after?

15 A. No. I had a receipt that said paid in full. They
16 gave me the original note stamped in red "paid in full",
17 signed by Mr. Fisher -- I believe it was Mr. Fisher, and
18 the office manager. I took that -- again, part of the
19 information in the banker's box. That is just one snippet
20 of what's in the banker's box and we all agreed that I
21 paid all -- I paid what I owed. I mean, that's not
22 disputed.

23 Q. You paid pursuant to your contract with CCC?

24 A. With me, CCC and Citifinancial Knox Abbott,
25 Citifinancial Charlotte, Consumer -- the other one,

1 Commercial Credit, all the ones that were listed with CCC,
2 again, which is in the banker's box that Mr. Bagnell had
3 and what you're showing is totally incomplete. Those files
4 are not nearly as thick as the banker's box and I gave him
5 a banker's box plus files.

6 Q. All I can work with is what I have.

7 A. That's right. So I've got to remind you that I can't
8 answer your questions, I can't prove these things without
9 my original records.

10 Q. Okay. But what we saw as relates to Citifinancial
11 is --

12 A. No, there's no question I paid them. I paid everybody
13 off. That was the whole thing.

14 Q. Okay.

15 A. I paid the whole eighty thousand plus off.

16 Q. All right. Now --

17 A. That's why I sacrificed.

18 Q. Okay. I'm going back to damages now. Is that okay?

19 A. (Nods head.)

20 Q. All right. Now you included in your -- in your
21 affidavit estimated damages incurred due to Citifinancial
22 actions. Do you see that in your affidavit? Do you still
23 have your affidavit in front of you?

24 A. I do.

25 Q. Okay. I believe it's the last two pages of your

1 affidavit.

2 A. Where are we? What page?

3 Q. I believe it's the last two pages. I don't think
4 they're numbered.

5 A. They're not numbered. Okay. What date? Give me a
6 date.

7 Q. No, no, no, no. It's the last two pages. It's the
8 chart that was attached.

9 A. Oh, okay. I see what you're saying.

10 Q. Okay. Because that was the last number that I saw in
11 the date field, so now I'm moving on to the chart that you
12 provided.

13 A. Yes, sir. I'm on the last page now.

14 Q. Well, it's -- technically I think it's the second to
15 the last page, but I could be wrong.

16 A. Okay. There we go. Okay. Here we are.

17 Q. All right. Where it says estimated monetary damages
18 incurred due to Citifinancial actions.

19 A. I don't see that.

20 Q. With the Court's permission, let me come back here.
21 We might have --

22 A. I don't see it.

23 Q. My copy may have gotten cut off. This is the page I
24 want to talk to you about and you will see it's continued
25 on the next page.

1 A. Okay. I thought that was the last page. I apologize.

2 Q. You've got the page now.

3 **MR. TRUSLOW:** Your Honor, if I -- if I can, I would
4 like to object to the relevance. We indicated that we were
5 limited to the \$128,000, not the additional 35,300 -- or
6 595 that he's asking about.

7 **MR. GLEISSNER:** I apologize, Your Honor. I thought
8 that the \$28,000 was a subset of this \$35,000. If what
9 Mr. Truslow is saying is that the \$28,000 is separate and
10 apart from this 35,000 -- well, I'm sorry, this \$42,000
11 and that the \$42,000 that's itemized here they are no
12 longer claiming, then -- then I can short circuit my
13 questions.

14 **MR. TRUSLOW:** I think he can, Your Honor. The -- I'm
15 looking at the -- it's called -- it's called the Herring
16 damages timeline. The last page of it says incurred
17 \$28,000 in damages plus a hundred thousand dollars and it
18 goes on, and then the next paragraph is what I'm saying --
19 is what I'm referring to. "I believe I have incurred other
20 damages caused by Defendants and I'm preparing a separate
21 spreadsheet in Excel", and that's what's being asked about,
22 what's in Excel, which is the estimated monetary damages.

23 **THE COURT:** And that's the total 42,000?

24 **THE WITNESS:** That's correct, yes.

25 **THE COURT:** Okay. So what you're telling the Court

1 today is that you're not seeking to recover any of the
2 \$42,301?

3 **MR. TRUSLOW:** Yes, ma'am. We're -- we're relying on
4 the hundred and twenty-eight and we think that -- that will
5 do it.

6 **THE COURT:** Does that clarify it?

7 **MR. GLEISSNER:** That did clarify it. That clarified
8 the questions about the spreadsheet. Now I just have to
9 ask questions about the 28,000.

10 **THE COURT:** Okay. And I'll tell you what. Let's take
11 a brief break and we'll come back.

12 **MR. GLEISSNER:** Thank you.

13 **THE COURT:** Mr. Herring, during this break you may not
14 discuss your testimony with your attorney because you've
15 not concluded your testimony. It would not be appropriate
16 for you to discuss it with him, or with anybody else, so
17 neither the defense attorney either. And let's take a
18 break and then we'll come back and continue on. You may
19 step down.

20 (Recess taken.)

21 **BAILIFF:** Court come to order. All rise. Thank you.
22 Be seated.

23 **THE COURT:** Yes, sir. You may continue with your
24 questions, Mr. Gleissner.

25 **MR. GLEISSNER:** Thank you, Your Honor.

1 I believe we've just received a stipulation as
2 relates to the last two pages of the affidavit; that the
3 Defendant {sic} is not seeking the damages that are
4 itemized on the last two pages of the affidavit; that
5 instead he's seeking \$28,000 in damages and so we were
6 -- in addition to the hundred thousand dollars we've
7 previously discussed.

8 BY MR. GLEISSNER:

9 Q. Okay. So now we've got to find out what the \$28,000
10 consists of. So what does the \$28,000 consist of?

11 A. I don't have my calculator with me.

12 Q. I have my phone. My phone has a calculator. Does
13 that help?

14 A. I'll have to work through it. I don't have the -- I
15 would imagine it's this first grouping.

16 Q. I'm sorry, this first --

17 A. This first grouping up here on the page -- of the
18 affidavit you're talking about, right?

19 Q. Okay.

20 A. You're asking me how did I get the 28? Is that the
21 question?

22 Q. That's exactly the question. How did you get the 28?

23 A. Again, I'll have to have a pencil and a piece of paper
24 and a calculator.

25 Q. All right. I have some paper. I have --

1 A. Because I have the other in the file with Mr. Bagnell,
2 so this is --
3 Q. I have paper, I have pens.
4 A. Well, give me that, please.
5 Q. Here's a piece of paper, here's a pen. Do you want
6 to borrow my phone for a calculator?
7 A. I should be okay, but thank you.
8 Q. Here's a pen.
9 A. What the 28 is referencing is -- it might be easier
10 to show you. It's this middle section which says value
11 exceeds 28.
12 Q. Okay. I'll come up.
13 A. That's what this is referencing, the 28. This here
14 is what the reference is. I don't know why that is, but
15 the sum total of 42, this number, is this total, that total
16 and that total.
17 Q. Okay. Now you're referring to the last --
18 A. You asked -- you asked about the 28.
19 Q. I asked what was the \$28,000.
20 A. That's what -- that's what this is saying right here.
21 This is the value. That's the present value of it. You've
22 got the 28,000. That's what that note says.
23 Q. Okay. But you're -- you're referring to the last two
24 pages of your affidavit, right?
25 A. This is what we're talking about. This is my

1 question. This is what -- as I understand it right now,
2 this is what I said was the total.

3 **THE COURT:** I'm sorry, when you're saying --

4 **MR. GLEISSNER:** The judge can't see what --

5 **THE WITNESS:** Oh, I'm sorry. I apologize.

6 **THE COURT:** When you're saying "this", I'm trying to
7 follow along.

8 **THE WITNESS:** I apologize. I'm making the assumption,
9 which ain't a great thing to do, but it says 28 and this is
10 the only reference I have of 28 is right here on this page.

11 **MR. GLEISSNER:** Okay. This is the page -- the second
12 from the last page of the affidavit.

13 **THE COURT:** Yes, sir.

14 **MR. GLEISSNER:** Okay. And -- and he's pointing at
15 where it says total expenses in the -- it's the second
16 grouping. It says 35,595.01, the total loss, converted to
17 present value, exceeds \$28,000. Do you see that, Judge?

18 **THE COURT:** Yes.

19 BY MR. GLEISSNER:

20 Q. Okay. Now I was under the impression from the
21 stipulation that --

22 A. That's the only 28 I see.

23 Q. Okay. But I was under the impression from the
24 stipulation that the \$28,000 was separate and apart from
25 the items contained on this page and the following page so

1 that I didn't have to go over what's itemized on this page,
2 and this page being the second to the last page of the
3 affidavit.

4 A. All right. This is my spreadsheet that I gave
5 Mr. Truslow and that's how it came up, plus the hundred
6 thousand paid, bla, bla, bla. That's what that's saying.
7 I incurred over \$28,000 in damages. This is over \$28,000
8 in damages. Now the actual original spreadsheet I had
9 showing my damages was in the banker's box with Mr. Bagnell
10 which detailed how I came up with those numbers. This is
11 trying to come back from memory.

12 Q. Okay.

13 A. That's what all this is. Again, the original document
14 is in the banker's box that Mr. Bagnell didn't have.
15 That's what I gave him. That's -- that's the number I came
16 up with. That's where I came up with the treble damages,
17 where I came up with a hundred thousand dollars based on,
18 again, the letter inside the banker's box from Consumer
19 Affairs agency they helped me draft.

20 Q. Okay. So -- so you believe that the -- to the best
21 of your knowledge the \$28,000 is, in fact, an item -- the
22 second two pages --

23 A. Where it says over \$28,000, so we just rounded
24 numbers.

25 Q. Okay. But you believe that the itemization of that

1 is in these last two pages of the spreadsheet?

2 A. Yes, and which total up to \$42,000.

3 Q. Okay. All right. So you're not waiving your right
4 to claim this money because that's included in the 28,000?

5 A. I'm not waiving my right to include -- to include
6 anything. What I'm saying is I didn't -- we didn't know
7 how the lady came up with -- the judge came up with 254.
8 This right here is 42,000 total right here. That's what
9 the total of this number is.

10 Q. Okay.

11 A. And that's the summation of all these numbers in
12 this column over here. Not this column, this is -- but
13 this column here. That's where you got that number.

14 Q. All right.

15 A. Now my original claim for damages against
16 Citifinancial is in the banker's book that Mr. Bagnell
17 has with supporting documentation proving how I came up
18 with those numbers.

19 Q. Okay. So --

20 A. And, again, I don't have the original documents, so
21 how can I go against -- file a claim?

22 Q. Okay. So let's go over this itemization of the
23 \$28,000 that you from memory believe is the \$28,000.

24 A. Memory. I will -- best of my recollection this is
25 what the numbers are.

1 Q. Okay.

2 A. Now the documentation, the proof, the verification,
3 the supporting schedules, so forth and so on, is in the
4 banker's box that Mr. Bagnell had who never returned it
5 for me. That was what I was trying to sue upon and get
6 -- collect damages from, along with the letter from
7 Consumer Affairs supporting my numbers. Again, in the
8 banker's box. I can't prove any of this because he has
9 all my documents.

10 Q. Okay.

11 A. So how can I prove it?

12 Q. Well, I just need to -- okay.

13 A. And I'm giving you the best information I can
14 recollect from memory because I do not have the original
15 documents because Mr. Bagnell has them.

16 Q. Okay.

17 A. Just pure and simple.

18 Q. All right.

19 **MR. GLEISSNER:** So I guess -- are we revoking the
20 stipulation from earlier?

21 **THE COURT:** I would suggest that you ask whatever
22 questions need to be asked.

23 **MR. GLEISSNER:** I think that's the wise decision. I
24 agree with Your Honor. Thank you, Your Honor.

25 **BY MR. GLEISSNER:**

1 Q. All right. So looking at -- at this, the second to
2 the last page of the affidavit that has the itemization on
3 it, the first item on there is lost wages.

4 A. Yes, sir.

5 Q. And then it has a calculation of yearly salary, hours
6 worked per year, and then it says hourly rate.

7 A. Came up with an hourly rate. Yes, sir.

8 Q. Okay. I'm assuming that working at the Budget Control
9 Board that that's the yearly salary that you made?

10 A. That was the average year -- well, we didn't get any
11 pay raises, so -- yeah. But it was supposedly the average
12 year of the salary, but there were no pay raises involved
13 in those years.

14 Q. And so you just basically calculated what your hourly
15 rate would be based upon the hours that you worked divided
16 by the total annual salary?

17 A. Correct. That's the -- that's the annual FT hours you
18 work, full-time equivalent hours, in state government.

19 Q. All right. And that got you an hourly rate and then
20 it says hours --

21 A. 150 hours.

22 Q. All right. Now did you have to take off work from --

23 A. Yes.

24 Q. Okay. So you took off work --

25 A. To track him down, go to meetings, try to find him,

1 stand outside, stand in his parking space, wait for him to
2 show up, not being at work. Yes, I had to account for my
3 time with my employer, so I had to lose money and/or annual
4 and sick leave in order to do this, yes. So, therefore, it
5 cost me money.

6 Q. So this is sick leave? No.

7 A. Sick leave -- well, annual leave. When I worked at
8 the budget office, I accumulated my 45 days in the first
9 year of overtime, but this is the lost wages because I
10 couldn't use it somewhere else. I couldn't add it to my
11 retirement. Let's put it that way.

12 Q. Okay. Do you know if these lost wages are recoverable
13 under the --

14 A. I'm not an attorney. I don't know.

15 Q. Okay. So you -- if you'd just be patient with me and
16 make sure the record is clear. Do you know if these are
17 recoverable under the Fair Credit Reporting Act?

18 A. I'm not an attorney. I don't know.

19 Q. Do you know if they're recoverable under the Fair Debt
20 Collection Practices Act?

21 A. I'm not an attorney. I do not know.

22 Q. The next item is -- that's the 1099-C?

23 A. Yeah, evidently that's the adjusted one that you
24 talked about.

25 Q. Right. That's the adjusted one. Okay.

1 A. Which is what -- I didn't use on my tax return, but I
2 put the adjusted one on there.

3 Q. That's the corrected one that we talked about earlier?

4 A. Right. Yes.

5 Q. I think it's Exhibit -- Defense Exhibit 1 or 2.

6 A. Right, whatever. But proof, again, I'm not trying to
7 mislead.

8 Q. All right. Do you know if that's recoverable under
9 the Fair Credit Reporting Act?

10 A. No, sir, I do not. I'm not an attorney.

11 Q. Do you know if that's recoverable under the Fair Debt
12 Collection Practices Act?

13 A. No, sir, I do not. I'm not an attorney.

14 Q. Okay. Now this isn't actual money out of your pocket.

15 A. Yes, sir, it is.

16 Q. It is money out of your pocket?

17 A. Because it increased my income.

18 Q. Okay. It increased your income, but then I look
19 further down and it says 2005 tax refund loss.

20 A. Yes.

21 Q. Isn't that the actual money out of your pocket as a
22 result of the \$3,619.57?

23 A. That's the state loss, right?

24 Q. It says --

25 A. Oh, that's just --

1 Q. -- tax refund loss.

2 A. Oh, that's probably a combination of both. Probably
3 a combination of both. So I did lose that from my refund,
4 yes.

5 Q. So you're -- so is it the 1,805 or is it the 3,619?

6 A. Well, 3,619 -- well, actually 7,000 is what I put on
7 the tax return as income and then I used the 39 here as
8 being overcharged, but I lost eighteen hundred dollars'
9 worth of tax refund.

10 Q. Okay.

11 A. Now that's a 2006 return and this is 2015 and I'm
12 reaching back.

13 Q. Okay. Do you know whether or not the tax refund loss
14 is recoverable under the Fair Credit Reporting Act?

15 A. No, sir.

16 Q. Do you know --

17 A. No, sir. I'm not an attorney, so I do not know. I'm
18 not an expert on that.

19 Q. Do you know if it's recoverable under the Fair Debt
20 Collection Practices Act?

21 A. No, sir, I do not know. I know I'm out the \$1,805.

22 Q. Before the 1,805 it says \$800 loss of educational tax
23 credit.

24 A. Right.

25 Q. Okay.

1 A. That threw me over -- over income-wise and denied me
2 the tax credits.

3 Q. Okay. Did the 36 throw you over the educational tax
4 credits?

5 A. I used the 7,000 and whatever dollars it was as my
6 memory, okay? I haven't looked at my 2006 return in a long
7 time, but as I remember it I used the 7,000 which threw me
8 over the limit filing single.

9 Q. Okay. Do you know if the 36 would have put you over
10 the limit?

11 A. Yes.

12 Q. So --

13 A. I'm -- I'm not gonna say yes because I'm not -- I
14 don't have it in front of me to see the actual numbers. I
15 don't remember the actual numbers.

16 Q. So you don't know?

17 A. I'm not -- I'm not saying for certain with certainty.

18 Q. Okay. All right. Loan overpayment.

19 A. The Citifinancial account in Charlotte we talked about
20 earlier, which, again, all the documentation, proof of
21 overpayment, is in the banker's box with Mr. Bagnell, which
22 has the cancelled checks, which has the telephone log of
23 the people I talked to, has a handwritten spreadsheet if
24 you want to refer to that, showing principal, interest and
25 overpayment, along with cancelled checks from Consumer

1 Credit Counseling showing the payments. All that's, again,
2 in that banker's box plus of documents that Mr. Bagnell
3 has. So can I prove that? No. Do I know that? Yes.

4 Q. Okay. Is this the same --

5 A. Separate account.

6 Q. All right. Is this the same one that we talked about
7 with the --

8 A. No, sir. That's Citifinancial on Knox Abbott. This
9 is Citifinancial where the account was in Charlotte. I
10 told you earlier there was two accounts.

11 Q. Do you know if that overpayment is recoverable under
12 the Fair Credit Reporting Act?

13 A. No, sir, I do not. I'm not an attorney and I do not
14 know.

15 Q. Do you know if it's recoverable under the Fair Debt
16 Collection Practices Act?

17 A. No, sir. I'm not an attorney. I do not know.

18 Q. The next item is interest. Interest on what?

19 A. The \$1,200.

20 Q. Do you know if that interest is recoverable under
21 the Fair Credit Reporting Act?

22 A. No, sir. I'm not an attorney. I do not know.

23 Q. Do you know if it's a recoverable under the Fair Debt
24 Collection Practices Act?

25 A. No, sir. I'm not an attorney. I do not know.

1 Q. Telephone expense, \$600.

2 A. Long distance phone calls to Citifinancial in
3 Charlotte. Again, the telephone log to prove that
4 documentation is in the banker's box Mr. Bagnell did not
5 return to me.

6 Q. Do you know whether or not that's recoverable under
7 the Fair Credit Reporting Act?

8 A. No, sir. I do not know. I'm not an attorney.

9 Q. Do you know if it's recoverable under the Fair Debt
10 Collection Practices Act?

11 A. No, sir. I do not know. I'm not an attorney.

12 Q. The next is --

13 A. I was just gonna say that I do know I paid -- paid the
14 money.

15 Q. Certified mail expense, fifteen letters.

16 A. Correct.

17 Q. Okay. Do you know if that's collectable under the
18 Fair Credit Reporting Act?

19 A. No, sir. I do not know. I'm not -- I'm not attorney,
20 but I did pay the expenses.

21 Q. Okay. Do you know if it's collectable under the Fair
22 Debt Collection Practices Act?

23 A. No, sir. I do not. I'm not an attorney, but I did
24 pay the -- paid to mail them.

25 Q. Next is credit card additional interest.

1 A. That's an estimate as it says there and that's a rate
2 versus -- a bad rate versus a good rate because of the
3 1099-C going on my credit report.

4 Q. Okay. Do you know whether or not they actually put
5 1099-C's on credit reports?

6 A. Yes, I do.

7 Q. And you believe they do?

8 A. I know they do because they call it a charge-off.

9 Q. Okay. So they put a charge-off on your credit report?

10 A. Because that's what it says on the 1099-C.

11 Q. Okay. Now -- but prior to engaging Mr. Bagnell, you
12 were walking bankrupt?

13 A. That's correct.

14 Q. And that was before Mr. Bagnell?

15 A. That's right and that's why I paid all these accounts
16 off in full. That's why when they sent the 1099-C they
17 put that on my credit reference as a charge-off. That's
18 why I went to Bagnell to recover my monetary loss. That's
19 why I hired your client. And, again, all the supporting
20 documents are in the banker's box that Mr. Bagnell never
21 returned to me.

22 Q. Do you know what your credit score was in 2006?

23 A. No, sir, I do not. I wouldn't imagine it was very
24 good.

25 Q. Do you know whether or not the increased interest

1 rate is recoverable under the Fair Credit Reporting Act?

2 A. No, sir. I'm not an attorney. I do not know.

3 Q. Do you know whether or not it's recoverable under the
4 Fair Debt Collection Practices Act?

5 A. No, sir. I'm not an attorney. I do not know.

6 Q. Okay. The next series of numbers relate to a home
7 purchase. I believe you testified that you purchased your
8 father's home out of his estate?

9 A. Correct. That's correct.

10 Q. Okay. Now the loan origination fee, wouldn't you have
11 to pay that regardless of --

12 A. Well, I would think so, yes, sir, but I -- but my
13 notes are in that box. I'm just -- here it is.

14 Q. Then you have a tax service fee. I'm not exactly
15 sure --

16 A. Oh, the closing costs.

17 Q. Closing costs. So you would have to pay some closing
18 costs regardless of Mr. Bagnell, wouldn't you?

19 A. If I remember correctly -- and, again, this is
20 reaching back memory, there was a special offering, you
21 know? Do you remember back when -- before the housing
22 bubble burst that you could get closings with no -- you
23 know, no closing costs if your credit was at such a level?
24 Obviously my credit because of the charge-off did not meet
25 and that's what this is referencing to. That's what this

1 is referencing to. Again, I refer back to the banker's box
2 because I remember the -- the business cards and whatnot
3 that I got from the different bankers and it was in that
4 banker's box.

5 Q. Do you know if removing the charge-off from your
6 credit report would sufficiently have affected your credit
7 score so that you would qualify for special offers?

8 A. I believe it would, but -- I'm not an expert, but I
9 believe it would.

10 Q. Okay. So you believe it would, but you don't know
11 for sure?

12 A. I couldn't -- I remember, again, notes that I took in
13 a meeting with the banker, and I believe it was Bank of
14 America, if I remember correctly. He showed me that
15 charge-off and that's what was driving my credit score
16 down. And, again, that --

17 Q. I'm gonna have to object to what somebody told you.

18 A. I understand. But, again, in the banker's box. I
19 can't prove it. It's in the banker's box and your client
20 won't return it to me, so I can't prove it.

21 Q. Did you ever send a dispute to one of the credit
22 reporting agencies, Equifax or Experian or TransUnion
23 saying hey, this should have been --

24 A. I learned that later on to do that and I did.

25 Q. You did? When did you do that?

1 A. I don't remember, but I did do that. I contested
2 several of these things, things that were on my account,
3 you know, but the Citifinancial charge-off was the big
4 one and I argued against it. Now what they did, I don't
5 remember back then. I know it's been seven years, so it's
6 clean now.

7 Q. So it's clean now?

8 A. Yeah. It's been seven years.

9 Q. So you could refinance the house now?

10 A. Well, I could. I mean, I guess -- is that -- I mean,
11 I don't know why I would.

12 Q. Well, wouldn't that remove the mortgage insurance?

13 A. Not necessarily.

14 Q. Wouldn't that reduce your excess mortgage interest?

15 A. No, sir, because that's already happened. Now you're
16 talking about the future mortgage interest?

17 Q. Yeah.

18 A. I mean, I'm not talking about the future mortgage
19 interest. Are you talking about based on today's rates,
20 is that what you're saying?

21 Q. Yeah, okay.

22 A. No, it wouldn't because I had a real low rate back
23 then. I've already looked at that. No, it won't do it.
24 It doesn't behoove -- it doesn't behoove me today to
25 refinance that -- that piece of property.

1 Q. Okay. So --

2 A. Because I've already looked and checked. And I don't
3 qualify to reduce on the mortgage insurance either. I've
4 already looked and checked.

5 Q. Okay. So even with the removal of the items from
6 your credit report, you don't qualify to have those items
7 removed?

8 A. Wait a second. Are you -- whoa, whoa, whoa, whoa,
9 whoa, whoa. This is a transaction that happened way
10 before this. No matter what I do now affects what's on
11 this sheet. I've already paid those expenses. Just
12 because I refinance don't mean they're gonna give me that
13 money back. All that's gonna do is reduce my interest
14 rate at best.

15 Q. Well, Mr. Herring, I don't want to argue with you
16 and I'm clearly not trying to argue with you. One of the
17 items that you have on your list is thirty years of \$31.86
18 charges. You haven't paid thirty years yet.

19 A. Not quite, no. Nor -- nor is the balance less than
20 the 80 percent of the original loan either.

21 Q. So --

22 A. So at that point in time there would be no mortgage
23 insurance premium paid at all if I'd qualified. I did not
24 qualify because of my credit score. My credit score was
25 bad because of the 1099-C that I couldn't get off my credit

1 report. That's why I hired your client to get redress, get
2 these problems solved. Now that -- I mean, that's the
3 bottom line to the story.

4 Q. But as I understand your statement, because you didn't
5 have 80 percent then and you don't have 80 percent now, you
6 can't remove the mortgage insurance. Did I misunderstand
7 that?

8 A. Yes, you did. When I had this closing cost or this
9 closing package put together, there was to be no mortgage
10 interest at all if I qualified. There would be no closing
11 costs at all if I qualified. I did not qualify because
12 of the 1099-C which precipitated a charge-off account
13 from Citifinancial. So I had to accept the mortgage
14 interest expense, I had to accept the closing cost expense,
15 in order to purchase my father's home, okay? If I
16 refinanced today, it doesn't matter, I'm still gonna have
17 a mortgage insurance premium to pay. If I had qualified
18 at the time, I wouldn't have to pay it at all, nor would I
19 have to pay any of this closing cost. So if I refinance,
20 I'm not gonna recoup any of this.

21 Q. No, you're not gonna recoup any of this.

22 A. That's right, not by refinancing. So I don't
23 understand your premise.

24 Q. Well, my point is --

25 A. My point is I had to pay this because of your client

1 not doing what he was supposed to do. That is my damages.

2 Q. Well, my question was, and is, is the requirement
3 to pay the mortgage insurance because of something that
4 occurred on your credit report or is it because you didn't
5 have sufficient equity in the house? That's my question.

6 A. It is because of the credit report.

7 Q. And today you can't get rid of the mortgage insurance
8 because you don't have enough equity in the house; is that
9 correct?

10 A. That is correct based on a thirty year payment
11 schedule and they require mortgage insurance today and
12 when the purchase of this house they did not require
13 mortgage interest if you qualified. I did not qualify.

14 Q. Okay. Do you know if any of these closing costs,
15 including the mortgage insurance, including the excess
16 mortgage interest, is recoverable under the Fair Credit
17 Reporting Act?

18 A. No, sir. I'm not an attorney.

19 Q. Do you know whether or not any of this is recoverable
20 under the Fair Debt Collection Practices Act?

21 A. No, sir. I'm not an attorney. I just know I paid it.

22 Q. And your spreadsheet continues on down with additional
23 monetary damages. Do you see that?

24 A. Yes, sir.

25 Q. Okay. And it continues on the next page with

1 additional monetary damages?

2 A. Yes, sir.

3 Q. Do you know if any of these items listed under
4 additional monetary damages are recoverable under the Fair
5 Credit Reporting Act?

6 A. No, sir. I'm not an attorney.

7 Q. Do you know if any of them are recoverable under the
8 Fair Debt Collection Practices Act?

9 A. No, sir. I'm not an attorney, but I do know I
10 incurred the expense.

11 MR. GLEISSNER: I beg the Court's indulgence.

12 THE COURT: Sure.

13 MR. GLEISSNER: Thank you, Your Honor. I don't
14 think we have anything else, Your Honor. Thank you,
15 Mr. Herring.

16 THE WITNESS: Yes, sir.

17 THE COURT: Any redirect?

18 MR. TRUSLOW: I've got six areas I wanted to cover
19 and I may limit that.

20 REDIRECT EXAMINATION

21 BY MR. TRUSLOW:

22 Q. The hundred thousand dollars you had paid out in
23 reliance on Citibank's -- Citifinancial's representation
24 that your debt would be clear once you paid it?

25 A. Right.

1 Q. You paid that out and had paid it in full, the hundred
2 thousand dollars, by year 2006; is that correct? Before
3 the end, correct?

4 A. Yes.

5 Q. Now did you pay in equal amounts each year
6 approximately?

7 A. My amount that I owed was entered into an agreement
8 with Consumer Credit Counseling. We had a monthly payment
9 that they drafted every month towards payment.

10 Q. Right. And did you provide that information to
11 Mr. Bagnell and did he retain that?

12 A. He retained all the cancelled checks.

13 Q. My question though was, was the amount that you paid
14 each year approximately the same, \$20,000 a year? I'm
15 taking a hundred thousand divided --

16 A. Based on the payments. I just -- it's all in the box.
17 I mean, I can't prove it.

18 Q. I understand that. I understand that. I'm asking a
19 -- I hope I'm asking a simple question, maybe not. But you
20 had a hundred thousand in debt, you paid it off over a
21 five-year period. Did you pay approximate equal amounts
22 each year?

23 A. Every month.

24 Q. All right. And did you give that to Mr. Bagnell and
25 he retained it and didn't return it?

1 A. Yes.

2 Q. So you have a liquidated amount of a hundred thousand
3 dollars?

4 A. Right.

5 Q. Okay. And rather than keeping that money and earning
6 interest on it, you paid it to Citi based on their
7 representation?

8 A. I paid it -- I paid it to Consumer Credit Counseling.

9 Q. And they paid it to Citi?

10 A. They paid all the debtors.

11 Q. So you didn't have the use of that money and lost
12 interest on it?

13 A. No, sir, I did not.

14 Q. The liquidated amounts, you didn't have the money; is
15 that correct?

16 A. That's correct.

17 Q. All right. Now Mr. -- the question was asked of you
18 about what you would be -- what you think you might have
19 been entitled to under various legal theories. You've
20 never been in a lawsuit before; is that correct?

21 A. Not to my knowledge.

22 Q. This is your first lawsuit?

23 A. This is the first lawsuit.

24 Q. Okay. And what the lawsuit was called really didn't
25 concern you particularly, did it?

1 A. I just knew I was out this amount of money. I knew I
2 had damages and I wanted collections.

3 Q. And you were relying on what Mr. Bagnell was telling
4 you?

5 A. That's who I hired as my attorney.

6 Q. And did he -- regardless of the legal theory, did he
7 tell you that your case had a value of at least a hundred
8 thousand dollars?

9 A. Yeah.

10 Q. Did you rely on that?

11 A. Yes. Actually, it was more than a hundred.

12 Q. Did you trust him?

13 A. Yes.

14 Q. In addition to that, did he indicate as an -- as a
15 member of a class you may be entitled to money apart from
16 as an individual?

17 A. Yes. He was gonna use me as the lead witness or
18 something. I didn't know what that meant.

19 Q. If your case had -- if it had virtually minimal
20 value as might be suggested, do you know of any reason
21 Mr. Bagnell wouldn't have simply returned your file to you
22 rather than go be dis -- suffer the humiliation or presumed
23 humiliation that one would suffer by being publicly
24 disbarred?

25 MR. GLEISSNER: I'm sorry, Your Honor. I don't think

1 they can posit Mr. Bagnell's feelings or --

2 **MR. TRUSLOW:** I'm asking you.

3 **MR. GLEISSNER:** Thank you, Your Honor.

4 **THE COURT:** Well, I'll sustain the objection. It
5 calls for speculation into --

6 **THE WITNESS:** My answer was no.

7 **THE COURT:** -- what Mr. Bagnell may have been thinking
8 as to why he didn't return the box.

9 BY MR. TRUSLOW:

10 Q. Going about it another way, if Mr. Bagnell had
11 represented to you that your case may have minimal value
12 rather than the hundred thousand dollars that you testified
13 about that he said, would you have done the extra work that
14 you did?

15 A. I didn't understand your question.

16 Q. If he had told you your case wasn't worth much
17 money --

18 A. I would have gone somewhere else.

19 Q. -- would you have done all the work that you did?

20 A. No. I mean, I -- first of all, I would have gone
21 somewhere else for another opinion because I know how much
22 money I was out.

23 Q. All right. Did you feel independent of Mr. --
24 independent of what Mr. Bagnell told you regarding the
25 value of your case and what you could expect, did you have

1 an opinion that your file that he kept wrongfully had a
2 value of at least a hundred thousand dollars?

3 A. Or more actually.

4 Q. All right.

5 MR. TRUSLOW: That's it.

6 THE COURT: Thank you.

7 If I may, I have several questions because I think
8 I'm still confused and I'm trying to -- I'm trying to
9 understand the damages of a hundred thousand dollars.

10 EXAMINATION

11 BY THE COURT:

12 Q. If I understand, Mr. Herring, at the time that you
13 sought credit counseling you had multiple debts and you
14 owed a large amount of money?

15 A. Yes, ma'am.

16 Q. And the credit counseling agency negotiated with your
17 creditors --

18 A. Correct.

19 Q. -- to have them accept payments that would either
20 reduce the -- reduce the total amount that's due and/or
21 reduce the interest that they would have collected?

22 A. Not reduce the principal, would reduce the interest
23 rate, if you remember, at that given time was 30 percent or
24 whatever.

25 Q. And that applied to all those creditors?

1 A. Each one of them were different. Each individual
2 creditor was different, but all under the umbrella of
3 Consumer Credit Counseling.

4 Q. And the amount that you paid was a hundred -- around a
5 hundred thousand dollars?

6 A. Yes, ma'am.

7 Q. And that was to cover all of your debts?

8 A. Yes, ma'am.

9 Q. But the one that created a problem later on was
10 whatever you paid to Citifinancial?

11 A. The two Citifinancial accounts.

12 Q. Okay. And what I understand from you about the two
13 Citifinancial accounts was that once you had paid them they
14 still considered that you owed additional money and they
15 were sending collection letters?

16 A. The one on -- there's two accounts.

17 Q. Yes, sir.

18 A. The one on Knox Abbott, let's call it the Knox Abbott
19 account, and the Charlotte account. Let's do the first
20 one -- the Charlotte account first. The Charlotte account
21 I proved through the receipts that I got through Consumer
22 Credit Counseling that not only did I not owe anything, I
23 overpaid them the \$1,200.

24 Q. So on the Charlotte account you overpaid \$1,200?

25 A. And that's where I have the phone logs and all that

1 stuff.

2 Q. And on the Knox Abbott?

3 A. On the Knox Abbott, I had showed where I had a receipt
4 from the Knox Abbott place -- store that I paid -- the last
5 one is on that little exhibit, \$7.09, paid in full. They
6 gave me not only a little paper receipt showing a balance
7 of \$7.09, paid \$7.09, zero balance, they also gave me the
8 original note --

9 Q. Showing that it was paid off?

10 A. -- showing that it was paid off and stamped on front
11 paid in full, signed by the branch manager, and I believe
12 Mr. Fisher as the district manager. Because I couldn't
13 get relief from the branch manager, she tried -- the home
14 office, I wound up with the district manager, Jim Fisher.
15 Both of them very, very cordial. I paid it off, then I
16 started getting letters.

17 Q. Okay. Then you started getting letters. But let me
18 understand the money that you paid to pay off the debts,
19 you're not seeking to recoup that money back?

20 A. The point was that if I had known then what I know
21 now, I would just have declared bankruptcy and kept my
22 hundred thousand dollars.

23 Q. Well --

24 A. The bankruptcy laws at that point in time would have
25 allowed me to do that.

1 Q. Okay. So -- so what is it about what you know now?
2 I don't -- guess I'm not understanding -- I'm not
3 understanding why you -- why after -- if the only person
4 that was causing you problems was Citifinancial why you
5 wouldn't have paid off the other debts.

6 A. Oh, at the point in time I was just overwhelmed. I
7 didn't have the income without the intervention of Consumer
8 Credit Counseling, okay? I couldn't meet my monthly
9 obligations. I would have had to declare financial
10 bankruptcy. Instead of doing that, I talked the boss,
11 Dr. Fred Carter, who said hey, why don't you go down and
12 talk to -- because he was on the board of United Way.

13 Q. Right. And you were sent to credit --

14 A. And we talked it out and they said see what you can
15 do. Because I want to pay my debts. I mean, I owe it. I
16 want to pay it. I don't want to declare bankruptcy.

17 Q. And you were fine with that -- you were fine with
18 that arrangement as it related to everybody --

19 A. Everybody.

20 Q. -- except for later on --

21 A. Later on I found out --

22 Q. -- with Citifinancial?

23 A. -- that they -- that my credit score instead of being
24 clean after seven years was in horrible shape because of a
25 charge-off.

1 Q. Okay. And --

2 A. And that's what precipitated these other charges --
3 these other expenses.

4 Q. And the charge-off -- and the charge-off is -- at
5 least to what you recall is reflected in the affidavit in
6 that spreadsheet?

7 A. Right. That 1099-C caused -- caused me to lose money
8 on the income taxes, it caused me to lose money to help
9 pay my son's way to college. You know, financially. I'm
10 not talking about all the emotional stuff that's involved
11 in all this. And when I went to purchase my dad's house,
12 I no longer qualified for, again, pre-bubble housing,
13 free closing, no mortgage interest, whatever, whatever.

14 Q. And when did you purchase that house?

15 A. I'm gonna -- Judge, I can't tell you the exact date.
16 I can call --

17 Q. I don't need an exact date. Just give me a year.

18 A. It was several years after I got the 1099-C. You
19 know, it was after the -- when my thing should have been
20 clear.

21 Q. 2008, 2009?

22 A. Somewhere in that area. I just don't remember.

23 Q. And you also indicated that you -- if everything had
24 gone like it was supposed to in that there hadn't been any
25 subsequent letters from Citifinancial trying to collect a

1 debt, which you say was not due because you paid it in full
2 and you had evidence it was paid in full, you would have
3 been eligible for -- I thought I heard you say that you
4 wouldn't have been required to pay any mortgage interest
5 at all.

6 A. Mortgage insurance.

7 Q. Okay.

8 A. Mortgage insurance premium. That's \$38.11 a month.

9 Q. I understand the mortgage insurance part. I just
10 thought I heard interest.

11 A. No, ma'am.

12 Q. Okay. I just needed to clear that up.

13 A. And the closing -- the closing costs and all that was
14 free, but --

15 Q. Closing costs and mortgage insurance, those all would
16 have been at zero?

17 A. They would have been zero because at that time
18 remember they would -- that's what led to the housing
19 bubble burst and -- and I would have had a lower interest
20 rate. These things which I'm still paying for.

21 Q. And so -- and I understand that part. And so when
22 you went to see Mr. Bagnell about the letters that you
23 were receiving and the information you were receiving from
24 Citifinancial saying you still owed the money, what was --
25 what was your goal at that particular time? I mean, what

1 -- separate and apart from -- from the class action, what
2 specifically were you complaining about?

3 A. Let's back up one step. You missed -- if I may say,
4 I know you're not -- I don't want to try to insult you or
5 anything. Once I found out about the 1099-C and that they
6 were still saying I owed and I was being a charge-off on my
7 credit account, okay, I could not get any relief. I could
8 not get my \$1,200 back from Citi Charlotte, nor get my
9 account clear at Citi Knox Abbott. I was very close to the
10 Consumer Affairs agency because I used to be their budget
11 analyst. I'm a big fan of them. People should use them
12 more. I went over there with my documents because I've
13 already had Consumer Credit Counseling give me the
14 cancelled checks, give me all these things because I was
15 trying to prove to Citifinancial I paid. I paid this and
16 I paid that. So I went there, they were gonna handle it.
17 And I cannot remember the gentleman's name. Again, it's in
18 the file. After about four months he called me back and
19 said I can't do anything --

20 **MR. GLEISSNER:** Your Honor, I just have to object as
21 to --

22 **THE COURT:** I understand.

23 **BY THE COURT:**

24 Q. And I understand --

25 A. Then I went --

1 Q. -- that you could not get any relief from anyplace
2 else.

3 A. Then they said go hire an attorney and remember you
4 get triple damages for this and he cited again --

5 Q. And so what you were complaining about was the fact
6 that you -- that you had received all these letters that
7 said that you still owed money, that they reflected on your
8 credit rating that it was a charge-off, that your 1099 was
9 incorrect or the very fact that --

10 A. I even received one.

11 Q. -- that they were claiming that it was income was
12 incorrect and that was all what you were trying to get
13 corrected either through the credit counseling, through
14 Consumer Affairs and then finally to Mr. Bagnell?

15 A. I was finally referred -- or I was told to get an
16 attorney in the building, went to Mr. Allen, Mr. Allen
17 said I don't do this type of work, but my guy next door
18 does, his name is Gil Bagnell, and he just -- you know,
19 stuff that you heard, and I went in and interviewed with
20 him, talked to him, he said yes. And then after that
21 agreement was signed, I think this is the question, I got
22 another letter from where Citifinancial I'm assuming sold
23 -- hey, if you can collect it, you can have it, sold it
24 to some attorney in Atlanta and I took it to Mr. Bagnell,
25 he wrote the attorney in Atlanta saying hey, we dispute

1 it, we don't owe it, I'm his attorney, contact me from
2 now on.

3 Q. And do you remember -- and I know that you gave
4 all those documents to Mr. Bagnell. Do you remember
5 approximately what they were claiming that you owed to
6 them that had not been paid?

7 A. The last time I remember it -- well, according to
8 the 1099-C, the corrected one, would be what I owed them.
9 But, like I said, I used seven thousand one on my income
10 taxes.

11 Q. So basically they were claiming that you owed --
12 initially they were claiming you owed seven thousand or
13 whatever was on the 1099?

14 A. It's half the interest. I can tell you where that
15 number came from. I had the principal paid. The interest
16 was fifteen thousand, I paid half of it, this was the other
17 half.

18 Q. And that's the amount that you claimed that not only
19 were they sending you letters that you owed it when you
20 had paid it, but they also sent information to the credit
21 bureau saying this was owed and the fact that it was a bad
22 debt that you weren't paying your bills?

23 A. That's right.

24 Q. And it was those things that gave rise to what you
25 wanted Mr. Bagnell to fix?

1 A. That's right.

2 Q. And either to have them stop and/or fix those things
3 that were a consequence?

4 A. All of those things had already happened when I went
5 to Mr. Bagnell and these are my damages, this is what
6 it cost me because this was their action. They,
7 Citifinancial, Knox Abbott, okay, using as a reference.

8 Q. Sure.

9 A. Plus Citifinancial Charlotte owes me \$1,200 plus
10 interest. And then letters and mails and all those things
11 according to Mr. Bagnell I put in the spreadsheet. Again,
12 in the box.

13 **THE COURT:** And I now understand more clearly. Thank
14 you very much.

15 Are there any additional questions as a result?

16 **MR. GLEISSNER:** Your Honor, I just would like to point
17 out that in Mr. Bagwell's letter to Mr. Mann, which is
18 Exhibit Number 1, it refers to the amount of \$2,403.77,
19 which is what it purports to say Mr. Mann is attempting to
20 collect from Mr. Herring.

21 **THE COURT:** And I'll -- I'll review all the exhibits
22 as well.

23 **MR. TRUSLOW:** I have one follow-up question on what
24 the Court asked, and it was a very good question, but I
25 wanted to reemphasize.

1 FURTHER REDIRECT EXAMINATION

2 BY MR. TRUSLOW:

3 Q. In 2006 when you went to Mr. Bagnell about
4 representing you, was your goal at that point to at least
5 recover a hundred thousand dollars?

6 MR. GLEISSNER: Your Honor, I would object to his
7 leading of the witness.

8 MR. TRUSLOW: I'll say it another way.

9 BY MR. TRUSLOW:

10 Q. In 2006 when you engaged Mr. Bagnell to represent you,
11 what was your financial goal?

12 A. My understanding at that point in time what I wanted
13 was \$125,000 plus attorney fees period.

14 Q. All right. And did he tell you that your case was
15 worth at least a hundred thousand dollars based on the
16 documentation?

17 A. Yeah. He took the case.

18 MR. TRUSLOW: All right. Thank you.

19 THE COURT: I don't have any additional questions.
20 Thank you very much. You may step down.

21 THE WITNESS: Thank you, ma'am.

22 (Witness excused.)

23 THE COURT: Is there anything further from anyone at
24 this particular point?

25 MR. TRUSLOW: Your Honor, not from the Plaintiff. I

1 was gonna make a suggestion, if you would consider it,
2 that within a week we submit proposed orders. Or if you
3 need more time or if Mr. Gleissner needs more time. I
4 think I'm gonna -- I think I'm prepared to submit a
5 proposed order.

6 **THE COURT:** Mr. Gleissner?

7 **MR. GLEISSNER:** Your Honor, a week would be just
8 fine. I don't have any problem with a week. That would
9 be next week Wednesday, right?

10 **THE COURT:** Yes.

11 **MR. TRUSLOW:** Before next Friday?

12 **MR. GLEISSNER:** Would that be okay, Your Honor? Next
13 Friday, September 4th?

14 **THE COURT:** That's fine. Do you want to get it done
15 before Labor Day weekend?

16 **MR. GLEISSNER:** Yes, Your Honor.

17 **THE COURT:** That's fine with me. What I would ask is
18 you both submit at the same time. I don't think I will
19 need a reply because there's so many memoranda and the
20 previous orders, I've got all that information, so I think
21 I have -- and I'll have a chance to read that along with
22 the transcript. I can -- I can go through it and I can
23 assume that it would be hotly contested because it was a
24 factual issue, but please, please make sure that you cite
25 for me the legal basis with appropriate case citations.

1 And, Mr. Truslow, you did ask me to take judicial
2 notice of something and you neglected to give me the
3 statute. I would -- it was about the three -- I think it
4 was with reference to the three-year statute of limitations
5 on documents.

6 **MR. TRUSLOW:** The retention period on documents.

7 **THE COURT:** The retention period. And you can put
8 that in the -- in your order and that way I can look at
9 all that together.

10 Is there anything else?

11 **MR. TRUSLOW:** No. Thank you for your time. I
12 appreciate you accommodating us.

13 **MR. GLEISSNER:** Thank you.

14 **THE COURT:** Thank you very much. I appreciate it.
15 And I would like to say I'll be as quick as I can. You
16 know, I have additional duties and responsibilities, so
17 I'm trying to play catch-up on a lot of things. I'm gonna
18 ask that the two exhibits that were in the prior hearing,
19 I'm gonna put them back in the exhibit file, and just have
20 the notation made that I used those two exhibits. And
21 with that, I appreciate it very much. Unless there's
22 something else?

23 **MR. GLEISSNER:** Nothing from the Defendant, Your
24 Honor. Thank you.

25 **THE COURT:** Thank you. And we're adjourned on this

1 one. Thank you very much.

2 **MR. TRUSLOW:** Thank you, Your Honor.

3 (Whereupon, the proceedings were concluded at
4 1:08 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete transcript of record of all the
proceedings had and the evidence introduced in the hearing
of the captioned case in Circuit Court on the 26th day of
August, 2015.

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

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

June 14, 2016

s/ Stacy S. Johnson
Stacy S. Johnson, RPR
Circuit Court Reporter

October 13, 2006

M. Douglas Mann, Esq.
Mann Bracken, LLC
One Paces Ferry Road, SE, Suite 1400
Atlanta, GA 30339

VIA US MAIL, CERTIFIED MAIL, AND FACSIMILE ONLY:

678-801-2355

704-837-0569

Re: *Jones George Herring*
Your File # 61432730



Dear Mr. Mann:

What a strange letter your firm generates!

Please note that we represent Jones George Herring, filed in your system under number 61432730. All future correspondence concerning this matter should be addressed to us at the Columbia address shown above. Fax to 803-748-1333 is fine and we do not need a separate copy by mail.

Your letter is strange because nobody signed it. Most folks who send letters are not ashamed to put their names at the bottom, but I guess Mann Bracken is in a business where its employees don't admit to authorship. Or are you trying to evade the requirements of 15 USC § 1692e?

Another strange feature is that your letter states "Payments and communications should be made only through this office" – and then lists four regional offices. Is that merely sloppy draftsmanship, or is it an attempt to create a "gotcha" where a reply goes to the "wrong" office?

Your letter refers to a purported debt in the amount of \$2,403.77, from our client, Jones Herring, to Citifinancial.

Please note that there is no such debt. Mr. Herring has fully satisfied all of his past obligations to Citifinancial and its affiliates, subsidiaries, and predecessor companies, and, in fact, I believe an accounting will show that they overcharged him, resulting in an overpayment.

Our investigations suggest that Citifinancial maintains a double set of books. In his dealings with Citifinancial, our client negotiated an amendment to the loan agreement reducing somewhat the high rate of interest, thereby enabling him to pay the loan off over time. Despite this, Citifinancial appears to have recorded the same loan relationship on a second set of books showing a higher interest rate, with the result that even though Mr. Herring has discharged his obligations completely, Citifinancial has continued to dun him. I am not sure whether Citifinancial has done this a) in order to inflate its loan receivable assets and defraud the investing public, b) out of sheer incompetence and gross negligence, c) to enable it to extract payments from many customers despite the fact that they have already paid in full.

By the way, we have investigated these facts quite carefully – how much investigation did your collection mill take before sending out this false dunning letter?

M. Douglas Mann, Esq.
October 13, 2006
Page 2

The bottom line is this:

1. We do dispute the debt;
2. All future correspondence should be sent to us;
3. We ask that you forward a complete accounting together with appropriate underlying documentation in support of the claims you assert;

Mr. Herring continues to consider his legal options.

We look forward to hearing back from you. With best regards, I am

Sincerely yours,

Gilbert Scott Bagnell

GSB/ys

cc: Jones Herring

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 13, 2009

Gilbert S Bagnell, Esq.
Attorney at Law
1201 Main Street
Suite 1980
Columbia, South Carolina 29211

Dear Mr. Bagnell:

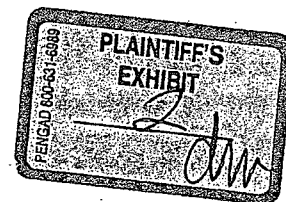
I have not had a response to my letter to you on September 15, 2008 concerning the status of my case. After speaking with you in the building lobby and asking you about the status of my case, I followed your instructions to ask another lawyer you were working with for him to remind you of the concern I have over the time limit of my case and the status of my case.

Since that time, I have had no communications with either you or your office concerning my case and your efforts to pursue a cause of action and relief for my case.

Therefore, I must insist that I receive in writing from you in ten (10) days from receipt of this letter, the status of my case and the timeline you intend to pursue in court to secure an outcome for my complaint.

Sincerely yours,

Jones G. Herring



RETAINER AGREEMENT

Attorneys: Bagnell & Eason, LLC
McGowan Hood Felder & Johnson, LLC

Client: Jones Herring
As Proposed Class Representative for CitiFinancial Customers

Matter: Investigation and Filing of Class Action suit against CitiFinancial arising out of accounting discrepancies on customers' accounts, particularly failing to adjust balances due to correct for reduced interest rates, leading to overcharging, misreporting of credit, and issuance of incorrect 1099-C's

Fee: Contingency fee to be decided by court, but no greater than 40%
Individual fee of 33% in the event class is not certified

This is an agreement *between Bagnell and Eason, LLC and McGowan, Hood, Felder and Johnson, Attorneys*, on one hand, and *Jones Herring*, individually and as class representative of certain customers of Citifinancial (hereinafter, "Clients"). This agreement covers legal services in connection with all matters relating to, regarding and/or affecting proposed Class Action litigation to be investigated and filed. This agreement covers any claim that clients may have against any potentially liable party for the injuries, resulting damages and any liability insurance coverage.

The attorneys will work on behalf of clients to investigate and pursue this case. They will discuss significant case developments with the clients. The attorneys will discuss offers of settlement with the clients. Only the clients have the right to accept or reject these offers.

Clients authorize attorneys to obtain any necessary information to successfully prosecute this claim. Clients also authorize attorneys to discuss this case with any potential witnesses, medical service providers and other people if attorneys decide it is necessary. Further, clients authorize attorneys to associate any lawyers or attorneys they deem necessary to prosecute the clients' individual and class claim. The clients shall keep the Attorneys advised of clients' whereabouts at all times, shall appear on reasonable notice at any and all depositions and Court appearances, and shall comply with all reasonable requests of the Attorney in connection with the preparation and presentation of the aforesaid claim and cause of action of the clients. Clients' cooperation is a basis of this agreement, and a failure to cooperate by clients, disappearance for 6 months or more without contacting the attorney or leaving a forwarding address, is a material breach of this agreement, and adequate cause for Attorney's withdrawal without further notice to client.

The clients understand that they are retaining attorneys to prosecute a claim in a class action. A class action is a legal vehicle which allows one person to sue on behalf of a large group of people who have suffered the same or similar damages. Though the damages may be significantly larger or smaller on behalf of each specific potential class member, the clients understand that they may be

the class representative for the entire class. This will create certain responsibilities on behalf of the clients as the class representative.

The clients understand that as the class representative they have an obligation to do whatever is in the best interests of the class, even if it is to their own personal detriment. The clients understand that if they feel they cannot act in a way that is going to favor the class, they may ask to be removed as the class representative. The clients also understand that if the class is certified and a settlement is reached and the clients do not feel the settlement adequately addresses their damages, they may have the right to opt out of the class settlement.

The clients understand that they are only entitled to recover their specific pro-rata portion of any settlement received on behalf to the class. As the class representative, the clients additionally understand that they may be entitled to a greater compensation than the non-class representative class member since the clients will have undergone representation of the class as a whole and undertook those obligations to benefit the class as a whole.

The clients understand that the attorneys will ask for a legal fee for representing the class as a whole. They will ask for a percentage of the total amount recovered for the class. The amount of legal fee requested by attorneys will be a percentage of the total recovered of **not more than 40%** or the attorneys may ask for a specific set amount. The attorney fee requested by attorneys will be based on numerous factors including, but not limited to, the amount of benefit conferred on the class, the amount of time spent by attorneys, the amount of money spent to prosecute the action, the number of attorneys working on case and other factors. The clients understand that the attorneys will receive a legal fee for representing the class as a whole. The clients also understand that the attorneys will charge a legal fee for the amount of specific money that the client receives. Thus, the class will be charged a legal fee for the attorneys obtaining a recovery for the whole class. No one client is responsible for any legal fee charged to the class. Instead, the attorneys will ask a judge to award attorneys fees to attorneys which will be deducted from the entire class settlement amount or paid separately by class defendant(s). The settlement will then be disbursed to each specific member of the class who does not opt out of the settlement. For each person represented by the attorneys for their individual cases a separate legal fee will be charged than that charged for the class fee. The class fee is distinct and different from any fee charged on an individual basis.

An attorney fee will be charged for handling any individual case of a client separate and apart from the class, but only if no class is certified or if all certified classes are decertified. The fee will be as follows: 33 1/3 (%) of all actual damages and all punitive damages received by way of settlement, verdict or order (with any accrued interest) in connection with this case. This fee is based upon gross recovery of compensation prior to any deduction for costs or subrogation obligations.

All costs will be reimbursed to attorneys from the proceeds of the class case. Costs include, but are not limited to, expert fees, filing fees, telephone and facsimile expenses, deposition expenses, copy costs, trial presentation costs and travel expenses. These costs may be allocated to each specific class member on a pro-rata basis. Clients understand and consent to the allocation of fees earned between the attorneys based on their agreement among themselves based on their assessment of the respective efforts and contributions of each to the representation. Clients consent to association of outside counsel if necessary. Association of outside counsel will not affect in any way the recovery

of the clients. If outside counsel is associated, the attorneys and any such outside counsel will negotiate a separate agreement with regard to fee splits.

In recognition of my lawyer's co-ownership interest in the proceeds of this legal matter, and to secure payment by me to Attorneys of all expenses, court costs and attorney's fees I am obligated to pay under this retainer agreement, I hereby grant to Attorneys a charging lien applicable to any and all recoveries on my claims or causes of action, whether by settlement, collection of a judgment, order or otherwise. I understand that the charging lien may be used to protect my lawyer's fee for reasonable compensation for work done in the event I discharge my lawyer without just cause. Clients further agree that, as of the date of this contract, the value of any of their claims or causes of action are speculative and is dependent upon the services of counsel for its potential to be realized. The attorneys retain a charging lien against the proceeds of any settlement, verdict or court ordered award in the amount of reasonable legal fees and costs due hereunder.

If clients end this Agreement before a settlement or jury verdict or order becomes final, the attorneys are entitled to reasonable legal fees for services provided. The attorneys have a lien on your claim, suit, or recovery for these legal fees, for costs advanced and/or for qualified expenses incurred on your behalf for this case.

The amount of the lien shall not be less than 40(%) of the most recent total offer(s) of settlement conveyed by Defendant(s). The parties agree that the 40 (%) fee of the latest offer received is a reasonable fee since the offer would have been generated as a result of the work product of attorneys prior to separation between attorneys and clients. If no offer has yet been received at time of separation, the attorneys are entitled to a lien based on the amount of work done on the file to date. The lien based on work done before any offer is tendered will be reimbursed at a rate of 250.00 per hour. If the parties are unable to agree upon quantum meruit fees, the matter will be submitted to binding arbitration before a qualified arbitrator mutually agreed upon by the parties hereto. If the parties cannot decide on a particular arbitrator, three arbitrators will be selected randomly from Attorneys who are members of the American Arbitration Association. Each side will then strike one arbitrator and the remaining person will decide any fee issues.

The lien will apply to any future funds received on the case. The lien will be paid before clients receive money from any subsequent attorney or insurance concern on this case. The parties agree that the lien from this contract is superior to any subsequent fee paid to other attorneys in regard to this specific case.

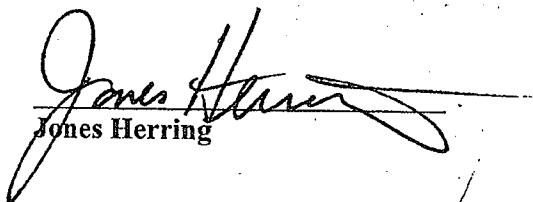
The clients understand that during the course of the investigation or litigation of a class action claim, facts may arise that would make it impossible to proceed with the investigation or litigation. The client further understands that the attorneys are in the best position to determine whether it is most feasible to further prosecute the claim. The client agrees that upon notification by the attorneys that they do not feel that it is feasible for them to continue prosecuting the claim, the attorneys may withdraw from representation under this agreement.

The attorneys do not promise or guarantee that the client will receive any compensation from this claim. But if the attorneys do not recover compensation or remuneration on this claim or in this case, the client is not responsible for any legal fees for attorneys' services.

The attorneys will represent the client in court for the trial of this case. This agreement covers the institution of a lawsuit if the attorneys and clients agree that a lawsuit is proper and justified under the circumstances. This agreement does not cover appeals to the higher courts. The attorneys will handle an appeal in this action if they decide that an appeal is justified under the circumstances. Any further action requiring an appeal, however, will necessitate that a separate retainer agreement be signed by attorneys and client before the institution of the appeal.

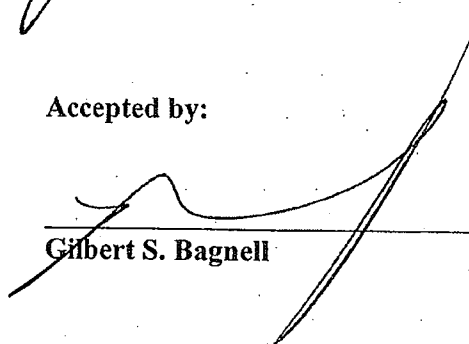
The clients agree that the attorneys may use any information or facts of this case on their website or any other matter disseminated to the general public. The clients agree that the attorneys shall hold the clients file in this case for six years from the date of the signature of this agreement. After six years, the clients agree that attorneys may dispose of all materials in the clients file.

When the clients sign in the area so designated below, they stipulate that this agreement has been discussed with them, they understand its contents and agree to its provisions.


Jones Herring

Date 5/17/06

Accepted by:


Gilbert S. Bagnell

Date 5/17/08

April 2, 2009

Mr. Gilbert S. Bagnell, Attorney
Bagnell & Eason, LLC
Attorneys At Law
1201 Main Street Suite 1980
Columbia, South Carolina 29201

Dear Mr. Bagnell:

Since you would not call me or set up an appointment to meet, I enlisted the help of Mr. Doug Truslow who in turn contacted Mr. Jones Andrews (because his firm was associated with my case by way of our signed contract) in order to contact you on my behalf.

Mr. Andrews indicated to Mr. Truslow that he had contacted your office and you would call me immediately that day. Three days have since passed with no contact from you. You have my address and telephone number, but again the address is 3220 Cherry Hill Drive Columbia, South Carolina 29206 and my telephone number is (803) 397-7518. Needless to say, your behavior is perplexing.

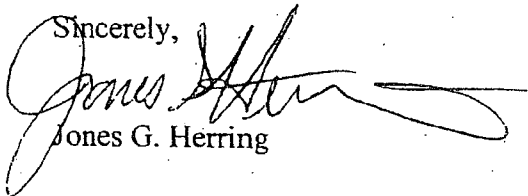
You told me I had an excellent case; you told me you have filed a complaint and you were actively working on the case. However, notwithstanding, you have ceased all communications. You will not return phone calls, you want allow me to have a meeting with you and you will not respond to certified mail. Most grievous, you have assured me I have a great case and that Jones Andrews law firm was actively associated with you on my behalf. I have now been informed that Mr. Andrew's firm declined to be involved and they know of no active lawsuit.

Needless to say, I am very, very disappointed. You have never told me that this was a non-meritorious case or that you were not actively pursuing it. To the contrary, you always assured me that you were working on the case.

Finally, I only sought assistance from Mr. Truslow in an attempt to get you to communicate with you. He has not and is not representing me in the case you have undertaken, I have also been informed that Mr. Andrew's firm specifically declined to be involved, which makes me even more upset; given your claim they were actively involved.

Under the circumstance, I feel that I have no choice but to take this to the next level.

Sincerely,



Jones G. Herring

cc: Douglas Truslow
Jones Andrews

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2011-CP-40-01998

Jones G. Herring,

Plaintiff,

vs.

TRANSCRIPT OF RECORD

Gilbert S. Bagnell and
Bagnell & Eason, LLC.,

Defendant.

October 31, 2011
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

DOUGLAS N. TRUSLOW, ESQ.
Attorney for the Plaintiff

RICHARD R. GLEISSNER, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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PLAINTIFF EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Letter	15	15
2	Letters	19	19

1 OCTOBER 31, 2011

2 THE COURT: This is Jones Herring versus
3 Gilbert Bagnell, is that correct?

4 MR. TRUSLOW: Yes, Your Honor. By way of
5 background, my client had initiated a lawsuit
6 against Mr. Bagnell and against his law firm. They
7 have gone into default. I didn't know there was
8 even an attorney involved until a few minutes ago.
9 But we are prepared to go forward on the damages
10 aspect of this case.

11 THE COURT: All right.

12 MR. GLEISSNER: Your Honor, I'm Rick
13 Gleissner. I am appearing here for Mr. Bagnell and
14 Bagnell & Eason, the two Defendants. And just for
15 the record, I got the call at 2:00 o'clock this
16 afternoon. So I'm here.

17 THE COURT: And what did you say your name
18 was?

19 MR. GLEISSNER: Rick, R-I-C-K, Gleissner,
20 G-L-E-I-S-S-N-E-R.

21 THE COURT: All right. And this is a damages
22 hearing. All right.

23 MR. TRUSLOW: And, Your Honor, I hope I wasn't
24 impolite to Mr. Gleissner. I understand the
25 circumstances and, like he said, he just got a call

1 at 2:30 for a 3:30 matter.

2 THE COURT: Okay. All right. Y'all are ready
3 to proceed?

4 MR. TRUSLOW: We are ready to proceed.

5 THE COURT: Okay. Yes, sir.

6 MR. TRUSLOW: Your Honor, I call Mr. Herring.

7 THE BAILIFF: Place your left hand on the
8 Bible, and raise your right hand, please.

9 (Witness complies.)

10 THE CLERK: Do you solemnly swear or affirm
11 the testimony you are about to give in this case
12 will be the truth, the whole truth, and nothing but
13 the truth, so help you God?

14 THE WITNESS: Yes, ma'am.

15 THE CLERK: Thank you. Have a seat in the
16 witness stand, please.

17 (Witness complies.)

18 THE COURT: And, Mr. Truslow, the order of
19 default was entered on -- has there been -- the
20 order of default has been entered already?

21 MR. TRUSLOW: Yes, Your Honor. The order of
22 default was on 6/14/11. We have notified the
23 Defendants of this hearing, as is obvious by Mr.
24 Gleissner's appearance. Those have been filled.
25 It looks like it was filed on 10/27.

1 THE COURT: Okay. Here it is. Judge Lee. I
2 was looking for it. All right.

3 MR. TRUSLOW: And, Your Honor, what I have
4 done is passed up some -- the background, which is
5 what my client intends to testify about. And I
6 provided -- I showed Mr. Gleissner those documents
7 and several other items.

8 THE COURT: All right. Yes, sir.

9 MR. TRUSLOW: We are ready to proceed.

10 THE COURT: Yes, sir.

11 JONES HERRING,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. TRUSLOW:

15 Q Your name is Jones Herring?

16 A Correct.

17 Q You are the Plaintiff in this case?

18 A Correct.

19 Q And you have already gotten a default judgment
20 against the Defendants in this case, is that
21 correct?

22 A Yes, sir, that's correct.

23 Q And you are here today, you are seeking an award of
24 whatever damages and punitive damages that the
25 Court finds to be appropriate?

1 A That is correct.

2 Q By way of background, were you originally injured
3 as a result of a lending institution, their unfair
4 credit and debt collection practices?

5 A Yes, sir.

6 MR. GLEISSNER: Your Honor -- nevermind.

7 MR. TRUSLOW: I am going to lead. If I
8 don't -- unless there is an objection. If there
9 is, I can go the other way. I am just trying to
10 speed it up. I can get every bit of this into
11 evidence, I'm sure.

12 MR. GLEISSNER: Well --

13 MR. TRUSLOW: I understand the position he is
14 in, so if he needs to object I don't mind.

15 MR. GLEISSNER: I don't mind a little leading,
16 you know, to get the preliminaries over with, but
17 once we get into the substantive stuff like
18 damages, then I object to it.

19 MR. TRUSLOW: And it may make it easier. Just
20 in my mind's eye I start preparing a draft of
21 documents. I've got one for your law clerk also,
22 if this will assist you in understanding what we
23 are doing.

24 THE COURT: You may continue.

25 MR. TRUSLOW: I'm down under Paragraph Number

1 2.

2 Q But as a result of some actions by a lending
3 institution, did you seek legal assistance from the
4 Defendants Bagnell and Bagnell & Eason Law Firm?

5 A Yes, I did.

6 Q Did you have actual damages at that point that
7 exceeded \$28,000 exclusive of your future damages
8 for your credit being harmed and any unliquidated
9 damages for the attempts to collect funds that were
10 not due?

11 MR. GLEISSNER: Your Honor, I would have to
12 object. That one was -- well, it was compounded,
13 it was leading.

14 MR. TRUSLOW: I'll restate it. That's all
15 right.

16 THE COURT: Yes, please rephrase.

17 BY MR. TRUSLOW:

18 Q Did you seek the assistance of the Defendants as it
19 related to a lawsuit?

20 A Yes, I did.

21 Q And did you provide to Mr. Bagnell your
22 documentation?

23 A Yes, I did.

24 Q And did you have actual documented records showing
25 \$28,000 or more of damage?

- 1 A Yes, I did.
- 2 Q Did you provide that to Mr. Bagnell?
- 3 A Yes, I did.
- 4 Q And did you have future -- or documents showing
5 future damages that you sustained that you also
6 provided to Mr. Bagnell?
- 7 A Yes. We discussed it.
- 8 Q And in the course of this, I am going to call part
9 of it a debt collection, did you receive phone
10 calls at your home, at your work?
- 11 A Yes.
- 12 Q Were they upsetting to your family?
- 13 A Yes, very much so.
- 14 Q I believe Ms. Herring is here?
- 15 A Yes.
- 16 Q Now, did you attempt before you went to see Mr.
17 Bagnell, did you attempt to work out your problems
18 with the lender?
- 19 A Yes.
- 20 Q And did that appear to be a positive thing? Was it
21 going well for you to start with?
- 22 A They looked for documentation. I got it submitted
23 and I didn't hear any more from them.
- 24 Q Did the Citibank -- this was Citibank?
- 25 A City Financial.

1 Q City Financial, I'm sorry. City Financial, did
2 they then leave the Columbia area so you had no one
3 else to deal with?

4 A That's correct.

5 Q And is that when you established an attorney-client
6 relationship with the Defendants?

7 A Yes.

8 Q Okay. In order to induce you to use his legal
9 services, did Mr. Bagnell make any representations
10 to you?

11 A Yes.

12 Q Did he indicate to you whether he had recently
13 settled a case for \$120 million?

14 MR. GLEISSNER: Your Honor, we are starting to
15 get into some substance, if he can avoid the
16 leading questions.

17 MR. TRUSLOW: I couldn't hear what he said.

18 MR. GLEISSNER: I objected on the grounds of
19 leading.

20 MR. TRUSLOW: I don't think that was leading,
21 but I can rephrase it if necessary.

22 THE COURT: All right.

23 BY MR. TRUSLOW:

24 Q What did Mr. Bagnell indicate to you about having
25 obtained a \$120 million verdict in a class action

- 1 case?
- 2 A He told me that it was processed and they had
- 3 collected and so did the other lawyers.
- 4 Q Okay. Did he invite you to verify those facts
- 5 online?
- 6 A Yes.
- 7 Q Did you do that?
- 8 A Yes.
- 9 Q And did this involve some Thaxton litigation?
- 10 T-H-A-X-T-O-N litigation?
- 11 A Yes. Yes.
- 12 Q Did he, Mr. Bagnell, advise you that he would be
- 13 pursuing a class action on your behalf?
- 14 A Yes, he did.
- 15 Q Okay. What did he say about his experience? Did
- 16 he say he was experienced or not experienced?
- 17 A He had done these before and he's been successful.
- 18 Q In addition, did he indicate to you that he was
- 19 working with another law firm?
- 20 A He did.
- 21 Q And was that law firm McGowan & Hood?
- 22 A Yes.
- 23 Q Did he indicate that he already had approval of
- 24 them to represent you? They -- the two of them
- 25 were going to be representing you?

- 1 A It was in the contract that I signed.
- 2 Q And that was on the contract?
- 3 A Yes, it was.
- 4 Q The contract was dated May 17th, 1996?
- 5 A 2006.
- 6 Q I'm sorry, 2006. I misstated it. My fault.
- 7 A Yes.
- 8 Q And did the contract have McGowan & Hood's name on
- 9 the contract as well as Mr. Bagnell and his law
- 10 firm?
- 11 A That is correct.
- 12 Q Did you subsequently find out that McGowan &
- 13 Bagnell -- excuse me, McGowan & Hood had never
- 14 agreed to be associated on the case?
- 15 A I found out later that they did not agree and did
- 16 so in writing.
- 17 Q Did you find out they in fact had written --
- 18 A Yes.
- 19 Q -- a letter to Mr. Bagnell to that effect?
- 20 A I did.
- 21 Q Did you know it at the time?
- 22 A Not at the time I signed the contract, no.
- 23 Q Did you rely on Mr. Bagnell's representation that
- 24 they were associated with him?
- 25 A Yes.

- 1 Q And you live in the Columbia area, do you not?
- 2 A Yes, I do.
- 3 Q You work for the State of South Carolina?
- 4 A Yes, I do.
- 5 Q You are familiar with McGowan & Hood as having a
- 6 good reputation -- excellent reputation?
- 7 A I do now, yes.
- 8 Q All right. Did you believe Mr. Bagnell when he
- 9 represented to you that he had their approval and
- 10 they were working on the case?
- 11 A Yes.
- 12 Q What did he tell you -- he, Mr. Bagnell -- tell you
- 13 about who you should deal with? Were you -- could
- 14 you call McGowan & Hood?
- 15 A In the contract it was to him, Mr. Bagnell.
- 16 Q All right. Did he indicate to you whether he would
- 17 diligently be working on the case?
- 18 A Yes.
- 19 Q Did he use -- did he say that he'd be figuratively
- 20 like an iceberg or a duck paddling on a pond?
- 21 A Well, he said I wouldn't see much, but he would be
- 22 working hard at it. It would take time.
- 23 Q To try to move things along, you had an opportunity
- 24 to go over this proposed order?
- 25 A Yes, I have.

1 Q And have you gone over each sentence with me?

2 A Yes.

3 Q And are the matters that you have set forth herein,
4 is that going to be your testimony?

5 A Yes, it is.

6 Q Moving forward, when?

7 MR. GLEISSNER: I'm sorry, Your Honor, I
8 haven't seen the proposed order.

9 THE COURT: Do you have an extra copy?

10 MR. TRUSLOW: And, again, I'm sorry, I just
11 didn't know there was somebody here. You can
12 follow with it and I'll make you another copy if
13 needed.

14 BY MR. TRUSLOW:

15 Q In conjunction --

16 MR. TRUSLOW: And, Your Honor, if we need
17 time, we can -- I see the law clerk. I know they
18 are invaluable.

19 THE COURT: He's fine.

20 MR. TRUSLOW: And maybe I should have gotten
21 another copy as well.

22 BY MR. TRUSLOW:

23 Q As it relates to your case, did Mr. Bagnell request
24 that you provide him with all of your original
25 documents?

1 A All the original documents, yeah, I gave them to
2 him in his law office.

3 Q And when he looked at those, is that when he
4 indicated what your damages were?

5 A Yes. We went through it.

6 Q Did he indicate that your damages were in excess
7 of a hundred thousand dollars?

8 A Total would be.

9 Q And that was without even considering any treble
10 damages or punitives or fees?

11 A That's correct. Fees were on their own.

12 Q After you entered into the fee agreement with the
13 Defendants on May 17th, 2006, did Mr. Bagnell
14 indicate to you that he had also received a fee in
15 excess of \$10 million on another similar case,
16 similar to yours?

17 A Yes.. Yes.

18 Q Did he say -- is your answer yes?

19 A Yes.

20 Q In conjunction, did he indicate that he was with
21 those fees going to Europe for a vacation?

22 A He went to Europe on a vacation and others
23 afterwards.

24 Q Did he say he would start on your case when he came
25 back?

1 A Yes.

2 Q Did he say whether he would notify you when
3 anything of substance occurred or needed to be done
4 on your case?

5 A On several occasions.

6 Q Did some time go by and you didn't hear anything?

7 A That is correct.

8 Q And sometime about October, October 13th, 2006, did
9 you receive a letter written by Mr. Bagnell that he
10 was representing you?

11 A Yes.

12 Q And --

13 A Well, let me make sure I am saying the right thing.

14 Q Is this the letter?

15 A I wasn't -- I received --

16 Q Did you get that from him?

17 A Yes.

18 Q All right.

19 MR. TRUSLOW: We are going to offer this into
20 evidence, Your Honor.

21 THE COURT: Any objection?

22 MR. GLEISSNER: I have seen a copy. And no
23 objection, Your Honor.

24 (WHEREUPON, Plaintiff's Exhibit No. 1
25 was marked for identification and

1 received into evidence.)

2 Q Did you believe that Mr. Eason -- or Mr. Bagnell
3 was working on your case?

4 A Yes.

5 Q Okay. After that, did you get any other letters?
6 And I might -- we might let the Court take a --

7 MR. TRUSLOW: Your Honor, I was really
8 interested in about the first three paragraphs and
9 to show that there was representation.

10 BY MR. TRUSLOW:

11 Q Okay. Did you get any other communications from
12 him?

13 A No.

14 Q Did you become concerned about your case?

15 A Yes.

16 Q Did you attempt to get in touch with Mr. Bagnell?

17 A On many, many occasions.

18 Q Did you assist or obtain assistance from Attorney
19 Ken Allen in trying to set up a meeting?

20 A Yes.

21 Q And was that successful?

22 A No.

23 Q Did you consider that odd?

24 A They were next-door to each other. Yes, I did.

25 Q And did the Defendants give you any update on what

1 was going on in your case?

2 A When I would find him, he would say he was still
3 working on it.

4 Q All right.

5 A That was his words.

6 Q Were you able to get a copy of any of your file?

7 A No.

8 Q As a result, did you contact the McGowan-Hood Law
9 Firm because of your contract that said that they
10 were working on your case?

11 A That's correct, I did.

12 Q Did you find out at that time that McGowan-Hood had
13 specifically told Mr. Bagnell that they would not
14 be involved in a case with him?

15 A That is true.

16 Q And your case in particular?

17 A My case particular.

18 Q Do you know why McGowan & Hood --

19 A I was never told the exact reason.

20 Q -- would not get involved?

21 A And I never got a copy of the letter.

22 Q Now, at that point in time when you found out --
23 when Mr. -- or the Defendants wouldn't communicate
24 with you and you found out that McGowan & Hood was
25 not involved, did you seek assistance in getting

- 1 your file back?
- 2 A I went to -- got a lawyer to get him to call to see
3 if he could get the money -- get the file back to
4 me.
- 5 Q Were you concerned at that point in time about the
6 statute of limitations running out?
- 7 A Very much so.
- 8 Q Did you have any way to prove any case or have any
9 details without your files?
- 10 A None whatsoever. All the documentation was there.
- 11 Q Had the Defendants promised that they would return
12 your file to you?
- 13 A Once they were scanned on CD's he would return my
14 original files back to me. That was the original
15 agreement.
- 16 Q All right. Did you ever get it back?
- 17 A Never.
- 18 Q Did you write certified -- many certified letters
19 to the Defendants trying to get your file back?
- 20 A I have a folder full of certified letters
21 requesting it.
- 22 Q Are these two letters, one is dated February 13th
23 and one is dated April 2nd, 2009, are these just
24 samples of two of the letters that you wrote --
- 25 A Yes.

1 Q -- to the Defendants?

2 A Yes. Yes.

3 MR. TRUSLOW: We offer these into evidence
4 collectively just as Exhibit 2.

5 THE COURT: Any objection?

6 MR. GLEISSNER: No objection, Your Honor.

7 (WHEREUPON, Plaintiff's Exhibit No. 2
8 was marked for identification and
9 received into evidence.)

10 BY MR. TRUSLOW:

11 Q And are those just samples of letters that you were
12 writing asking for your file?

13 A Yes. That's correct.

14 Q Without your file, without your documents, is there
15 any way you could file a lawsuit? Did you even
16 know the names -- specific name of who you would
17 sue or what your losses are and when they were
18 occurred?

19 A All copies of canceled checks, documentation of
20 phone calls, everything is in that file.

21 Q So did you get your file back from the Defendants
22 at that point in time?

23 A No.

24 Q And were you concerned that your statute of
25 limitations was possibly going to run?

1 A Yes, sir.

2 Q And did you communicate that to the Defendants?

3 A On several occasions.

4 Q Did you get your file then?

5 A No, sir.

6 Q Did you seek assistance from South Carolina Bar to
7 just get your file?

8 A Correct. I did.

9 Q Was the bar able to get anything?

10 A No, they were not.

11 Q As a result did you file a complaint against the
12 Defendant Bagnell?

13 A I filed a claim with the grievance -- Supreme Court
14 Grievance Committee hoping to get them back.

15 MR. TRUSLOW: And, Your Honor, I would ask you
16 to take judicial notice of the record before you,
17 which is the opinion July 18th, 2011.

18 THE COURT: Yes, that has been passed up to
19 me, and I will take judicial notice of Mr.
20 Bagnell's disbarment. And it looks like in
21 relation to this action.

22 MR. TRUSLOW: That is what I was going to ask.

23 BY MR. TRUSLOW:

24 Q Does it relate -- is what you are telling us today
25 basically the same thing you said throughout?

- 1 A It is.
- 2 Q Was the bar able to get --
- 3 A We never, ever received any documentation.
- 4 Q Would he cooperate in any fashion?
- 5 A To my knowledge, he did not.
- 6 Q Now, you have already mentioned that the Defendants
- 7 told you that your case, exclusive of treble
- 8 damages, had value of at least a hundred thousand
- 9 dollars?
- 10 A Yes.
- 11 Q And that is exclusive of attorney's fees and
- 12 interest?
- 13 A That's correct.
- 14 Q Did he indicate to you that he wanted -- he, Mr.
- 15 Bagnell -- wanted you to be the lead Plaintiff in a
- 16 class action that he was filing?
- 17 A Originally, yes.
- 18 Q And he did tell you that he had investigated the
- 19 matter and that he filed a lawsuit?
- 20 A To my knowledge, yes, that's correct.
- 21 Q At this point in time, had you found out after your
- 22 statutes of limitations had passed that there was
- 23 no lawsuit that had ever been filed, in addition to
- 24 McGowan & Hood never being involved?
- 25 A No lawsuit was ever filed. I was never told it was

1 never filed. And Hood & McGowan did not want to
2 participate in it.

3 Q Now, talking about the Defendants, and Mr. Bagnell
4 in particular, has he now left the State of South
5 Carolina?

6 A Yes.

7 Q After telling you that he had gotten a \$30 million
8 fee and a \$10 million fee on some related cases --

9 A My understanding.

10 Q -- that you had checked out at least one of them
11 and found it to be correct?

12 A That's my understanding, yes.

13 Q He then was suspended from the practice of law?

14 A That is correct.

15 Q And that was unrelated to you?

16 A I understood -- later on I understood he had
17 already been suspended.

18 Q Okay. But that was -- his initial suspension was
19 unrelated to you?

20 A Correct, yes.

21 Q And then you -- when you -- after he was suspended,
22 he had his \$30 million, his \$10 million, and then
23 in October of 2009 did he leave the State of South
24 Carolina?

25 A Yes.

- 1 Q And go to New York?
- 2 A Yes.
- 3 Q And you have seen online --
- 4 A Yes.
- 5 Q -- on the computer --
- 6 A Yes, I have.
- 7 Q -- you have seen where he is now in the Catskills
- 8 of New York?
- 9 A That is correct.
- 10 Q Have you seen the home?
- 11 A Yes, on Google Search.
- 12 Q Can you try to describe it as -- how it is
- 13 furnished?
- 14 A It is a tutorial mansion -- a tudor mansion.
- 15 That's what it looks like to me.
- 16 Q In the Catskills?
- 17 A That is where the site said it was. That's all I
- 18 can say.
- 19 Q Has Mr. Bagnell ever given you any of your file
- 20 even now?
- 21 A He tried to e-mail me something and it was
- 22 unlegible and wasn't nearly -- I mean, it wasn't
- 23 even what I was needing.
- 24 Q Did he say he had all of your file in a warehouse
- 25 somewhere?

1 A He said that it was in a warehouse between here and
2 New York, the moving truck broke down and it was
3 stored in a warehouse and it would come to him
4 shortly.

5 Q How many times did he promise he would deliver your
6 file and then just not deliver?

7 A I don't know the numbers of letters I wrote him and
8 his partner, but at least five to ten.

9 Q Did you communicate how important it was that you
10 get your file?

11 A Yes.

12 Q And --

13 A Did it in a telephone conversation.

14 Q Was he deliberately indifferent?

15 A I'll get it to you in three days.

16 Q Sir?

17 A I will get it to you in three days.

18 Q Did he deliver?

19 A Never.

20 Q Okay. Not just within three days, but ever?

21 A To this date.

22 Q Now, are you asking for punitive damages --

23 A Yes, I am.

24 Q -- in this case? And the evidence that you have
25 regarding the \$30 million and the \$10 million in

1 fees that Mr. Bagnell earned were from him as well
2 as you were able to check out the Thaxton
3 settlement, class action settlement?

4 A Yeah, online.

5 Q So when he got his \$30 million, he left you high
6 and dry?

7 A That's the way I view it.

8 Q And are you asking for punitive damages as the
9 Court finds appropriate in this case?

10 A I certainly am.

11 Q Do you think five times your, I'm going to call
12 them your actual damages, is appropriate in this
13 case?

14 A I certainly do.

15 Q If the Court gives you more you'd be pleased?

16 A I'd be happy.

17 Q You would not want it to be in double digits?

18 A No.

19 Q Is that correct?

20 A Correct.

21 Q All right. So you contend that you have \$300,000
22 in actual damages and you are asking for punitive
23 damages of five times that?

24 A That is correct.

25 Q And that would be exclusive of legal fees that you

1 have incurred --

2 A That is correct.

3 Q -- costs, that would be just five times the --

4 A That is basically what his contract --

5 Q -- actual damages?

6 A His contract read to do the same thing.

7 Q One other thing I see here. You mentioned that Mr.
8 Bagnell had -- was living in the Catskills?

9 A Correct.

10 Q In checking with me with my help, did you find that
11 with the Secretary of State he had in fact
12 incorporated a business known as the Catskill House
13 on October 29th, 2009?

14 A Yes.

15 Q And he is the registered agent?

16 A Correct.

17 Q So if we consider everything that you've got and
18 the punitive damages -- are you asking for punitive
19 damages commensurate with the wrongdoing that has
20 been done?

21 A I believe so, yes.

22 Q Does the -- from what the Defendant has represented
23 regarding fees that he has gotten in a class action
24 lawsuit, are you asking the Court to consider that?

25 A Yes.

1 Q And that was known nationally, you could go online
2 and see where the Thaxton lawsuit was mentioned?

3 A That is correct.

4 Q A number of places?

5 A And other lawyers discussing it as well.

6 Q I'm -- all of us here are proud of being lawyers.
7 Do you think that the legal profession is a high
8 calling?

9 A Yes, I do. I grew up around lawyers.

10 Q Do you feel that lawyers who act inappropriately
11 should be deterred --

12 MR. GLEISSNER: I'm sorry, Your Honor. I have
13 got to object. This is opinion testimony and he is
14 asking a lay person --

15 MR. TRUSLOW: I can rephrase it.

16 THE COURT: Yes, sir.

17 Q In this case, are you asking that the Court impose
18 some deterrent so those who don't play by the rules
19 will be deterred?

20 A Yes, sir.

21 Q Do you consider that this is -- the actions by Mr.
22 Bagnell, the Defendants, has it been repeated?

23 A I'm sorry?

24 Q Was there more than one bad act? You mentioned
25 representing that he was going to take on the case.

1 A To me?

2 Q Yes.

3 A Multiple bad acts.

4 MR. TRUSLOW: I think that is all I have.

5 Thank you, Your Honor.

6 THE COURT: All right, please answer any
7 questions that Mr. Gleissman has.

8 MR. GLEISSNER: Thank you, Your Honor. I came
9 here for a damages hearing. I thought I was going
10 to hear some testimony about damages.

11 CROSS-EXAMINATION

12 BY MR. GLEISSNER:

13 Q Did you pay Mr. Bagnell anything?

14 A No, I did not.

15 Q You didn't pay him a retainer?

16 A No, sir, as part of the contract.

17 Q You didn't pay him a filing fee?

18 A No, sir.

19 Q You are not out of pocket any money with Mr.
20 Bagnell?

21 A To Mr. Bagnell?

22 Q Right.

23 A No, I'm not out to him individually, no.

24 Q Okay. All right. So strike that -- those damages.

25 Okay. I heard you say \$28,000 in damages.

1 Then I heard you say a hundred thousand dollars in
2 damages. Then I heard you say \$300,000 in damages.

3 And I was trying real hard to follow. Okay,
4 how were you damaged?

5 A How was I damaged?

6 Q Yes. What are your damages?

7 A Damages was the loss of income, the taxes I had to
8 pay, the credit rating that I had gotten.

9 Q So one is taxes that you had to pay?

10 A Yes.

11 Q Is that correct?

12 MR. TRUSLOW: I don't believe --

13 MR. GLEISSNER: I'm just trying to understand
14 his answer.

15 THE COURT: Hold on. Let him make his
16 objection.

17 MR. TRUSLOW: I know it wasn't willful, but he
18 didn't get to finish answering. He asked him how
19 he was damaged and he started to explain. He asked
20 another question. I would ask the witness to be
21 allowed to fully answer.

22 THE COURT: All right. Give him an
23 opportunity to answer.

24 MR. GLEISSNER: I'm sorry, Your Honor. Okay.

25 BY MR. GLEISSNER:

1 Q How were you damaged?

2 A Because of his inaction, which I didn't get my
3 credit rating back into play when I bought my home.
4 Based on the -- at that time, there was free
5 closing costs, and whatnot. Because of the credit
6 damages I had to pay closing costs, I had to pay
7 mortgage insurance costs, I also had to pay -- by
8 having to accept and file a cancellation to see,
9 which started this whole process over \$7,000, I had
10 to put that as an income. That charge raised my
11 income tax levels. Also, by putting me as single
12 at that point in time I lost tax credits of my
13 son's education. I overpaid one of the accounts by
14 \$1,200. He had all the copies of the cancelled
15 checks proving -- and my worksheets proving that I
16 was overpaid. I did not get that money back.

17 THE COURT: You said \$1,200?

18 THE WITNESS: Yes, \$1,200.

19 THE COURT: Twelve hundred.

20 A There was -- I'm trying -- all this is documented
21 inside those files, and I'm trying to reach out of
22 my head to it. Offers to reduce interest rates
23 was -- on my credit cards was denied because of the
24 cancellation of C, unpaid debts, which that is the
25 gist -- you know, the reason I was going in this

1 lawsuit to begin with. That cost me money,
2 out-of-pocket money, real money, money I needed
3 badly.

4 That is about it. But the documentation for
5 all these things that he agreed to -- he, being Mr.
6 Bagnell -- is in that file which I never got back.

7 Q So let's start. I got three things. I got taxes
8 paid, credit ratings, and overpaid. Those are the
9 three things that I got out of your statement.

10 A Yes. And the cost of closing costs on the house I
11 bought.

12 Q Okay. That was --

13 A That is part of the credit rating.

14 Q Okay. That is part of the credit rating.

15 A That was because of that, yes.

16 Q Let's start out by the taxes paid.

17 A Okay.

18 Q Now, you had to pay taxes because Mr. Bagnell
19 failed to file a lawsuit?

20 A Yes. I was not able to get those -- get a, what do
21 you call it, an amended 1099-C, which would have
22 pulled out the about \$7,300 off my taxes. If he
23 had filed that lawsuit, I would have got an
24 amended -- that amended 1099-C. I could have done
25 an amended return, gotten that money back. I also

1 would have gotten another \$800 or a \$1,000
2 education credit for my son in college. So right
3 there is \$2,500.

4 If he would have given me my files or
5 proceeded with the case, I would have gotten my
6 \$1,200 plus interest on the other 1099-C.

7 If he had proceeded -- you know, and got it
8 amended -- if he had proceeded with the case, I
9 would have gotten my credit rating cleared up
10 because that is what is bad on it. And I would
11 have gotten the mortgage at a lower interest rate,
12 would not have had to pay closing costs. You know,
13 we have all been through that. You know what I'm
14 talking about.

15 I had to pay mortgage insurance that I'm still
16 paying on. And when you start adding up all these
17 numbers, yes, sir, it does come up to more than the
18 28 that is referred to.

19 Q Well, I'm still working on the first one, because I
20 don't understand -- I mean, I do understand what a
21 1099-C is. I mean, that is -- a bank issues a
22 1099-C when there is a forgiveness of debt. That
23 is basically what -- is that what happened to you,
24 is that somebody --

25 A No, it is not what happened to me. They did an

1 error. They gave me one.

2 Q Right.

3 A But when you -- it is not forgiveness of debt at
4 all. You have to take that 1099-C and put that on
5 your income taxes as income.

6 Q Okay. And why did they issue a 1099-C?

7 A Why?

8 Q Yes, why?

9 A When I divorced -- she and I divorced, by the
10 way -- I went and had -- I had \$80,000 worth of
11 debts. So I went to Consumer Credit Counseling.
12 They negotiated a lower interest rate to pay them
13 back, which I did. Again, all this was in the
14 file, which I don't have.

15 At the end of the day, when I paid off
16 everything that I owed them, all the principal,
17 they still contended that I had \$7,243 worth of
18 unpaid interest. In other words, they could not
19 close their books. So to close their books, they
20 gave me a 1099-C. I had documentation in that file
21 from the branch manager of City Financial out here
22 on Knox Abbott, which is no longer there, saying
23 that they included that original interest in their
24 income, and when I paid off that note, based on the
25 revised contract with the Consumer Credit

1 Counseling, that was the only way to get it cleared
2 off their books, so I got the 1099-C, which then I
3 had to report to the IRS as income, which I never
4 had -- you know, that was interest that I didn't
5 owe, to begin with. And then I had to report it
6 on my income tax.

7 By putting it on my income tax and being
8 single at that point in time, it threw me in a
9 higher tax bracket, a lot higher tax bracket, trust
10 me, and it stopped me from getting my tax credits,
11 education tax credits as well, which was real money
12 which I needed at the point in time.

13 Also, the other 1099-C, which is on the credit
14 reference, is from another City Financial account,
15 which I paid off, again through Consumer Credit
16 Finance -- consumer -- over here at the -- I
17 forgot, consumer -- you know, the United Way
18 people. I work through them. They gave me
19 canceled checks proving that I overpaid them --
20 that account by close to \$1,200, which is in my
21 file.

22 If Mr. Bagnell would have proceeded with this
23 case, that would have been cleared up. That 1099-C
24 would have been taken off my record because I'm
25 still shown and still being called because of that

1 unpayment -- nonpayment of debt. I'm still getting
2 phone calls. The last one was from Washington
3 State, of all places, some credit agency, or
4 collection agency. So I have multiple losses of
5 money.

6 Q Okay. So we have two situations in which you were
7 issued a 1099-C?

8 A Correct.

9 Q Okay. And both of them related to a renegotiation
10 of your debt by Consumer Credit Finance, is that
11 right?

12 A I might be saying that the wrong name, but that
13 is -- it is United Way, a branch of United Way.

14 Q Okay. Some debt service renegotiated the interest
15 rates?

16 A Correct.

17 Q Now, you are an accountant, right?

18 A Correct.

19 Q So you prepare taxes for other people, right?

20 A Not as an accountant, no.

21 Q Oh, okay. So you have never prepared any taxes?

22 A Oh, yes, I have. Yes. Yes. Oh, I'm sorry.

23 Q Oh, okay. So you have --

24 A Not in my role as an accountant. I work for state
25 government.

1 Q Oh, okay. All right. But you have prepared taxes
2 for other people?

3 A Yes.

4 Q Okay. Now, in your particular instance, they
5 didn't forgive any of the principal of the
6 obligation, is that right?

7 A No. No, I paid all the principal back.

8 Q Paid all the principal. But, in fact, the interest
9 was reduced on each of the loans, isn't that right?

10 A That's correct.

11 Q Okay.

12 A The interest rate was reduced.

13 Q The interest rate was reduced. Okay.

14 A And the monthly payments were extended.

15 Q Now, as it relates to 1099-C, there is some
16 exception to having to report that as income on the
17 income tax returns, right?

18 A Not at that point in time, not 2005.

19 Q Okay. Well, now, if you file bankruptcy you don't
20 have to report --

21 A I wasn't brought up that way. I paid all my debts.
22 I paid every debt I owed. I could have filed
23 bankruptcy. I wouldn't have paid \$80,000 back at
24 all, I would have had in my pocket. But I paid
25 every penny of it back.

- 1 Q Well, I'm asking you about reporting a 1099-C on
2 your tax return.
- 3 A Yes.
- 4 Q Okay. Are there exceptions to having to report a
5 1099-C on your tax return?
- 6 A I didn't know it at that time.
- 7 Q So you didn't know that there were?
- 8 A That's right.
- 9 Q Okay.
- 10 A And if there is, I didn't know it at that time.
- 11 Q Okay. All right. Well, did you consult with a tax
12 person as it relates to these 1099-C's?
- 13 A No, I did not.
- 14 Q So you don't know whether or not you qualify for
15 any exceptions under Section 108?
- 16 A I did not at that time. No, I did not at that
17 time.
- 18 Q The people, the creditors reduced their interest
19 rate by more than 25 basis points. Isn't that what
20 they did?
- 21 A What do you mean basis points?
- 22 Q Oh, I'm sorry, a quarter of a percent of interest?
23 What they did?
- 24 A They reduced it more, yes.
- 25 Q And do you know whether or not under Regulation

1 1.1001-3(e) whether or not interest is considered a
2 significant modification subject to taxation?

3 MR. TRUSLOW: Objection to the relevance, Your
4 Honor. This doesn't have anything -- the case is
5 that he went to a lawyer, had a loss. The lawyer
6 said he was bringing the lawsuit for his losses,
7 and then didn't bring the lawsuit.

8 THE COURT: Can I see y'all for a second?

9 (WHEREUPON, a bench conference was
10 held.)

11 THE COURT: Can we take about a five minute
12 break?

13 (WHEREUPON, a break was taken.)

14 BY MR. GLEISSNER:

15 Q We were talking about the 1099-C that had been
16 issued to you, and I had asked you if you were
17 aware of Code Section or Tax Regulation
18 1.1001-3(e)?

19 A No, sir, I'm not.

20 Q You're not familiar with that. Do you know whether
21 or not the tax code requires a financial
22 institution to report forgiveness of debt income
23 when the interest rate is reduced by more than a
24 quarter of a percent interest?

25 A Say that again for me? I didn't quite understand.

1 Q Are you familiar with the tax code requiring a
2 creditor to report a forgiveness of debt income
3 when they are -- when they reduce their interest
4 rate by more than a quarter of a percent?

5 A No, I haven't heard that.

6 Q You are unfamiliar with that.

7 MR. GLEISSNER: Your Honor, I would ask the
8 Court to take judicial notice of Tax Code 108 and
9 Tax Regulation 1.1001-1, Subparagraph (a).

10 THE COURT: One more time. Tax code what?

11 MR. GLEISSNER: Tax Code Section 108. And I
12 have a copy of that for Your Honor.

13 MR. TRUSLOW: And we are going to object now
14 that the Defendant is in default. What they can do
15 is cross-examine. They can't put up evidence at
16 this point in time.

17 THE COURT: You cannot, sir.

18 MR. GLEISSNER: Well, I'm not entering
19 evidence, Your Honor. I'm asking the Court to take
20 judicial notice of the law.

21 MR. TRUSLOW: Okay.

22 MR. GLEISSNER: And the law usually isn't
23 considered evidence, but maybe I'm wrong. I have
24 been known to be wrong, Judge. So if you don't
25 want to take judicial notice of those sections of

1 the code, I was just asking you.

2 THE COURT: I can read them, but I would
3 probably need somebody here that is an accountant
4 or someone to -- I'm not sure where you are going
5 with it. And I'm not an accountant. And in
6 reading them -- I'm not sure he is testifying here.
7 today in his capacity as an accountant, I think he
8 is testifying here as to his loss.

9 THE WITNESS: Yes.

10 MR. TRUSLOW: Your Honor, as I understand it,
11 the proffer has been made, you are sitting as a
12 judge alone. And I have objected. Your Honor is
13 indicating that you are going to accept it for
14 whatever value it may have, subject to it being
15 tied in. And if you don't find it persuasive you
16 may not give it any weight at all. Is that the way
17 I understand? That way the record is protected.

18 THE COURT: Yes. I'll take a look at it.
19 I'll try to interpret it. I can't assure you
20 that -- but, I mean, there is no one here other
21 than myself and my law clerk, and I don't know if
22 he -- Judge Manning's law clerk is a CPA, but my
23 law clerk is not.

24 MR. GLEISSNER: I understand, Your Honor.

25 THE COURT: And what is the tax code again?

1 MR. GLEISSNER: It is Tax Code Section 108.
2 And, Your Honor, I would be happy to hand up that
3 tax code to you.

4 THE COURT: All right. I'll take a look.

5 MR. GLEISSNER: I also referenced Tax
6 Regulation Section 1.1001-1(a), Your Honor, on the
7 proposition that there is a quarter percent
8 interest reduction, that that is a significant
9 modification subject to a 1099-B.

10 THE COURT: Like I say, you totally lost me.
11 Section 108. Which section are you looking at?

12 MR. GLEISSNER: Section 108 deals
13 with --Section 108 of Title 26, Subchapter 8,
14 Section 108 of the United States Code of Law.

15 THE COURT: All right. But there is (a);
16 (b)...

17 MR. GLEISSNER: Your Honor, it deals with
18 exclusions from forgiveness of debt income, which
19 is 1099-C.

20 THE COURT: Okay.

21 MR. GLEISSNER: Judge, specifically like, for
22 instance, (a)(3) deals with exclusion if the person
23 is insolvent.

24 THE COURT: All right. And he --

25 MR. GLEISSNER: And he said he didn't know --

1 THE COURT: He testified that he is not
2 familiar with this?

3 MR. GLEISSNER: That is what he said.

4 THE COURT: All right. Okay.

5 MR. TRUSLOW: And Your Honor has my objection
6 and you are accepting this for -- I'm not sure
7 whether it is being offered as evidence. If it is
8 offered as evidence we object --

9 THE COURT: He is saying take judicial notice
10 of the tax code, that he has asked him about it,
11 and he has basically said he doesn't know about
12 this part of the tax code.

13 You may continue.

14 MR. GLEISSNER: Thank you.

15 BY MR. GLEISSNER:

16 Q All right. So now as I understand your testimony,
17 your testimony is that you hired Mr. Bagnell to
18 bring a lawsuit against City Financial?

19 A That is original, yes.

20 Q And you brought -- you wanted Mr. Bagnell to bring
21 that lawsuit against City Financial because they
22 issued a 1099-C -- well, issued two 1099-C's to
23 you?

24 A Correct.

25 Q Okay. All right. And you gave Mr. Bagnell all of

1 the documents relating to the 1099-C that they
2 issued to you?

3 A To the two accounts that relate to the 1099-C.

4 Q Okay. So you gave all that information to him?

5 A Yes.

6 Q All right. And one of those 1099-C's was for
7 \$7,243?

8 A Best of my memory, yes, sir.

9 Q And one of them was for \$1,200?

10 A No, sir. That \$1,200 one -- let's say the \$7,200
11 is number one and the other one, the \$1,200 is
12 number two, okay?

13 Q Okay.

14 A Account number two, after I received the 1099-C for
15 that account saying I had a balance due, you know,
16 I went and had Consumer Credit Counseling to give
17 me copies of all the checks paid, because I believe
18 I paid that account in full, which I -- when I
19 received all the canceled checks and added them up
20 to determine that I had paid that account in full,
21 not only had I paid it in full, I overpaid it by
22 \$1,200. That is the \$1,200 I'm talking about.

23 Q Oh, so it is not a 1099-C for \$1,200 --

24 A It is an overpayment of \$1,200, which they would
25 not give back to me.

1 Q Okay. And --

2 A Subsequently I did receive a 1099-C, which a
3 nonpayment of debt, then they posted it against my
4 credit report that I, you know, defaulted on
5 payment of a debt, when in actuality I had overpaid
6 them by \$1,200.

7 And all those canceled checks that prove that
8 is in the files that Mr. Bagnell has that he has
9 not returned to me.

10 Q They are also in the files of Consumer Credit
11 Finance?

12 A Somewhere. They had -- remember, the banks had
13 quit -- now quit doing checks. I mean, they
14 destroyed their records. This is what, five years,
15 over five years since I requested copies of those
16 checks.

17 Q So --

18 A So they have been shredded.

19 Q So you were going to have Mr. Bagnell bring a
20 lawsuit against City Financial because, one, they
21 issued a 1099-C --

22 A Seven thousand --

23 Q -- for seven thousand --

24 A 243.

25 Q -- some dollars. And you overpaid them \$1,200?

- 1 A Then subsequently got reported on my credit for
2 nonpayment of debt. Defaulted on payment of a
3 debt, when in actuality I overpaid them \$1,200.
- 4 Q But if in fact it was appropriate for them to issue
5 the 1099-C for \$7,243 --
- 6 A No, it was not. I had in the files signed by the
7 manager of City Financial on Knox Abbott Drive that
8 my account was paid in full. I had a balance of
9 zero. I had letters in that file attesting to
10 that. I had the handwritten receipt showing a zero
11 balance. They gave me my copies of the note -- I
12 say the note. It had on it stamped paid in full.
13 All of this I gave to Mr. Bagnell. I still got a
14 1099-C from them, from City Financial, for \$7,243.
15 I might be off a few bucks, but it is \$7,200 plus.
- 16 Q Now, did Mr. Bagnell tell you about the possibility
17 of filing an IRS Form 4598 to contest the 1099-C?
- 18 A No, he did not.
- 19 Q He didn't. Do you know about filing an IRS Form
20 4598 that contests a 1099-C?
- 21 A I do now.
- 22 Q You do now?
- 23 A Not then.
- 24 Q Not then.
- 25 A Not --

- 1 Q When did you -- when did the 1099-C get issued?
- 2 A 2005.
- 3 Q And when did you find out about the Form 4598?
- 4 A 2008.
- 5 Q And did you amend your 2005 tax returns in 2008
- 6 when you found out about the Form 4598?
- 7 A No, three years of being able to amend. I found
- 8 out after the fact, so I was not able to amend.
- 9 Q Okay. The 2005 tax return would have gotten filed
- 10 in 2006, right?
- 11 A April 15th. By April 15th, 2006.
- 12 Q And you found out about the Form 4598 in 2008?
- 13 A Yes. The end of 2008, yes.
- 14 Q And that is within three years of your filing --
- 15 A Well, that is true. I did not -- I did not file
- 16 the amended return. But I thought the filing date
- 17 had passed, so I did not file the amended return.
- 18 No one told me I should. I thought -- I just
- 19 learned about it. I'm just learning. I went and
- 20 learned a whole bunch after all this.
- 21 Q Okay. All right. So now let's go to the credit.
- 22 When did you turn this material over to Mr.
- 23 Bagnell?
- 24 A It was prior to May 17, 2006, because that is when
- 25 we signed the contract. He had it for a month, six

1 weeks prior to signing the contract.

2 Q So Mr. Bagnell had everything May of 2006?

3 A That's correct.

4 Q Okay. Now, when did you get -- when did you
5 refinance your house?

6 A I did not refinance the house. I bought -- my
7 father passed away. The estate -- I bought --
8 tried to buy my father's house where I grew up.
9 And that was probably -- I don't remember. I'm
10 going to say two years later.

11 Q 2008?

12 A I'm not going to attest to that because I just --
13 it was after that is all I can tell you.

14 Q It was after May 17th, 2006?

15 A Yes. I don't remember the exact date. I
16 remember --

17 Q So Mr. Bagnell wouldn't have the documents relating
18 to the impact -- the impact resulting from the
19 credit report, right?

20 A Oh, for that transaction?

21 Q Right.

22 A Yes, he did.

23 Q Okay. So --

24 A That is in the file. In other words, he and I sat
25 down and we listed out what it cost me because of

1 the second City Financial claim on my credit
2 report, which caused me to not take advantage of
3 all the special deals going on at that time. Yes,
4 he was very much aware of it. He sat there with me
5 and helped calculate the amount in his office. And
6 all that is in those files. All those notes are in
7 those files.

8 Q Okay. And when did you report Mr. Bagnell to the
9 South Carolina Bar?

10 A I don't have the date. It was right before I filed
11 the complaint against him with the grievance
12 committee. Whatever that date is, it is two or
13 three months prior to that.

14 Q Do you know a year or?

15 A I don't have that right in front of me, no, sir.
16 It don't have -- it is in the file. I just don't
17 have that date. I'm not going to say a date and
18 be -- say I'm wrong. But it is all in the record
19 somewhere.

20 Q Did you -- okay. So was Mr. Bagnell, was he
21 charged with suing the credit reporting agencies?

22 A Did I ask him to?

23 Q Or was he just going to sue City Financial?

24 A City Financial.

25 Q Just City Financial?

- 1 A And that would have cleared up the record on the
2 credit reports.
- 3 Q If he was successful?
- 4 A If he was successful. And he would have been.
- 5 Q But you never asked Mr. Bagnell to actually contact
6 the credit reporting agencies, is that right?
- 7 A I never specifically said, please go sue them, no,
8 I did not.
- 9 Q Did you ever contact the credit reporting
10 agencies?
- 11 A I contacted them by telephone on several occasions.
12 They just would not get City Financial to take it
13 off -- get City Financial to take it off. You
14 know, that was their response.
- 15 Q And when did you contact them?
- 16 A Right when I first got hold of him. That is why I
17 kept going to City Financial trying to get them to
18 amend -- give me something in writing to get it
19 off. That led to the lawsuit.
- 20 Q Okay. So this is in 2007 that you were contacting
21 them?
- 22 A Prior to that.
- 23 Q Okay. So even in 2006?
- 24 A Yes. Prior to that. It is all documented in the
25 file. They have a phone log in that file.

1 Q Is your current report incorrect today? Are they
2 still incorrect?

3 A That City Financial one, number two is still on my
4 report as far as I know.

5 Q Okay. After Mr. Bagnell refused to assist you, did
6 you hire somebody else to bring --

7 A No, I did not, because I had signed a contract with
8 Mr. Bagnell and that is who I was working with. He
9 never released me from that contract.

10 Q So you believe that your signing on a contract with
11 one lawyer prevents you from engaging another
12 lawyer?

13 A Experience that I have seen and been a -- and
14 witnessed, when signed with one lawyer who did not
15 do anything, they went to another lawyer, but that
16 person had to pay both lawyers. That happened to
17 my sister-in-law.

18 Q And have you ever brought an action under the Fair
19 Credit Reporting Act?

20 A No, sir. This is the first lawsuit I ever engaged
21 in.

22 Q Do you have any proof that you were denied credit
23 because of the alleged actions of City Financial?

24 A Not denied credit. I had to -- I was denied the
25 special deals with the special packages going on

1 and had to pay higher interest rates, specifically
2 in buying my dad's house.

3 Q You don't have any documentation for that?

4 A In that file.

5 Q Okay. But that happened after May 17th, 2006?

6 A Yes. When I bought my father's house, yes.

7 Q But I thought all the documents that Mr. Bagnell
8 had were before May 17th, 2006.

9 A I kept adding to them. I kept bringing them to
10 him.

11 Q And you didn't keep copies of anything?

12 A Not of that, no.

13 Q And you don't have an expert to support this
14 action, right?

15 A An individual?

16 Q An expert witness to support the allegations?

17 A No, sir. I don't have -- you have to define expert
18 for me. What do you mean?

19 Q Somebody to testify as it relates to the
20 malpractice that occurred in this action, somebody
21 to say that Mr. Bagnell's actions fell below the
22 standard of care, somebody to say that maybe that
23 this is the proximate cause of the injuries,
24 something like that?

25 MR. TRUSLOW: Excuse me, if I can, Your Honor.

1 That would be irrelevant. Liability has already
2 been determined.

3 THE COURT: Yes, sir, he's correct. The
4 objection is sustained.

5 MR. GLEISSNER: Your Honor, if I could just
6 briefly be heard. I agreed that liability has been
7 established, but proximate cause of damages I think
8 I can get into that at a damages hearing.

9 THE COURT: What do you want to ask him?

10 MR. GLEISSNER: I just wanted to know if he
11 had an expert.

12 THE COURT: An expert, but you have got to
13 rephrase your question. An expert to do what?

14 MR. GLEISSNER: An expert to testify on
15 proximate cause of your damages.

16 THE COURT: All right. I'll allow it.

17 A All I know, my damages with the money I paid out of
18 my pocket was derived from what we have just been
19 discussing. Was somebody there with me at the
20 time? The names of the people I talked to are in
21 that file.

22 Q Okay. So do we have a monetary amount of
23 additional closing costs that you were required to
24 pay?

25 A Total estimation. I'm not going to say it is

1 exact, but it is in the file. It was close to --
2 for the whole 30 years, the interest, the higher
3 interest rate, the mortgage insurance premium, the
4 closing costs, the other sundry things going along
5 with that, close to \$28, \$30 thousand on that one
6 item.

7 And, again, that is listed out in the file
8 that Mr. Bagnell has. We did that in his office.

9 THE COURT: The cause of action that Mr.
10 Bagnell was supposed to bring in the City
11 Financial, do you know whether or not that cause of
12 action would entitle you to recover treble damages?

13 A Yes.

14 Q Do you know whether or not a court would have
15 awarded treble damages?

16 A Yes, sir. The statute, I understand from -- again,
17 it is in that file -- Consumer Finance, state
18 agency, one of the consumer analysts, I think that
19 is their titles, so stated in a letter to me.

20 Q Okay. So no judge said anything?

21 A No. No, sir, but they -- no, sir. That was --
22 that was supposedly the law.

23 MR. GLEISSNER: Your Honor, I don't have
24 anything further.

25 MR. TRUSLOW: I am mindful of the time. If

1 Your Honor has some questions or if you want me to
2 go over --

3 THE COURT: What I'd like, if you can get me
4 something outlining -- I have got the \$28 to \$30
5 thousand for the closing account, then there was --
6 I think he testified earlier that there was an
7 \$80,000 -- or if you can get me something showing
8 me exactly how he is coming up with that number. I
9 think we said \$80,000 earlier plus \$28 or \$30
10 thousand if I'm remembering it correctly?

11 MR. TRUSLOW: I think we can -- I think I can
12 help you now, and if we need to do something else
13 we will.

14 THE COURT: Okay. Because this was slotted
15 for 15 minutes and we have been going for about an
16 hour, over an hour.

17 MR. TRUSLOW: I'm so sorry. I thought we were
18 going to just breeze right through. I have a
19 couple of things, if I can now, Your Honor.

20 THE COURT: Okay. I am probably going to
21 leave in about five minutes. Go.

22 MR. TRUSLOW: All right, I'll go fast. That
23 will be easier.

24 REDIRECT EXAMINATION

25 BY MR. TRUSLOW:

1 Q As relates to treble damages, before you ever went
2 to Mr. Bagnell, did you go to the State Consumer
3 Credit Agency to try to get some help?

4 A State Consumer Credit -- Consumer Finance Agency.

5 Q And did they provide you with --

6 A Consumer Affairs Agency, excuse me.

7 Q And did they provide you with -- did they review
8 everything and attempt to deal with City Financial?

9 A They certainly did.

10 Q And then did they give you a letter telling you
11 that they thought you were entitled to punitive --
12 to treble damages and to give that to your lawyer?

13 A They recommended I hire a lawyer to go after the
14 City Financial.

15 Q As it relates to the tax code, did this -- this
16 occurred before December 31st, 2008, is that
17 correct?

18 A Yes.

19 Q Just for the record. All right. Now, regarding an
20 expert, since Mr. Bagnell has all of your records,
21 how could you get an expert?

22 A I didn't need an expert. I had all the
23 documentation there.

24 Q All right. And he had it, and he won't return it?

25 A He's got it.

1 Q Now, the question was asked to you about why didn't
2 you just terminate your contract in say 2008 or
3 whenever Mr. Bagnell wasn't -- when you didn't feel
4 comfortable. Did your fee agreement provide that
5 if you terminated the agreement before it was
6 concluded that you had to pay an attorney's fee to
7 Mr. Bagnell?

8 A Correct.

9 Q All right. For your damages, you said you had I
10 think -- we had \$80 and then we had \$100 thousand.

11 A Clear the record up. At the time I divorced I owed
12 \$80,000. He asked me about going into, you know,
13 bankruptcy. I refused to go into bankruptcy. I
14 paid back the whole \$80,000 that I owed at that
15 point in time. That is why this is so important to
16 me. I did everything I was supposed to do. I
17 could have gone in bankruptcy and I wouldn't have
18 this problem right now and I would be \$80,000 more
19 in my pocket. I chose to pay back my bills.

20 Q Now, at the time were -- on your credit cards
21 did -- were you paying 24 percent?

22 A Yes, sir.

23 Q And you wanted to get some -- you wanted to get
24 below 24 percent?

25 A I had an offer to get it to 11.99. Bank of

1 America, they did the credit report or, you know,
2 ran the credit report. The number two City
3 Financial failure to pay debt was on my credit
4 report and I was denied.

5 Q So one last thing. You have already been to the
6 State of South Carolina and they provided you with
7 a letter and recommended you get an attorney and
8 that you were entitled to treble damages based on
9 their investigation?

10 A That is correct.

11 Q Then you went to Mr. Bagnell, provided him with all
12 your documentation, and he confirmed the same
13 thing?

14 A That's correct.

15 Q But you had a hundred thousand dollars of damages,
16 and that included the extra interest rate you had
17 to pay at 24 percent on credit cards, your son for
18 his college, because they put you in a higher tax
19 bracket?

20 A Right.

21 THE COURT: How many is that?

22 THE WITNESS: I think it was tax credit at
23 that time I think was a thousand dollars.

24 THE COURT: Per year?

25 THE WITNESS: Per year.

1 THE COURT: How many years?

2 THE WITNESS: That -- well, what I did the
3 next year, mama took it. I paid it, but I got her
4 to claim it so she could get it with my taxes. It
5 put me in such a higher tax bracket.

6 THE COURT: You can continue.

7 BY MR. TRUSLOW:

8 Q And you had to pay a higher interest rate on
9 mortgages and closing costs?

10 A That's correct.

11 Q And taxes?

12 A Tax.

13 Q And all -- you provided all this to Mr. Bagnell?

14 A Yes.

15 Q And he confirmed that you had at least a hundred
16 thousand in actual losses?

17 A When I bought the house I took that document
18 saying, Gil, it cost me this much because this
19 inaction. And he agreed. And he went down the
20 list.

21 Q And one last thing, and then I think I'm done.
22 After he told you that he -- looked at all the
23 documentation and verified that you had, including
24 the future losses that you had there, a hundred
25 thousand dollars, did he keep your records? And is

1 that the reason you can't get an expert because you
2 don't have the record even now?

3 A I don't have any records, any documentation that I
4 gave him.

5 Q All right.

6 MR. TRUSLOW: I think that is all. Thank you.
7 And thank you for giving me five minutes.

8 THE COURT: I am going to put this under
9 advisement. And I asked earlier if you have
10 anything to supplement the file. I'll leave the
11 record open so if you all need to supplement the
12 file with -- I'll give you two weeks to do that,
13 anything to supplement the file regarding the
14 damages or if your client turns over the file or --
15 but I'll keep the record open and take it under
16 advisement.

17 I guess, Mr. Truslow, what I'm looking for is
18 something that breaks down as to -- I mean, he has
19 kind of thrown around a lot of numbers today and he
20 said there are some credit cards that were
21 24 percent that he couldn't get reduced to 11
22 percent, but I don't know how -- I know he said
23 Bank of America, but it appears there may be more
24 than one credit card?

25 THE WITNESS: That's -- yes.

1 MR. TRUSLOW: Your Honor, can I ask -- I'm
2 looking -- one last question, if I could, if I can
3 ask it.

4 BY MR. TRUSLOW:

5 Q A question was asked to you about when you learned
6 that perhaps you could refile on your tax return
7 and you mentioned a date of 2008. Do you recall
8 that?

9 A Yes. Yes.

10 Q Didn't you get a letter from Mr. Eason on March the
11 12th, 2010 indicating that you should go back and
12 file after your statute had already run?

13 A That's right.

14 Q And by then was it too late?

15 A Too late. And that was an interesting letter from
16 Mr. Eason too, by the way.

17 Q All right. So he wasn't able to get the records
18 for you either?

19 A No, sir.

20 Q And he confirmed that in a letter?

21 A He promised me that he would get them, that he
22 contacted Mr. Bagnell and they would be
23 forthcoming.

24 Q And he never was successful either in getting the
25 records from Mr. Bagnell?

1 A No.

2 Q All right. Thank you.

3 THE COURT: Yes, if you can get me something
4 just outlining --

5 MR. TRUSLOW: Damages.

6 THE COURT: -- the damages. Because I know it
7 was scheduled for 15 minutes and y'all are trying
8 to get a lot in in a little bit of time.

9 MR. TRUSLOW: I understand.

10 THE COURT: And if I can just get something as
11 to like the tax credit for the son. And he said
12 \$7,200 on the 1099-C and \$1,200 on another 1099-C.
13 If you can just get me something in the next --

14 MR. TRUSLOW: Now that we have got Rick
15 involved, maybe we can reason together and get
16 something down. I doubt it, but we'll try.

17 THE COURT: Okay. All right.

18 MR. TRUSLOW: Thank you.

19 MR. GLEISSNER: By November 14th, Your Honor?

20 THE COURT: Sir?

21 MR. GLEISSNER: You said two weeks. Is that
22 November 14th?

23 THE COURT: Yes. If you get it to me by the
24 18th.

25 MR. GLEISSNER: Oh, the 18th. Even better.

1 THE COURT: Yes, the 18th is fine, because I
2 probably won't be able to look at it until we have
3 the chambers week the next week. So as long as I
4 have it before that week.

5 Sir, you may step down. I'm sorry. Thank
6 you.

7 THE WITNESS: Thank you, ma'am.

8 (Witness steps down.)

9 (WHEREUPON, the proceedings were concluded.)
10
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 31st day of OCTOBER, 2011.

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

October 9, 2012

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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93021840037303813685

866-598-2849
called talked to
Jeremy
5:24 pm
2/23/06



TO: Jones Herring
Acct. # 381368
3220 Cherry Hill Rd.
Columbia SC 29204
RE: Settlement of account balance.

CitiFinancial
1109 Knox Abbott Dr.
Cayce, SC 29033
Tel 803 796 5850
Fax 803 791 8134

This is an acknowledgement of our understanding of exactly what the balance is remaining on the above account.

After considering the agreement from the Consumer Credit Counseling Company and reviewing all of the payments made from that company on the account, and after reviewing the reduced interest rate, it is of my opinion that the true balance is \$1810.00, and this was agreed to by both parties approx. Sept-04, and any payments made after this date should be deducted from this balance shown.

Mr. Herring will track his payments to this balance, as well as Citifinancial will have record of it, and when the final payment is going to be made, we will process the settlement as paid and issue the paid in full documents.

Any questions can be directed to myself, or the Branch Manager Lisa Wallace. A copy of this letter will be retained in the file as record of the agreement.

Thank You

Jim Fisher - District Manager Citifinancial - 01115

A handwritten signature in black ink, appearing to read "Jim Fisher", written over the typed name.

Date		Payment Amount	Applied to Balance	Applied to Interest	Balance
9/4/2004	Account Balance per Jim Fisher's Letter				\$1,810.00
9/29/2004		\$25.80	\$20.84	\$4.96	\$1,789.16
9/29/2004		\$232.20	\$232.20		\$1,556.96
10/26/2004		\$15.59	\$15.59		\$1,541.37
10/26/2004		\$140.33	\$140.32		\$1,401.05
11/29/2004		\$12.90	\$12.90		\$1,388.15
11/29/2004		\$116.10	\$116.10		\$1,272.05
12/27/2004		\$21.00	\$21.00		\$1,251.05
12/27/2004		\$189.00	\$189.00		\$1,062.05
1/31/2005		\$21.00	\$21.00		\$1,041.05
1/31/2005		\$189.00	\$189.00		\$852.05
3/2/2005		\$21.00	\$21.00		\$831.05
3/2/2005		\$189.00	\$189.00		\$642.05
3/29/2005		\$21.00	\$21.00		\$621.05
3/29/2005		\$189.00	\$189.00		\$432.05
4/27/2005		\$21.00	\$21.00		\$411.05
4/27/2005		\$189.00	\$189.00		\$222.05
<i>5/27/2005</i>		\$21.00	\$21.00		\$201.05
		\$189.00	\$189.00		\$12.05

7.09
Apr. 09. Balance
Prd

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JONES G. HERRING,

☐ Plaintiff

v.

Gilbert S. Bagnell And Bagnell And Eason, Llc

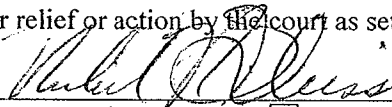
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-40-1998

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Douglas N. Truslow, Bar No. Address: Post Office Box 1465 Columbia, South Carolina 29202 phone: 803-256-6276 fax: e-mail: other:		Defendant's Attorney: Richard R. Gleissner, Bar No. 15139 Address: 1237 Gadsden Street, Suite 200A Columbia, South Carolina 29201 phone: 803-787-0505 fax: 803-712-4283 e-mail: rick@gleissnerlaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Reconsider Order Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		February 15, 2016 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JONES G. HERRING,

Plaintiff,

vs.

GILBERT S. BAGNELL and
BAGNELL AND EASON, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket No.: 2011-CP-40-1998

**DEFENDANT'S MOTION PURSUANT
TO S.C. R. CIV. P. 52(b) AND 59(e)
REGARDING ORDER FILED
FEBRUARY 4, 2016**

RICHLAND COUNTY
FILED
2016 FEB 18 PM 2:53
JEANETTE W. MERIDITH
C.C.P. G.S.

Pursuant to S.C. R. Civ. P. 52(b) and 59(e), Defendants Gilbert S. Bagnell and Bagnell and Eason, LLC (collectively "Bagnell"), request that this Court reconsider, alter, amend, and/or clarify its Order filed February 4, 2016, granting Plaintiff judgment. The undersigned counsel for Bagnell received written notice of the entry of the Order on February 5, 2016 (the "Order"), and this Motion is therefore timely filed.

Accordingly, the grounds for this Motion are as follows:

1. The Order conflates the Defendants' admission of liability with what evidence is necessary to show the proximately related damages.

The Order erroneously finds that "since Defendants defaulted on Plaintiffs claims against them, they admitted the veracity and underlying success of Plaintiff's claims against Citi." Order ¶ 6, p. 8. While South Carolina law provides that a defaulting party concedes liability, it holds that "a defaulting defendant does not concede the [a]mount of liability." *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241-42, 246 S.E.2d 880, 882 (1978)(citations omitted). In a default case, "the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence." *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 507 (Ct.App.1988). Thus, the result of the default was to have Defendants admit the veracity of the claims

of Plaintiff. i.e. Defendants were negligent in allowing the statute of limitations to expire. Contrary to the Order, the default did not result, however, in the Defendant admitting any and all damages were compensable.

The Order erroneously goes on to hold that evidence of harm caused by Citi may be inferred to have been caused by Defendants. The Order states Plaintiff “is entitled to the actual damages caused by Citi in its failure to follow the terms of the Agreement it entered into with Plaintiff.” Order ¶ 8, p. 9. This finding can only be true if adequate evidence is presented establishing the harm to Plaintiff caused by Citi would have been recovered “but for” the negligence of Defendant. See *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002)(“the plaintiff must show he or she ‘*most probably*’ would have been successful in the underlying suit if the attorney had not committed the alleged malpractice.”), see also *Brown v. Theos*, 345 S.C. 626, 550 S.E.2d 304 (2001); *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988); *Floyd v. Kosko*, 285 S.C. 390, 329 S.E.2d 459 (Ct.App.1985). The findings of the Order nowhere point to evidence supporting that but for the Defendants’ negligence, Plaintiff would have been successful in recovering the damages caused by Citi. Thus, without a finding of proximate cause, the Order must be amended.

Normally, proximate cause is a question of fact for the jury, and it may be proved by direct or circumstantial evidence. *Player v. Thompson*, 259 S.C. 600, 193 S.E.2d 531 (1972). Proximate cause requires proof of: (1) causation-in-fact, and (2) legal cause. *Bramlette v. Charter-Medical-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990). Causation-in-fact is proved by establishing the injury would not have occurred “but for” the defendant's negligence, and legal cause is proved by establishing foreseeability. *Id.* Generally, expert testimony is required to establish proximate cause in a malpractice case. *Green v. Lilliewood*, 272 S.C. 186, 249 S.E.2d 910 (1978)(“Since many malpractice suits involve [issues] outside the realm of ordinary lay knowledge, expert testimony is generally necessary.”). Expert testimony is not required, however, to prove proximate cause if the common knowledge or experience

of laypersons is extensive enough to determine the presence of the required causal link between the negligence and the harm. *Pederson v. Gould*, 288 S.C. 141, 341 S.E.2d 633 (1986); *King v. Williams*, 276 S.C. 478, 279 S.E.2d 618 (1981); see *Armstrong v. Weiland*, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (1976) (“When the testimony of an expert witness is not relied upon to establish proximate cause, it is sufficient for plaintiff to put forth some evidence which rises above mere speculation or conjecture.”). Thus, the Order is required to find some evidence establishing the proximate cause of the harm caused by Citi and the admitted negligence of the Defendants that rises above mere speculation or conjecture. As it stands, the Order speculates that any harm caused by Citi to Plaintiff would be recoverable had the Defendant not been negligent. The Order points to no evidence, nor was any evidence provided, that supports such a finding.

The issue of evidence of proximate cause is, in fact, the same issue raised before the Court of Appeals that led to the second hearing on damages. As evident in the Order’s finding of facts, no new evidence was presented by the Plaintiff in the second hearing that was not already presented in the first hearing. The Court of Appeals held that as a matter of law, there was insufficient evidence to warrant an award to the Plaintiff. The Supreme Court in *Manning*, a case in which the Court specifically addressed the issue of evidence required to survive summary judgment, held that without some evidence of the “likelihood of success of the proposed actions” any claim for damages resulting from legal malpractice necessarily fails. 294 S.C. at 386, 365 S.E.2d at 25. In making its decision, the Court held that the two affidavits of attorney’s presented by the plaintiff in support of its actions failed to address the issue of likelihood of success and, therefore, were irrelevant. Without amending the Order, the Court of Appeals will have no reason not to affirm its prior ruling on the matter and find the evidence supporting a judgment lacking as a matter of law. Therefore, the Order should be amended.

Other jurisdictions considering similar actions have lent supporting analysis as to what evidence supports a finding of “likelihood of success.” If the malpractice charged is related to the prosecution of

an underlying action, it is generally held that where there is a "trial within a trial" the client-plaintiff in the legal malpractice action has the burden of proof to establish that proper handling of the matter would have resulted in recovery of a judgment, and that the judgment would have been fully or partially collectible. *Williams v. Bashman*, 457 F. Supp. 322, 326 (E.D. Pa. 1978), See Also *Christy v. Saliterman*, 288 Minn. 144, 150, 179 N.W.2d 288, 294 (1970), *Sitton v. Clements*, 257 F. Supp. 63 (E.D. Tenn. 1966), *aff'd*, 385 F.2d 869 (6th Cir. 1967); *Duke & Co. v. Anderson*, 275 Pa. Super. 65, 418 A.2d 613 (1980); *Sherry v. Diercks*, 29 Wash. App. 433, 628 P.2d 1336 (1981), *McDow v. Dixon*, 138 Ga. App. 338, 226 S.E.2d 145 (1976), *Moore v. Moyle*, 405 Ill. 555, 566, 92 N.E.2d 81, 87 (1950), *Hoppe v. Ranzini*, 158 N.J. Super. 158, 385 A.2d 913 (Super. Ct. App. Div. 1978). "The plaintiff in a legal malpractice action must prove a 'case within a case,' as he or she must prove the merits of the underlying case as part of the proof of the malpractice case." 7A C.J.S. Attorney & Client § 331 (citations omitted). The question of what should have happened in the underlying action is a question of law. See, e.g., *Doe v. Howe*, 626 S.E.2d 25, 31, n. 18 (S.C. Ct. App. 2007) ("Under the case-within-a-case concept, the test is objective. Therefore, the test is not what the outcome would have been, but rather what it should have been."). No such evidence is found by the Order.

Simply, the Order must be amended as no evidence as to the likelihood of success or the collectability of such a judgment was presented. There was no evidence the alleged damage to the Plaintiff should have been recovered under any of the actions which the Defendants were engaged, let alone how collectible such a judgement would have been. The finding by the Order that Citi harmed Plaintiff through a \$1,200.00 overpayment, \$1,805.00 reduction in tax refund, \$800.00 in additional tuition for his son, and \$7,342.99 in additional closing costs and interest was never shown to have been recoverable or collectable by Defendants against Citi. Thus, the Order fails to point to any evidence Plaintiff's damages were proximately caused by Defendant's negligence.

2. The Order award of punitive damages was not in accord with the Defendants due process

rights and does not comport with South Carolina.

Under South Carolina law, “[p]unitive damages may be awarded only if the plaintiff proves by clear and convincing evidence that his harm was the result of the defendant’s willful, wanton, or reckless conduct.” S.C. Code Ann. § 15-32-520. The preeminent element as to whether punitive damages may be awarded is whether the Plaintiff has been harmed. Without evidence of specific damages to Mr. Herring proximately resulting from the willful, wanton, or reckless conduct of the Defendants, punitive damages would be improper.

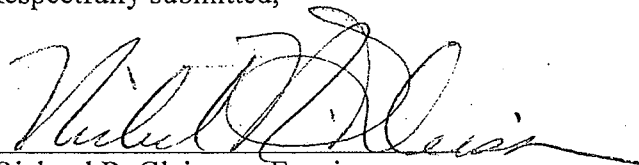
Further, scant evidence supporting the amount of punitive damages was presented. There is no evidence of the existence of similar past conduct by the Defendants, no evidence that the award is related to the harm suffered, and no evidence that there is a likelihood that this defendant will engage in similar conduct in the future. In fact, Mr. Bagnell has been permanently disbarred from the practice of law. Thus, there is no chance that this defendant will engage in similar conduct in the future.

Similarly, the Order erroneously fails to consider the factors that relate to the reprehensibility of the actions of the Defendants. Reprehensibility is “perhaps the most important indicium of the reasonableness of a punitive damages award.” *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). “This principle reflects the view that some wrongs are more blameworthy than others.” *Id.* In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *State Farm v. Campbell*, 538 U.S. 408, 416, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003). None of these elements were either explicitly considered or found to be present in the Order. There was no physical harm. There was no finding regarding the indifference to the safety of others. The Plaintiff was not shown to be

particularly vulnerable at the time of the negligent behavior. The only evidence presented related to a single incident of negligence. And finally, there was no evidence or admissions supporting an intent by the Defendants to harm Plaintiff.

WHEREFORE, the Defendants prays that the court reconsider its Order, set aside the Order and find in favor of the Defendants that the Plaintiff suffered no damage as a result of the Defendants' alleged actions and the Plaintiff should receive no monetary judgment against the Defendants.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard R. Gleissner", written over a horizontal line.

Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1237 Gadsden St., Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Facsimile (803) 712-4283

February 15, 2016.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JONES G. HERRING,)

Plaintiff,)

Vs.)

GILBERT S. BAGNELL and)
BAGNELL AND EASON, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

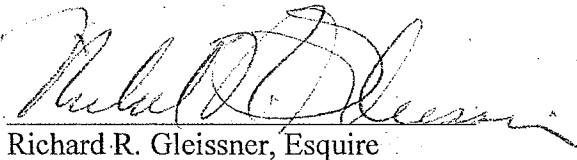
Docket No.: 2011-CP-40-1998

Certificate of Service

I, the undersigned employee of the Gleissner Law Firm, LLC, hereby certify that I have served the Motion to Reconsider on the Plaintiff in the above captioned matter by placing a copy in the first class mail with sufficient postage prepaid addressed to:

Douglas N. Truslow, Esquire
Truslow and Truslow
P.O. Box 1465
Columbia, SC 29202

Respectfully submitted,



Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Facsimile (803) 712-4283

February 15, 2016

RICHLAND COUNTY
FILED
2016 FEB 18 PM 2:55
JEANNETTE W. MCARDLE
C.C.P. & C.S.

Richland County Common Pleas

Clerk : Jeanette W. McBride
 Richland County Judicial Center
 Columbia, SC 29201
 (803) 576-1999

Received From: Gleissner, Richard R.
 1237 Gadsden Street, Suite 200A
 Columbia, SC 29201

Date: 2/18/2016
 Receipt #: 204302
 Clerk: METTSB

Paying for: Herring, Jones G

Transaction Type: Payment

Reference #: 3351

Payment Type: Check \$25.00

Comment:

Total Paid: \$25.00

Non-Refundable

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2011CP4001998	Jones G Herring vs Gilbert S Bagnell, defendant, et al	\$25.00	\$25.00	\$0.00
Total Cases: 1		\$25.00	\$25.00	\$0.00

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Gilbert S. Bagnell, Respondent.

Opinion No. 27008
Heard June 9, 2011 - Filed July 18, 2011

DISBARRED

Lesley M. Coggiola, Disciplinary Counsel, and
Ericka M. Williams, Assistant Disciplinary
Counsel, both of Columbia, for Office of
Disciplinary Counsel.

Gilbert S. Bagnell, *pro se*, of Columbia.

PER CURIAM: In this attorney discipline matter, Respondent Gilbert S. Bagnell has been accused of misconduct, including failure to work on a client's case, failure to communicate with a client, failure to properly terminate representation by protecting a client's interests, and failure to cooperate with the Office of Disciplinary Counsel (ODC). We concur in the Panel's recommendation, and therefore, disbar Respondent.

I.

Respondent Gilbert S. Bagnell was admitted to the Bar in 1991. In 2006, Client hired Respondent to work on a matter against a financial institution over a disputed debt.^[1] At the time, Respondent told Client that he had hired an additional firm to assist Respondent in the matter.^[2] Shortly thereafter, Respondent became very difficult to contact. Client called Respondent multiple times, sent multiple certified letters, used intermediaries to attempt to contact Respondent, and tracked Respondent down to speak to him personally. Whenever Client was able to get in touch with Respondent, Respondent was always dismissive. Respondent failed to do any work on the case or file an action. Respondent further failed to return Client's files, as requested.

Client filed a complaint with ODC in 2009. ODC informed Respondent of the allegations of misconduct and the initiation of a full investigation by way of multiple letters. Respondent failed to respond to these allegations or to a subpoena for documents. In early 2010, ODC filed formal charges—again, Respondent failed to acknowledge or answer. As a result, an order of default was issued. In July 2010, ODC notified Respondent of a hearing on the formal charges.^[3]

The matter came before a hearing panel of the Commission on Lawyer Conduct (Panel) in August 2010, and Respondent did not appear. At the hearing, Client testified that he

suffered about \$28,800 in damages as a result of Respondent's actions. He testified that he believed the statute of limitations had run on his cause of action.

The Panel found Respondent violated the following Rules of Professional Conduct under Rule 407, SCACR: Rule 1.2 (scope of representation); Rule 1.3 (diligence); Rule 1.4 (communication); Rule 1.16 (declining or terminating representation); Rule 8.1(b) (cooperating with disciplinary authority); Rule 8.4(a) (misconduct); Rule 8.4(e) (conduct prejudicial to the administration of justice). The Panel also found Respondent committed misconduct under the Rules for Lawyer Disciplinary Enforcement under Rule 413, SCACR: Rule 7(a)(1) (violated Rules of Professional Conduct); Rule 7(a)(3) (willfully failed to comply with subpoena issued under Rules of Professional Conduct and failed to respond to a lawful demand from disciplinary authority); Rule 7(a)(5) (engaged in conduct tending to pollute the administration of justice, tending to bring the courts and the legal profession into disrepute, and demonstrating unfitness to practice law). The Panel ultimately recommended Respondent be disbarred and ordered to pay the cost of the disciplinary proceeding.

II.

This Court "may accept, reject, or modify in whole or in part the findings, conclusions and recommendations of the Commission." Rule 27(e)(2), RLDE, Rule 413, SCACR.

An attorney's failure to answer formal charges is an admission of the factual allegations set forth in those charges. Rule 24(a), RLDE, Rule 413, SCACR. Similarly, an attorney's failure to appear before the Panel when ordered to do so is an admission of the factual allegations that were the subject of the hearing. Rule 24(b), RLDE, Rule 413, SCACR.

III.

We find Respondent has committed misconduct in the respects identified by the Panel. Thus, we find Respondent violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.2 (scope of representation); Rule 1.3 (diligence); Rule 1.4 (communication); Rule 1.16 (declining or terminating representation); Rule 8.1(b) (cooperating with disciplinary authority); Rule 8.4(a) (misconduct); Rule 8.4(e) (conduct prejudicial to the administration of justice). We further find Respondent violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (violated Rules of Professional Conduct); Rule 7(a)(3) (willfully failed to comply with subpoena issued under Rules of Professional Conduct and failed to respond to a lawful demand from disciplinary authority); Rule 7(a)(5) (engaged in conduct tending to pollute the administration of justice, tending to bring the courts and the legal profession into disrepute, and demonstrating unfitness to practice law).

We find disbarment is warranted in Respondent's case. As the Court has stated on numerous occasions, an attorney who "fail[s] to answer charges or appear to defend or explain alleged misconduct indicates an obvious disinterest in the practice of law." In re Hall, 333 S.C. 247, 251, 509 S.E.2d 266, 268 (1998). Attorneys who engage in such conduct face severe sanctions "because a central purpose of the disciplinary process is to protect the public from unscrupulous and indifferent lawyers." Id.; see In re Murph, 350 S.C. 1, 4-5, 564 S.E.2d 673, 675 (2002) (an attorney's bad acts, combined with his failure to respond, warranted disbarment); see also In re Sifly, 279 S.C. 113, 115, 302 S.E.2d 858, 859 (1983) (disbarring an attorney who failed to timely file an appeal on behalf of a client, failed to adequately represent a client in a trust fund matter resulting in significant monetary

losses by the client, drew checks on his personal account that were not sufficiently funded, had a civil default judgment entered against him, and failed to cooperate with disciplinary authorities or appear to contest the charges against him).

Respondent abandoned the practice of law, prejudicing Client and the administration of justice. Respondent is clearly not fit to practice law. We disbar Respondent. Within fifteen days of the date of this opinion, Respondent shall surrender his certificate of admission to practice law and shall file an affidavit with the Clerk of Court showing he has complied with Rule 30, RLDE, Rule 413, SCACR. Further, Respondent is ordered to pay the costs of the Panel proceedings within 60 days, in the amount of \$910.55.

DISBARRED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

[1] Client hired Respondent to pursue a suit against the financial institution for allegedly wrongly damaging Client's credit rating, which led to substantial economic loss.

[2] In fact, the law firm contacted by Respondent had declined to assist in the matter. Respondent never notified Client of that fact.

[3] Respondent abandoned the practice of law and ignored all ODC inquiries. It appears that Respondent moved and informed neither ODC nor the South Carolina Bar of a new mailing address. As a result, it may be that Respondent did not receive actual notice of the panel hearing. ODC sent notice to Respondent's last known address. Respondent was well aware of the grievance proceedings and so acknowledged in a letter he provided the Court shortly before oral argument. In the letter, Respondent consented to the sanction of disbarment and waived any objections to service. Although notified of oral argument, Respondent failed to appear.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals,

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No: 2011-CP-40-1998

RECEIVED
APR 14 2016
SC Court of Appeals

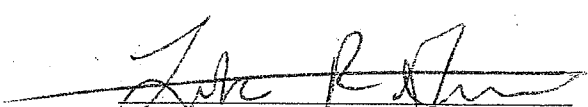
Gilbert S. Bagnell and Bagnell and Eason, LLC Appellants,

v.

Jones G. Herring Respondent.

NOTICE OF APPEAL

Defendants/Appellant files this Notice of Appeal in regard to the attached Orders Defendants received or about February 5, 2016 and March 17, 2016. The attached Orders appear to be finalized versions of the rulings of Judge Alison R. Lee on the Order of Default awarding damages to Plaintiff in the matter and Defendants' Motion to Reconsider.


Richard R. Gleissner, Esquire
Luke R. Gleissner, Esquire
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for Appellants

April 14, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No: 2011-CP-40-1998

RECEIVED
APR 14 2016
SC Court of Appeals

Gilbert S. Bagnell and Bagnell and Eason, LLC Appellants,

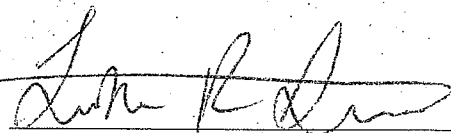
v.

Jones G. Herring Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2016, addressed to its attorney of record as follows:

Douglas N. Truslow, Esquire
Truslow and Truslow
P.O. Box 1465
Columbia, SC 29202



Richard R. Gleissner, Esquire
Luke R. Gleissner, Esquire
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for the Appellants

Dated: April 14, 2016

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2011CP4001998**

Jones G Herring

Gilbert S Bagnell

PLAINTIFF(S)

Bagnell and Eason LLC
DEFENDANT(S)

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Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 4 day of Feb, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 4 February 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas Neal Truslow

Richard R. Gleissner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jones G. Herring,

Plaintiff,

vs.

Gilbert S. Bagnell and
Bagnell & Eason, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-40-01998

ORDER

RECEIVED

APR 14 2016

SC Court of Appeals

RICHLAND COUNTY
FILED
2016 FEB -4 AM 10:17
JEANNETTE W. NICBRIDGE
C.C.P. & G.S.

Plaintiff Jones G. Herring ("Plaintiff") brought this action on March 24, 2011, seeking damages for negligence, fraud, constructive fraud, breach of fiduciary duty, and misrepresentation. Defendant Gilbert S. Bagnell ("Bagnell") and Defendant Bagnell & Eason, LLC, ("Bagnell & Eason") (collectively, "Defendants") failed to answer Plaintiff's complaint in a timely fashion, and as a result, a default judgment was entered on June 14, 2011. On October 31, 2011, the trial court held a hearing to determine damages in accordance with Rule 55(b)(2), SCRCF. The only evidence presented at the hearing was testimony from Plaintiff. Following the hearing, the trial court took the matter under advisement and left the record open to allow for the presentation of supplemental evidence. Thereafter, Plaintiff submitted an affidavit concerning his damages, and the Court signed an order in favor of the Plaintiff on November 23, 2011, awarding Plaintiff \$254,306.77 in actual damages and \$250,000.00 in punitive damages. Defendants appealed the trial court's order to the South Carolina Court of Appeals.

The Court of Appeals remanded this matter for a determination of damages based on the evidence presented. *Herring v. Bagnell*, 2014 WL 2968929 at *1 (Ct. App. June 30, 2014). The parties waived any right to have the damages hearing before a jury. On August 26, 2015, the Court held a damages hearing on Plaintiff's claims against Defendants. Present at the hearing were Douglas Neal Truslow, Esquire, counsel for Plaintiff, and Richard R. Gleissner, counsel for Defendants. Based upon the testimony, evidence, and the record before the Court, the Court makes the following findings of fact and conclusions of law.

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FINDINGS OF FACT

1. By late 1998 or early 1999, Plaintiff had incurred consumer debt around \$100,000.00, a substantial portion of which was with Citibank/CitiFinancial and/or its affiliates ("Citi"). At that time, Plaintiff's consumer debt carried an interest rate of 24% or higher, plus additional costs for late fees and penalties. Plaintiff acknowledged that he was insolvent. Plaintiff, however, wanted to avoid bankruptcy if possible. Accordingly, Plaintiff sought assistance through Consumer Credit Counseling Service ("CCCS"). CCCS assisted Plaintiff, as well as his creditors, by negotiating and restructuring Plaintiff's consumer debt obligation by extending the payment time at a reduced rate of interest. Plaintiff and his consumer debt creditors, including Citi, reached a formal written agreement ("Agreement") by which Plaintiff was to repay all of his then existing debt at a lowered interest rate. Under the Agreement, Plaintiff would make payments to CCCS, who would then make the payments to the holders of the respective debt obligations. The debt was to be paid in full by 2005. Pursuant to the Agreement, Plaintiff's consumer creditors, including Citi, agreed that upon full payment, Plaintiff's debt would not be adversely reported on his credit. This Agreement allowed Plaintiff to realize the benefits of credit at lower interest rates, avoid taxes associated with loan forgiveness, avoid letters and phone calls at work and at home demanding repayment, and ultimately, be able to purchase a home.

2. After entering into the Agreement in 1999, Plaintiff sold his home, lived frugally, rented a cheap apartment, often ate only one meal per day, and took a second job to earn money to pay off his debt. Plaintiff was able to pay off his entire consumer debt by 2005 as required by the Agreement. Thereafter, however, Citi failed to honor the Agreement by continuing to seek payment from Plaintiff.

3. Plaintiff's disputes with Citi involved two credit obligations: (1) a credit account Plaintiff maintained at Citi's location on Knox Abbott Road in Cayce, South Carolina ("Knox Abbott Account"); and (2) a credit account Plaintiff had at Citi's location in Charlotte, North Carolina ("Charlotte Account").

4. Plaintiff testified that these accounts originally had interest rates about 24%. Pursuant to the Agreement, however, these accounts' interest rates were reduced to about 8% while Plaintiff paid off the remaining balances.

5. Sometime in, or around, September of 2004, Plaintiff and Citi agreed that the remaining balance on the Knox Abbott Account was \$1,810.00. In, or around, May of 2005, Plaintiff paid

and #2

the outstanding balance for the Knox Abbott Account in full. Nonetheless, CCCS continued to make payments on the Knox Abbott Account in excess of \$1,200.00. Although the Knox Abbott Account was satisfied in full, Citi placed negative marks against Plaintiff's credit. Citi also had its collection personnel, and at least one of its lawyers, seek out payments from Plaintiff that were not due. Furthermore, Citi reported "income" for Plaintiff for 2005 on the IRS Form 2009-C. Apparently, the "income" was the amount of the debt Plaintiff did not pay because of the negotiations with CCCS referred to as loan forgiveness. Plaintiff, however, had, by this point, paid his debt in full.

6. Plaintiff eventually sought the assistance of the South Carolina Department of Consumer Affairs ("SCDCA") in an effort to resolve his dispute with Citi regarding the amount owed and any overpayments. SCDCA was unable to obtain any response from Citi. Accordingly, SCDCA recommended that Plaintiff obtain an attorney as he possibly had a meritorious claim against Citi.

7. In the beginning of 2006, Plaintiff received an IRS Form 1099-C for a forgiveness of debt in 2005 of \$7,238.34. This amount later was corrected to a lesser amount of \$3,619.17. As a result of this putative additional income, Plaintiff's taxable income was at a higher level. As a result, he was unable to receive an educational tax credit on behalf of his son. The excess income resulted in Plaintiff not realizing \$1,805.00 in a tax refund in 2006 and having to pay an additional \$800.00 in his son's college tuition.

8. Sometime in, or around, 2008, Plaintiff sought to purchase a home from the estate of his father. As a result of Plaintiff's poor credit score caused, in part, by Citi placing negative marks on his credit, Plaintiff was unable to qualify for favorable interest terms or waiver of closing costs. As a result, Plaintiff testified that he will likely pay an additional \$7,342.99 in closing costs and interests over the term of the loan.

9. Plaintiff testified that from 2006 through 2009, he had a viable complaint against Citi related to unfair consumer debt and collection practices, and that his actual damages were at least \$100,000.00, plus \$28,000.00 of other consequential damages. Plaintiff testified that in 2006, he had at least a "banker's box" of detailed documentation. The documentation included: 1) Plaintiff's original consumer debt; 2) the Agreement; 3) a detailed log of activities; 4) Citi's activities related to continually seeking payment from Plaintiff after his debt had been satisfied; and 5) credit reports, checks, and other related records evidencing the Agreement and his

consequential damages of at least \$28,000.00. Plaintiff also had letters from a local branch of Citi proving that Plaintiff had paid his debts in full and that none of his debt actually forgiven was taxable income. Plaintiff, moreover, testified that he had documented information reflecting that Citi was engaged in predatory lending and collection practices nationally. Plaintiff, furthermore, had documentation showing that he could not acquire the available lower rates (at less than 24%) on consumer credit because of Citi's inaccurate reports that Plaintiff had not paid his debt and therefore, was a bad credit risk.

10. In January and/or February 2006, and upon recommendation by an acquaintance, Plaintiff met with Bagnell. Bagnell represented to Plaintiff that he possessed considerable experience and skill in trying unfair debt collection cases and that he had investigated the matter. According to Bagnell, Citi was engaged in dual record keeping and had otherwise engaged in extensive illegal, predatory lending and collection practices. Defendants encouraged Plaintiff to engage them to initiate lawsuits both personally and as a class action representative against Citi. On May 17, 2006, Plaintiff and Defendants entered into a written contract of engagement. Bagnell informed Plaintiff that the law firm of McGowan, Hood and Felder, LLC ("McGowan Hood"), was co-counsel on the case. McGowan Hood is listed as co-counsel on the contract.

11. In conjunction with Plaintiff having entered into a formal contract of legal representation with Defendants, Bagnell required Plaintiff to provide all of his original documents in the banker's box detailing the transactions related to Plaintiff's debt since 1998, as well as documentation concerning Citi's wrongful acts and his resulting damages. The documents Plaintiff provided to Bagnell were Plaintiff's only copies. Bagnell explained that he would return the copies to Plaintiff but failed to do so despite repeated requests. Bagnell opined that Plaintiff had at least \$100,000.00 in actual damages. Plaintiff was inexperienced in the law and relied upon Bagnell's advice, as his attorney.

12. On October 13, 2006, Bagnell wrote a letter to an attorney who had been demanding money from Plaintiff for payment of an alleged Citi debt. Bagnell referred to 15 U.S.C. § 1692(e) concerning abusive, deceptive and unfair debt collections practices in the letter. Bagnell stated specifically that "[o]ur investigation suggests that CitiFinancial maintains a double set of books." In this letter, Bagnell appears to support and corroborate the historical, underlying facts and claims asserted by Plaintiff.

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13. In 2007 and 2008, Bagnell assured Plaintiff that he had filed a lawsuit on Plaintiff's behalf and that he and McGowan Hood were actively pursuing the case on Plaintiff's behalf. Bagnell orally asserted that Plaintiff's damages were at least \$100,000.00 independent of other consequential damages of \$28,000.00.

14. Between 2008 and 2011, Plaintiff made repeated attempts to meet with Bagnell to obtain legal updates concerning his case and a copy of the files and documents that he previously had provided Bagnell. Plaintiff also associated other counsel in an attempt to retrieve his files from Defendants, but to no avail. Plaintiff, furthermore, attempted to obtain the documents from Citi but similarly was unsuccessful. Thereafter, Plaintiff attempted to obtain his documents from the United Way and SCCPA but, again, was unsuccessful. Plaintiff eventually sought the assistance of the South Carolina Bar in an attempt to obtain his file and pursue his case with other counsel.

15. In 2009, when the Bar's efforts proved unsuccessful, Plaintiff filed a grievance against Bagnell with the Office of Disciplinary Counsel (ODC). Bagnell failed to respond to a subpoena from ODC for Plaintiff's documents and Defendants' file. Bagnell did not cooperate with ODC or Plaintiff. Without his necessary documents, Plaintiff could not find another attorney to take his case. Plaintiff, thus, could not proceed in his claims against Citi without his files. Plaintiff contacted McGowan Hood and learned that it never had been involved in Plaintiff's case despite Bagnell's assurances to the contrary.

16. Plaintiff then learned that Bagnell had been suspended from the practice of law on October 9, 2009. In an Opinion filed July 18, 2011, the Supreme Court found that: (a) Bagnell committed numerous acts of misconduct that harmed Plaintiff; (b) Bagnell's conduct undermined the administration of justice and harmed the legal profession; and (c) Plaintiff was financially prejudiced by Bagnell's actions. *See In re Bagnell*, 393 S.C. 382, 713 S.E.2d 304 (2011). Bagnell was disbarred. *Id.* at 386, 713 S.E.2d at 306.

17. In its disbarment Order, the South Carolina Supreme Court found that Bagnell abandoned Plaintiff and caused him prejudice. *Id.* The clear and convincing evidence in this matter convinces the Court of the same.

18. Bagnell sold his home for a significant amount of money, left the State of South Carolina and moved to New York after realizing a substantial settlement in an unrelated case. Despite Bagnell's suspension from the practice of law, Bagnell and Eason continued to hold itself out as being an active law firm, and Mr. Eason failed to advise Plaintiff that Bagnell had been

suspended from the practice of law. Furthermore, Bagnell and Eason maintained no record of the case and asserted that it had no obligation to assist Plaintiff.

19. Following his disbarment, Bagnell claimed that he provided Plaintiff with all of his documents. Plaintiff denies that Bagnell provided the documentation and avers that the statute of limitations governing his claim has expired.

20. On November 21, 2011, Bagnell filed a Memorandum Regarding Damages that included an affidavit wherein Bagnell explained that "Herring provided me [an] electronic file [of his documents] in disc form when he first discussed the matter with me."¹ Bagnell also stated that "in January 2011, when my files were delivered to me out of storage (where I had not been able to access them), I promptly forwarded the electronic records to Mr. Herring and he acknowledged receipt of those records."² Bagnell admitted that he did not provide Plaintiff the original paper files because he was unable to locate them.³ Bagnell attached the disc to his Memorandum Regarding Damages. This electronic file contains about 280 pages of documents.⁴ Although it is unclear whether Plaintiff received this electronic file in January 2011, the memorandum and disc were filed with the Richland County Clerk of Court on November 21, 2011. Plaintiff, thus, did receive an electronic copy of at least some of his files (if not all). Although Plaintiff was provided with a substantial amount of original documents (in electronic

¹ *Affidavit of Gilbert Bagnell* attached to *Defendant's Memorandum Regarding Damages* (November 18, 2011).

² *Id.*

³ *See id.*

⁴ Numerous documents were included on this disc, including, but not limited to: a 1099-C showing cancellation of \$7,238.34 in debt, dated November 9, 2005; a corrected 1099-C showing cancellation of \$3,619.17 in debt, dated November 9, 2005; a fax, dated November 6, 2006, sent by Herring to a representative with Citi contesting the 1099-C cancellation of debt; various statements showing amounts due; documents related to the underlying agreement between Herring and CCCS; disclosure statements/agreements with Commercial Credit Corporation; letters from the South Carolina Department of Consumer Affairs to Citi concerning complaints filed by Herring against Citi; Herring's complaint against Citi filed with the Department of Consumer Affairs; a letter Herring sent to a representative of Citi indicating that he had overpaid on his accounts; the respective response from that representative; a Citi account balance statement showing that Herring's account was paid in full; various Citi account statements; a CCCS credit information sheet; a CCCS family budget sheet; various faxes Herring sent to Citi contesting remaining balances; periodic reports sent by CCCS to Herring; and an Equifax Credit Report.

form), it was not until he spent at least three years trying to obtain them directly from Bagnell and over five years since Plaintiff entered into the legal representation agreement with Bagnell.⁵

21. Plaintiff provided credible testimony concerning damages related to: (a) an excess amount Plaintiff paid to Citi; (b) Plaintiff's inability to receive a certain tax refund; (c) additional expenses Plaintiff paid in tuition; and (d) additional closing costs and interest Plaintiff paid.

CONCLUSIONS OF LAW

1. The Court possesses both subject matter and personal jurisdiction. Venue is proper in Richland County.

2. Defendants are in default, and thus, are deemed to have admitted the truth of Plaintiff's allegations and to have conceded liability on Plaintiff's claims of negligence, fraud, constructive fraud, breach of fiduciary duty, and misrepresentation. *See Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). By defaulting, Defendants, however, have not admitted the *amount* of liability in damages. *See Renney v. Dobbs House, Inc.*, 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981) ("a defendant in default admit[s] liability but [does] not admit the damages as set forth in the prayer for relief."). Plaintiff must prove his damages by the preponderance of the evidence. *See Jackson v. Midlands Human Resources Ctr.*, 296 S.C. 529, 529, 374 S.E.2d 505, 506 (Ct. App. 1988). During the damages hearing, defense counsel is entitled to cross-examine witnesses and object to evidence presented. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978). The issue before the Court is the amount of Plaintiff's actual and, if applicable, punitive damages.

3. To recover damages, "the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). Accordingly, "the existence or amount of damages cannot be left to conjecture, guess or speculation." *Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 391, 162 S.E.2d 705, 708 (1968). Plaintiff, thus, is required to prove by the preponderance of the evidence, and with reasonable certainty, the amount of damages caused by Defendants' negligence.

4. Under South Carolina law, the liability for negligence and breach of fiduciary duty against an attorney and law firm acting within their scope of practice is most properly defined as an action for legal malpractice. *See Smith v. Hastie*, 367 S.C. 410, 412-13, 626 S.E.2d 13, 14

⁵ Herring and Bagnell entered into the legal representation agreement on May 17, 2006.

(Ct. App. 2005). "A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach." *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012). Although, through their default, Defendants have admitted the facts giving rise to Plaintiff's legal malpractice claim, Plaintiff must still prove, by the preponderance of the evidence, his amount of damages.

5. Defendants argue that Plaintiff has been unable to establish his damages. Specifically, Defendants allege that the damage caused to Plaintiff by the Defendants' fraud, constructive fraud, and misrepresentation appears to be none. The Court disagrees.

6. Defendants argue that Plaintiff failed to present adequate evidence that Defendants' failure to bring an action against Citi, as either a class action or as one for the breach of the Fair Credit Reporting Act or Fair Debt Collection Practices Act resulted in any quantifiable harm. Defendants specifically contend that Plaintiff failed to present evidence as to the ability to bring an action on his causes of actions against Citi. Defendants, however, fail to recognize that by defaulting on Plaintiff's cause of action against Defendants, they admitted that Plaintiff possessed the ability to bring a cause of action against Citi. In other words, Plaintiff alleged, among other things, that Defendants were negligent in not bringing a cause of action within the requisite statute of limitations, and because of Defendants' negligence, Plaintiff lost his ability to successfully bring a claim against Citi. Accordingly, since Defendants defaulted on Plaintiff's claims against them, they admitted the veracity and underlying success of Plaintiff's claims against Citi. As such, the only issue before the Court is the amount of damages caused by Defendants' failure to bring an action against Citi on behalf of Plaintiff.

7. Plaintiff contends that since Bagnell asserted that Plaintiff's claim was worth at least \$100,000.00 in actual damages and \$28,000.00 in other consequential damages, Plaintiff is entitled to such damages in this matter. The record, however, fails to reflect how Plaintiff, and through his counsel, Bagnell, arrived at such numbers. Unfortunately, Plaintiff no longer has possession of the documents that allegedly supported such damages. Nonetheless, damages awarded may not be speculative. Accordingly, Plaintiff is not entitled to \$100,000.00 in actual damages and \$28,000.00 in other consequential damages simply because Bagnell, his attorney, stated his claim was worth that much. Mere testimony from a party or his attorney concerning a

case's worth is insufficient to satisfy the preponderance of the evidence standard. See *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85-86 (Ct. App. 2008) ("[I]n order for damages to be recoverable[,] the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy."); *Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C. 556, 561, 274 S.E.2d 287, 289 (1981) ("Whether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount of damages based on the proof, and such proof must be by preponderance of the evidence."); *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 240, 246 S.E.2d 880, 881 (1978) ("[I]n a tort action[,] the amount stated in the prayer for relief often bears little relation to the amount which the plaintiff is entitled to recover. The prayer in an action may not serve as a substitute of proof. The plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence.").

8. Plaintiff, however, as part of his legal malpractice claim against Defendants, is entitled to the actual damages caused by Citi in its failure to follow the terms of the Agreement it entered into with Plaintiff. As admitted by Defendants' default, Plaintiff would have been successful in seeking those damages from Citi.⁶ Defendants' failure, moreover, to bring such a cause of action against Citi prevented Plaintiff from receiving those damages. Plaintiff's uncontroverted testimony and supporting affidavits prove, by the preponderance of the evidence, that Citi's breach of the underlying Agreement caused Plaintiff to suffer the following actual damages: (1) at least \$1,200.00 in overpayment to Citi; (2) \$1,805.00 in a tax refund Plaintiff would have received had Citi not improperly reported to the IRS that Plaintiff had incurred income when, in fact, Plaintiff had not; (3) \$800.00 in additional tuition expenses Plaintiff incurred because of his putative "increased income" causing him to not qualify for an education tax credit; and (4) \$7,342.99 in additional closing costs and interest that Plaintiff has, and will continue to have, to pay because of negative reports on his credit.

9. Plaintiff also is entitled to punitive damages because of the egregious manner in which Bagnell conducted himself as an attorney of the State of South Carolina. Bagnell undermined the pursuit of justice and tarnished the esteem of the legal profession. Punitive damages may be awarded when a plaintiff proves by "clear and convincing evidence the defendant's misconduct

⁶ Although Defendants believed that Plaintiff also would have received a much higher amount of damages because of Citi's unfair collection practices.

was willful, wanton, or in reckless disregard of the plaintiff's rights." *Welch v. Epstein*, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). "Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964). "The trial judge is vested with considerable discretion over the amount of a punitive damages award[.]" *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 149, 494 S.E.2d 449, 458 (Ct. App. 1997). Although courts "possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416, 123 S. Ct. 1513, 1519 (2003).

10. In *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574, 116 S. Ct. 1589, 1598 (1996), the United States Supreme Court held that "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *Gore* established three guideposts "that indicate whether the due process requirement of fair notice has been met." *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009). Under *Gore*, courts are to consider: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the harm, or potential harm, suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages award and civil penalties authorized or imposed in comparable cases. See *Gore*, 517 U.S. at 574-75, 116 S. Ct. at 1598-99.

11. *Mitchell, Jr.* articulated a new test courts are to use in determining whether, and how much, to award in punitive damages. 385 S.C. at 587, 686 S.E.2d at 185. Under *Mitchell, Jr.*, courts are to consider the following factors: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the amount of punitive damages award; and (3) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. *Id.* at 587-88, 686 S.E.2d at 185-86.

12. "[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Gore*, 517 U.S. at 575, 116 S. Ct. at 1599. "This principle reflects the accepted view that some wrongs are more blameworthy than

others.” *Id.* In determining the reprehensibility of a defendant’s conduct, the court should consider whether:

- (1) the harm caused was physical as opposed to economic;
- (2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others;
- (3) the target of the conduct had financial vulnerability;
- (4) the conduct involved repeated actions or was an isolated incident; and
- (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm, 538 U.S. at 419, 123 S. Ct. at 1521.

13. In determining the appropriate ratio between the actual or potential harm to plaintiff and the amount of a punitive damages award, courts may consider: “the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant’s ability to pay.” *Mitchell, Jr.*, 385 S.C. at 588, 686 S.E.2d at 185. “[I]n practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” *State Farm*, 538 U.S. at 425, 123 S. Ct. at 1524.

14. In considering the difference between the amount of punitive damages awarded and civil penalties authorized or imposed in comparable cases, courts may consider: “the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant’s conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.” *Id.* at 588–89, 686 S.E.2d at 186.

15. Defendants’ conduct has been manifestly reprehensible. Defendants represented to Plaintiff that they would bring a cause of action against Citi on Plaintiff’s behalf. Defendants also represented that they had associated local counsel to help pursue Plaintiff’s claim. Plaintiff provided Defendants his file of documents in hopes of pursuing such claim. Defendants informed Plaintiff that Plaintiff would receive copies of his documentation. Plaintiff, however, after repeated attempts, never received such documentation. Plaintiff attempted to contact Defendants numerous times in person, via telephone, email, and mail, including certified mail. Defendants, however, failed to respond to Plaintiff. The statute of limitations governing Plaintiff’s claims against Citi eventually ran. Plaintiff is now unable to bring his causes of action against Citi. Plaintiff first contacted Defendants in early 2006. Plaintiff, thus, has spent the past nine years seeking a resolution in this matter. The duration of Defendants’ egregious conduct in

this matter is troubling. Defendants' conduct reflects poorly on the legal profession's reputation. The harm resulting from Defendants' conduct largely is unquantifiable. Due to Defendants' failure to return Plaintiff's documents and Defendants allowing the statute of limitations to run, Plaintiff now is unable to bring any causes of action against Citi.

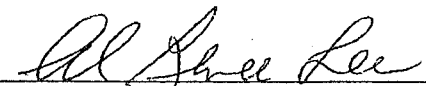
16. A punitive damages award in this matter will discourage other attorneys from acting in a similarly egregious manner. Plaintiff testified in the previous October 31, 2011, damages hearing that Defendants had informed him that, in 2005 or 2006, Defendants realized a fee in excess of thirty million dollars in an unrelated case.⁷ Thus, it appears that Defendants are jointly and severally capable of paying a sum of \$100,000.00 in punitive damages. An award of \$100,000.00, moreover, has a single digit ratio (8.97:1) between Plaintiff's punitive damages award and Plaintiff's actual damages award. Plaintiff, thus, is entitled to punitive damages against Defendants, jointly and severally, equaling \$100,000.00.

17. The Court is deeply troubled by Defendants' behavior and its impact upon the public's perspective of the legal profession. As determined by the South Carolina Supreme Court in Bagnell's disbarment proceedings, Bagnell "abandoned the practice of law, prejudicing [Plaintiff] and the administration of justice." *In re Bagnell*, 393 S.C. 382, 386, 713 S.E.2d 304, 306 (2011).

ORDER

For the reasons stated above, it is therefore **ORDERED** that Plaintiff is entitled to actual damages in the amount of \$11,147.99 and punitive damages in the amount of \$100,000.00.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
February 1, 2016

⁷ Plaintiff admitted into evidence, as Plaintiff's Exhibit 5, the Transcript of Record from the previous damages hearing. During the previous hearing, as noted in its Transcript of Record, Plaintiff was asked whether Bagnell left South Carolina "[a]fter telling [Plaintiff] he had gotten a \$30 million fee and a \$10 million fee on some related cases," to which Plaintiff responded, "[m]y understanding." Transcript of Record at 22:7-9 (October 31, 2011).

and
#12

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4001998

Jones G Herring

Gilbert S Bagnell

PLAINTIFF(S)

Bagnell and Eason LLC

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC Vol. 15, SCRPC (Settled); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 16 March 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas Neal Truslow

Richard R. Gleissner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. Agnew

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jones G. Herring,

Plaintiff,

vs.

Gilbert S. Bagnell and
Bagnell & Eason, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-40-01998

ORDER

RICHLAND COUNTY
FILED
2016 MAR 16 AM 9:08
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court on Defendants' Motion to Reconsider, Alter, Amend, and/or Clarify judgment pursuant to Rule 52(b), SCRPC, and Rule 59(e), SCRPC. This matter came before the Court on August 26, 2015, as a damages hearing on Plaintiff's claims against Defendants. On February 1, 2016, the Court awarded damages in favor of Plaintiff in the amount of \$11,147.99 in actual damages and \$100,000.00 in punitive damages. Defendants filed this motion on February 15, 2016.

After careful consideration of the motion made, memoranda submitted, and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendants' Motion to Reconsider, Alter, Amend, and/or Clarify judgment in this matter. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

Although the Court denies Defendants' Motion, the Court takes this additional opportunity to respond to arguments Defendants made in their Rule 52, SCRPC, and Rule 59, SCRPC, Motion. In their Motion, Defendants argue that the Court, in its February 1, 2016, Order "conflate[d] the Defendants' admission of liability with what evidence is necessary to show the proximately related damages." Defendants' Motion at 1. Defendants argue that through their default they admitted only their negligence in allowing Plaintiff's statute of limitations to expire on his underlying causes of action against Citi—they did not admit that

Plaintiff's damages were compensable. Defendants then cite several cases¹ in support of their contention that "adequate evidence [must be] presented establishing the harm to Plaintiff caused by Citi would have been recovered 'but for' the negligence of Defendant." Defendants' Motion at 2. The cases cited by Defendants, however, all involved defendant attorneys who did not default on the claims brought against them. Those cases, therefore, are not dispositive on the issues presented in the instant matter. In this case, Plaintiff, in his complaint, alleged, among other things, that Defendants were negligent in not bringing a cause of action within the requisite statute of limitations, and because of Defendants' negligence, Plaintiff lost his ability to successfully bring a claim against Citi. Since Defendants defaulted on Plaintiff's claims against them, they admitted the veracity and underlying success of Plaintiff's claims against Citi. Accordingly, Defendants have conceded that "but for" their negligence, Plaintiff "most probably" would have been successful on his underlying claims against Citi. As such, the only issue before the Court was the amount of damages caused by Defendants' failure to bring an action against Citi on behalf of Plaintiff.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
March 14, 2016

¹ Defendants cite the following cases: *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); *Brown v. Theos*, 345 S.C. 626, 550 S.E.2d 304 (2001); *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988); *Floyd v. Kosko*, 285 S.C. 390, 329 S.E.2d 459 (Ct. App. 1985).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No: 2011-CP-40-1998
Appellate Case No.: 2016-000772

RECEIVED

JAN 03 2017

SC Court of Appeals

Jones G. Herring, ... Respondent,

v.

Gilbert S. Bagnell and Bagnell and Eason, LLC, ...Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal complies with Rule 211(b),
SCACR.



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Attorneys for Appellants

January 3, 2017