

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL # **2016-001379** FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

CIVIL ACTION 2015-CP-10-6819

ORDER OF DISMISSAL

HONORABLE KRISTI LEE HARRINGTON PRESIDING JUDGE

Tracy Smith,

Appellant

v.

Sarah Gainey SAVE, Inc.

Respondent

**RECORD ON APPEAL**

Tracy Smith  
Pro Se Appellant  
1510 SWARTZ FAIRBANKS ROAD  
MONROE, LA 71203  
318 233 8572

**RECEIVED**

APR 10 2017

SC Court of Appeals

**INDEX - PRINCIPLE MATTERS ON RECORD – Smith V. Gainey SAVE Inc. CIVIL ACTION 2015-CP-10-6819**

**ORDER OF DISMISSAL WITH PREJUDICE** - written by defense counsel with no edits by Judge, omitting breach of contract and misrepresentation claims, mischaracterization of complaint as solely professional negligence action, false and misleading statement of service dates without evidentiary support (Page 2)

**JUDGEMENT** – “.....Plaintiff is given 30 days to file *the required* affidavit or this case is subject to dismissal with prejudice.” (Page 4)

**PLEADINGS**

Plaintiff’s Summons and Complaint –citing personal injury and breach of contract including specifically Breach of Duty of Care, Misrepresentation, Breach of Contract, Breach of Fiduciary Duty, Intentional Infliction of Emotional Distress (Page 7)

Defendant’s Answer (Page 11)

**HEARING TRANSCRIPT** (Page 16)

Defense characterizes complaint as professional negligence (Page 17 line 24)

Defense false statement of October 2012 as dates of “care and treatment” (Page 18 line 1)

Defense false statement that “Plaintiff failed to comply with Statute” (Page 18 line 17)

Plaintiff begins his statement rebutting Defense assertions “First of all....” (Page 18 Line 25)

Judge interrupts Plaintiff mid-sentence erroneously stating/plain error of law “what we are only here for today is the law requires.....Do you have an affidavit?” (Page 19 line 2)

Judge interrupts plaintiff stating “We don’t even get to there” and cites basketball rules analogy given to male inmate in orange jumpsuit who appeared moments prior to Plaintiff. (Page 21 line 4)

Judge erroneously states “But you haven’t followed the rules....You *again* have not done what you’re supposed to do, but are alleging what she – *what you believe* she has not done.” (Page 21 line 24)

**Plaintiff Motion to Compel** Sarah Gainey to Release Medical Records - never ruled on (Page 28)

**Defendant’s Amended Motion to Dismiss** citing Failure to Attach Expert Affidavit pursuant to SC Statute 15-36-100 B and G **omitting C** , addition of false statements of date Plaintiff filed Complaint, **Adding Statute of Limitations Defense, Deletion of Motion for more Definitive Statement** (Page 30)

**Defendant’s Initial Motion to Dismiss** citing SC 15-36-100 B and G **omitting C**, including Motion for more Definitive Statement. (Page 34)

**Plaintiff’s Notice of Civil Appeal** (Page 38)

SC CODE SECTION 15-36-100 (Page 39)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Tracy Smith, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Sarah Gainey and SAVE, Inc., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2015-CP-10-6819

**ORDER OF DISMISSAL**

FILED  
 2016 JUN 13 AM 11:27  
 WILHELM ARYSTRONG  
 CLERK OF COURT

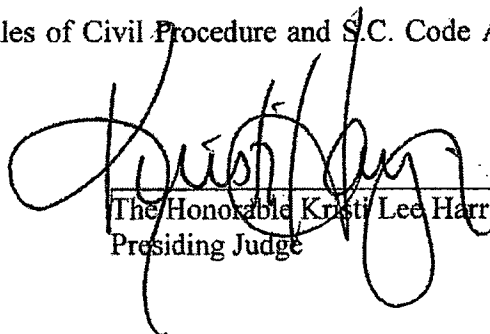
THIS MATTER appeared before me on April 29, 2016 on Defendants' Motion to Dismiss. Plaintiff Tracy Smith appeared *pro se* and Lauren Spears, Esquire, appeared on behalf of Defendants Sarah Gainey and SAVE, Inc.

Plaintiff filed this professional negligence action in Charleston County Court of Common Pleas on December 17, 2015 alleging breach of duty of care, breach of agreement of confidentiality, breach of duty to obtain adequate history, breach of fiduciary duty, intentional infliction of emotional distress, and breach of duty to obtain peer consultation against Defendant Sarah Gainey in her capacity as a licensed professional counselor licensed in the State of South Carolina, and Defendant SAVE, Inc. as her employer. These allegations stem from counseling sessions Plaintiff received from Defendant Sarah Gainey on or around October of 2012. Plaintiff claimed damages in an undisclosed amount in the form of lost wages and pain and suffering. In response, Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, S.C. Code Ann. § 15-36-100 and S.C. Code Ann. § 15-3-545, stating Plaintiff's Complaint must be dismissed with prejudice because Plaintiff failed to file the required expert affidavit along with his Complaint, and as required by S.C. Code Ann. § 15-36-

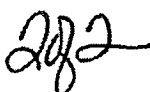
*[Handwritten signature]*

100(B), based on allegations professional negligence against Sarah Gainey, a licensed professional counselor.

The parties appeared before me on April 29, 2016. After a full hearing and reviewing the pleadings and motion, I adjudged that Plaintiff be allowed thirty (30) days in which to provide an expert affidavit alleging at least one negligent act or omission of Defendants, or Plaintiff's Complaint be dismissed with prejudice. A Form 4 Order denying Defendants' Motion was entered on May 6, 2016. As of May 31, 2016, thirty (30) days from the date of the hearing on this matter, Defendants have not been served with any affidavit from any expert on behalf of Plaintiff alleging any negligence on the part of Defendant Sarah Gainey and SAVE, Inc. As such, I hereby adjudge and decree that this matter be DISMISSED WITH PREJUDICE pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-36-100.

  
The Honorable Kristi Lee Harrington  
Presiding Judge

  
June 10, 2016  
Charleston County, South Carolina



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-6819

Tracy Smith,

Sarah Gaaney, et al.,

FILED  
 2016 MAY -6 PM 4:10  
 JULIE ARMSTRONG  
 CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------	---

**DISPOSITION TYPE (CHECK ONE)**

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

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

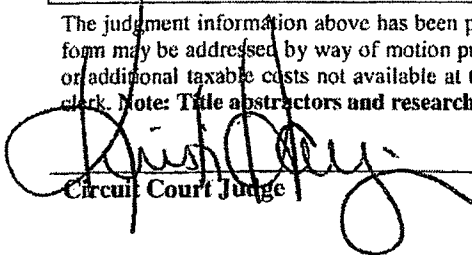
**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: Defendant's Motion to Dismiss is denied. Plaintiff is given 30 days to file the required affidavit or this case is subject to dismissal with prejudice.

**ORDER INFORMATION**

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

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
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

2151  
 Judge Code

April 29, 2016  
 Date

4



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CHARLESTON COUNTY COURT OF COMMON PLEAS

Tracy Smith,

Plaintiff,

vs.

Sarah Gainey, SAVE, INC.

Defendant

Case No.: 2015-CP-10-6819

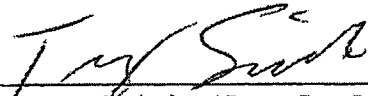
SUMMONS

FILED  
2015 DEC 17 PM 3:17  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

TO DEFENDANT SARAH GAINNEY, SAVE INC.

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Dated this Seventeenth day of  
December, 2015

  
\_\_\_\_\_  
Tracy Smith (Pro Se Litigant)  
4351 PARK ISLAND ROAD  
HOLLYWOOD, SC 29449

6

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CHARLESTON COUNTY COURT OF COMMON PLEAS

Tracy Smith,  
  
Plaintiff,  
  
vs.  
  
Sarah Gainey, Save Inc.  
  
Defendant

) Case No.: [Number] 2015-CP-10-6819  
)  
) Complaint:  
) Breach Of Duty of Care,  
) Misrepresentation,  
) Breach Of Contract,  
) Breach Of Fiduciary Duty,  
) Intentional Infliction of Emotional  
) Distress

FILED  
2015 DEC 17 PM 3:17  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Parties

Sarah L. Gainey, LPC, CEAP is President of SAVE, Inc. and personally counseled Plaintiff. SAVE, Inc. provides behavioral healthcare services and training for personal and Supervisory development. SAVE is an independent counseling and healthcare provider.

Venue

Venue is proper as Counseling was rendered in Charleston County at SAVE clinic at 4130 Faber Place.

1  
2 Facts

3 As part of plaintiff's employment agreement, plaintiff  
4 sought services including assistance, counseling, treatment,  
5 therapy for occupational problems resulting from his employment  
6 with Showa Denko.  
7

8 Plaintiff initially received counseling treatment from  
9 Sarah Gainey of SAVE Inc. Early during this treatment Sarah  
10 Gainey requested plaintiff sign a release document to allow her  
11 to verbally discuss matters with Plaintiff's coworkers.  
12 Plaintiff decided against this agreement at this early stage of  
13 treatment. Sarah Gainey subsequently ceased personal counseling  
14 and instead referred Plaintiff to Jonathon Kessler who was  
15 either a subcontractor or employed by SAVE, Inc. or employed by  
16 Sarah Gainey.  
17

18 Plaintiff received assistance, counseling, and treatment  
19 from Jonathon Kessler at SAVE clinic at 4130 Faber Place up to  
20 and including the date John Wing of Showa Denko wrongfully  
21 terminated Plaintiff's employment.  
22  
23  
24  
25  
26  
27  
28

1 Cause Of Action

2  
3 Plaintiff incorporates the facts and allegations of  
4 previous paragraphs as if stated verbatim.

5 Breach of duty to obtain adequate history. Sarah Gainey  
6 and SAVE inc. were grossly negligent by failing to obtain an  
7 adequate history and understanding of plaintiff's work  
8 environment causing severe emotional distress and damage to  
9 plaintiff.  
10

11 Breach of Duty of Care. Sarah Gainey breached her duty to  
12 use reasonable care in providing assistance and treatment of  
13 plaintiff by intentionally raising her voice and using  
14 accusatory language during counseling of plaintiff causing  
15 severe emotional distress and damage to plaintiff.  
16

17 Breach of agreement to maintain confidentiality. Sarah  
18 Gainey shared confidential information regarding Plaintiff among  
19 management of Showa Denko causing severe emotional distress and  
20 damage to plaintiff.  
21

22 Breach of Fiduciary Duty. Sarah Gainey acted with Gross  
23 negligence and through her irresponsible actions, statements,  
24 and disclosures financially damaged plaintiff.  
25

26 Intentional Infliction of Emotional Distress. Sarah Gainey  
27 acted with Gross negligence and through her irresponsible  
28

1 actions, statements, and disclosures emotionally harmed,  
2 severely distressed, and severely damaged plaintiff.


3 Breach of Duty to obtain Peer Consultation. Sarah Gainey  
4 failed to obtain Peer Consultation and seek professional  
5 consultation with appropriate parties and agencies in her  
6 efforts to reconcile her dual obligations to Plaintiff and Showa  
7 Denko causing severe emotional distress and damage to plaintiff.  
8

9  
10 Relief

11  
12  
13 Wherefore, Plaintiff prays for the following relief.

- 14  
15 1) Lost wages, benefits, and expenses expended  
16 seeking to rectify this matter.  
17  
18 2) Compensation for severe, pervasive, persistent  
19 emotional distress.  
20  
21 3) Such other and further relief as the Court deems  
22 appropriate.  
23

24 Dated this Tenth day of  
25 December, 2015

26   
27 Tracy Smith (Pro Se Litigant)  
28

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF CHARLESTON )

CIVIL ACTION NO.: 2015-CP-10-6819 )

Tracy Smith, )

Plaintiff, )

ANSWER TO PLAINTIFF'S COMPLAINT )

v. )

Sarah Gainey and Save, Inc., )

Defendants. )

FILED  
2016 JAN 15 PM 4:27  
JULIE J. ARMSTRONG  
CLERK OF COURT

**TO: TRACY SMITH, *PRO SE* PLAINTIFF**

COME NOW, Sarah Gainey, LPC and Save, Inc. (hereinafter "Defendants"), named as Defendants in the above-styled action, by and through their undersigned counsel, and while not waiving any defenses or assertions addressed in the Motion to Dismiss filed contemporaneously herewith, hereby files this Answer to Plaintiff's Complaint showing this Honorable Court as follows:

**PARTIES**

1. Defendants deny the allegations contained on Page 1, lines 14-19 of Plaintiff's Complaint, Defendants.

**VENUE**

2. Defendants admit the allegations contained on Page 1, lines 23-24, of Plaintiff's Complaint.

**FACTS**

3. Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations contained on Page 2, lines 3-6, of Plaintiff's Complaint.

4. In response to the allegations contained on Page 2, lines 7-17, of Plaintiff's Complaint, Defendants would crave reference to and incorporate herein the pertinent treatment records for a description of the treatment provided. Defendants deny any and all allegations contained in said paragraph inconsistent with said records and demand strict proof thereof.

5. In response to the allegations contained on Page 2, lines 18-22, of Plaintiff's Complaint, Defendants would crave reference to and incorporate herein the pertinent treatment records for a description of the treatment provided. Defendants deny any and all allegations contained in said paragraph inconsistent with said records and demand strict proof thereof.

#### CAUSES OF ACTION

6. In response to the allegations contained on Page 3, lines 3-4, of Plaintiff's Complaint, Defendants repeat and reallege all prior responses above as if fully set forth herein verbatim.

7. Defendants deny the allegations set forth on Page 3, lines 5-10, of Plaintiff's Complaint.

8. Defendants deny the allegations set forth on Page 3, lines 11-16, of Plaintiff's Complaint.

9. Defendants deny the allegations set forth on Page 3, lines 17-21, of Plaintiff's Complaint.

10. Defendants deny the allegations set forth on Page 3, lines 22-25, of Plaintiff's Complaint.

11. Defendants deny the allegations set on Page 3, lines 26-27 and Page 4, lines 1-2, of Plaintiff's Complaint.

12. Defendants deny the allegations set forth on Page 4, lines 3-8, of Plaintiff's Complaint.

13. To the extent Plaintiff's "WHEREFORE" paragraph demands a response, Defendants deny the same and demand strict proof thereof.

14. All other allegations or averments not specifically admitted above are hereby denied.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Failure to State a Claim)**

15. Plaintiff's Complaint fails to state a valid cause of action against Defendants, and should therefore be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Compliance with Standard of Care)**

16. At all times relevant to the matters set forth in Plaintiff's Complaint, Defendants complied with the generally accepted standard(s) of care applicable to them under the same or similar circumstances at that time, and as a result thereof, Defendants are in no way liable for the matters set forth in Plaintiff's Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(No Proximate Cause)**

17. That, even if Defendants were negligent, which is specifically denied, the negligence of or attributable to Defendants is not a direct or proximate cause of any injury alleged by Plaintiff and, therefore, Defendants are not liable for any damages allegedly sustained by Plaintiff.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Failure to Comply with the Provisions of S.C. Code Ann. § 15-36-100)**

18. As set forth in the Motion to Dismiss filed contemporaneously herewith, Plaintiff's Complaint is subject to dismissal for failing to attach an expert affidavit required by S.C. Code Ann. § 15-36-100, and failing to participate in the Notice of Intent process required by § 15-79-125.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Set-Off)**

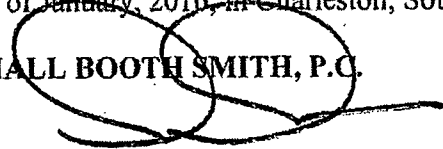
19. To the extent Plaintiff receives compensation for injuries complained of in the Complaint from any other party to this action and/or any other source, Defendants are entitled to a set-off of that amount for any damages that may or may not be assessed to Defendants.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Reservation and Non-Waiver)**

20. Defendants reserve any additional affirmative defenses as may be revealed or become available to them during the course of this investigation and/or discovery in this case and are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully responded to Plaintiff's Complaint herein, Defendants pray the Plaintiff's Complaint be dismissed, with prejudice and without cost to Defendants, and for other such relief as the Court may deem proper.

Respectfully submitted this 15<sup>th</sup> day of January, 2016, in Charleston, South Carolina.

**HALL BOOTH SMITH, P.C.**  


Jack G. Gresh, SC Bar No. 75188  
Lauren V. Spears, SC Bar No. 100994  
40 Calhoun Street, Suite 550  
Charleston, SC 29401  
Phone: 843.720.3460  
Fax: 843.720.3475  
Email: [jgresh@hallboothsmith.com](mailto:jgresh@hallboothsmith.com)  
[lspears@hallboothsmith.com](mailto:lspears@hallboothsmith.com)

*Counsel for Defendants*

Intentionally Left Blank

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF CHARLESTON

COURT OF COMMON PLEAS  
CASE NO. 2015-CP-10-6819

**RECEIVED**

OCT 19 2016

SC Court of Appeals

3  
4  
5  
6 TRACY SMITH, )  
7 PLAINTIFF, )  
8 VS. )  
9 )  
10 SARAH GAINNEY AND )  
11 SAVE, INC., )  
12 DEFENDANTS. )

TRANSCRIPT OF RECORD

APRIL 29, 2016  
CHARLESTON, SC

13 B E F O R E:

14 HONORABLE KRISTI HARRINGTON, JUDGE

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

16 TRACY SMITH, Pro Se  
17 For the Plaintiff

18 LAUREN SPEARS, ESQUIRE  
19 Attorney for the Defendant

20 \* \* \* \* \*

21  
22 Ruth C. Weese, RDR  
23 Official Court Reporter  
24 Ninth Judicial Circuit  
25

1 (The following proceedings were held  
2 April 29, 2016, Charleston County, South Carolina,  
3 @ 11:12 a.m.)

4 THE CLERK: Smith versus Gainey.

5 THE COURT: Counsel, state your name  
6 for the record and the party you represent.

7 MR. SMITH: Tracy Smith, pro se  
8 Plaintiff.

9 THE COURT: Are you an attorney?

10 MR. SMITH: No, ma'am.

11 MS. SPEARS: Lauren Spears for the  
12 Defendant Sarah Gainey and Save, Inc.

13 THE COURT: We are here on your motion  
14 to dismiss?

15 MS. SPEARS: Yes, Your Honor.

16 THE COURT: Are you prepared to go  
17 forward on that matter?

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: Happy to hear from you, Ms.  
20 Gainey, I am sorry, Ms. Spears.

21 MS. SPEARS: May it please the Court,  
22 Your Honor, we are here today on a fairly  
23 straightforward motion to dismiss. Plaintiff has  
24 filed a complaint alleging professional negligence  
25 against Defendants Sarah Gainey and Save, Inc. for

1 care and treatment around October 2012, some  
2 counseling sessions that Plaintiff received through  
3 his employer contract with Defendants. South  
4 Carolina statute 15-36-100 states, "In an action  
5 for damages alleging professional negligence  
6 against a professional licensed by or registered  
7 with the State of South Carolina listed in  
8 subsection (G) or against any licensed health care  
9 facility alleged to be liable based upon the action  
10 or inaction of the health care professional, the  
11 Plaintiff must file as part of the complaint an  
12 affidavit of an expert witness."

13 Plaintiff has failed to file an  
14 affidavit of an expert witness pursuant to  
15 15-36-100 (G)16, Sarah Gainey, the licensed  
16 professional counselor; therefore, Plaintiff has  
17 failed to comply with the statute and we would move  
18 for dismissal of the Plaintiff's claim.

19 MR. SMITH: Your Honor, may I provide  
20 this brief to the Court at this time?

21 THE COURT: That's fine. Thank you.

22 MR. SMITH: Your Honor, I'm not an  
23 attorney. I'm a software engineer. I have had a  
24 couple business law courses earning my college  
25 degree. First of all, I contend that Ms. Gainey

1 has acted outside the scope of her --

2 THE COURT: I understand. What we are  
3 only here for today is the law requires that you  
4 file an affidavit when you allege medical or  
5 professional malpractice. So it is a simple issue.  
6 If you do not have that affidavit the law requires  
7 that I must dismiss this case. Do you have an  
8 affidavit?

9 MR. SMITH: No. I am willing to get  
10 one though.

11 THE COURT: And so when -- you filed  
12 this case 2015?

13 MR. SMITH: Yes.

14 THE COURT: The law requires that when  
15 you file this case you must file it with the  
16 affidavit. Did you do that?

17 MR. SMITH: No, I did not.

18 THE COURT: And when did you have  
19 notice that there was -- that you had failed to  
20 file this affidavit?

21 MR. SMITH: I received their motion --  
22 actually I just received it about a week ago. I  
23 have changed residences. I have been out of town.  
24 I have to look at the date if you are relying on  
25 the date when they sent that. So only recently did

1 I realize I needed that affidavit.

2 THE COURT: So it was filed January  
3 29th of 2016. I am assuming that you received  
4 service fairly close to that time. Would that be  
5 an accurate statement?

6 MR. SMITH: I was probably out of town.  
7 Probably not in town. My mother may have received  
8 it. I apologize for the oversight, but I have not  
9 seen it until recently.

10 THE COURT: And so you have been on  
11 notice not only did you need to file it when you  
12 filed this case in 2015, but you were on notice as  
13 of the filing of this the service on or about  
14 January 29th of 2016. So the statute would allow  
15 me to give you once you had notice, but you again  
16 have failed to do so; is that correct?

17 MR. SMITH: Failed to seek an  
18 affidavit? Yes, I have not sought an affidavit.

19 THE COURT: Is there any reason that  
20 you know that I should not dismiss this case based  
21 upon your failure to follow the law?

22 MR. SMITH: First of all, I believe  
23 that she is outside the scope of her professional  
24 responsibility in her counseling sessions with me.

25 THE COURT: I am sorry. You are

1 pointing at?

2 MR. SMITH: The Defendant is outside  
3 the scope of her professional responsibilities.

4 THE COURT: We don't even get to there.  
5 I don't know how long you have been here, the last  
6 gentleman I explained about the rules of  
7 basketball. I'm not sure, I'm not very computer  
8 savvy so I can't even make an attempt, I will not  
9 even make an attempt to do an IT analogy.

10 But you haven't followed the rules.  
11 And the rules are set up for a very particular  
12 reason the way that they are set up. Every  
13 attorney that's appeared in front of me today has  
14 told me why I need to make sure that the rules are  
15 followed and I need to know why I shouldn't follow  
16 the rules for you here today.

17 MR. SMITH: Again, I did not realize I  
18 needed to file an affidavit. I suggest that she  
19 acted outside the scope of her -- and I would also  
20 like to point out to the Court that she has falsely  
21 stated the dates of her service.

22 THE COURT: And all those things could  
23 be true, Mr. Smith. The problem is that you may  
24 not be able to present those because you haven't  
25 followed the rules. You again have not done what

1 you're supposed to do, but are alleging what she --  
2 what you believe she has not done.

3 MR. SMITH: Your Honor, I have acted to  
4 the best of my ability.

5 THE COURT: And unfortunately that is  
6 not going to save the day here today. Is there any  
7 other reason why this case should not be dismissed  
8 based upon the failure to follow the rules?

9 MR. SMITH: She has made false  
10 statements and I contend she acted outside the  
11 scope of her professional responsibility.

12 THE COURT: And again, Mr. Smith, we  
13 just -- if you don't give me the legal basis to  
14 move this case forward, those things may be true,  
15 but you will not be able to present those because  
16 you have not followed the rules. All right?  
17 Anything further?

18 MS. SPEARS: No, Your Honor.

19 THE COURT: At this point would you  
20 object if I gave him 30 days to file an affidavit?

21 MS. SPEARS: Dismissal without  
22 prejudice?

23 THE COURT: I am sorry?

24 MS. SPEARS: Are you dismissing without  
25 prejudice or for a chance to refile or just giving

1 an additional 30 days?

2 THE COURT: Either one.

3 MS. SPEARS: No objection.

4 THE COURT: Mr. Smith, I'm going to  
5 give you 30 days to get an affidavit. If you do  
6 not comply with the affidavit requirement this case  
7 will be dismissed with prejudice which means that  
8 you cannot file.

9 As of this point, sir, you have -- you  
10 are on notice that this affidavit is required. And  
11 as I indicated to you, and to several of the other  
12 people who have appeared in front of me, you are  
13 entitled to represent yourself. Most of us can  
14 read the law and get a basic understanding of it.  
15 You may have had really good instructors who taught  
16 you business law. But just as I can turn my  
17 computer on or off, but when I really have trouble  
18 I call the professional IT guy up in Columbia to  
19 help me.

20 MR. SMITH: I'm a professional IT guy.

21 THE COURT: So I can -- I would take  
22 that however you take it and it may be that you  
23 need to hire somebody with a little more savvy in  
24 the legal world who has had a few more classes than  
25 a couple of business law.

1 MR. SMITH: Yes.

2 THE COURT: Thirty days or it is  
3 dismissed with prejudice. I will do a Form 4. So  
4 then what I would ask from you is if he doesn't  
5 comply with it that you send an order dismissing it  
6 so that the file is clean. Good luck to you, sir.

7 MR. SMITH: May I ask a quick question?  
8 Is there a way to review this information on line?  
9 I was --

10 THE COURT: I'm not sure what  
11 information you mean.

12 MR. SMITH: Just the motions in case I  
13 have trouble being served at my new address.

14 THE COURT: What is your address?

15 MR. SMITH: 1510 Fairbanks Road.

16 THE COURT: Is that what you have,  
17 James?

18 THE CLERK: I am looking at it right  
19 now.

20 THE COURT: The clerk of court is going  
21 to update your address, but that's about all I can  
22 do for you right here today.

23 MR. SMITH: Thank you, Your Honor.

24 (These proceedings were concluded at  
25 11:40 a.m., April 29, 2016, Charleston County,

South Carolina.)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

## CERTIFICATE OF REPORTER

1  
2  
3 I, Ruth C. Weese, Registered Diplomate  
4 Reporter for the State of South Carolina at Large,  
5 do hereby certify that the foregoing transcript is  
6 a true, accurate, and complete record.

7 I further certify that I am neither related  
8 to nor counsel for any party to the cause pending  
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my  
11 official seal this 19th day of September, 2016 at  
12 Charleston, Charleston County, South Carolina.

13  
14 *Ruth C. Weese*

15  
16 \_\_\_\_\_  
17 Ruth C. Weese

18 Registered Diplomate

19 Reporter

20  
21 **RECEIVED**

22 OCT 19 2016

23 SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SC )  
 )  
Tracy Smith )  
 ) Plaintiff, )  
 vs. )  
SAVB Inc / Sara Gainey )  
 ) Defendant. )

IN THE COURT OF COMMON PLEAS  
7th JUDICIAL CIRCUIT  
 CASE NO.: 2015-CP-10-6819  
**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III) <input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <u>Tracy Smith</u>            Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant         </div> <div style="text-align: center;"> <u>5-27-2016</u>            Date submitted         </div> </div>	
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> <b>PAID - AMOUNT: \$</b> <u>25</u> <input type="checkbox"/> <b>EXEMPT:</b> (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	<b>JUDGE CODE</b> _____
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> <b>MOTION FEE COLLECTED: \$</b> _____ <input type="checkbox"/> <b>CONTESTED - AMOUNT DUE: \$</b> _____	

Tracy Smith

2015-CP-10-6819

V

SAVE Inc. Sarah Goring

Motion to Compel  
Release of Medical Records

FILED  
2016 MAY 27 PM 2:36  
JULIE R. ARMSTRONG  
CLERK OF COURT  
BY BS

Pro Se Plaintiff respectfully requests  
the court to order Sarah Goring of

SAVE Inc. to release Plaintiff's Medical  
records related to treatment/counseling.

Defendant Sarah Goring, owner/president of  
SAVE Inc refuses to release these records.

Respectfully Submitted

Tracy Smith

Tracy Smith Pro Se Plaintiff

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 )  
TRACY SMITH )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 )  
SARAH GAINES and SAVE, INC. )  
 ) Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2015-CP-10-6819  
**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: Tracy Smith, Pro Se, Bar No. _____ Address: 4351 Park Island Road, Hollywood, SC 29449 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Jack G. Gresh, Bar No. 75188 Lauren V. Spears, Bar No. 100994 Address: 40 Calhoun St., Ste 550, Charleston, SC 29401 Phone: 843-720-3460 Fax 843-720-3458 E-mail: jgresh@hallboothsmith.com Other: _____
---	--

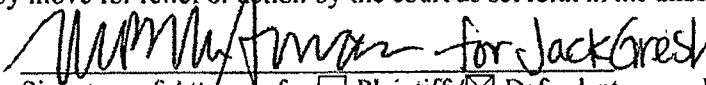
- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion to Dismiss  
 Estimated Time Needed: 15 mins. 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 1/27/16

**SECTION III: Motion Fee**

- PAID - AMOUNT: \$ 25.00  
 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, SCRCF)
  - 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: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Tracy Smith, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Sarah Gainey and SAVE, Inc., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2015-CP-10-6819

**AMENDED NOTICE OF MOTION AND  
 MOTION TO DISMISS PLAINTIFF'S  
 COMPLAINT**

FILED  
 2016 JAN 29 PM 2:13  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

**TO: TRACY SMITH, PRO SE PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that Defendants Sarah Gainey, LPC and SAVE, Inc. (collectively "Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Ninth Judicial Circuit at the Charleston County Courthouse on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing all causes of action contained in Plaintiff's Complaint, with prejudice, pursuant to Rules 8(a) and 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRPC") for failure to state facts sufficient to constitute a legal cause of action and for failing to comply with S.C. Code Ann. § 15-36-100, which governs all actions alleging professional negligence.

**Motion to Dismiss**

Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRPC Rule 12(b)(6). Plaintiff is required to set forth a short and plain statement of the facts showing he is entitled to relief pursuant to SCRPC Rule 8(a), and he has failed to do so. A Complaint that fails to state facts sufficient to state a claim should be dismissed pursuant to SCRPC Rule 12(b)(6). Defendant's Motion to Dismiss is predicated on well-established South Carolina law governing professional

negligence actions, specifically S.C. Code Ann. § 15-36-100 *et. seq.* These statutory provisions apply to this case and control its disposition.

A. **Plaintiff Failed to Attach an Expert Affidavit Pursuant to S.C. Code Ann. § 15-36-100**

Plaintiff's Complaint alleges professional negligence against Defendants. Plaintiff states Defendant "Sarah L. Gainey, LPC, CEAP is President of SAVE, Inc. and personally counseled Plaintiff. SAVE, Inc. provides behavioral healthcare services and training for personal and Supervisory development." See Complaint, p. 1, lines 14-19. Plaintiff's Complaint further states that "as part of plaintiff's employment agreement, plaintiff sought services including assistance, counseling, treatment, therapy for occupational problems resulting from his employment with Showa Denko." See Complaint, p. 2, lines 3-7. Plaintiff's Complaint further alleges breach of duty of care, breach of agreement to maintain confidentiality, breach of fiduciary duty and intentional infliction of emotional distress by Defendant Sarah Gainey. See Complaint, *generally*. S.C. Code Ann. § 15-36-100 states:

"in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

S.C. Code Ann. § 15-36-100(B)

Pursuant to S.C. Code Ann. § 15-36-100(G)(17), licensed professional counselors are health care providers subject to the statutory requirements of a contemporaneously filed expert affidavit with Plaintiff's Complaint. At all times relevant hereto, Sarah Gainey was a licensed professional counselor licensed by the State of South Carolina. See Complaint, p.1, ln. 14.

Plaintiff's Complaint criticizes the Defendants for the negligent and improper counseling sessions. See Complaint, generally. However, Plaintiff fails to attach an affidavit from a competent expert specifying at least one negligent act of omission claimed to exist as the basis for his Complaint. Therefore, Plaintiff has failed to comply with South Carolina law controlling actions for professional negligence.

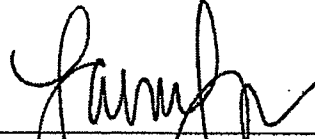
**B. Plaintiff Has Failed to Comply with the Statute of Limitations**

The statute of limitations for an action for medical malpractice/professional negligence is three (3) years after the alleged incident. South Carolina law states: "(A) In any action, other than actions controlled by subsection (B), to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Chapter 79, Title 38 acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section." S.C. Code Ann. § 15-3-545. "The statute of limitations begins to run at the time the individual has constructive or inquiry notice." Kelly v. Logan, Jolley, & Smith, LLP, 383 S.C. 626, 634 (2009). The allegations contained in Plaintiff's Complaint stem from counseling provided by Defendants in September and October of 2012. As pursuant to South Carolina law, Plaintiff's Complaint must have been filed on or before three years from the last date of treatment, omission or operation giving rise to the cause of action, or, October 2015. Plaintiff filed his Complaint on December 18, 2015. See Complaint, generally. Plaintiff has failed to comply with the applicable statute of limitations; and as such, is time barred from bringing his claims. Therefore, Plaintiff's Complaint should be dismissed.

WHEREFORE, Defendants respectfully move this Court for an Order dismissing Plaintiff's Complaint, with prejudice, pursuant to SCRPC Rule 12(b)(6), and to award Defendants such other and further relief as this Court deems just and proper.

Respectfully submitted this 21 day of January, 2016, in Charleston, South Carolina.

**HALL BOOTH SMITH, P.C.**



---

Jack G. Gresh, SC Bar No. 75188  
Lauren V. Spears, SC Bar No. 100994  
40 Calhoun Street, Suite 550  
Charleston, SC 29401  
Phone: 843.720.3460  
Fax: 843.720.3475  
Email: [jgresh@hallboothsmith.com](mailto:jgresh@hallboothsmith.com)  
[lspears@hallboothsmith.com](mailto:lspears@hallboothsmith.com)

*Counsel for Defendants*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2015-CP-10-6819
Tracy Smith,	)	
	)	
Plaintiff,	)	
	)	<b>NOTICE OF MOTION AND</b>
v.	)	<b>MOTION TO DISMISS.</b>
	)	
Sarah Gainey and Save, Inc.,	)	
	)	
Defendants.	)	

FILED  
 2016 JAN 15 PM 4:26  
 JULE J. ARMSTRONG  
 CLERK OF COURT

**TO: TRACY SMITH, *PRO SE* PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that Defendants Stacy Gainey, LPC and Save, Inc. (collectively "Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Ninth Judicial Circuit at the Charleston County Courthouse on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing all causes of action contained in Plaintiff's Complaint, with prejudice, pursuant to Rules 8(a) and 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP") for failure to state facts sufficient to constitute a legal cause of action and for failing to comply with S.C. Code Ann. § 15-36-100, which governs all actions alleging professional negligence.

**Motion to Dismiss**

Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6). Plaintiff is required to set forth a short and plain statement of the facts showing he is entitled to relief pursuant to SCRCP Rule 8(a), and he has failed to do so. A Complaint that fails to state facts sufficient to state a claim should be dismissed pursuant to SCRCP Rule 12(b)(6). Defendant's Motion to Dismiss is predicated on well-established South Carolina law governing professional

negligence actions, specifically S.C. Code Ann. § 15-36-100 *et. seq.* These statutory provisions apply to this case and control its disposition.

Plaintiff's Complaint alleges professional negligence against Defendants. Plaintiff states Defendant "Sarah L. Gainey, LPC, CEAP is President of SAVE, Inc. and personally counseled Plaintiff. SAVE, Inc. provides behavioral healthcare services and training for personal and Supervisory development." See Complaint, p. 1, lines 14-19. Plaintiff's Complaint further states that "as part of plaintiff's employment agreement, plaintiff sought services including assistance, counseling, treatment, therapy for occupational problems resulting from his employment with Showa Denko." See Complaint, p. 2, lines 3-7. Plaintiff's Complaint further alleges breach of duty of care, breach of agreement to maintain confidentiality, breach of fiduciary duty and intentional infliction of emotional distress by Defendant Sarah Gainey. See Complaint, *generally*. S.C. Code Ann. § 15-36-100 states:

"in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

S.C. Code Ann. § 15-36-100(B)

Pursuant to S.C. Code Ann. § 15-36-100(G), licensed professional counselors are health care providers subject to the statutory requirements of a contemporaneously filed expert affidavit with Plaintiff's Complaint. At all times relevant hereto, Sarah Gainey was a licensed professional counselor licensed by the State of South Carolina. However, Plaintiff fails to attach an affidavit from a competent expert specifying at least one negligent act of omission claimed to exist as the

basis for his Complaint. Therefore, Plaintiff has failed to comply with South Carolina law controlling actions for professional negligence.

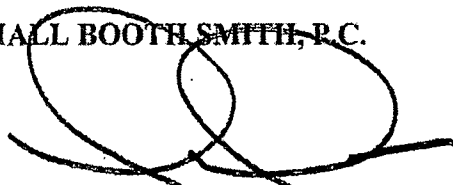
**Motion for More Definite Statement**

This Motion will be supported by the South Carolina Rules of Civil Procedure, the common and statutory laws of South Carolina, pleadings and documents on file, arguments of counsel, any Memorandum of Law to be filed with this Court, and such other and further argument or information as may be properly presented to the Court.

WHEREFORE, Defendants respectfully move this Court for an Order dismissing Plaintiff's Complaint, with prejudice, pursuant to SCRPC Rule 12(b)(6), and to award Defendants such other and further relief as this Court deems just and proper. Alternatively, in the event Defendants' Motion to Dismiss is denied in whole or in part, Defendants move this Court for an Order requiring Plaintiff to make a more definite statement pursuant to SCRPC Rule 12(e).

Respectfully submitted this 15<sup>th</sup> day of January, 2016, in Charleston, South Carolina.

HALL BOOTH SMITH, P.C.



---

Jack G. Gresh, SC Bar No. 75188  
Lauren V. Spears, SC Bar No. 100994  
40 Calhoun Street, Suite 550  
Charleston, SC 29401  
Phone: 843.720.3460  
Fax: 843.720.3475  
Email: [jgresh@hallboothsmith.com](mailto:jgresh@hallboothsmith.com)  
[lspears@hallboothsmith.com](mailto:lspears@hallboothsmith.com)

*Counsel for Defendants*

**PROOF OF SERVICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS  
Tracy Smith v. Sarah Gainey and SAVE, Inc.  
CIVIL ACTION 2015-CP-10-6819  
ORDER OF DISMISSAL  
HONORABLE KRISTI LEE HARRINGTON PRESIDING JUDGE

Appellate Case No. 2016-001379

Tracy Smith                      Appellant.

V.

Sarah Gainey and SAVE Inc.  
Respondent  
Represented by Jack Gresh  
40 Calhoun Street, Suite 550  
Charleston, SC 29401

**RECEIVED**

APR 10 2017

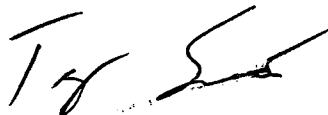
**SC Court of Appeals**

**CERTIFICATION OF RECORD ON APPEAL**

I certify that to the best of my knowledge and abilities the enclosed RECORD ON APPEAL contains all material available on public record to the lower court prior to DISMISSAL WITH PREJUDICE and not any other material.

April 7, 2017

8



Tracy Smith

1510 Swartz Fairbanks Road  
Monroe, LA 71203  
318 233 8572  
Pro Se Appellant