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June 4, 2018

VIA HAND DELIVERY
The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: ***Personal Care, Inc. v. Jerry N. Theos; Uricchio, Howe, Krell, Johnson, Toporek, Theos & Keith, P.A.; Cheryl D. Shoun; and Taylor, Shoun, Bowley & Byrd, LLC***
Appellate Case No. 2016-001266
C&L File No. 002008-00100

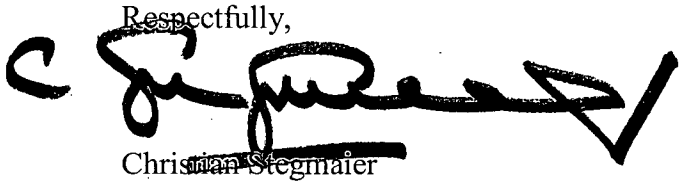
Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Appellant Personal Care, Inc. Return to Respondents' Joint Motion to Dismiss in connection with the above referenced matter. Please file the original and return one clocked copy to us via our courier.

By copy of this correspondence and enclosure to counsel of record, we are serving same on them.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,



Christian Stegmaier

CS/mmm
Enclosures
cc: Thomas A. Pendarvis, Esquire
Christopher Lempesis, Jr., Esquire
Oana D. Johnson, Esquire
Karen E. Spain, Esquire
Jennifer H. Thiem, Esquire
M. Dawes Cooke, Esquire
Phillip S. Ferderigos Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Appellate Case No. 2016-001266

Personal Care, Inc.,.....Appellant,

v.

Jerry N. Theos; Uricchio, Howe, Krell Johnson, Toporek, Theos & Keith, PA; Cheryl D. Shoun; and Taylor, Shoun, Bowley & Byrd, LLC.....Respondents.

APPELLANT'S RETURN TO RESPONDENTS' JOINT MOTION TO DISMISS APPEAL AS MOOT

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH CAROLINA:

Respondents Jerry N. Theos; Uricchio, Howe, Krell, Johnson, Toporek Theos, & Keith, PA; Cheryl D. Shoun; and Taylor, Shoun, Bowley & Byrd, LLC have jointly moved to dismiss the above-captioned appeal as moot.

Appellant Personal Care, Inc. opposes Respondents' joint motion to dismiss and respectfully requests this Court to deny Respondents' motion.

FACTS/PROCEDURAL BACKGROUND

The following are pertinent facts in the instant dispute:

- Appellant hired Respondents to assist him in a dispute against a competitor and former employees of Appellant. This assistance included Respondents writing a cease and desist letter to the competitor.
- Respondents negligently transmitted the letter to a third party, which was a former customer of Appellant (and a new customer of the competitor).
- Following publication to the third party, the competitor maintained this letter contained defamatory content, which was actionable.
- As a product of this alleged defamation, the competitor sued Appellant (via counterclaim), which resulted in Appellant having to expend substantial time and money defending and resolving the competitor's claim. A sizeable settlement ended the dispute with the competitor.
- By virtue of having to expend this resource, Appellant was demonstrably damaged due to Respondents' error.

- Appellant thereafter hired Attorney Thomas Pendarvis and sued Respondents in the Circuit Court, alleging legal malpractice relating to the letter's transmission and resulting damages sustained by Appellant.
- The action brought by Appellant following the Circuit Court's denial of Appellant's motion to restore pursuant to Rule 40(j), SCRCP.
- The denial of Appellant's motion to restore is the basis for the instant appeal.
- During the pendency of the instant appeal (and long after the parties had submitted their respective final briefs to this Court)[1], Appellant brought a separate and distinct action against Pendarvis in the Circuit Court for his failure to timely restore the initial action against Respondents.[2]
- Appellant was damaged again, this time due to Pendarvis' error; hence, Appellant's pursuit of relief in the Circuit Court.

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[1] Appellant filed its final brief with this Court on June 8, 2017.

[2] Appellant's action against Pendarvis was filed in the Circuit Court on February 28, 2018, more than 8 months after Appellant had filed its final brief with this Court in the instant appeal.

See Exhibit A (Substituted Modified Order on Plaintiff's Motion to Alter or Amend Judgment, filed June 14, 2016, at pp. 2-8)[3] and Exhibit B (Summons and Complaint, Personal Care, Inc. v. Thomas A. Pendarvis and Pendarvis Law Offices, PC, C/A 2018-CP-10-1084, filed February 28, 2018).

LAW/ANALYSIS

Respondents seek dismissal of the case at bar, averring the instant dispute is moot. Specifically, Respondents assert Appellant has taken inconsistent positions in the instant appeal and in the subsequent proceeding against Pendarvis regarding whether Appellant's claims against Respondents were time barred at the time Appellant's motion to restore was considered by the circuit judge, and that due to this alleged inconsistency, the instant appeal should be barred from proceeding to disposition by this Court. Respondents' position is incorrect.

[3] In addition to the Substituted Modified Order on Plaintiff's Motion to Alter or Amend Judgment, filed June 14, 2016, Appellant appeals: Order Denying Plaintiff's Motion to Restore, filed March 3, 2015; Order on Plaintiff's Motion to Alter or Amend Judgment, filed June 22, 2015; and Modified Order on Plaintiff's Motion to Alter or Amend Judgment, filed May 23, 2016. See Exhibit C (Appellant's Amended Notice of Appeal (without attachments), served on October 31, 2016 and filed November 1, 2016).

I. Appellant Was Under a Compulsion to Bring the Separate Action Against Pendarvis So As to Avoid That Secondary Claim Being Time Barred

The initial order denying Appellant's motion to restore was filed on March 3, 2015. The initial order is one of the bases for the instant appeal. See Exhibit C (Appellant's Amended Notice of Appeal (without attachments), served on October 31, 2016 and filed November 1, 2016). The restoration not being granted was the product of Pendarvis' failure to timely file a motion with the Circuit Court pursuant to Rule 40(j), SCRCP. See Exhibit D (Affidavit of Stephen E. Darling, filed November 3, 2017).

Any action for legal malpractice against Pendarvis would have a three year statute of limitations. See S.C. Code Ann. § 15-3-530(5) (stating the statute of limitations for "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law" is three years). An action against Pendarvis for failing to file a motion to restore pursuant to Rule 40(j), SCRCP arguably[4] therefore would run on March

[4] Understandably, this proposition is debatable due to the recent holding in Stokes-Craven Holding Corporation v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016), concerning when a claim for malpractice begins to run when the underlying action where the alleged malpractice occurred remains on appeal. However, in light of the fact that the action between Appellant and Respondents includes whether Appellant's claims against Respondents for

3, 2018—three years from the date of the filing of the initial order denying Appellant's motion to restore. The action against Pendarvis for failing to timely pursue restoration of the matter against Respondents was filed on February 28, 2018.

Appellant was under a compulsion to file his action against Pendarvis before the instant appeal could be disposed of because of the statute of limitations that was arguably fast approaching. In the abundance of caution, Appellant had no choice but to file the subsequent action against Pendarvis when Appellant did. See Stokes–Craven Holding Corp. v. Robinson, 416 S.C. 517, 531, 787 S.E.2d 485, 492 (2016) ("[A] claimant seeking recovery for a legal malpractice claim is constrained by two constants: (1) filing the claim within the statute of limitations ....").

The instant appeal has been pending and ready for disposition since Appellant filed its final brief with this Court on June 8, 2017. Appellant was compelled to file its secondary action against Pendarvis due to the constraints created by the statute of limitations. If this Court were to now dismiss the

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their own malpractice were time barred, the prudent lawyer representing Appellant in the action against Pendarvis were err on the side of caution and leave no doubt about timeliness by filing within three years of the Circuit Court's issuance of its initial order denying Appellant's motion to restore.

appeal, any opportunity to recover from Respondents for their separate and distinct negligence would be eliminated and forever foreclosed. Appellant avers such a disposition would not only be contrary to law, but violative of equity as well. See, e.g., Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 253, 715 S.E.2d 348, 354 (Ct. App. 2011) ("The notion 'equity looks to substance rather than form' evolved out of judicial regard for that which ought to be done. This maxim applies by 'dispensing with pure formalities which would otherwise defeat the equity.'") (citation omitted).

II. Judicial Estoppel Does Not Apply in the Case Sub Judice

By Respondents' own admission, the doctrine of judicial estoppel does not apply in the instant case; nevertheless, Respondents assert the "concept" of this doctrine "is compelling" for purposes of supporting dismissal. Respondents state that Appellant maintaining an action against them in this Court and also bringing an action against Pendarvis in the Circuit Court is "misleading" and somehow challenges the "integrity" of the "process" and "should not be tolerated." Appellants' assertion is not only histrionic, but incorrect.

As an initial matter, judicial estoppel does not apply. Our case law contains clear articulation of the elements of this doctrine, which must be

satisfied to facilitate its application in South Carolina as a bar to a companion or secondary action.

As explicated by our Supreme Court in Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004):

> [T]he following elements [are] necessary for the doctrine to apply: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Id. at 215-16, 592 S.E.2d at 632 (citing Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001)). See also Quinn v. Sharon Corp., 343 S.C. 411, 540 S.E.2d 474 (Ct. App. 2000) (Anderson, J., concurring) (articulating the same elemental analysis prior to its adoption by the Cothran Court).

In the instant case, the elements articulated within Cothran are not satisfied. Respondents and Pendarvis are not in privity with one another; the actions in the Court of Appeals and the Circuit Court are not the same and are not related; to date, Appellant has not realized any success in the Circuit Court in either action and certainly has not received any benefit; and there clearly is

no demonstration of any intentional effort to mislead either tribunal. To that end, especially since Respondents acknowledge the elements of judicial estoppel aren't satisfied, Appellants' question why Respondents cited the doctrine and appear to rely on it as a basis for relief. Unless the elements are satisfied, judicial estoppel cannot be applied as a bar to the instant appeal from going forward to disposition by this Court.

CONCLUSION

For the foregoing reasons, Appellant Personal Care, Inc. opposes Respondents' joint motion to dismiss and respectfully requests this Court to deny Respondents' motion.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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APPELLANTS' RETURN TO RESPONDENTS JOINT MOTION TO DISMISS APPEAL AS MOOT

Columbia, South Carolina
June 4, 2018

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
Personal Care, Inc.,	)	Civil Action No. 2013-CP-10-1396
	)	
Plaintiff,	)	
	)	
v.	)	**SUBSTITUTED MODIFIED ORDER ON PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT**
	)	
Jerry N. Theos; Uricchio, Howe, Krell, Johnson, Toporek, Theos and Keith, PA; Cheryl D. Shoun; and Taylor, Shoun, Bowley and Byrd, LLC,	)	
	)	
Defendants.	)	

Basis of Substitution of Order Entered May 23, 2016

This Order is substituted for the Court's Modified Order on Plaintiff's Motion to Alter or Amend Judgment ("Prior Order") entered May 23, 2016 in order to comport with and properly cite to the latest opinion in Stokes-Craven Holding Corp. v. Robinson, No. 27572, 2016 WL 3040160 (May 25, 2016). On April 22, 2016, defendants were requested to submit a proposed order consistent with the Court's ruling on the motion described herein. The Court on May 23, 2016 entered as an order the proposal submitted by Defendants. The Prior Order was in part premised upon the recent Supreme Court opinion of Stokes-Craven. On May 25, 2016, the Supreme Court, in response to a petition for rehearing in Stokes Craven issued a substituted opinion in Stokes-Craven. While the substituted opinion in Stokes-Craven does not have any Substantive impact upon the outcome of the matters pending before the Court, it is issuing this Substituted Order to conform the references to the substituted Opinion in Stokes-Craven and clarify those references.

Introduction

This matter is before this Court on Plaintiff Personal Care, Inc.'s (hereinafter "Personal Care") Motion to Alter or Amend Judgment, filed on March 16, 2015 ("Motion to Amend"). The Motion seeks to amend this Court's Order Denying Plaintiff's Motion to Restore, filed on March 3, 2015. Defendants Jerry N. Theos and Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, PA (hereinafter collectively referred to as "Theos"); Cheryl D. Shoun (hereinafter "Shoun"); and Taylor, Bowley and Byrd (hereinafter "TBB")[1] oppose Plaintiff's Motion. After review of the entire Record, including, but not limited to, the motions, the memoranda and affidavits submitted by the parties, the original Orders filed by this Court, and the relevant case law, this Court hereby modifies its Prior Order of March 3, 2015 and makes the following findings of fact and conclusions of law.

Procedural Background

This case arises from events that occurred in 2009 and early 2010. Beginning in 2009, Theos and Taylor, Shoun, Bowley, and Byrd, LLC, were retained by Personal Care to pursue a potential claim against one of its competitors. Two former employees of Personal Care went to work for the competitor and allegedly disclosed and otherwise utilized protected client information, gained while in Personal Care's employ, to the advantage of the competitor. On or about September 14, 2009, at the direction of Personal Care, Theos sent a letter to the competitor **(Exhibit A)**, with a copy allegedly sent to a third-party dialysis clinic, addressing the competitor's alleged wrongful use of the protected information. On December 10, 2009, Theos and Shoun filed the underlying lawsuit on behalf of Personal Care against the competitor. On or

[1] After Defendant Cheryl Shoun left the law firm of Taylor, Shoun, Bowley, and Byrd, LLC, in April 2010, the firm became Taylor, Bowley and Byrd, LLC.

about March 9, 2010, the defendant in the underlying suit filed a counterclaim for defamation against Personal Care based solely on the September 2009 letter **(Exhibit B)**.

On or about March 8, 2013, Personal Care filed the instant action against Theos, Shoun, and TBB[2] **(Exhibit C)**.[3] In its Verified Complaint, Personal Care asserted that its failure to attach the required S.C. Code Ann. § 15-36-100(B) Expert Affidavit for a legal malpractice claim was excused "because this Complaint is being filed when there is a good faith basis to believe the expiration of the statute of limitations is imminent."

Personal Care filed a Verified Amended Complaint on April 19, 2013 **(Exhibit D)**. In its Verified Amended Complaint, Personal Care alleges causes of action for breach of fiduciary duties and legal professional negligence against Theos and Shoun and for breach of contract against the Defendant law firms. All claims purportedly arose from the allegedly defamatory letter drafted by Theos and dated September 14, 2009. Personal Care alleges that Shoun and Theos were negligent and breached their fiduciary duties to it by sending the allegedly defamatory letter and by failing to inform Personal Care of the counterclaim for over two years after it had been filed. As to the Defendant law firms, Personal Care alleges that they breached their contract with Personal Care when they sent out the allegedly defamatory letter.

After filing the Verified Amended Complaint, Personal Care took no action via formal discovery (written discovery or depositions) to prosecute its claims before the matter was administratively dismissed by an order dated August 28, 2013. Personal Care's counsel requested a Consent Order Striking the Case from the Docket pursuant to Rule 40(j), SCRCP. All of the Defendants agreed to the Consent Order, which Judge Dennis executed on August 27, 2013

[2] Shoun continued to represent Personal Care after her departure from TBB in April, 2010. TBB ended its representation of and had no contact with Personal Care after Shoun's departure from the firm.

[3] On March 7, 2013, the day before, Personal Care's counsel expressed his concerns that the statute of limitations may bar his client's litigation if it were commenced after March 8, 2013: "We also discussed my concerns about an argument that the statute of limitations might expire on Friday, March 8."

(Exhibit E). Pursuant to its express terms, the Consent Order (hereinafter the "2013 Judge Dennis Order") set forth the following:

> IT FURTHER APPEARING that each party agrees that if the claim is restored within one year from the date of this Order, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations as of the date of this Order shall remain and begin to run on the date the claim is restored. (Emphasis added).

The 2013 Judge Dennis Order was filed on August 28, 2013, and thereafter the status of the case was shown as "Dismissed."

Approximately one year later, on August 22, 2014, Personal Care's counsel contacted Theos's counsel to request his consent to a proposed Consent Order Restoring Case to Docket (Rule 40(j), SCRCP), (hereinafter "2014 Proposed Consent Order") **(Exhibit F)**, which purported to reinstate the case pursuant to the 2013 Judge Dennis Order. On August 26, 2014, Theos did not have an overt reason not to consent to the 2014 Proposed Consent Order. Defense counsel for Theos signed the 2014 Proposed Consent Order and forwarded it to Personal Care's counsel on August 26, 2014. The other co-Defendants, Shoun and TBB, however, did not consent to the 2014 Proposed Consent Order. In fact, TBB did not receive a copy of the 2014 Proposed Consent Order until September 17, 2014.

Despite the fact that Personal Care's counsel did not have the consent of all the parties to submit the 2014 Proposed Consent Order to the Court, on or about August 27, 2014, Personal Care's counsel mailed the partial consent to the 2014 Proposed Consent Order to the clerk of court, requesting that the clerk present it to Judge Dennis for his consideration. The clerk returned the mailing unfiled because Personal Care did not include a proper cover sheet and filing fee. Personal Care submitted the 2014 Proposed Consent Order on September 4, 2014, along with the requisite fee and cover sheet. On September 15, 2014, Judge Dennis and his law

clerk received the 2014 Proposed Consent Order. Upon review, Judge Dennis's clerk noted that the 2014 Proposed Consent Order did not have the consent of all of the parties. The clerk contacted Personal Care's counsel to inquire about the missing consents. During the email exchange between Judge Dennis's clerk and Personal Care's counsel, Personal Care's counsel asserted that Shoun's failure to object to his 2014 Proposed Consent Order was tantamount to consent and that counsel for all of the other defendants had consented. On September 17, 2014, TBB contacted Judge Dennis's clerk to inform her that Personal Care had never given TBB notice of its intent to restore nor asked TBB to consent to restoration. Shortly thereafter, Personal Care's counsel withdrew the 2014 Proposed Consent Order via his communication with the Court on September 17, 2014 (**Exhibit G**), wherein Personal Care's counsel stated:

> Please extend my apologies to Judge Dennis for the circumstances, but **Personal Care is withdrawing the proposed Consent Order to restore** the case to the active trial roster as not all parties have consented to the restoration. . . . It is also my understanding from the telephone call with Ms. Byrd that Taylor, Bowley & Byrd, LLC has not consented to Personal Care's proposed consent Motion to restore the case to the active trial roster. As such, a formal motion to restore will be filed. ... Again, under the circumstances the proposed Consent Order is being withdrawn, and we will proceed with a formal motion to restore. (Bold in the original; underline added).

After withdrawal of the 2014 Proposed Consent Order, on September 22, 2014, over three weeks after the one-year deadline pursuant to the 2013 Judge Dennis Order and SCRCP Rule 40(j), Personal Care's counsel subsequently filed a formal Motion to Restore the case to the active roster. Defendants opposed Personal Care's Motion to Restore. In support of its Motion to Restore, in addition to other arguments, Personal Care argued that the Proposed Order Restoring the Case to the Docket, arguably filed one day before the one-year anniversary of the Consent Order Striking the Case from the Active Roster, should be treated as a Motion to Restore and should be granted based on that timeline. Defendants disagreed, arguing that, in addition to other

arguments, the Proposed Order was not signed by all parties and therefore was invalid and, further, that the proposed Order had been voluntarily withdrawn and was void. Defendants also argued that the formal Motion to Restore, filed on September 22, 2014, should be denied because the statute of limitations had run on this action.

This Court heard oral arguments on the Motion to Restore on November 19, 2014, and took the matter under advisement. After reviewing the Motion to Restore and the memoranda in support of and in opposition to the motion, and considering the arguments of counsel, the Court issued its Order on March 3, 2015, denying Personal Care's Motion to Restore. In the Order, the Court agreed with Defendants and held that the Proposed Order was invalid because it lacked a signature and that the Proposed Order was not a Motion to Restore. The Court also held that the formal Motion to Restore must be denied because the statute of limitations on this action had run.

On March 16, 2015, Personal Care filed the instant Motion to Amend, arguing that Rule 40(j) does not provide for or allow Defendants to assert affirmative defenses nor does it allow the Court the authority to evaluate the merits of a statute of limitations defense. Defendants filed memoranda in opposition to the Motion to Amend. As a result of Personal Care's Motion to Amend, the Court requested additional briefing addressing whether Rule 40(j) requires the Court to perfunctorily restore a case to the active roster without considering the statute of limitations issue.

Following receipt of the parties' additional briefing, the Court issued an Order dated June 19, 2015 (the "June Order"), modifying its prior March 3, 2015 order. In the June Order, the Court held that, pursuant to Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (2003), a party may challenge a motion to restore on grounds of the expiration of the statute of limitations. See Maxwell, 356 S.C. at 622 n.2 (rejecting plaintiff's argument that since defendants agreed to the

Rule 40(j) dismissal after the statute of limitations had expired, they waived their right to oppose the motion to restore on grounds of the expiration of the statute of limitations). The Court further found that the issue of whether a plaintiff is entitled to the tolling of the statute of limitations is one that must be addressed at the hearing for a motion to restore. The Court reasoned that, if a court cannot address the statute-of-limitations issue at the hearing, then there would be no reason to hold a hearing in the first place, because the court would be required to automatically grant all motions to restore and address issues such as the statute of limitations at later motion hearings. The Court concluded that such outcome would be nonsensical from a judicial economy standpoint.

However, because the Court found that it did not afford Personal Care an opportunity to address the statute of limitations issue at the motion hearing on November 19, 2014, the Court announced that it would hold this matter in abeyance to allow all parties to present live testimony and affidavits as to the statute of limitations issue, thereby providing the parties an additional opportunity to provide additional evidence that any party wished to present to the Court prior to its issuing a decision. The parties were given fourteen days from the date of the Order to notify the Court as to whether they wished to supplement the Record with affidavits or live testimony.

Defendants thereafter informed the Court that they did not wish to supplement the Record further with either affidavits or live testimony, although they did reserve the right to cross-examine witnesses called by Personal Care or to submit response affidavits. On July 9, 2015, Personal Care filed Plaintiff's Memorandum as Directed by Court's Order on Plaintiff's Motion to Alter or Amend Judgment, in which it informed the Court that it intended to submit additional affidavit testimony. The Court gave the parties a deadline of September 4, 2015, by which to submit affidavits. On September 2, 2015, Personal Care mailed a letter to the Clerk of Court with

a copy of an Affidavit of Bernard Cignavitch for filing. However, the affidavit was not filed at that time. Personal Care resubmitted the affidavit to the Clerk of Court for filing on January 7, 2016, at which time the affidavit was properly filed and made part of the Record.

On April 15, 2016, this Court held a telephonic status conference with counsel for all of the parties. Upon hearing from the parties that the Record was complete, the Court informed the parties that it would review the entire Record and issue a final order on Personal Care's Motion to Amend.

Findings of Fact and Conclusions of Law

Pursuant to the procedural background set forth above, which the Court finds to be accurate and hereby incorporates as the procedural facts of the case, this case was dismissed by the 2013 Judge Dennis Order. In South Carolina, unless a party seeks rehearing or appeals a court decision, the party is bound by the previous order as the law of the case. See Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 525 S.E.2d 869 (2000) (finding that an unappealed ruling, right or wrong, is the law of the case and requires affirmance). Stated differently, a prior order of the Court issued by a Circuit Court Judge may not be reversed or modified by another Circuit Court Judge. See Maxwell v. Genez, 350 S.C. 563, 567 S.E.2d 496 (Ct. App. 2002) (quoting Judge Dennis and stating that "it is the long-standing rule in this State that a Circuit Judge cannot modify or reverse an Order of another Circuit Judge."), reversed on other grounds by 356 S.C. 617, 591 S.E.2d 26 (2004). Because no party challenged the 2013 Judge Dennis Order, either by requesting a hearing or appealing the decision, the 2013 Judge Dennis Order is the law of the case.

Under the express terms of the 2013 Judge Dennis Order, the statute of limitations was not tolled after the case was dismissed in 2013. That Order required the case to be restored

within one year of the date of the Order (i.e., by August 28, 2014) in order for the statute of limitations to be tolled during the period of dismissal. However, it is undisputed that Personal Care failed to restore the case within the one-year deadline. Thus, the statute of limitations was not tolled following the entry of the 2013 Judge Dennis Order.

Similarly, the statute of limitations was not tolled under Rule 40(j). Unlike the 2013 Judge Dennis Order, which required the case to be restored within one year in order for the statute of limitations to be tolled, Rule 40(j) provides that the statute will be tolled "if the claim is restored upon motion made within 1 year of the date stricken."[4] Although a party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j), the party "cannot take advantage of the one year tolling period provided by the rule." Maxwell v. Genez, 356 S.C. at 620-621. It is undisputed that the Motion to Restore currently pending in this Court was not filed until September 22, 2014, long after the expiration of the one-year period. Therefore, the statute of limitations cannot be tolled by Rule 40(j).

At oral argument, Personal Care conceded as much to the Court when it acknowledged that it did not restore or move to restore its case within the timeframe set forth in either the 2013 Judge Dennis Order or SCRCP Rule 40(j). Personal Care further conceded that it should not receive the benefit of the tolling provision of SCRCP Rule 40(j). Instead, Personal Care argued that there is still time left on the statute of limitations because the statute did not begin to run

[4] SCRCP Rule 40(j) sets forth the following:

> **(j) Case Stricken From Docket by Agreement**
> A party may strike its complaint, counterclaim, cross-claim or third party claim from any docket one time as a matter of right, provided that all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. (Emphasis added).

until the summer of 2012. However, Personal Care subsequently reversed course, asserting in its Memorandum submitted to the Court after the hearing that the withdrawn 2014 Proposed Consent Order is equivalent to and should be treated as a Motion to Restore. There is no merit to either argument.

The Court finds that the 2014 Proposed Consent Order is a nullity. It is undisputed that not all of the parties consented to the proposed order. Moreover, Personal Care did not comply with SCRCP Rule 5 and Rule 7, which govern the filing and service of motions. Finally, and most importantly, Personal Care withdrew the 2014 Proposed Consent Order, rendering it a nullity. Thus, even if the 2014 Proposed Consent Order could have been construed as a Motion to Restore, it no longer is before this Court. Therefore, if this case is restored, it will not be restored "upon motion made within one year of the date stricken." SCRCP Rule 40(j). The Court concludes that Personal Care did not file the instant Motion to Restore within one year after the case was stricken from the docket.

Accordingly, in regard to Personal Care's 2014 Proposed Consent Order submitted to the Court, the Court finds that (1) all parties had not consented to the Order and the Order was defective on its face; (2) the case had not been "restored" by August 28, 2014, as the 2013 Judge Dennis Order striking it required; and (3) Personal Care withdrew the 2014 Proposed Consent Order, so it is not properly before the Court and is a nullity. The Court further finds that Personal Care filed its Motion to Restore approximately three weeks after August 28, 2014. Accordingly, under the terms of either the 2013 Judge Dennis Order or Rule 40(j), the statute of limitations was not tolled following the dismissal of the case.

Personal Care argues that it is of no consequence that the statute of limitations was not tolled because, according to Personal Care, the statute of limitations did not start running until

July 2012. At the hearing, although Personal Care's counsel conceded that Personal Care knew both about the Counterclaim and that there were alleged issues with the defense of the case, Personal Care's counsel asserted that the statute of limitations did not begin to run until Personal Care experienced, in the summer of 2012, the "first financial consequence" caused by Defendants' alleged errors.[5] The Court finds Personal Care's argument wholly unpersuasive and concludes that the statute of limitations has expired.

As set forth in the recent Stokes-Craven Holding Corp. v. Robinson, No. 27572, 2016 WL 3040160 (May 25, 2016), the Supreme Court held:

> The Statute of Limitations for a legal malpractice action is three years. S.C. Code Ann. § 15-3-530(5) (2005) (stating the statute of limitations for "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law" is three years); see Berry v. McLeod, 328 S.C. 435, 444-445, 492 S.E.2d 794, 799 (Ct. App. 1997) (concluding that section 15-3-530(5) of the South Carolina Code provides a three-year statute of limitations for legal malpractice actions). Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. Burgess v. Am. Cancer Soc'y, S.C. Div., Inc., 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989); see S.C. Code Ann. § 15-30535 (2005)("[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."). "This standard as to when the limitations period begins to run is objective rather than subjective." Burgess, 300 S.C. at 186, 386 S.E.2d at 800. "Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." Id.
>
> "Statutes of limitations are not simply technicalities." Kelly v. Logan, Jolley & Smith, L.L.P., 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009). "On the contrary, they have long been respected as fundamental to a well-ordered judicial system." Id. Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Id. "One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a

[5] In essence, Plaintiff desires this Court to adopt a version of the continuous representation rule which the Stokes-Craven court declines to adopt and cites as "problematic."

plaintiff has slept on his or her rights." Id. (citations omitted). "Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation." Id. "Statutes of limitations are, indeed, fundamental to our judicial system." Id. (citation omitted).

The Supreme Court further stated:

> As legislatively mandated, we being our analysis with the well-established discovery rule. Pursuant to this rule, all legal malpractice actions must be commenced within three years after the claimant knew or by the exercise of reasonable diligence should have known that he or she had a cause of action. See S.C. Code Ann. § 15-3-535 (2005) ("[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action").
>
> Thus, a claimant seeking recovery for a legal malpractice claim is constrained by two constants: (1) filing the claim within the statute of limitations,[6] and (2) establishing the four requisite elements of his or her claim. Because a statute of limitations operates on remedies, the limitation period cannot start until the client has a cause of action that has accrued. See 3 Ronald E. Mallen & Allison Martin Rhodes, Legal Malpractice § 23:14 (2015) ("Since a statute of limitations operates on remedies, the limitation period cannot start until the client has a cause of action that has accrued. Thus, 'accrual' means the existence of a legally cognizable cause of action.").
>
> As evidenced by this case, the key question is when the claimant's cause of action accrues to trigger the running of the three-year statute of limitations. The answer to this question is complicated by the seemingly endless factual scenarios surrounding the underlying claim of a legal malpractice cause of action.
>
> While this approach may be perceived as impermissibly requiring a person to have actual knowledge of a potential claim before the statute of limitations begins to run, we find that it is mandated by our appellate court rules and, as a result, effectuates the objective standard provided by the Legislature. See Black's Law Dictionary 1624 (10th ed. 2014) (An objective standard is defined as "[a] legal standard that is based on conduct and perceptions external to a particular person." (emphasis added)); Id. at 1529 (A rule is generally defined as "an established and authoritative standard or principle; a general norm mandating or guiding conduct or action in a given type of situation.").

[6] "A legal malpractice cause of action is governed by the applicable statute of limitations whether it sounds in tort, contract or fraud." 1 S.C. Jur. Attorney & Client, § 69 (Supp. 2016) (citing section 15-3-530 of the South Carolina Code).

In so doing, the Supreme Court affirmed an objective standard for the discovery rule in legal malpractice cases. Finally, the Stokes-Craven court also found that, "based upon existing appellate court rules," an appeal tolls the statute of limitations for a legal malpractice action, stating:

> "In doing so, we hold that the statute of limitations for a legal malpractice cause of action may e tolled if the client appeals the matter in which the alleged malpractice occurred. We conclude that this rule is mandated by our appellate court rules and, as a result, effectuates the objective standard provided by the Legislature.
>
> Applying this rule to the facts of the instant case, we find the circuit court erred in granting Respondents' motions for summary judgment because Stokes-Craven's lawsuit was timely filed after this Court affirmed the verdict against Stokes-Craven. Additionally, we find the circuit court abused its discretion in denying Stokes-Craven's motion to compel the production of communications between Respondents and their malpractice carrier given there was no evidence to support the court's ruling."

However, here, in the present case, there was no appeal to stay the statute of limitations in accordance with the Stokes-Craven decision.

Clearly, "South Carolina's statute of limitations requires very little to start the clock." Maher v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (internal quotation marks omitted). South Carolina follows the discovery rule, which means that the statute of limitations begins to run from the date the injured party either knows or should have known, by the exercise of reasonable diligence, that a cause of action arises from the wrongful conduct. Stokes-Craven Holding Corp. v. Robinson, No. 27572, 2016 WL 3040160 (May 25, 2016); see S.C. Code Ann. § 15-3-535. "Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist." Id. (emphasis added). Moreover, in a legal malpractice action, like other actions, the date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C.

Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

"Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." Stokes-Craven Holding Corp., No. 27572, 2016 WL 3040160 (May 25, 2016).

Importantly, under South Carolina law, "[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it." Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941), modified by Santee Portland Cement v. Daniel Int'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston, 197 S.C. 458, 15 S.E.2d 770; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3, 7 (S.C. 1997). Finally, both within and outside of the context of "existing appellate court rules" (which allows a stay of the statute of limitations for a legal malpractice claim, if an appeal is filed), an objective standard "based on the conduct and perceptions *external to a particular person*" (emphasis added by Supreme Court) applies when a party has actual knowledge of a potential legal malpractice claim before the statute of limitations begins to run.

Here, based on the allegations in the Amended Complaint and the clear evidence in the Record, the Court finds that the statute of limitations has expired on Personal Care's claims against Defendants. According to Paragraph 18 of the Amended Complaint, the first act of alleged negligence occurred in September 2009 when Theos allegedly sent a defamatory letter to a third party. Paragraph 20 alleges that, on March 9, 2010, the underlying defendant filed an Answer and Counterclaim asserting a claim for defamation based on the allegedly defamatory statements in the letter published by Theos in September 2009. Finally, Paragraph 40 alleges that Personal Care was damaged by Theos and Shoun's errors when "it was forced to spend additional funds and commit time and other resources to mitigate the damages caused as a direct and proximate result of Defendants' errors." Based on such allegations and the clear evidence in the Record, the Court finds Personal Care suffered damages as soon as it was forced to incur costs to defend against the competitor's counterclaim.

Once the counterclaim was filed on March 9, 2010, Personal Care became obligated to expend additional monies, including the additional attorney's fees in responding to and defending against the counterclaim, and to otherwise contend with the inconvenience of the counterclaim. Accordingly, as a cause of action accrues at the moment when the plaintiff has a legal right to sue on it, and the law presumes at least nominal damages at that point, the Court finds that Personal Care's causes of action accrued and Personal Care had a legal right to sue Defendants on March 9, 2010.

Moreover, Defendants notified Personal Care multiple times of the counterclaim in the spring of 2010. Plaintiff's position with respect to when it received notice has shifted over time. In Paragraph 21 of its Verified Amended Complaint, Personal Care alleges that Defendants did not inform Personal Care about the counterclaim until over two years after the counterclaim had

been filed. Personal Care's expert repeated such assertion in his Affidavit supporting Personal Care's legal malpractice claim. However, at the hearing, Personal Care's counsel conceded that his client knew about the counterclaim "throughout the course of this entire . . . underlying case." (Hrg. Tr. at 23; id. at 24 ("Certainly he knew about the counterclaim.").) Therefore, Personal Care's sworn allegation in the Verified Amended Complaint not only is belied by the overwhelming evidence in the Record, but also has been subsequently acknowledged by Personal Care's counsel to be a misrepresentation.

The Court finds that Personal Care (and Mr. Cignavitch in particular) was notified of the underlying Counterclaim multiple times beginning on March 19, 2010. Overwhelming evidence refutes Mr. Cignavitch's original sworn assertions to the Court including, but limited to, the following:

1. Email from Shoun to Cignavitch dated March 19, 2010: "Hey Bernie: Hope this finds you well. We have received an Answer and Counterclaim on behalf of the Defendant in this action. I need to get a copy of the Counterclaim to you; a response is due April 9th. May I fax to you? Will you provide the correct number? Also, if you will please provide your insurance information, we will submit the Counterclaim to your carrier, asking it to defend and indemnify you. We will need a copy of the policy if you have it. Thanks. I look forward to hearing from you." (**Exhibit H**).

2. Email from Smith to Cignavitch dated March 19, 2010: "Mr. Cignavitch, attached please find a filed copy of the Answer and Counterclaim." (**Exhibit I**).

3. Email from Shoun to Cignavitch dated March 26, 2010: "I am attaching a copy of a letter I am sending to Askew's counsel requesting an extension of time in which to respond to the Counterclaim. As I think we discussed earlier, when we granted an extension to Askew's attorneys, this is a routine practice, and I have no reason to think it will not be granted. You will see, if granted, our response will be due mid-May giving us plenty of time to talk over the allegations. Even if it is not granted, the response isn't due until mid-April. ... I sincerely appreciate your patience in this matter, and look forward to talking with you regarding the Counterclaim." (**Exhibit J**).

4. Email from Shoun to Cignavitch dated April 6, 2010: "Bernie: Hey. I am back in the office today and have received confirmation of our 30-day

extension to respond to the Counterclaim in this case. Our reply is due on or before May 13, 2010. Please let me know a time that is good for you for us to get together to talk over our response. We may even be able to do it by phone if your schedule is full. In the meantime, I will probably prepare a draft and send it to you as a starting point." (**Exhibit K**).

5. Email from Shoun to Cignavitch dated April 6, 2010: "Bernie: I forgot to mention this again – please get your insurance information to me as quickly as you can. Thanks." (**Exhibit L**).

6. Email from Shoun to Cignavitch dated April 13, 2010: "Please remember that a reply to the Counterclaim by Ms. Askew will have to be served by the latter part of May." (**Exhibit M**).

7. Invoice from Nexsen Pruet to Personal Care dated June 2, 2010: Charging $1440 for services related to answering counterclaim (**Exhibit N**).

8. Email from Kerr to Cignavitch dated June 7, 2010: "Bernie: Attached please find for your review and file a filed stamped copy of the Reply to Counterclaim in the above-referenced matter. Should you have any questions or concerns, please let us know." (**Exhibit O**).

9. Affidavit of Jerry N. Theos (**Exhibit P**).

10. Affidavit of Cheryl D. Shoun (**Exhibit Q**).

Based on these communications alone, the Court finds that Theos and Shoun unequivocally and timely informed Mr. Cignavitch of the counterclaim asserted against Personal Care and advised Personal Care to put its insurance carrier on notice in order to defend and indemnify Personal Care against the counterclaim. The Court further finds that Personal Care was first billed for charges resulting from the counterclaim no later than June 2, 2010.

The Court hereby concludes that, upon receiving a copy of the counterclaim, multiple e-mails referencing the counterclaim, a request for insurance information so that the client could get coverage for defense of the counterclaim, an invoice charging for services rendered to reply to the counterclaim, and a copy of the Reply to the Counterclaim, a person of common knowledge and experience would have been put on notice and have actual knowledge that claims against his lawyer might exist as a result of the letter and Counterclaim. See Stokes-Craven

Holding Corp., No. 27572, 2016 WL 3040160 (May 25, 2016). Therefore, the Court finds that Personal Care had both knowledge of the alleged negligence, the adverse counterclaim, and present damage, and Plaintiff's legal malpractice claim accrued and Plaintiff's legally cognizable claim existed by the first half of 2010. Accordingly, the Court hereby concludes and finds that the three-year statute of limitations on Plaintiff's claims began to run in the spring of 2010. Further, no appeal or existing "appellate court rules" stayed or tolled the statute of limitations from running.

Furthermore, the Court finds that, based on the Verified Complaint's S.C. Code Ann. § 15-36-100 (c)(1) Expert Affidavit verification, Personal Care has also admitted that the statute of limitations expired, at the latest, on March 18, 2013.[7] Paragraph 97 of the Complaint, filed on March 8, 2013, takes advantage of the provision of South Carolina Code Section 15-36-100(b), (c)(1): "Pursuant to the code, because this complaint is being filed when there is a good faith basis to believe the expiration of the statute of limitations is imminent, it is filed without an affidavit by an expert licensed by the Supreme Court of the State of South Carolina." S.C. Code Ann. § 15-36-100 (c)(1), sets forth the following: "The contemporaneous filing requirements of Subsection (b) do not apply to any case in which the period of limitations will expire or there is a good faith basis to believe it will expire on a claim stated in the complaint within 10 days of filing." Personal Care verified for this Court that the statute of limitations would likely expire within ten days of filing, i.e., on March 18, 2013.[8] The Court agrees that the statute of limitations, which began to run in the spring of 2010, was set to expire in the spring of 2013. Because Personal Care cannot benefit from the tolling provision of either the 2013 Judge Dennis

[7] Personal Care's Verified Complaint's expert affidavit verification is consistent with Personal Care's counsel's March 7, 2013 email raising his concerns that the statute of limitations would run the following day, March 8, 2013.

[8] At the hearing, Personal Care sought to undo his prior verified admission. This Court rejects Personal Care's attempt to retract via argument that to which it admitted via its verified Complaint. Mere self-serving arguments of counsel do not trump Personal Care's sworn admissions, which were previously submitted to the Court.

Order, Rule 40(j), or the existing appellate court rules, the Court concludes and finds that the statute of limitations on Personal Care's claims expired prior to the filing of the formal Motion to Restore.

In summary, the Court finds that the 2014 Proposed Consent Order is a nullity. Moreover, the Court finds that Personal Care failed to restore the case within the one-year timeframe provided in the 2013 Judge Dennis Order. Furthermore, Personal Care did not file a timely Motion to Restore, which Rule 40(j) requires in order to benefit from the tolling provision of Rule 40(j). The Court further finds that at no point did any of the Defendants agree that the statute of limitations would be further tolled above and beyond the parameters set forth in the 2013 Judge Dennis Order or SCRCP Rule 40(j). As Personal Care did not file its Motion to Restore the case within one year of the administrative dismissal, the Court hereby finds that the statute of limitations was not tolled following entry of the 2013 Judge Dennis Order and thus had expired prior to the filing of the formal Motion to Restore. Accordingly, Personal Care's claims against Defendants are time-barred.

Conclusion

Based on the foregoing discussion, I hereby Order that Personal Care's Motion to Restore Case is denied. The Exhibits are attached and made a part of this Order by reference.

IT IS SO ORDERED!

Dated: 6/13/16

J. C. Nicholson, Jr., Judge
Ninth Judicial Circuit

Exhibit B

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

Persoanl Care, Inc.)
Plaintiff(s))

vs.)

Thomas A. Pendarvis and Pendarvis Law Offices, P.C.)
Defendant(s))

CIVIL ACTION COVERSHEET

2018-CP - 10- 1084

Submitted By: John Blincow, Jr.
Address: Blincow Griffin law Firm
126 Meeting St.
Charleston, S.C. 29401

SC Bar #: 738
Telephone #: 843-872-6449
Fax #:
Other:
E-mail: jblincow@blincowgriffin.com

NOTE: The coversheet 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 cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

X **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.
X 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)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/ Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____

Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
X Medical Malpractice (220)
Previous Notice of Intent Case # 20____-NI-_____-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____

Torts – Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ 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) _____

Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture—Consent Order (850)
☐ Other (899) _____

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)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) _____

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 Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____

Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)
☐ Permanent Restraining Order (680)
☐ Interpleader (690)

Submitting Party Signature: _____ **Date:** 2/27/2018

[redacted]

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Personal Care, Inc.

Plaintiff,

v.

Thomas A. Pendarvis and
Pendarvis Law Offices, PC

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NUMBER:
2018-CP-10-1084

SUMMONS

FILED
2018 FEB 28 AM 9:31
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the Complaint on the subscriber at their offices located at 126 Meeting Street, Charleston, SC 29401, within thirty (30) days after service hereof, exclusive of the date of such service. If you fail to answer the Complaint within the time aforesaid judgment by default will be rendered against you for the relief demanded in the Complaint.

Blincow Griffin Law Firm

John Blincow, Jr.
126 Meeting Street
Charleston, SC 29401

Law Offices of John F. Wall, III

John F. Wall, III
288 Meeting St. Suite 400
Charleston, SC 29401

Date: 2/27/18
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Personal Care, Inc. Plaintiff, vs. Thomas A. Pendarvis and Pendarvis Law Offices, PC Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NUMBER: 2018-CP-10-1084 **COMPLAINT** **(JURY TRIAL DEMANDED)**

The Plaintiff, Personal Care, Inc., (Personal Care) alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. The Plaintiff, Personal Care Inc., is a corporation organized and existing under the laws of the State of South Carolina with its principle place of business in Charleston, South Carolina.

2. The Defendant, Thomas A. Pendarvis, Esquire, is a citizen and resident of Beaufort County, South Carolina and is an attorney licensed to practice law in South Carolina. At all relevant times Mr. Pendarvis was a shareholder in Pendarvis Law Offices, PC. and does business in Charleston, South Carolina.

3. The Defendant Pendarvis Law Offices, PC is a professional corporation organized and existing under the laws of the State of South Carolina and does business in Charleston, South Carolina.

4. That jurisdiction and venue are proper in this Court.

5. The Plaintiff originally filed and served its action on August 25, 2017. Thereafter the Defendants answered and filed a Motion to Dismiss on the basis that the Plaintiff's expert

affidavit had not been timely filed. Thereafter, on November 3, 2017, before any substantive work had been done and without any prejudice to the Defendants, the Plaintiff filed and served its expert affidavit. The Plaintiff now files this action, together with its expert affidavit, in order to remove the basis for the Motion to Dismiss.

FACTS RELATIVE TO THE UNDERLYING LAWSUIT

6. Mr. Pendarvis, individually and on behalf of Pendarvis Law Offices, was engaged and retained to represent the Plaintiff with respect to claims against two (2) other lawyers and their respective law firms (attorneys in the underlying lawsuit).

7. That the Plaintiff retained the Attorneys in the underlying lawsuit to represent it in a dispute with a competitor. The essence of the dispute was that two (2) of the Plaintiff's former employees went to work for the competitor. Thereafter, the competitor began to wrongfully use the Plaintiff's proprietary list of clients to its advantage and in violation of the HIPPA statutes by attempting to solicit business away from the Plaintiff, causing certain damages.

8. That on September 14, 2009, one of the Attorneys in the underlying lawsuit wrote a letter to the competitor of the Plaintiff and sent a copy to a third party dialysis clinic.

9. That on December 10, 2009, the Attorneys in the underlying lawsuit filed suit in Charleston County against the competitor of the Plaintiff.

10. That on or about March 8, 2010, the competitor filed its Answer and Counter claim. The Counterclaim contained a single cause of action for defamation. The defamation was based solely on the September 14, 2009, letter written by one of the Attorneys in the underlying law suit. The Counterclaim alleged that several statements in the letter were false and defamatory and made with malice and published to a third party. The Counterclaim sought actual and punitive damages.

11. That on or about March 8, 2010, the competitor filed a Motion to Change Venue.

12. Following a hearing on July 13, 2010, the Court entered an Order transferring venue to Hampton County.

13. Over two years later, on or about August 30, 2012, the Attorneys in the underlying lawsuit filed a Motion to be Relieved as Counsel for the Plaintiff. The Plaintiff was forced to hire separate counsel and opposed the Motion.

14. After an in-camera hearing, the Court entered an Order dated November 9, 2012, filed under seal, which relieved the Attorneys in the underlying lawsuit as counsel for the Plaintiff. At least one basis for the Court's ruling was that the key factual issue at trial would be the accuracy and truthfulness of the letter written by one of the Attorneys in the underlying law suit which would necessarily require the testimony of the Defendants. The Attorneys in the underlying lawsuit could not simultaneously be a witnesses on this key factual issue and serve as counsel for the Plaintiff.

15. The Plaintiff was required to retain new lawyers to represent it in the defense of the Counterclaim thereby incurring additional fees and expenses.

16. On or about December 5, 2013, the Plaintiff settled the Counterclaim for $90,000.

FACTS RELATIVE TO THIS CASE

17. That, at all relevant times, an attorney client relationship existed between the parties.

18. As part of the acceptance of representation, the Defendants entered into a written contract of representation with the Plaintiff.

19. That on or about March 8, 2013, the Defendants filed a lawsuit on the Plaintiff's behalf against the Attorneys in the underlying lawsuit. This was a legal malpractice action. Among other things, the suit alleged that the letter, written by one of the Attorneys in the underlying lawsuit, directly caused the Plaintiff to be sued for defamation in a difficult venue in South Carolina. In addition, the suit alleged that the two-year delay between writing and sending the letter and moving to be relieved as counsel caused the Plaintiff additional damages. Thereafter, the respective Attorneys in the underlying lawsuit filed their Answers and the issues were joined between the parties.

20. After filing suit, the Defendant failed to serve any written discovery requests and failed to take any depositions to advance the case.

21. That on or about August 28, 2013, the Defendants filed a Consent Order pursuant to Rule 40(j) SCRCP striking the case from the docket. A copy of that Order is attached as Exhibit 1 to the Complaint.

22. That on September 22, 2014, after the one-year deadline to restore the case pursuant to the Court's Order and Rule 40(j) SCRCP, the Defendant filed a Motion to Restore. A copy of the Motion is attached as Exhibit 2 to the Complaint.

23. The Motion came before the Court for a hearing on November 19, 2014. The Court denied the Motion. A copy of the Court's Order is attached as Exhibit 3 to the Complaint. The net effect of the Defendants' negligent and careless acts and omissions was to make it impossible for Plaintiff to pursue its valid claims against the Attorneys in the underlying case in Court.

24. That the matter is currently on appeal and pending before the South Carolina Court of Appeals.

25. At all relevant times, the acts and omissions of the Pendarvis Law Offices included the acts and omissions of its agents, principles, employees, and servants, including but not limited to those by Mr. Pendarvis, pursuant to the principles of non-delegable duty, corporate liability, apparent authority, ostensible agency and respondeat superior.

26. At all relevant times, Pendarvis Law Offices acted by and through its agents and principles, including but not limited to Mr. Pendarvis, who acted within the course and scope of his employment or agency so as to make the Defendant law firm vicariously liable.

FOR A FIRST CAUSE OF ACTION

(PROFESSIONAL NEGLIGENCE)

27. The Plaintiff reiterates and re-alleges each of its previous allegations as if set forth fully herein.

28. The nature of the lawyer client relationship herein required, among other things, that the Defendants protect the Plaintiff's interests and pursue its claims against its former attorneys with reasonable diligence.

29. By undertaking to represent Personal Care, the Defendants impliedly represented that they possessed the requisite degree of learning, skill and ability necessary for the practice of the profession that other lawyers ordinarily possess and would exercise reasonable and ordinary care and diligence in the use and application of skill and knowledge in their representation of Personal Care.

30. By virtue of the lawyer client relationship the Defendants owed certain duties of care to Personal Care including the duty to protect, preserve, and prosecute Personal Care's rights and interests to the same degree as would be exercised by reasonably competent lawyers under the same or similar circumstances.

31. That the Defendants deviated from the accepted standard of care in one or more of the following particulars:

a) By not moving to restore the case within one year as required by the Court's order.

b) By not moving to restore the case within one year as required by Rule 40(j) SCRCP.

c) By not following the requirements of the law when handling the client's case.

d) By failing to take reasonable steps to prosecute the case.

e) By doing things that required the client to spend more money on legal fees and other expenses than he otherwise would have been required to spend.

f) By not adequately protecting the client's interest and in failing to take the appropriate steps so that the Plaintiff could pursue its claims in Court.

g) By not keeping the client properly informed regarding all matters concerning the case.

h) In such other particulars as will be established during discovery.

32. The Defendants conduct herein did not involve the exercise of his or its professional judgment, but is instead actionable and resulted from the Defendant's failure to exercise ordinary skill and knowledge.

33. The Defendant's failed to meet the minimum standard of care and thereby breached their duties to perform competent legal services for Personal Care and otherwise acted in a negligent and careless manner.

34. As a direct and proximate cause of the Defendant's actions Personal Care incurred actual damages, special damages, and incidental damages all in an amount to be proven at trial.

FOR A SECOND CAUSE OF ACTION

(BREACH OF FIDUICARY DUTIES)

35. The Plaintiff reiterates and re-alleges each of its previous allegations as if set forth fully herein.

36. At all relevant times the Defendants owed certain fiduciary duties to Personal Care.

37. The Defendants' fiduciary duties included, but were not limited to, duties of competence and loyalty as well as a duty to act diligently and carefully to protect, preserve and advance the rights and interests of Personal Care.

38. The Defendants had a duty to keep Personal Care fully informed of all facts material to the lawsuit.

39. The Defendants failed to meet the minimum standard of care and thereby breached their fiduciary duties to provide competent legal services to Personal Care.

40. As a direct and proximate cause of the Defendant's conduct and breach of their fiduciary duties, Personal Care sustained compensatory damages in an amount to be proven at trial. The Defendants should also be required to disgorge all fees and other benefits obtained from their relationship with Personal Care.

FOR A THIRD DEFENSE

(BREACH OF CONTRACT)

41. The Plaintiff reiterates and re-alleges each of its previous allegations as if set forth fully herein.

42. The Defendant law firm entered into a contract with Personal Care and contracted to provide competent legal services to pursue a recovery for Personal Care against the Defendants in the underlying law suit.

43. Personal Care fulfilled all necessary conditions of the contract with the Defendants.

44. The Defendant law firm breached its contract with Personal Care by failing to restore the case in a timely manner thereby causing the Plaintiff certain damages.

45. As a direct and proximate result of the Defendant law firm's breach of contract, Personal Care sustained actual damages in an amount to be proven at trial.

EXPERT AFFIDAVIT

46. The Plaintiff's expert affidavit is attached to this Complaint.

WHEREFORE, Personal Care prays for judgment against the Defendants on each cause of action and for actual damages, special damages, and incidental damages and for such other relief as this Court deems appropriate.

John K. Blincow, Esquire
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Charleston, SC 29401
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jblincow@blincowgriffin.com

Date: 2/27/15
Charleston, South Carolina

Exhibit C

(5)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2013-CP-10-1396

PERSONAL CARE, INC. . . . . Appellant,

vs.

Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, ... Respondents.

AMENDED NOTICE OF APPEAL

Appellant, PERSONAL CARE, INC, appeals the following orders:

1. Order Denying Plaintiff's Motion to Restore, filed on March 3, 2015, a copy of which is attached as Exhibit 1.
2. Order On Plaintiff's Motion to Alter or Amend Judgment, filed on June 22, 2015, a copy of which is attached as Exhibit 2.
3. Modified Order on Plaintiff's Motion to Alter or Amend Judgment, filed on May 23, 2016, received by counsel for Appellant on June 1, 2016, a copy of which is attached as Exhibit 3.
4. Substituted Modified Order on Plaintiff's Motion to Alter or Amend Judgment,

filed on June 14, 2016 and mailed to counsel for Appellant on June 15, 2016 a copy of which is attached as Exhibit 4.

All four Orders were issued by the Honorable J.C. Nicholson, Jr.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

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Thomas A. Pendarvis (SC Bar # 064918)
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Counsel for Appellant, PERSONAL CARE, INC.

Beaufort, South Carolina
October 31, 2016

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2013-CP-10-1396

PERSONAL CARE, INC. . . . . Appellant,

vs.

Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, ... Respondents.

PROOF OF SERVICE

I, Thomas A. Pendarvis, a lawyer with PENDARVIS LAW OFFICES, P.C., certify that I have served one (1) copy of the NOTICE OF APPEAL on counsel for Respondents, by depositing a copy of the same in the United States Mail, postage prepaid, on the 31st day of October, 2016 addressed to:

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Respectfully submitted,

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Counsel for Appellant, PERSONAL CARE, INC.

Beaufort, South Carolina

October 31, 2016

Exhibit D

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

PERSONAL CARE, INC.,

Plaintiff,

vs.

THOMAS A. PENDARVIS and PENDARVIS LAW OFFICES, P.C.,

Defendants.

Case No. 2017-CP-10-04374

AFFIDAVIT OF STEPHEN E. DARLING

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, STEPHEN E. DARLING who, first being duly sworn, deposes and says:

1. I am an attorney at law who has practiced at the law firm of Haynsworth Sinkler Boyd, P.A., and its predecessor firms in Charleston, South Carolina, since 1974.

2. I graduated from the University of South Carolina with a Bachelor of Science degree in Business Administration in 1971 and the University of South Carolina School of Law with a Juris Doctor degree in 1974.

3. I was licensed to practice law and admitted to the Bar in South Carolina on November 14, 1974 and have continued to practice law in South Carolina as a member in good standing since that time.

4. I am also admitted to practice in the United States Supreme Court since 1982, the United State Court of Appeals for the Fourth Circuit since 1976, the United States Court of

Appeals for the Fifth Circuit since 1976, and the United States Court of Appeals for the Third Circuit since 2000.

5. I have been recognized by *The Best Lawyers in America*© for Personal Injury Litigation-Defendants (2013-2018) and Product Liability Litigation-Defendants (2013-2018) and *South Carolina Super Lawyers*® Personal Injury-Products: Defense (2008-2017).

6. I am a member of the South Carolina Defense Trial Attorneys' Association and have served on its Board of Directors from 1994 to 1999, as Secretary in 2000, Treasurer in 2001, Present-Elect in 2002, and President in 2003.

7. I am also a member of the South Carolina Bar, Charleston County Bar Association, American Bar Association, Defense Research Institute, International Association of Defense Counsel, American Board of Trial Advocates and Litigation Counsel of America.

8. I devote the majority of my practice to the defense of civil litigation matters.

9. I have been asked to review file materials in this case on behalf of the Plaintiff and provide an expert witness affidavit pursuant to the provisions of §15-36-100, S.C. Code (2005).

10. I have been provided and reviewed the following pleadings, court documents and orders:

(a) Complaint in *Personal Care, Inc. v. Hattie M. Askew, et al.*, Case No. 2009-CP-10-07692 filed December 20, 2009;

(b) Verified Complaint in *Personal Care, Inc. v. Jerry N. Theos, et al.*, Case No. 2013-CP-10-01396 filed March 8, 2013;

(c) Motion to Restore Pursuant to Rule 40(J), SCRCP in *Personal Care, Inc. v. Jerry N. Theos, et al.*

(d) Order Denying Plaintiff's Motion to Restore and Denying Defendants' Motions for Sanctions in *Personal Care, Inc. v. Jerry N. Theos, et al.*; and

(e) Complaint in Personal Care, Inc., v. Thomas A. Pendarvis and Pendarvis Law Offices, P.C., Case No. 2017-CP-10-04374 filed August 25, 2017.

11. The relevant facts underlying this claim are set forth in the above-referenced Order Denying Plaintiff's Motion to Restore and Denying Defendant's Motion for Sanctions and the Complaint in *Personal Care, Inc. v. Thomas A. Pendarvis and Pendarvis Law Offices, P.C.*

12. On March 8, 2013, Personal Care, by its lawyers Thomas A. Pendarvis and Pendarvis Law Offices, P.C., filed its action against Jerry N. Theos, *et al.*, alleging legal malpractice. The Personal Care action against Theos, *et al.* was administratively dismissed by The Honorable R. Markey Dennis, Jr.'s Consent Order Striking Case From Docket [Rule 40(j), SCRCP] That order set forth the following:

> IT FURTHER APPEARING that each party agrees that if the claim is restored within one year from the date of this Order, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the status of limitations as of the date of this Order shall remain and begin to run on the date the claim is restored.

The Order was filed August 28, 2013.

13. Although Personal Care's lawyer Thomas A. Pendarvis attempted to get consent from all parties to restore the case within one year of the Rule 40(j) dismissal, he was unable to obtain all those consents. Thereafter, he filed the Motion to Restore September 22, 2014, over three weeks after the one year deadline set forth in Judge Dennis' 2013 Order and S.C.R.C.P. Rule 40(j).

14. The Honorable J.C. Nicholson, Jr., issued his Order Denying Plaintiff's Motion to Restore and Denying Defendants' Motion for Sanctions filed March 3, 2015 in which he found that Personal Care did not file a timely motion to restore in order to benefit from the tolling provisions of Rule 40(j). He then went on to find that because the Motion to Restore had not

been filed within one year of the administrative dismissal, the statute of limitations was not tolled and, therefore, Personal Care's claims against the Defendants Theos, *et al.*, were time barred.

15. S.C.R.C.P. 40(j) and cases decided thereunder clearly require that in order to toll the statute of limitations a motion to restore must be filed within one year of the date the case was stricken under the rule.

16. In my judgment and opinion, based upon a reasonable degree of legal certainty, Thomas A. Pendarvis and Pendarvis Law Offices, PC, who were retained by Personal Care, Inc., to pursue the legal malpractice action against Jerry N. Theos, *et al.*, were and/or should have been aware of the provisions of S.C.R.C.P. 40(j) and when they could not get consent to restore, they should have filed the motion to restore the case pursuant to Rule 40(j) within one year of Judge Dennis' Order filed August 28, 2013. Their failure to do so resulted in the case being dismissed as time barred by Judge Nicholson's Order.

17. The failure of Thomas A. Pendarvis and Pendarvis Law Offices, PC timely to file the motion to restore pursuant to Rule 40(j) was violative of the standard of care for lawyers licensed to practice in South Carolina, was negligent and caused the case to be dismissed.

STEPHEN E. DARLING

Sworn to before me this 3rd
day of November, 2017.

Notary Public for South Carolina
My Commission Expires: 3-12-24

DM: 5176235 v.1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Appellate Case No. 2016-001266

Personal Care, Inc.,.....Appellant,

v.

Jerry N. Theos; Uricchio, Howe, Krell,
Johnson, Toporek, Theos & Keith, P.A.;
Cheryl D. Shoun; and Taylor, Shoun,
Bowley & Byrd, LLC,..... Respondents.

PROOF OF SERVICE

Counsel for Appellant Personal Care, Inc. certifies that he served Appellant's Return to Respondents' Joint Motion to Dismiss Appeal as Moot upon all parties by placing a copy in the United States mail, postage prepaid, to the below listed parties on June 4, 2018, addressed to the following:

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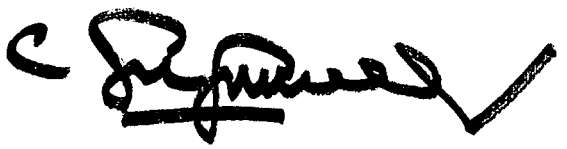
COUNSEL FOR RESPONDENTS JERRY N. THEOS & URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK, THEOS & KEITH, P.A.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

COLLINS & LACY, P.C.

By: 

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ATTORNEYS FOR APPELLANT

**PROOF OF SERVICE-
APPELLANT'S RETURN TO
RESPONDENTS' JOINT MOTION
TO DISMISS APPEAL AS MOOT**

Columbia, South Carolina
June 4, 2018

Collins Lacy
ATTORNEYS AT LAW

1330 Lady Street, Sixth Floor (29201) Post Office Box 12487 | Columbia, SC 29211

VIA HAND DELIVERY
The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
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Columbia, South Carolina 29201

2008-100