

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin Stilwell, Circuit Court Judge

Case No. 2017-CP-23-3754
Appellate Case No. 2017-002618

RECEIVED
JUL 17 2018
SC Court of Appeals

Harold Estes Blackwell, Jr.

Appellant,

v.

Miracle Hill Ministries, Inc.

Respondents.

RECORD ON APPEAL

July 17, 2018

Harold Estes Blackwell, Jr.
315 Glendale Road
Union, South Carolina 29379
(864) 303-7000
halblackwell@gmail.com
Appellant appears *pro se*

Adam Bach
1306 South Church Street
Greenville, South Carolina 29605
Attorney for Respondent Miracle
Hill Ministries, Inc.
(864) 236-5013

CERTIFICATE OF COUNSEL

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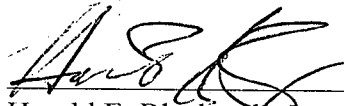
Case No. 2017-002618

CERTIFICATE OF COUNSEL

RECORD ON APPEAL

The undersigned certified that this Record of Appeals complies with Rule 210(g) SCRPC and Appellant, pro se, certifies as described in said Rule.

July 16, 2018.



Harold E. Blackwell, Jr.
315 Glendale Road
Union, South Carolina 29379
(864) 303-7000
Appellant, pro se

Adam Bach
1306 S. Church Street
Greenville, SC 29605
864-236-5013

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Harold Estes Blackwell, Jr.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

vs.

Anita Jane Miller
Miracle Hill Ministries, Inc.
William Fisk

2017 Plaintiff (SP) 2:39

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE, SC

-CP-

2017-CP-23-03754

Defendant(s)

Submitted By: Harold Estes Blackwell, Jr. pro se
Address: 315 Glendale Road, Union, SC 29379

SC Bar #: na
Telephone #: 864 303 7000
Fax #: _____
Other: _____
E-mail: halblackwell@gmail.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. 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.

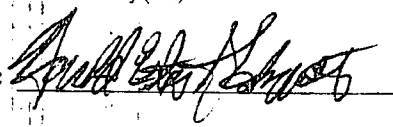
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- xx 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.
xx 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)
☐ 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)
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☐ Possession (450)
☐ Building Code Violation (460)
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| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
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☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: 

Date: June 8, 2017

A

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 GREENVILLE

HAROLD ESTES BLACKWELL, JR.

vs.

ANITA JANE MILLER
MIRACLE HILL MINISTRIES, INC
WILLIAM FISK

Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO.

2017-CP-23-03754

2017 JUN -9 PM 2:39

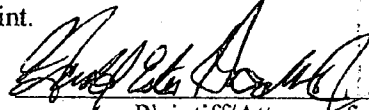
FILED
CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

TO THE DEFENDANT ABOVE-NAMED: *Miracle Hill Ministries, 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.

Union, South Carolina

Dated: June 9, 2017



Plaintiff/Attorney for Plaintiff

Address: 315 Glendale Road
Union, SC 29379
864 303-7000
halblackwell@gmail.com

STATE OF SOUTH CAROLINA,

COUNTY OF GREENVILLE

HAROLD ESTES BLACKWELL, JR.

Plaintiff,

vs.

ANITA JANE MILLER

MIRACLE HILL MINISTRIES, INC

WILLIAM FISK

Defendant.)

IN THE COURT OF COMMON PLEAS

2017 JUN -9 PM 2:39

SUMMONS

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

FILE NO.

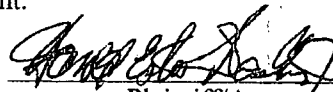
2017-CP-23-03754

TO THE DEFENDANT ABOVE-NAMED: *Anita Jane Miller*

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.

Union, South Carolina

Dated: June 9, 2017



Plaintiff/Attorney for Plaintiff

Address: 315 Glendale Road
Union, SC 29379
864 303-7000
halblackwell@gmail.com

STATE OF SOUTH CAROLINA,

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

HAROLD ESTES BLACKWELL, JR. 2017 JUN -9 PM 2:39

SUMMONS

Plaintiff,

vs.

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

FILE NO.

ANITA JANE MILLER
MIRACLE HILL MINISTRIES, INC
WILLIAM FISK

2017-CP-23-03754

Defendant.

TO THE DEFENDANT ABOVE-NAMED: *William Fisk*

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.

Union, South Carolina

Dated: June 9, 2017



Plaintiff/Attorney for Plaintiff

Address: 315 Glendale Road
Union, SC 29379
864 303-7000
halblackwell@gmail.com

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Harold Estes Blackwell, Jr.

Plaintiff

vs.

Miracle Hill Ministries, Inc.

Anita Jane Miller (a.k.a. Anita M. Blackwell)

William Fisk

Defendants

IN THE COURT OF COMMON
PLEAS

2017 JUN -9 PMT 2:13
THIRTEENTH JUDICIAL
CIRCUIT

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE
Case No. _____-CP-_____

COMPLAINT

(JURY TRIAL DEMANDED)

2017-CP-23- 03754

I. INTRODUCTION

The Plaintiff, Harold Estes Blackwell, Jr., pro se, comes now before this honorable Court to complain of Defendants, jointly and severally, by alleging the following facts, causation of damages and to seek monetary redress for damages suffered by Plaintiff at the hands of defendants.

II. PARTIES AND JURISDICTION

1. Plaintiff is a U.S. citizen residing at 315 Glendale Road, Union, Union County, South Carolina.

2. Defendant Miracle Hill Ministries (Miracle Hill) is a South Carolina Non-profit Corporation, organized under the laws of the state of South Carolina and is located at 2419 B Wade Hampton Blvd., Greenville, South Carolina.

3. Plaintiff is informed and believes Defendant Anita Jane Miller (Defendant Miller) is a person who lives a transient lifestyle but was last known to Plaintiff to

2

have a post office box at the US post office in Greenville County, South Carolina with zip code 29604.

4. Plaintiff is informed and believes Defendant William Fisk (Defendant Fisk) resides at 223 Riggs Drive, Clemson, Pickens County, South Carolina and is a U.S. citizen.

5. As such this Court has personal jurisdiction over all Defendants to this action and has subject matter jurisdiction with respect to all causes of action stated herein. The claims as stated herein arose from occurrences in Greenville and Pickens Counties of South Carolina, with the exception of Defendant Miller's actions in Oconee County, South Carolina, which represents a only one event relevant to Plaintiff's complaint and several of Defendant Fisk's actions described below which do not affect personal jurisdiction in this matter.

6. Venue is proper in this forum in that the damages alleged are in excess of the amounts lower courts are permitted to adjudicate under the law.

III. FACTUAL ALLEGATIONS

7. Plaintiff and Defendant Miller were married on March 8, 1992 and divorced on October 1, 2016.

8. Plaintiff is of good character and would enjoy a cherished reputation were it not for the actions of Defendants, jointly and severally.

9. Plaintiff is an accomplished professional. In his career Plaintiff has received awards for commercial insurance sales, owned an independent insurance agency for eight years and eight months (was the youngest agency owner ever awarded a

property and casualty insurance contract with binding authority by The Hartford Insurance Group), won awards for marketing investment products and predicted the 2008 financial crisis while a financial advisor at Merrill Lynch, written a bestselling book about his experiences at Merrill Lynch, "Secrets of the Skim", appeared on national television (Fox Business News' "Happy Hour") as a wealth management industry expert, lectured at the George Dean Johnson Business School and to the Clemson University Graduate School of Entrepreneurism, composed white papers for North Carolina Senator Kay Hagen and Republican presidential candidate Jeb Bush regarding conflicts of interest in the investment advisory industry and the danger of negative interest rates in a global economy, respectively.

10. Plaintiff also demonstrated a greater knowledge of addiction and the elements of successful treatment as it pertained to Defendant Miller than the staff at the Miracle Hill operated treatment facility for women at 19 Graves Drive in Greenville, South Carolina, called "Renewal."

11. Miracle Hill Director Reid Lehman, Miracle Hill Director of Adult Ministries William Slocum, Miracle Hill teacher Toby Woodard and Defendant Fisk all incorrectly assessed Defendant Miller progress in recovery from alcoholism.

12. Plaintiff correctly assessed Defendant Miller's progress in recovery from alcoholism.

13. Plaintiff has never abused Defendant Miller in any regard.

14. The matter of treating the disease of addiction in the homeless population is a matter of public policy.

15. The manner in which nonprofit addiction services providers treat family members of those experiencing an attempt by a loved one to address their alcoholism under an unorthodox treatment protocol designed by the nonprofit is a matter of public policy.

16. Defendants knew, or should have known, Plaintiff was in a fragile emotional state and predisposed to be injured by emotional trauma during all times referenced herein.

17. Reid Lehman, former Director of Miracle Hill Ministries, William Slocum, Director of Adult Ministries at Miracle Hill, his wife Janine Slocum, a counselor at Miracle Hill's Renewal center of the treatment of women's addiction (Renewal) and Toby Woodard, a part time teacher at Renewal were acting in their capacity as employees of Defendant Miracle Hill and within the scope of their employment during all times referenced herein.

18. Exasperated by Defendant Miller's habitual drunkenness, Plaintiff informed Defendant Miller in late January, 2015, he was separating from her as he alone was moving to Clemson, South Carolina, to rejoin the congregation of Clemson Presbyterian Church, which had been the source of much emotional comfort and spiritual growth to Plaintiff in the past.

19. Defendant Miller was fired from her position as assistant to the Rector at Christ Church Episcopal in Greenville for being intoxicated while at work in January of 2015 subsequent to a telephone call made by Plaintiff requesting help in addressing his wife's alcoholism from her employer.

20. Defendant Miller was extremely angry with Plaintiff because he sought help in dealing with her addiction from her employer, who subsequently terminated her employment because she was intoxicated while at work.

21. While Plaintiff arranged to move to Clemson, the City of Greenville Police Department arrived at 9 Wiscasset Way, Greenville, South Carolina, where Defendant Miller and Plaintiff were living as man and wife, to do a wellness check on Defendant Miller.

22. The police had been summoned by Amy Malik, Defendant Miller's former co-worker, who requested a wellness check on Defendant Miller because, "both cars were in the driveway and I became concerned."

23. The police apologized to Plaintiff, as Defendant Miller was only slightly intoxicated and in good spirits, obviously in no fear of Plaintiff in any regard and in no danger whatsoever.

24. Defendant Miller injured herself while intoxicated and falsely accused Plaintiff of domestic abuse to explain bruises on her person to coworkers at Christ Episcopal Church in Greenville. Defendant Miller has admitted to this lie under oath in her divorce proceeding with Plaintiff. (see Plaintiff's Exhibit A).

25. When Plaintiff and Defendant Miller lived in Clemson as man and wife, Defendant Fisk acted as their shepherding elder at Clemson Presbyterian Church and met frequently with Plaintiff and Defendant Miller.

26. On February 10, 2015, Plaintiff moved to Clemson, South Carolina, and immediately met with Defendant Fisk at 102 Karen Court, Clemson, South

Carolina, Plaintiff's home, to tell him about Defendant Miller's gross and repeated adultery. Plaintiff also described for Defendant Fisk his wife acute alcoholism.

27. Defendant Fisk asked Plaintiff if he were sober and Plaintiff truthfully told him he had not had a drink since January 5, 2015.

28. Plaintiff gave Defendant Fisk this most personal and confidential information to explain the Biblical justification for his separation from his wife and why he intended to divorce Defendant Miller if she did not get help for alcoholism and "take ownership" of her gross adultery.

29. Plaintiff also told Defendant Fisk at this time how much he looked forward to reestablishing relationships at Clemson Presbyterian Church and how much those relationship meant to Plaintiff.

30. Defendant Fisk at this meeting also informed Plaintiff of his struggles with his son's addiction, describing how he had carried his son's medication in his pocket and was forced to be near his son daily to dispense the medication as prescribed.

31. During his time acting as Plaintiff's and Defendant Miller's shepherding elder, Plaintiff had informed Defendant Fisk of the accepted protocol for dealing with his son's addiction. Defendant Fisk ignored Plaintiff's advice then and was obviously still attempting to apply his self-designed solution to addiction by, inter alia, managing his son's medication in the fashion he described.

32. Plaintiff is informed and believes Defendant Miller was admitted to a medical facility for alcohol detoxification shortly after Plaintiff moved to Clemson, rekindling Plaintiff's hope his marriage could be repaired.

33. Plaintiff met Defendant Miller several times while she remained in a halfway house trying to get into an alcoholic treatment facility and had sexual relations with her on the weekend before her admission to Renewal.

34. Knowing Defendant Miller wanted to go into an extended treatment program, and being enthusiastically supportive of those efforts, Plaintiff called Mr. Woodard and asked him to intervene on behalf of Defendant Miller to gain her admission into Renewal's program.

35. Plaintiff is informed and believes employee Woodard did arrange for Defendant Miller's admission to Renewal at Plaintiff's request.

36. Renewal advertises the use of a treatment protocol described in the Renewal Handbook as "a Christian adaptation of the 12-step recovery model, a Biblically based approach to the 12 step of Alcoholics Anonymous." (See Plaintiff's Exhibit B).

37. The Renewal website states "best practice recovery concepts" are used to treat patients.

38. The Renewal handbook is published on the Renewal website.

39. Plaintiff relied on statements published by Defendant Miracle Hill on Renewal's website in regards to their philosophy of treating the disease of alcoholism before enthusiastically supporting Defendant Miller's desire to be admitted to Renewal with a call to Mr. Woodard.

40. During Plaintiff's aforementioned conversation with Mr. Woodard, which lasted about thirty (30) minutes, Mr. Woodard confirmed the handbook's description of the treatment protocol. Mr. Woodard assured Plaintiff at length that the Renewal

program was strictly adherent to Biblical principles and the principles of recovery from alcoholism as described in the book, "Alcoholics Anonymous."

41. The subsequent actions of Defendants Miller and Defendant Miracle Hill employees in no way adhered to any aspect of the Bible or the principles laid out in the book Alcoholics Anonymous or the best practices for treating addiction.

42. In the first 30 days of the Miracle Hill Renewal treatment program patients are permitted no visitors and the only communication is with immediate family members via US post.

43. Plaintiff wrote Defendant Miller practically every day during this period and Defendant Miller reciprocated, with both expressing deep affection for each other and expressing hopes Defendant Miller's treatment for alcoholism would heal their marriage.

44. Despite Defendant Miller's assurances in her letters that Plaintiff was "#1 on the list" regarding visitors, she had informed Renewal staff to put Plaintiff on the "no contact" list upon her entrance to Renewal without telling Plaintiff.

45. Plaintiff is informed and believes Defendant Miller later had Plaintiff removed from the "no contact" list.

46. On the first day Defendant Miller was allowed visitors, Plaintiff arrived at Renewal's facility, promptly at the earliest possible moment, 1pm, and stayed until the last possible moment, 4pm.

47. During his first visit to Renewal, Plaintiff asked Defendant Miller if she planned to move back in with him upon her completion of the Miracle Hill treatment protocol and she eagerly, and without any hesitation, replied she "yes."

48. On his first visit to Renewal, Plaintiff was accused by Ms. Slocum of being intoxicated though he was not.

49. Ms. Slocum stated her suspicions regarding Plaintiff's level of intoxication were due to warnings by untrained members of the Renewal "house staff" that they had smelled alcohol on Plaintiff.

50. This accusation and confrontation upset Defendant Miller to the point she began to cry even though Plaintiff was allowed to continue his visit.

51. Ms. Slocum threatened Plaintiff upon his departure with banishment from the Renewal facility should he appear again intoxicated. Plaintiff was taken aback by Ms. Slocum's unprofessionalism and her unchristian attitude as her evaluation of Plaintiff was seriously in error.

52. Plaintiff visited his wife at the Renewal facility again the following Saturday. On this visit Plaintiff found Defendant Miller upset because her fellow Renewal program participants were openly criticizing her for not doing her fair share of cleanup work, by virtue of her only responsibility being the cleanliness of the Renewal housing facility's baseboards.

53. Plaintiff also learned on his second visit from Defendant Miller that the accusation of Plaintiff's intoxication had been the devious plot of one of the "house staff" members to "create drama."

54. Upon completion of thirty days at Renewal, Defendant Miller was permitted two weekly fifteen (15) minute telephone conversations. Defendant Miller called Plaintiff at every single opportunity until May 28, 2015.

55. Plaintiff was rightly concerned Defendant Miller was not making sufficient progress in recovery because she refused to admit she had been drinking in the morning before going to work despite the fact Plaintiff had witnessed Defendant Miller pouring vodka from a half gallon bottle into a small plastic cup in their walk-in bedroom closet and drinking it prior to leaving for work on more than one occasion.

56. Defendant Miller continued making these twice-weekly calls to Plaintiff until May 28, 2015, when Plaintiff noticed Defendant Miller calling but was on a very important business call and was unable to answer.

57. Plaintiff's last verbal communication with Defendant Miller prior to his suicide attempt was on May 25, 2015, in which Defendant Miller ended the call by telling Plaintiff she "loved him very much."

58. Plaintiff is informed and believes Defendant Miller had been for some time lying to her mother and other family members about the nature and status of her marriage.

59. Plaintiff is informed and believes Defendant Miller began a period of refusing to communicate with Plaintiff and refusing to offer any explanation for her silence, starting May 28, 2015, to perpetuate the lies she had told her family regarding her marriage, to intentionally inflict emotional pain on Plaintiff in retaliation for his

call to her employer and to continue the pattern of abuse she inflicted on Plaintiff during their marriage.

60. On May 28, 2015, Plaintiff's stepfather-in-law, Richard Wagner, died, forcing Defendant Miller to either admit to her misrepresentation of the status her marriage or not inform Plaintiff of Mr. Wagner's death to avoid having Plaintiff mingle with family members, and reveal Defendant Miller's deception regarding her marriage at the funeral.

61. On June 4, 2015, Plaintiff sold a last real estate holding netting approximately \$50,000 and used the proceeds to start a business brokerage firm.

62. Defendant Miller has a track record of deciding to not communicate with her husband and offer no explanation. During the most dysfunctional periods in her life, when she was least able to rationally make decisions, (she move to Colorado in the depths of despair of her last alcoholic bout in 1990 which ended her first marriage, absolutely refused to speak with the Plaintiff at all during a trip to Susan Ray's home in Clemson, South Carolina, shortly after she was caught posting herself to the website Adult Friend Finders and meeting men in and around Spartanburg, South Carolina, to engage in adulterous sex acts including unprotected sexual intercourse with strangers).

63. Defendant Miller knew her refusal to communicate with Plaintiff outside a note sent via Mr. Slocum's email, warning Plaintiff to stay away from the Renewal facility and stating she was under the capable care of Defendant Miracle Hill, would cause Plaintiff extreme emotional distress as she had witnessed Plaintiff's extreme

emotional duress when Defendant Miller took the identical tact on her visit to Susan Ray's house in 2012.

64. Defendant Miller's first marriage ended when she, without warning, disappeared from her home in Greenville along with her two young children, without telling her husband why, where she was or that she was even considering such an action before she did it.

65. Defendant Miller also falsely accused her first husband of domestic abuse in her answer to his divorce complaint, a claim the Court determined to be untrue during the divorce action.

66. Defendant Miller has demonstrated she has no qualms with discarding husbands like pieces of trash and accuse them of domestic abuse when it suits her purposes.

67. Defendant Miller and the staff at Miracle Hill refused to return Plaintiff's telephone calls, answer his letters, answer his emails, or communicate in any fashion with him, between May 28, 2015 and June 29, 2015.

68. Plaintiff visited the Renewal facility on June 20th in an attempt to speak with his wife but was told by a Renewal staffer, "she's not seeing visitors today. After a while you can sit down and speak to her when we decide the time is right."

69. Plaintiff's treatment on his June 20, 2015, visit was unprofessional, disrespectful, counter indicative of an organization capable of effectively applying the alcoholic treatment protocol prescribe in the Bible, the book "Alcoholics Anonymous," or best practices of addiction treatment. This realization gave Plaintiff

ample reason for concern regarding his wife's progress in recovery and general well-being.

70. The treatment Plaintiff received at the hands of Defendants Miller and Miracle Hill on June 20, 2015 was outrageous and caused Plaintiff severe emotional duress, shame, humiliation, pain and suffering.

71. Plaintiff gave Defendant Miller and Miracle Hill no reason to be concerned that Plaintiff was dangerous or motivated by anything other than his ever-increasing concern about his wife's health.

72. Despite the fact Plaintiff in all likelihood saved Defendant Miller from serious injury, or even death, and that Plaintiff was a sober Christian who had accumulated twenty years of sobriety utilizing the treatment protocol claimed to be used by Defendant Miracle Hill and the fact he had facilitated Defendant Miller's admission to the Renewal facility, the staff at Renewal, with absolutely no just cause, treated Plaintiff with disdain and designed disrespect, which caused Plaintiff to suffer severe emotional distress, humiliation, pain and suffering.

73. Plaintiff made clear through letters and emails to Defendants Miller and Miracle Hill he was experiencing the most extreme emotional distress imaginable due to the disrespect, pain and suffering due directly and proximately to Defendant Miller's refusal to explain her silence and Defendant Miracle Hill's encouragement of her outrageous behavior.

74. Plaintiff is informed and believes Defendants Miller and Defendant Miracle Hill decided in June of 2015, to teach Plaintiff a lesson by inflicting emotional abuse

on Plaintiff using the disrespectful refusal of Defendant Miller to explain her silence as a catalyst for their plan to inflict emotional duress on Plaintiff.

75. Defendants Miller and Miracle Hill knew, or should have known, their decision to not provide any information to Plaintiff regarding the status of his twenty-three (23) year marriage or provide an explanation for Defendant Miller's silence would cause him extreme emotional distress, humiliation, shame, pain and suffering.

76. Defendant Miller steadfastly refused to rescue Plaintiff from the extreme emotional duress he was experiencing and provided not a single accommodation to her husband of twenty three years. In fact, just the opposite occurred. When it became clear her unexplained silence was drastically effecting Plaintiff emotionally, Defendant Miller became evermore insistent she would not rescue Plaintiff in any regard.

77. Defendant Miller's unexplained silence was a direct violation of Biblical principles Miracle Hill falsely claim to employ, the principles of Alcoholics Anonymous Miracle Hill falsely claimed to employ, the best practices of addiction treatment and the laws of the State of South Carolina regarding the fiduciary obligations one spouse has to another.

78. Plaintiff repeatedly expressed concern to Renewal staff his wife's vicious treatment of him indicated she was not making progress in recovery from alcoholism per the recovery program described to Plaintiff by Mr. Woodard and the handbook published on the Renewal website.

79. Plaintiff was also concerned the Renewal program did not include family participation in their treatment protocol as prescribed in the AA treatment regiment described in the book, "Alcoholics Anonymous," the protocol endorsed by the American Society of Addiction Medicine (ASAM) and best practices for the treatment of addiction.

80. Defendant Miller's note of June 29th (Plaintiff's Exhibit C) was not written in front of Plaintiff and he had no way of knowing whether Defendant Miller's words were coerced or unduly influenced.

81. Plaintiff had reason to consider Defendant Miller's reference to Miracle Hill's competency as possibly a sign of distress since Defendant Miller was well aware Plaintiff had been treated as described at the hands of Ms. Slocum on his two visits to the facility.

82. Plaintiff did recognize if Defendant Miller voluntarily wrote the note she was suffering from a debilitating rage and not making progress in recovery from her alcoholism.

83. After Plaintiff's June 20, 2015, visit to the Renewal center he escalated his efforts to discover what his wife had told the Miracle Hill staff to make them decide to treat Plaintiff so heinously and why she had made such a drastic decision concerning Plaintiff and her marriage without his input.

84. Plaintiff began calling and emailing Renewal staff and writing letters to the Board of Directors to inquire as to the health and welfare of Defendant Miller, pass on a description of the outrageous treatment a fellow Christian had been afforded

by their organization and express concerns about the efficacy of Renewal's application of the advertized treatment protocol being used to treat his wife's addiction.

85. Plaintiff's allegation Defendant Miller was engaged in an assault on his emotional well-being is grounded in the doctrine *mater semper certa est*. There is no other explanation for Defendant Miller's note of June 29th, which is prima facie evidence of Defendant Miller's rage, and her refusal to provide any explanation to Plaintiff for her silence, was a method to injure Plaintiff.

86. Having over 20 years successful experience in the recovery community Plaintiff was deeply concerned Defendant Miracle Hill was obviously supporting a drastic decision by a "client" who only two months earlier had been medically detoxified from alcohol and experiencing the grief of having lost her stepfather. A rule of thumb in Alcoholics Anonymous and best practice for treating addiction is for a recovering person to make "no major decisions in the first year." For Defendant Miracle Hill to support Defendant Miller's decision given her recognized impaired ability to make decisions is an outrageous policy which foreseeably injured Plaintiff.

87. Knowing the last words his wife spoke to him were, "I love you very much," being falsely accused of being drunk on his first visit, learning of the Miracle Hill staff's "drama" on his second visit, having experienced the most unprofessional behavior imaginable at the hands of Ms. Slocomb and other Renewal staff; joined with the unexplained but encouraged silence of his wife, Plaintiff had every reason to be concerned for the well being of his wife on July 18, 2015.

88. By deciding to provide Plaintiff no explanation for Defendant Miller's unexplained silence, Defendant Miller and Defendant Miracle Hill consciously exposed Plaintiff to an unjustifiable risk which, as a matter of law, constitutes recklessness on the part of Defendants Miller and Miracle Hill.

89. No reasonable person would expect a spouse to stop seeking to rescue another spouse in the same situation in which Plaintiff found himself.

90. Plaintiff had a duty to rescue Defendant Miller, who was his wife on July 18, 2015.

91. No Defendant is able to cite any Biblical edict, principle of Alcoholics Anonymous or best practice, which prescribes a wife suddenly, and without providing any explanation, stop communicating with her husband and therefore Defendant Miracle Hill must be determined to be administering a protocol to the treatment of the disease of addiction designed "in-house."

92. Defendant Miracle Hill's administration of an "in-house" protocol for the treatment of the disease of addiction is not advertized on their website and is in contradiction to the claim made on the website regarding the treatment protocol's philosophy.

93. On Saturday July 18, 2015, Plaintiff, knowing Defendant Miller had been at Renewal long enough to leave the facility during visiting hours, drove to Greenville and waited on a side street to follow Defendant Miller upon her departure, to learn if she had authored the note received by Plaintiff on June 29, 2015, under duress

and to speak with his wife of twenty three (23) years without the Renewal staff present.

94. Plaintiff is informed and believes, as an unredacted police report (Plaintiff's exhibit D) would reveal, Mr. Slocum informed the police when making the call to summon them to the Renewal facility that Plaintiff had been guilty of domestic abuse in the past and that Plaintiff was intoxicated on his visits to Renewal, which are allegations Mr. Slocum knew, or should have known, were false.

95. Plaintiff has never committed domestic abuse against anyone, which is a crime in South Carolina.

96. Mr. Slocum alleged verbally to police on July 18, 2017, Plaintiff was guilty of criminal behavior and insisted Plaintiff be arrested.

97. Mr. Slocum on July 18, 2017, disparaged Plaintiff's character by falsely accusing Plaintiff of being intoxicated at the Renewal facility on previous occasions.

98. Being falsely informed Plaintiff was a criminal by Mr. Slocum, while Plaintiff waited in his car, two City of Greenville Police officers approached Plaintiff and asked who he was and why he was there on July 18, 2015..

99. Plaintiff noticed Mr. Slocum in a parking lot adjacent to the side street while Plaintiff explained his predicament to the officers and then watched as Mr. Slocum left the scene.

100. Almost immediately after his departure, Mr. Slocum returned to the parking lot. He called one of the police officers over to his car and began to insist Plaintiff be arrested.

101. Plaintiff noticed Mr. Slocum was exhibiting rage toward Plaintiff for trying to see his wife.

102. Upon information and belief, Mr. Slocum made his determinations regarding Plaintiff's character after a single thirty (30) minute meeting with Defendant Miller and no other, or minimal, investigation.

103. Mr. Slocum knew, or should have known, his defamatory allegations and insistence Plaintiff be arrested would caused, and did cause, Plaintiff extreme emotional duress, pain and suffering. Mr. Slocum, therefore had a duty of care to ensure his actions were warranted and his statements regarding Plaintiff's character truthful.

104. Refusing Mr. Slocum's demands, the police then asked Plaintiff if he would be willing to speak with Mr. Slocum, to which Plaintiff readily agreed, explaining he had been trying to accomplish such a meeting for more than a month.

105. Mr. Slocum approached Plaintiff and began to hurl insults at Plaintiff, stating "she said she doesn't want anything to do with you" (referring to Defendant Miller) and telling the police officers Plaintiff had been drunk on previous visits to Renewal.

106. Plaintiff has never visited Renewal under the influence of alcohol or intoxicated in any fashion whatsoever.

107. Mr. Slocum's unsympathetic and unexpected remarks inflicted serious emotional harm, pain and suffering to Plaintiff, who, never anticipated a fellow Christian to heap such insults on a fellow Christian, especially one who was in such

obvious emotional duress and innocent of any wrongdoing in regards to his wife, Defendant Miller.

108. Distraught at his venomous treatment by Mr. Slocum, but absolutely compliant, Plaintiff judged no help was to be realized in the situation, and thanked the police officers before departing for his home in Clemson, emotionally devastated at what had just transpired at the hands of Defendants Miller and Miracle Hill.

109. Plaintiff experienced extreme emotional tumult at this time and began having difficulty leaving his house or conducting the activity required of a start-up business brokerage firm. The horrific treatment Plaintiff was receiving from Defendants Miller and Miracle Hill greatly impacted his ability to earn income by execute his business plan due to the extreme pain and suffering he was enduring, lack of self confidence which developed and experiencing an indeterminable fear, which began to characterize his daily state of mind when Defendant Miller began her cruel treatment of Plaintiff and which was exacerbated to a new level of suffering as a result of the July 18, 2015, visit.

110. In the days following the July 18, 2015, incident, Plaintiff, emotionally distraught and angry, resumed his letter writing campaign that culminated in a threat to sue Miracle Hill and Mr. Slocum.

111. Prompted by Plaintiff's threat to sue, Reid Lehman, director of Miracle Hill, agreed to meet with Plaintiff with the caveat Plaintiff include a member of his church's pastoral staff for Plaintiff's "accountability."

112. Defendant Fisk had been Plaintiff and Defendant Miller's shepherding elder at Clemson Presbyterian Church when they lived in Clemson, South Carolina, and they had met with Defendant Fisk and his wife Deby on more than twenty (20) occasions. Plaintiff was even invited to the renewal of Defendant Fisk and his wife's wedding vows.

113. To avoid having to repeat the embarrassing information shared with Defendant Fisk on February 10, 2015, with a member of the pastoral staff, Plaintiff asked Defendant Fisk if he would attend the meeting with Reid Lehman. Defendant Fisk readily agreed.

114. Prior to the meeting with Plaintiff and Defendant Fisk, Plaintiff is informed and believes Reid Lehman entered into a conspiracy to teach Plaintiff a lesson by intentionally inflicting severe emotional distress on Plaintiff by agreeing not to disclose to Plaintiff any information regarding his wife of twenty-three (23) years, refuse to help him learn about the welfare of his wife, or help him in any way.

115. At the meeting Defendant Fisk informed Mr. Lehman he was not a member of the pastoral staff but an elder in the church who had served as Defendant Miller's and Plaintiff's shepherding elder when they had lived in Clemson between 1996 and 2006 and attended Clemson Presbyterian Church.

116. At the meeting held at Clemson Presbyterian Church at 7am on Monday, July 27, 2015, Mr. Lehman initially flatly refused to help or intercede to help Plaintiff obtain an explanation for Defendant Miller's complete silence.

117. At the July 27, 2015, meeting Mr. Lehman made the communications represented below:

- (a) He would not recommend or ask Defendant Miller to call, write or visit Plaintiff.
- (b) He would not recommend or ask Defendant Miller to provide any explanation for her refusal to communicate with Plaintiff.
- (c) He had no knowledge of Defendant's Miller's situation except information he had been provided by Renewal staff and that information was that Defendant Miller felt she was being force to choose between her marriage and a relationship with her children.
- (d) That if he were to learn more about Defendant Miller's situation he would no longer be able to communicate with Plaintiff regarding Defendant Miller's situation.
- (e) He was of the belief, after hearing Plaintiff's story, that Plaintiff was not intoxicated on any of his visits to the Renewal facility.
- (f) Admitted Mr. Slocum acted in an unprofessional manner by stating, "yeah, Bill is not the one to conduct conflict resolution" yet offered no apologies for Mr. Slocum's hostile actions, defamatory statements and generally disrespectful behavior. Mr. Lehman chuckled at the thought of Mr. Slocum's involvement and behavior. He obviously thought Mr. Slocum's actions were a humorous side note to the whole affair.

- (g) He was of the opinion Plaintiff's actions on July 18, 2015, indicated Plaintiff was unfit to have Defendant Miller, his wife of 23 years, communicate with him in any capacity.
- (h) He was of the opinion Plaintiff's actions on July 18, 2015, diminished the creditability of Plaintiff's point of view and flatly rejected Defendant Miller's decision to provide no explanation for her silence was a product of her rage.
- (i) Claimed his only method of approaching Defendant Miller in regards to communicating with Plaintiff was to present the ultimatum to Defendant Miller that she contact Plaintiff or be expelled from the Renewal program, which he was unwilling to do.
- (j) Mr. Lehman stated he knew of no female success stories (graduates with 5 years continuous sobriety) of Renewal graduates but cited Venus Dixon, Renewal's Director, who had graduated from the facility before it was operated by Miracle Hill, and a graduate student at the University of Georgia who was scheduled to attend a reunion to be held for female graduates of the Renewal program (but did not know if she had achieved five (5) years of sobriety) as evidence Renewal's treatment protocol was effective.
- (k) Mr. Lehman agreed if Plaintiff's allegations of abuse regarding Renewal staff's "creation of drama" he observed on his first two visits were

true the situation would be of grave concern to the operation of the Renewal center.

- (l) The extent of Miracle Hill's efforts to measure the effectiveness of their treatment protocol consisted of one telephone call made on the graduate's anniversary of her graduation from the program and nothing more.
- (m) Mr. Lehman stated he had no way of measuring the efficacy of his "in-house" designed treatment protocol and did not see the importance of developing one.
- (n) Mr. Lehman could provide no basis in best practices for his attitude or decision to refuse Plaintiff's request for help communicating with his wife.
- (o) Mr. Lehman stated he would do everything in his power to prevent Plaintiff from directly communicating with his wife.
- (p) Mr. Lehman, after Plaintiff's repeated expression of disbelief at his outrageous treatment, agreed to arrange a meeting between Defendant Fisk and Defendant Miller as the sole means of Plaintiff to intervene in the farce of an alcoholic treatment program plied by Defendant Miracle Hill in an effort to save his wife's life.
- (q) Mr. Lehman stated the decision not to provide an explanation for Defendant Miller's silence was entirely Defendant Miller decision and that Renewal clients routinely made such decisions without the influence of Renewal staff.

- (r) Despite the obvious emotional pain his decision was causing Plaintiff, Mr. Lehman claimed he had no duty of care to Plaintiff, only to Defendant Miller who was his "client."
- (s) Mr. Lehman stated, as did Defendant Fisk, that Defendant Miller had no obligation, legal or otherwise, to provide Plaintiff with an explanation for her silence irrespective of the amount of emotional duress she was inflicting on Plaintiff.
- (t) Mr. Lehman stated Plaintiff's emotional devastation was none of his concern, and that, given Plaintiff's behavior on July 18, 2015, Plaintiff deserved the pain he was now suffering.
- (u) Claimed that despite Defendant Miller's statement to Miracle Hill staff that she was being made to choose between her children and Plaintiff, the staff at Miracle Hill was not interested in speaking with Plaintiff to determine the legitimacy or reasonableness of such a statement or offer a reply to false allegations that had obviously generated an extremely low opinion of Plaintiff's character at Renewal by Miracle Hill staff.
- (v) Stated Miracle Hill's Renewal program's accountability was provided by "local churches" as expressed through their financial support of Miracle Hill.

118. At the same July 27, 2015, meeting Plaintiff communicated the following to Defendant Fisk and Mr. Lehman:

- (a) He was suffering the most extreme mental pain and suffering imaginable by Defendant Miller's disrespectful, nonproductive refusal to explain her silence.
- (b) He thought the Renewal program was deficient because Defendant Miller was obviously acting out of anger and the Renewal staff was overlooking this important clue into Defendant Miller's progress in recovery.
- (c) He thought there was a abuse problem at Renewal and described the seriousness of the situation surrounding him being falsely accused of being intoxicated on his first visit to Renewal and the implications of Renewal staff deliberately leveling false allegations was a cause for great concern.
- (d) Employee Lehman's actions were unbiblical and cited specific Scripture applicable to the subject matter.
- (e) Pointed out the incongruence of Defendant Miracle Hill's alcohol treatment protocol and the Bible, principles of AA and best practices, in particular allowing Defendant Miller to make such a drastic decision after being detoxified from alcohol only two months prior and while suffering from grief at the loss of her stepfather.
- (f) Pointed out how Biblical principles, the principles of Alcoholics Anonymous and best practices state unambiguously that Defendant Miller would eventually relapse into active alcoholism if the status quo was continued.

119. Upon information and belief, Mr. Lehman, despite agreeing that what the Plaintiff was describing in his narrative about patient abuse at Renewal would constitute a major concern, failed to investigate any of Plaintiff's allegations.

120. Mr. Lehman did not tell Plaintiff Defendant Miller was not receiving his mail even though Mr. Lehman knew this to be the case at the time of the July 27, 2015 meeting.

121. Defendant Fisk readily agreed to act in the role of Plaintiff's representative for the purposes of visiting Defendant Miller to learn why she had made such an important decision in late May to not notify Plaintiff of her intentions to cut off all communication with him, why she refused to offer any explanation for her silence and to learn if Defendant Miller was aware of the humiliation, shame, disrespect, pain and suffering her decision was causing Plaintiff and how it was affecting his ability to function on a day to day basis.

122. After the July 27, 2015, meeting, Mr. Lehman presented Plaintiff and Defendant Fisk with a copy of the book he has authored and self-published, "Are Those The Words You Meant To Use" which had the ironic subtitle, "Keeping Marital Conflict Safe, Productive and Biblical."

123. Plaintiff is able to cite no less than 15 examples of Mr. Lehman advocating one course of action in his book and having acted in an opposite fashion where Plaintiff's marriage was concerned (see Exhibit E). Plaintiff limited his review of Mr. Lehman's book to finding at least one example of Mr. Lehman's contradiction in

each chapter. Plaintiff asserts there are more examples of Mr. Lehman not following his own advice sprinkled throughout his book.

124. Mr. Lehman's book's subtitle, "How to Keep Marital Conflict Safe, Productive and Biblical" is clear and convincing evidence that Mr. Lehman knew acting in contradiction to what he had written would be to encourage unsafe, unproductive and unbiblical occurrences, which is exactly what he did and exactly what happened.

125. Mr. Lehman's duty of care, and by extension Defendant Miracle Hill's duty of care, to Plaintiff under the doctrine of "calculus of negligence"¹, or "Hand rule", is alleged by Plaintiff to, as a matter of law, establish Defendant Miracle Hill not only had a duty of care, but a heightened duty of care in the instant case.

126. The subtitle of his book establishes Mr. Lehman knew the "L" variable in the formula $PL > B$ was very high and the precautions Mr. Lehman took represented by the variable "B" would reflect a negative value as Mr. Lehman subsequently published emails and took actions, infra, he knew would cause Plaintiff extreme emotional duress, pain and suffering.

127. After the July 27, 2015, meeting, which ended at approximately 9am, Plaintiff returned to his home to reflect on what had been an emotionally devastating outcome. Remembering Defendant Fisk's level of competency demonstrated by his attempts to "help" his son and knowing the abilities of Defendant Miller to deceive, Plaintiff telephoned Defendant Fisk to inform him,

¹ $PL > B$ where B is the burden of precautions and P is probability of injury, L gravity of loss. Where the $P \times L$ must be greater than B to create a duty of care.

that on reconsideration, Plaintiff did not want him to act as his representative because Defendant Fisk was not qualified to take on such a task. Plaintiff stressed to Defendant Fisk he was not prepared in any way to act as Mr. Lehman demanded.

128. Upon learning Plaintiff had reconsidered having him act as his representative, Defendant Fisk became highly agitated, citing all of the reasons he believed he was qualified to deal with addicted persons and promised to act in the limited capacity requested by Plaintiff.

129. Defendant Fisk wanted very badly to act in the contemplated role and thusly agreed to limit his interaction to gaining the answers to four questions posed by Plaintiff. 1. Would Defendant Miller agree to a five-minute telephone conversation with Plaintiff, 2. How Defendant Miller's refusal to explain her silence benefited her recovery, 3. If Defendant Miller was at Miracle Hill of her own accord, 4. If Defendant Miller wanted a divorce.

130. Given the fact Plaintiff had no other alternative to communicate with his wife, Plaintiff accepted Defendant Fisk's counter offer and entered into a contract with Defendant Fisk allowing him to act as his representative.

131. The agreement between Defendant Fisk and Plaintiff constituted a contract between the two parties and Defendant Fisk created for himself another fiduciary duty of care to Plaintiff as a result.

132. It was before this meeting on July 27, 2015, Plaintiff, engaged the services of Ross Collins, a licensed therapist and fellow member of Clemson Presbyterian Church to help Plaintiff understand what was going on in his life as he had done

nothing to warrant the abuse he was enduring at the hands of Defendants Miller and Defendant Miracle Hill.

133. Plaintiff was not yet aware Defendant Fisk was participating in the aforementioned abuse of Plaintiff.

134. Plaintiff informed Defendant Fisk he had engaged Ross Collins, a therapist that attended Clemson Presbyterian Church and who was known to Defendant Fisk.

135. Defendant Fisk informed Plaintiff on Thursday, July 30, 2015, he had finally been able to arrange a meeting with Defendant Miller on the following day at 5pm but would not be able to communicate with him regarding the outcome until Saturday, August 1, 2015, because he had other business in Greenville but did agree to text Plaintiff to confirm the meeting had taken place.

136. Upon information and belief, Defendant Fisk spent over 1.5 hours with Defendant Miller, far longer than it took to get the answers to the four questions Plaintiff had asked Defendant Fisk to retrieve or discuss.

137. Defendant Fisk later admitted his wife Deby visited with Defendant Miller for a significant period of time after their meeting, plenty of time for him to call Plaintiff and give a report, which he did not do.

138. Defendant Fisk lied to Plaintiff about his ability to communicate with him immediately after the meeting with Defendant Miller.

139. Plaintiff is informed and believes Defendant Fisk did not communicate with Plaintiff after his July 31, 2015, meeting with Defendant Miller because he desired

to speak with Ross Collins before deciding what information would be shared with Plaintiff.

140. After texting Plaintiff informing him the meeting had taken place and lasted for over 1.5 hours, Defendant Fisk telephoned Plaintiff at 10:15am, Saturday, August 1, 2015, to give an account of the meeting.

141. The call lasted 10 minutes but provided Plaintiff with none of the answers to the questions that Defendant Fisk was to retrieve.

142. Plaintiff is informed and believes, Defendant Fisk, Defendant Miller and the Renewal staff on July 31, 2015, conspired to intentionally inflict emotional distress on Plaintiff by providing Plaintiff a completely inadequate recounting of Defendant Fisk's meeting with Defendant Miller, keep certain information from Plaintiff and to lie to Plaintiff should Plaintiff press Defendant Fisk for information regarding the situation.

143. Plaintiff is informed and believes Defendant Miller told Defendant Fisk she was not planning to continue in the marriage after her graduation from Renewal but Defendant Fisk did not tell Plaintiff that information.

144. Upon information and belief, Defendant Fisk, being aware Plaintiff was under the care of Ross Collins, and knowing Ross Collins from their shared membership at Clemson Presbyterian Church, telephoned Ross Collins to discuss what information was to be shared with Plaintiff regarding what he had learned from Defendant Miller, in direct contradiction, and without Plaintiff's permission to do so and in violation of their agreement.

145. Defendant Fisk, in his telephone conversation with Plaintiff after his meeting with Defendant Miller, quoted Defendant Miller as saying, "Hal and I are just not good together."

146. Defendant Fisk could not explain why Defendant Miller's current explanation was different than what Mr. Lehman had said in the July 27, 2015, meeting (i.e. that Defendant Miller was being forced to choose between Plaintiff and her children).

147. The emotional despair, pain and suffering Plaintiff suffered on August 1, 2015 and August 2, 2015, cannot be understated.

148. Upon information and belief, Defendant Fisk continued to visit and communicate with Defendant Miller without Plaintiff's knowledge and deceived Plaintiff regarding these communications in direct violation of their agreement.

149. Unbeknownst to Plaintiff, Defendant Fisk recommended Defendant Miller for a job at Clemson University, which acted as an endorsement of Defendant Miller's continued unexplained silence, progress in recovery from alcoholism and disrespect of Plaintiff, all of which constitute a violation of their agreement.

150. Defendant Fisk's recommendation of Defendant Miller for employment is appalling evidence of his incompetence in evaluating a person's progress in recovery as Defendant Miller got drunk shortly after leaving the Renewal program.

151. Plaintiff's therapy sessions with Ross Collins after Defendant Fisk's visit with Defendant Miller became sharply focused on convincing Plaintiff to cease writing letters to Defendant Miller, a precept Plaintiff reluctantly agreed to, save

the sending of one last correspondence to Defendant Miller posted on August 7, 2015.

152. Plaintiff discontinued his therapy sessions with Ross Collin on September 13, 2015, for the following reasons:

- a) since the focus of the sessions had turned to Plaintiff's cessation of correspondence with Defendant Miller, no relief or demonstrated progress was being realized.
- b) many subtle hints from Mr. Collins such as "if today is our last session", Plaintiff got the impression Mr. Collin's was eager to end their relationship and that he no longer wanted to treat Plaintiff.
- c) Mr. Collins revealed in the last session Defendant Fisk had been visiting and communicating with Defendant Miller without Plaintiff's knowledge
- d) when pressed to reveal to Plaintiff what Defendant Fisk had communicated to him about those meetings, Mr. Collins refused to reveal the nature of those communications by stating to the effect, "you'll have to ask Bill (Defendant Fisk). I'm afraid I will not accurately tell you what has been said."

153. Upon information and belief, Defendant Fisk had learned Plaintiff's letters were not being read by Defendant Miller but did not to tell Plaintiff.

154. Being informed by Ross Collins that Defendant Fisk was acting in the matter without his knowledge Plaintiff confronted Defendant Fisk.

155. Upon Plaintiff's expression to Defendant Miller of his intentions to file for divorce on the grounds of adultery and habitual drunkenness, Defendant Fisk contacted Plaintiff to dissuade him from making such a filing yet was still deceiving Plaintiff as to the nature of his involvement and his secret communications with Defendant Miller.

156. Defendant Fisk betrayed Plaintiff as a friend and confidant which played a significant part in Plaintiff attempting to commit suicide on December 9, 2015.

157. Plaintiff again reasserted to Defendant Fisk that Defendant Miller could avoid such a filing before she began living away from the Renewal center if she would write a short explanation of her outrageous behavior for Plaintiff or make a five minute telephone call to Plaintiff, but absent this modicum of respect and demonstration of her empathy for Plaintiff's deteriorating emotional health, the divorce filing would be made.

158. During this conversation, on September 23, 2015, Plaintiff was informed by Defendant Fisk he had visited Defendant Miller without Plaintiff's knowledge explaining his visit to see Defendant Miller was the result of a spur of the moment decision since he was traveling to Greenville to attend other matters. He did not reveal the email correspondence exchange he had been having with Defendant Miller.

159. When Plaintiff pointed out this was not part of the agreement and began to end the call, Defendant Fisk changed his story and began shouting, "she called me,

she called me," revealing his original story of "a spur of the moment decision" was a lie.

160. When Defendant Fisk revealed his treachery Plaintiff ended the call abruptly, emotionally devastated by Defendant Fisk's deception and betrayal.

161. In an attempt to learn the truth, Plaintiff scheduled a meeting with Defendant Fisk and David Sinclair, pastor at Clemson Presbyterian Church.

162. When confronted the first time face to face Defendant Fisk admitted he had deceived Plaintiff regarding the extent of his activities regarding Plaintiff's wife.

163. Despite vehemently denying any other interaction with Plaintiff's wife in previous emails and telephone conversations, Defendant Fisk admitted he had visited Defendant Miller at Renewal on a Saturday and attended Defendant Miller's graduation from the Renewal program on September 8, 2015. He still did not reveal other information about the role he had created for himself and his other deceptions of Plaintiff.

164. Defendant Fisk exerted vigorously, and falsely, in the meeting with David Sinclair his disclosure of the full nature of his relationship with Defendant Miller had been revealed to Plaintiff.

165. Defendant Fisk during this meeting made false representations to Plaintiff in denying his participation in Plaintiff's private affairs other than what he had already disclosed to Plaintiff. At the time Defendant Fisk knew his representations were false, as he had recommended Defendant Miller for a job at Clemson University on August 14, 2015, (which only became known to Plaintiff when

Defendant Miller produced discovery in the divorce action on September 15, 2016), had several telephone conversations with Defendant Miller and written her an email after one of the telephone calls between Defendant Fisk and Plaintiff, insinuating Plaintiff was being unreasonable and unjust in his dealing with Defendant Miller.

166. Defendant Fisk also flatly denied having any conversation with Ross Collins regarding the responsibilities he had assumed in Plaintiff's personal affairs and the mending of his marriage.

167. Defendant Fisk did admit to several pieces of information he had gathered on his visit with Defendant Miller on or about August 15, 2015, he had not shared with Plaintiff, in direct violation of his agreement with Plaintiff to act as his representative.

168. Defendant Fisk referenced Plaintiff's behavior on July 18, 2015, as the reason Plaintiff had no creditability in asserting he was being wronged or that the Miracle Hill treatment protocol was not what it was advertized to be.

169. Defendant Fisk also failed to inform Plaintiff he thought Plaintiff was lying to him about certain facts of the circumstance.

170. Upon information and belief, upon learning of Defendant Fisk's unsuccessful attempt to dissuade Plaintiff from filing for divorce on the grounds of adultery and habitual drunkenness, Mr. Lehman sent Plaintiff an email stating Defendant Miracle Hill was providing Defendant Miller a counselor to aid in her decision regarding her marriage.

171. Mr. Lehman, in the aforementioned email, stated he was attaching certain pieces of Plaintiff's mail and email to Defendant Miller's Renewal-provided marriage counselor he had selected with the expressed intent of making Plaintiff's efforts to restore his marriage fruitless.

172. Mr. Lehman sent Plaintiff this email for the purpose of inflicting emotional duress, pain and suffering on Plaintiff.

173. In a pit of despair, in a state emotional tumult of an extreme nature, feeling abandoned and betrayed by his so-called "Christian support system" and feeling he had no other alternative, Plaintiff served Defendant Miller with a divorce complaint on September 23, 2015.

174. On the day he was forced to file for divorce, September 23, 2015, Plaintiff breached his nine months of continued sobriety and Plaintiff once again began imbibing alcohol on a daily basis.

175. Upon receiving Defendant Miller's answer to his divorce complaint Plaintiff recognized several devastatingly defamatory lies contained therein.

176. Defendant Miller did however admit the truth that she had falsely accused Plaintiff of domestic violence to her co-worker Amy Malek in December of 2014 which precipitated the police visit to their home at 9 Wiscasset Way.

177. In an effort to demonstrate to Mr. Lehman and Defendant Fisk their confidence in Defendant Miller's representations should be questioned, he sent an email with Defendant Miller's answer to his divorce complaint to each.

178. It was not until rereading the email record in constructing his reply to Defendant Miller's answer to the divorce complaint that Plaintiff realized Defendant Miller had not been reading his correspondence.

179. Upon receipt of Defendant Miller's response to his interrogatories in late October of 2015, submitted as part of his divorce proceedings' discovery, which contained grossly false allegations of adultery, Plaintiff again made several attempts to demonstrate the evil intentions of Defendant Miller, the error of Defendant Fisk's and Defendant Miracle Hill's assessment of Defendant Miller's motives and, by extension, her lack of progress in recovery from addiction.

180. Plaintiff feared for the life of his wife, as he is acutely aware many people die each day from addiction to alcohol.

181. Upon information and belief, Plaintiff's alerts that Defendant Miller had little hope of attaining long-term recovery from alcoholism given her dishonesty and continued cruel treatment of Plaintiff, did not concern Defendant Fisk or Defendant Miracle Hill and Plaintiff was ignored.

182. Plaintiff on December 9, 2015, feeling completely abandon and betrayed by Defendants, suffering from an inability to function in his vocational pursuits due to the emotional distress caused by Defendants, Plaintiff attempted suicide by piping the exhaust from his automobile into his bedroom to cause his death by carbon monoxide poisoning.

183. Plaintiff scheduled, via Microsoft Outlook's "automatic send" feature, an email to be sent to Defendant Miller at 5 am.

184. Defendant Miller, 51 minutes after reading the email, contacted the Clemson City Police, who arrived in time to save Plaintiff's life. As a result Plaintiff was forced to undergo a seventy two (72) hour evaluation period.

185. In her call to Clemson Police, Defendant Miller stated Plaintiff suffered from a "narcissistic personality disorder."

186. Plaintiff does not suffer from a "narcissistic personality disorder."

187. Plaintiff was, after receiving emergency medical care at Easley Hospital, involuntarily committed to the Patrick Harris Psychiatric Hospital in Anderson, South Carolina to complete the seventy two (72) evaluation period.

188. Plaintiff was released on December 17, 2015, after being judged by doctors to not be mentally ill or suffering from clinical depression.

189. The medical staff at Patrick Harris judged anyone subjected to such treatment as Plaintiff had endured at the hands of Defendants would consider suicide as a reasonable option.

190. Plaintiff would not have attempted suicide had it not been for the intentional cruelty, betrayal, and grossly negligent actions, determinations and conspiratorial efforts made by Defendants in regards to Plaintiff.

191. Upon information and belief, Ross Collins retired shortly after Plaintiff's suicide attempt from counseling individuals because of Plaintiff's suicide attempt and the circumstances which led up to the event.

192. Plaintiff wrote an email to Defendant Miller, her family, Defendant Fisk and Mr. Lehman on December 29, 2015, entitled "Anita is not alright," which

accurately predicted Defendant Miller's prospects of success and relapse back into active alcoholism, which Plaintiff is informed and believes had already occurred.

193. Defendants Fisk and the Miracle Hill staff, including Mr. Lehman, held the opinion that Defendant Miller was doing well in recovery when in fact she had already relapsed back into alcoholism.

194. Plaintiff is informed and believes Defendant Miller, after leaving the Renewal center, made it known to many people she was hiding from Plaintiff because Plaintiff had been guilty of domestic abuse in the past and she felt Plaintiff sought to do her physical harm again.

195. Defendant Miller's advertized "hiding" from Plaintiff was designed to bring about damage to Plaintiff's reputation and inflict humiliation on Plaintiff.

196. Plaintiff was aware Defendant Miller attended the meeting of Alcoholics Anonymous which met on Pelham Road Sundays and Thursday but he never sought her out as she alleged to so many would be the case should Plaintiff learn of her whereabouts.

197. Defendant Miller, prior to her cruelty to Plaintiff, which began May 28, 2015, was never afraid of Plaintiff.

198. After her graduation from Renewal, Defendant Miller was indeed afraid of Plaintiff because of the cruelty she had inflicted upon him and the lies she had told about his character that any reasonable person would consider sinister activity apt to evoke a violent response from the offended party.

199. Plaintiff is informed and believes Defendant Miller was readmitted to Miracle Hill for the treatment of her alcoholism in June of 2016 and began active alcoholism again shortly after graduating from Renewal the second time.

200. Plaintiff and Defendant Miller were divorced by final order of the Court on October 1, 2016.

201. Despite these realities, including admitted defamation, Plaintiff allowed Defendant Miller to receive a divorce based on twelve (12) months separation as opposed to having a trial on Plaintiff's grounds of adultery and habitual drunkenness, both of which he could have easily proved.

202. The grace provided Defendant Miller in their divorce proceedings is hardly the actions of the person depicted by the Defendants to so many others.

203. Plaintiff is informed and believes Defendant Miller is currently a practicing alcoholic.

204. On October 20, 2016, Plaintiff received an Facebook message from Alan Moorehead, (see Exhibit F) of Westminster, South Carolina, who attended meetings of Alcoholics Anonymous with Defendant Miller and Plaintiff at the time they lived in Clemson, South Carolina.

205. Mr. Moorehead stated in the email Defendant Miller had stolen property from him and he was calling the police.

206. Mr. Moorehead stated Defendant Miller had been living with him during the time she was married to Plaintiff, had become intoxicated on five occasions

while living with him and had apparently relocated to another paramour named Jonathon's residence.

207. Plaintiff called Mr. Moorehead whereupon Mr. Moorehead refused to elaborate on his Facebook message and told Plaintiff he believed Plaintiff was "a sick son of a bitch" but refused again to elaborate.

208. Plaintiff became very concerned about Defendant Miller and began searching for her for the first time since July 18, 2015.

209. After finally talking to Defendant Miller by telephone she indicated she was indeed in trouble and Plaintiff offered to come and get her to live at his mother's house until she felt safe.

210. When Plaintiff went to meet Defendant Miller, he found he was unable to communicate with her except to receive a "thumbs up" picture from her (see Plaintiff's Exhibit G). Plaintiff indicated to Defendant Miller in subsequent text messages that if she did not want him to come to please text him that information and he would no longer try to help her.

211. For his concern, Plaintiff, after sending the text messages, received a call from the Oconee County Sheriff's department. The deputy explained to Plaintiff Defendant Miller had come to the department to report Plaintiff was harassing her.

212. The actions of Defendants described herein constitute malice as defined in law by all Defendants.

213. All of the circumstances described herein and the actions of Defendants raise the level of this claim such that it constitutes unusual and extraordinary circumstance, under the law.

FOR A FIRST CAUSE OF ACTION
(Intentional Infliction of Emotional Duress)

214. Items 1-213 are incorporated herein by reference.

215. Each Defendants' actions described below are outrageous as a matter of law:

(a) Defendant Miller's cruel acts as listed below and described herein rises to the level of outrageous behavior as defined in the law:

- i. refused to communicate with Plaintiff after closing their last conversation with the lie, "I love you very much," on May 25, 2015.
- ii. refused to offer an explanation to Plaintiff as to why she had decided to cease to communicate with him for no other purpose than to inflict emotional harm on Plaintiff.
- iii. unlawfully published and spoke false statements accusing Plaintiff of domestic abuse to the staff at Miracle Hill,
- iv. Did not tell Plaintiff his stepfather-in-law had died,
- v. Convinced Defendant Fisk Plaintiff was not due her respect or his,

-
- vi. Interfered with Plaintiff's relationship with Defendant Fisk to further her selfish ends,
 - vii. Committed the unlawful act of slander against Plaintiff,
 - viii. Forced Plaintiff to file for a divorce in order to maintain contact with her upon her graduation from Renewal,
 - ix. Participated in conspiracy to inflict emotional duress on Plaintiff,
 - x. Aided and abetted Defendants Fisk and Miracle Hill in failing to fulfill their fiduciary duty to Plaintiff.

(b) Defendant Fisk:

- i. Decided he knew more about addiction and its successful treatment than Plaintiff,
- ii. Deceived by omission and lied to Plaintiff in regards to the role he was asked to fill by Plaintiff,
- iii. Relied on his incompetent abilities to discern a person's progress in the recovery of alcohol in contradiction to Plaintiff's expressed experience.
- iv. Destroyed Plaintiff's therapy support system by engaging Plaintiff's therapist to relay information he had not shared with Plaintiff, eventually causing Plaintiff's therapist to resign from their relationship.

- v. Encouraged Plaintiff's wife to maintain her silence in regards to Plaintiff when his sole function, as he promised Plaintiff, would be to gather information on behalf of Plaintiff,
- vi. Began communicating with Defendant Miller in a reckless disregard of Plaintiff's rights and the potential for harm were Plaintiff to discover Defendant Fisk's betrayal (which Plaintiff did),
- vii. Despite being warned by Plaintiff that his wife was an expert deceiver, was incited to deceive, had perpetrated hyenas deceptions against Plaintiff in the past, Defendant Fisk choose to ignore all of Plaintiff's warnings, and believe Defendant Miller in all pertinent matters described herein,
- viii. Made the determination, in direct opposition to Plaintiff's expressed and explained evaluation, that Plaintiff's wife was successfully receiving treatment for her addiction to alcohol,
- ix. Continued to believe the treatment program at Renewal was Biblically based despite all evidence to the contrary and the complete absence of any evidence it is,
- x. Continued to believe the treatment program at Renewal was based on the principles contained in the book Alcoholics Anonymous despite all evidence to the contrary and the complete absence of any evidence it is,

- xi. Continued to believe the treatment program at Renewal was practicing best principles despite all evidence to the contrary and the complete absence of any evidence it is,
- xii. Committed the tort of defamation of character against Plaintiff,
- xiii. Breached his fiduciary duty to Plaintiff,
- xiv. Aided and abetted Defendants Miracle Hill and Miller in failing to fulfill their fiduciary duty to Plaintiff,
- xv. Participated in a civil conspiracy to intentionally inflict emotional duress on Plaintiff,
- xvi. Committed fraudulent concealment against Plaintiff,
- xvii. Failed to act in good faith in regards to matters described herein,
- xviii. Acted negligently in regards to Plaintiff and his interest,
- xix. Acted with negligent, outrageous and fraudulent behavior which diminished Plaintiff's ability to repair his marriage,
- xx. As his shepherding elder, Defendant Fisk betrayed Plaintiff in such a fashion as to damage Plaintiff's faith in God and prevented Plaintiff from enjoying membership at Clemson Presbyterian Church, which was essential at the time to Plaintiff's ability to cope with life, and contributed primarily in Plaintiff's decision to attempted suicide on December 9, 2015.

216. Plaintiff has demonstrated that the defendants' conduct was so extreme and outrageous that it exceeded all possible bounds of decency, and that the

emotional distress suffered by Plaintiff was so severe that "no reasonable [person] could be expected to endure it."

217. All Defendants intended to cause Plaintiff emotional distress.

218. All Defendants, in addition to their intentional acts, caused Plaintiff emotional distress by the recklessness of their actions.

219. Defendants' outrageous conduct is the actual and proximate causation of the emotional distress suffered by Plaintiff.

220. Plaintiff attempted to take his own life on December 9, 2015, as the direct and proximate cause of Defendants' intentional and reckless actions which were committed with malice.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence)

221. All Defendants owed Plaintiff a duty of care as alleged herein. Each defendant's duty of care emanates as alleged below:

(a) Defendant Miracle Hill established a duty of care to Plaintiff by virtue of:

- i. admitting Plaintiff's wife into the Renewal program,
- ii. the emotional duress Plaintiff suffered was foreseeable,
- iii. acting on Plaintiff's request to admit his wife into the Renewal program for women by admitting her in March 2015,
- iv. Reid Lehman and William Slocum knew their actions described herein would cause Plaintiff extreme emotional duress,

-
- v. Miracle Hill staff knew Defendant Miller's refusal to provide Plaintiff with an explanation for her silence was cruel to Plaintiff and caused him extreme emotional distress,
 - vi. Mr. Lehman refused to allow Plaintiff to communicate with his wife at the time his marriage was most vulnerable.
 - vii. Mr. Lehman's explanation of how to safely address martial conflict in his book, *Are Those The Words You Meant To Use* yet employee Mr. Lehman abandoned all of those principles in regards to Plaintiff and his marriage knowing the outcome would be unsafe for Plaintiff,
 - viii. Mr. Slocum's interactions with the Greenville City Police on July 18, 2015, were made with malice and intended to injure Plaintiff and constituted defamation per se,
 - ix. Mr. Lehman refused to even investigate Plaintiff's reports of allegations of abuse at Renewal and knowing Plaintiff's wife was in the care of Renewal employees Plaintiff alleged were abusing his wife, constitutes negligent behavior on Defendant Miracle Hill's part,
 - x. Mr. Lehman knew how important Plaintiff's marriage was to Plaintiff and had the ability to render assistance to Plaintiff,
 - xi. providing Plaintiff's wife with marriage counseling services while she was married to Plaintiff,

- xii. failed to do an adequate investigation regarding Defendant Miller's accusations against Plaintiff,
- xiii. failed to portray Plaintiff accurately to the aforementioned marriage counselor,
- xiv. continued Renewal's execution of providing a protocol for the treatment of addiction which has proven to be ineffective,
- xv. continued Renewal's execution of providing a protocol for the treatment of addiction which is not Biblical, in conformity with the principles of Alcoholics Anonymous nor in keeping with best practices in order to treat his wife's addiction to alcohol.

(b) Defendant Miller established a duty of care to Plaintiff by virtue of:

- i. her marriage to Plaintiff,
- ii. her knowledge a refusal to explain her silence caused, and causes, Plaintiff extreme emotional duress,
- iii. stating in her last conversation with Plaintiff that she, "loved him very much" only to heighten the emotional duress she intended on inflicting upon Plaintiff,
- iv. encouraging Plaintiff to assist her in December 2016, as a result of threats issued against her by Alan Moorehead.

(c) Defendant Fisk established a duty of care to Plaintiff by virtue of:

- i. agreeing to be privy to extremely personal and confidential information as Plaintiff's shepherding elder at Clemson Presbyterian Church,
- ii. making counter offer on July 27, 2015, to represent Plaintiff at Renewal, when Plaintiff called him to resend his permission to be Plaintiff's representative at Renewal,
- iii. agreeing to represent Plaintiff in regards to his communications with his wife as a result of Plaintiff accepting his counter offer made in a telephone conversation Plaintiff made to him immediately after the July 27, 2015, meeting,
- iv. agreeing to help Plaintiff alleviate the severe emotional duress he was experiencing due to his wife's unexplained silence.
- v. knowledge his actions as Plaintiff's representative would affect Plaintiff's life dramatically,
- vi. speaking to Ross Collins, a therapist who attended Clemson Presbyterian church, who Defendant Fisk knew was treating Plaintiff regarding Plaintiff's marriage,
- vii. creating a deception that he was not having any contact with Defendant Miller not known to Plaintiff, with full knowledge that should Plaintiff discover his deception the news would devastate Plaintiff emotionally,

- viii. acted as Plaintiff's shepherding elder for more than two years when Plaintiff lived in Clemson with his family.

222. Defendants breached their duty of care to Plaintiff by virtue of:

(a) Defendant Miracle Hill's breach of duty of care:

- i. making the untrained, incompetent Defendant Fisk the only channel Plaintiff had to communicate with his wife,
- ii. perpetrating fraud upon Plaintiff, supra,
- iii. aiding and abetting Defendants Miller and Fisk in their breach of her fiduciary duty to Plaintiff,
- iv. having a person such as Mr. Slocum be responsible for addressing conflict challenges at Renewal on July 18, 2015,
- v. Mr. Slocum's defamation of Plaintiff on July 18, 2015,
- vi. consciously deciding to expose Plaintiff to unjustified risk by taking the actions described herein, making Defendant Miracle Hill's actions reckless, as a matter of law,
- vii. failing to provide Plaintiff's wife a treatment program for alcoholism that had any chance of success,
- viii. refused to heed Plaintiff's warnings regarding his wife and the ineffectiveness of the Renewal treatment protocol for alcoholism,
- ix. creating circumstances which empowered Defendant Fisk to make decisions and take actions that caused Plaintiff extreme emotional duress,

- x. ignoring Plaintiff's pleadings to acknowledge Defendant Miller was acting out of rage toward Plaintiff,
- xi. ignoring Plaintiff's alert that Miracle Hill staffers were abusing "clients,"
- xii. conducting an alcoholic treatment program that did not include family members such as Plaintiff in the process, as best practices demands,
- xiii. giving Mr. Lehman decision-making discretion or authority regarding the treatment of alcoholism or alcoholics in need of treatment,
- xiv. failing to recognize unexplained silence as perpetrated by Defendant Miller is not consist with a person thriving in the recovery from alcoholism,
- xv. providing Plaintiff's wife with a marriage counselor with no intention of including Plaintiff, or consider Plaintiff's concerns that his wife was sure to relapse given what he knew about his wife and the successful treatment of alcoholism,
- xvi. sending email via Mr. Lehman, for the purpose of causing Plaintiff emotional duress,
- xvii. taking upon itself to participate in and facilitate a conspiracy to teach Plaintiff a lesson by intentionally inflicting emotional duress on him,

- xviii. Mr. Lehman, Mr. Slocum and Mr. Woodard's participation in an illegal conspiracy to harm Plaintiff.
- xix. failing to adequately investigate Defendant Miller's allegations of domestic abuse against Plaintiff,
- xx. participation in inflicting emotional pain on Plaintiff to the point of causing him so much emotional duress he could not function in society,
- xxi. participation in inflicting emotional pain on Plaintiff to the point of causing him so much emotional duress he attempted suicide.

(b) Defendant Miller's breach of duty of care:

- i. perpetrating an illegal attempt have Plaintiff appear to commit a crime,
- ii. reporting to the Oconee County Sherriff Plaintiff was harassing her after she indicated to Plaintiff by sending him a "thumbs up" text message (see Plaintiff's Exhibit G) indicating she wanted Plaintiff to come to where she was,
- iii. as Plaintiff's wife refused to rescue Plaintiff as required under the "Duty to Rescue" doctrine,
- iv. refusal to provide Plaintiff with an explanation for her complete silence for the sole purpose of being cruel to Plaintiff,

- v. publishing false allegations of domestic abuse against Plaintiff to the Renewal and Miracle Hill staff, other Miracle Hill "clients," and family members,
- vi. lying to her family regarding the status of her marriage to Plaintiff,
- vii. failing to timely notify Plaintiff his stepfather-in-law died,
- viii. participating in a conspiracy to intentionally inflict emotional pain upon Plaintiff,
- ix. forcing Plaintiff to file a divorce action,
- x. insinuating Plaintiff was dangerous by publicly hiding from him after she left the Renewal facility,
- xi. falsely accusing Plaintiff of having a history of adultery in regards to statements made to Plaintiff's children and in her answer, while under oath, to interrogatories during her divorce proceedings with Plaintiff,
- xii. providing a completely false depiction of Plaintiff's character to the staff at Renewal and Miracle Hill,
- xiii. breached her fiduciary responsibility to Plaintiff,
- xiv. aided and abetted Miracle Hill and Defendant Fisk in failing to uphold their fiduciary duty to Plaintiff,

(c) Defendant Fisk's breach of duty of care:

- i. fraudulently concealing information from Plaintiff,

- ii. consciously exposing Plaintiff to risk of harm by betraying Plaintiff's trust in some warped scheme to inject himself into the lives of Plaintiff and his wife,
- iii. taking the actions described herein that were wanton and reckless as a matter of law, which harmed Plaintiff,
- iv. taking actions which demonstrate an assumption he knew more about the successful treatment of alcoholism than Plaintiff,
- v. encouraging Defendant Miller to continue her unexplained silence,
- vi. breaching his contract with Plaintiff
- vii. lying to Plaintiff at different times as recounted herein,
- viii. betraying Plaintiff by disrespecting Plaintiff by communicating with Defendant Miller in a manner which Defendant Miller understood Defendant Fisk was not sharing with Plaintiff,
- ix. betraying Plaintiff by visiting his wife at the Renewal facility without his knowledge,
- x. breaching his fiduciary duty to Plaintiff,
- xi. having discussions with Plaintiff's therapist Ross Collins about Plaintiff's therapy without Plaintiff's knowledge or consent,
- xii. asking Plaintiff's therapist Ross Collins not to share certain information with Plaintiff regarding Defendant Miller,
- xiii. defaming Plaintiff,

- xiv. Conspiring with co-defendants to intentionally inflict emotional duress on Plaintiff,
- xv. aiding and abetting Defendants Miller and Miracle Hill in failing to meet their fiduciary obligation to Plaintiff.

223. As the direct and proximate cause of Defendants' breach of duty of care as described above, their actions being grossly negligent acts, as a matter of law, Plaintiff was injured and suffered damages.

224. As the direct and proximate cause of Defendants grossly negligent acts which damaged him, Plaintiff is due special, general and punitive damages from Defendants in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION
(Civil Conspiracy)

225. Items 1-223 are incorporated herein by reference.

226. Each Defendant conspired with each Defendant to injure Plaintiff.

227. Employees of Defendant Miracle Hill who acted as conspirators include Reid Lehman, Toby Woodard, Venus Dixon and William Slocum.

228. The conspiracy had as its objective to illegally inflict emotional duress on Plaintiff in order to teach him a lesson by refusing to provide him certain information, threatening to bring about an end to Plaintiff's marriage and perpetrating deceptions on him.

229. As a direct and proximate cause of the aforementioned conspiracy Plaintiff experienced emotional duress sufficient to cause Plaintiff to attempt suicide on

December 9, 2015, and incur medical charges Defendants are liable for as a matter of law. Damages for these medical bill's reimbursement is special damages as define by law.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

230. Paragraphs 1-229 is incorporated herein by reference.

231. Each Defendant in the instant case had a fiduciary duty to Plaintiff at the times referenced herein.

232. Plaintiff imposed a special confidence in each Defendant, so that the each, in equity and good conscience is bound to act in good faith and with due regard to the interests of the Plaintiff as he imposed the special confidence in Defendants as described below:

- a. Defendant Miller's fiduciary duty to Plaintiff is by virtue, inter alia, of her marriage to Plaintiff.
- b. Defendant Miracle Hill's fiduciary duty to Plaintiff is by virtue of, inter alia:
 1. Toby Woodard's representation to Plaintiff Miracle Hill would treat his wife for her alcoholic condition as described in the handbook and on the Renewal website,
 2. its requirement Plaintiff depend on Renewal staff to monitor Defendant Miller's progress in the recovery from alcoholism forcing

Plaintiff to repose special confidence in Defendant Miracle Hill's ability to treat alcoholism,

3. its employee, Toby Woodard, acting within the scope of his employment, agreed to help Plaintiff gain admission for his wife into the Renewal program,
4. its requirement Plaintiff have a representative to communicate with his wife and then selecting that representative,
5. it selected, and provided, a "Biblical" marriage counselor to advise Defendant Miller regarding her marriage to Plaintiff,
6. Miracle Hill published to that counselor selected pieces of Plaintiff's correspondence, but not all available correspondence of Plaintiff's in the possession of Miracle Hill,
7. decided to exclude Plaintiff from providing any input into his wife's recovery from alcoholism. As such, Plaintiff was forced to repose special confidence in the Renewal program and the Miracle Hill staff, acting within the scope of their employment, to provide a treatment program grounded in best practices.
8. Miracle Hill's treatment protocol is used despite management being unable to provide any evidence whatsoever their treatment protocol has any efficacy which forced Plaintiff to repose special confidence in the representations made by employees of Miracle Hill,

9. it failed to act in good faith in any matters having to do with Plaintiff,
- c. Defendant Fisk's fiduciary duty to Plaintiff is by virtue, inter alia, of :
- 1) the contract he entered into with Plaintiff after Plaintiff called to request he not get involved as described herein,
 - 2) eager representation of Plaintiff in the manner provided and prescribed by Miracle Hill's administration,
 - 3) his agreement to act as representative of Plaintiff in regards to a role Miracle Hill created for him. Defendant Fisk only assumed that role after convincing Plaintiff to trust him in a telephone conversation,
 - 4) the special relationship he had as a result of being Plaintiff and Defendant Miller's shepherding elder,
 - 5) Plaintiff reposed special confidence in Defendant Fisk based on their agreement and the seriousness of the role in which he claimed proficiency and an intense desire he had to fill that role.

233. Each Defendant breached their fiduciary duty to Plaintiff.

d. Defendant Miller when she:

1. refused to provide Plaintiff with any explanation for her silence,
2. refused to meet with Plaintiff,
3. failed to disclose her decisions regarding her twenty three year marriage with Plaintiff to Plaintiff,

4. knew Plaintiff was suffering extreme emotional duress and refused to rescue Plaintiff in any regard whatsoever,
5. defamed Plaintiff by publishing false allegations of domestic abuse and false allegations regarding Plaintiff's health to third parties,
6. defamed Plaintiff by telling the Clemson Police Plaintiff suffered from the hyenas disease of narcissistic personality disorder even though he does not,
7. defamed Plaintiff by falsely accusing him of committing adultery under oath,
8. failed to notify Plaintiff his step-father-in-law died,
9. conspired to intentionally inflict emotional harm upon Plaintiff,
10. insinuated Plaintiff was dangerous by publicly hiding from him after leaving the Renewal facility,
11. intentionally inflicted emotional pain on Plaintiff repeatedly and without mercy,
12. participated in a conspiracy to inflict emotional duress on Plaintiff,
13. tried to have Plaintiff arrested for harassment when she had encouraged Plaintiff's actions.

e. Miracle Hill:

1. providing Plaintiff's wife with an alcoholism treatment protocol that had no prospect for success,

2. selected Defendant Fisk to be Plaintiff's only method of communicating with his wife when Defendant Fisk has no training in the treatment of addiction or in the field of marriage counseling,
 3. participated in a conspiracy to intentionally inflict emotional harm upon Plaintiff,
 4. failed to provide Defendant Miller a treatment protocol as it represented to Plaintiff would be employed at Renewal,
 5. committed fraud against Plaintiff,
 6. defamed Plaintiff
- a. Defendant Fisk:
1. breached the contract between himself and Plaintiff,
 2. pretended to be an impartial party when in fact he was actively recommending Defendant Miller for employment at Clemson University while refusing to do the same for Plaintiff,
 3. fraudulently concealed information from Plaintiff regarding:
 - a. what he knew about his wife, Defendant Miller,
 - b. the number of times he had visited Defendant Miller,
 - c. email exchanges with Defendant Miller,
 - d. the fact he had acted as Defendant Miller advocate in her unsuccessful efforts to secure a position at Clemson University.
 - e. his wife's intentions in regards to Plaintiff's marriage,

- f. the conspiratorial effort to inflict emotional harm to Plaintiff in which he enthusiastically participated.
- g. having conversations with Ross Collins regarding his wife which contained information he had not shared with Plaintiff,
- h. his decision to act outside the boundaries discussed with Plaintiff when he no abilities to perform marriage counseling or treat of addiction to alcohol,
- i. his ability to call Plaintiff immediately after meeting with Defendant Miller on July 31, 2015.
- j. his decision not to tell Plaintiff the information he was sent to retrieve on Plaintiff's behalf,
- k. his lying to Plaintiff as described herein,

234. Plaintiff suffered injuries and damages caused by the Defendants' breach of their fiduciary duty to him.

235. As the direct and proximate cause of Defendants' breach of their fiduciary duty, Plaintiff is due special, general and punitive damages from Defendants in an amount to be determined at trial.

FOR A FIFTH CAUSE OF ACTION
(Aiding and Abetting Breach of Fiduciary Duty)

236. Items 1-234 are incorporated herein by reference.

237. Each Defendant knew, or should have known, each party had a fiduciary duty to Plaintiff.

238. Each Defendant aided and abetted each Defendant's breaching of their fiduciary duties to Plaintiff described about and incorporated by reference.

239. Defendants' aiding and abetting these breaches of fiduciary duty caused injury to Plaintiff.

240. As a result of injuries suffered by Plaintiff due to Defendants' aiding and abetting breaches of fiduciary duty, Plaintiff is due special, general and punitive damages in an amount to be determined at trial.

FOR A SIX CAUSE OF ACTION
(Defamation of Character)

241. Paragraphs 1-240 are incorporated herein by reference.

242. Plaintiff is informed and believes Mr. Slocum to be the person whose name is redacted in Plaintiff's Exhibit B, and as such is guilty of publishing certain defamatory information as recounted in the incident report to third parties,

243. Plaintiff is informed and believes Defendant Miller is a person who provided defamatory information to the police and is recounted in the police report but her name is also redacted (Ibid).

244. Defendant Miller slandered Plaintiff by telling the Clemson Police on December 9, 2015, that Plaintiff suffered from a narcissistic personality disorder.

245. Defendant Miller has on many occasions defamed Plaintiff by making utterances and writings communicating Plaintiff committed domestic abuse against her, which is an allegation of criminal behavior,

246. Defendant Miller falsely accused Plaintiff of adultery under oath in her divorce proceedings,

247. Defendant Miller and Miracle Hill published this and other defamatory material to third parties, (Ibid).

248. Defendant Miller and Defendant Miracle Hill defamed Plaintiff with malice as malice is defined in law, per their actions described herein,

249. Defendant Miller committed defamation per se against Plaintiff as she acted with malice as malice is define in the law,

250. Defendant Miracle Hill, by virtue of its employee William Slocum's actions on July 18, 2015, when he alleged to the Greenville City police Plaintiff was guilty of public intoxication and domestic abuse, both criminal acts (Ibid), which defamed Plaintiff.

251. Plaintiff has never, ever been intoxicated at the Renewal center nor has he committed domestic abuse against anyone, ever.

252. Plaintiff is informed and believes Miracle Hill, by virtue of employee Reid Lehman, published defamatory material to a marriage counselor Mr. Lehman provided Plaintiff's wife,

253. Defendant Miracle Hill defamed Plaintiff with malice by virtue of the actions of Mr. Lehman and Mr. Slocum,

254. Defendant Miracle Hill acted with wonton recklessness to a level considered to be malicious under the law.
255. Defendant Miracle Hill committed defamation per se against Plaintiff.
256. Plaintiff is informed and believes Defendant Fisk has defamed Plaintiff by publishing a statement to the affect Plaintiff's suicide attempt was an attempt by Plaintiff to make others believe he attempted to commit suicide when in fact he did not make such an attempt.
257. Defendant Fisk statement is reckless and therefore malicious as defined by law.
258. Defendants' defamation per se of Plaintiff is considered under the law to have caused injury to Plaintiff's reputation.
259. Defendants' defamation per se caused injury to Plaintiff and he is entitled to general and punitive damages in an amount to be determined at trial.

FOR A SEVENTH CAUSE OF ACTION
(Fraudulent Concealment)

260. Paragraphs 1-259 are herein incorporated by reference.
261. Defendant Fisk had a duty to speak candidly regarding his knowledge of Plaintiff's wife after Plaintiff and Defendant Fisk's telephone conversation on July 27, 2015,
262. Plaintiff expressly reposed trust and confidence in Defendant Fisk,
263. Defendant Fisk owed Plaintiff a duty of care,

264. Defendant Fisk had a fiduciary responsibility to Plaintiff,
265. Defendant Fisk knew full well Plaintiff would be highly upset and emotionally damaged should he learn of Defendant Fisk's decisions regarding the role to which he had agreed to assume,
266. Defendant Fisk had a duty to inform Plaintiff he thought Plaintiff was not telling the whole truth before enticing Plaintiff to involve him in the most personal situation imaginable which would affect Plaintiff's life forever.
267. Defendant Fisk's concealment of the above referenced information was a direct and proximate cause of Plaintiff's emotional duress, pain and suffering.
268. Defendant Fisk's concealment of the above referenced information caused injury to Plaintiff when Plaintiff learned he had been deceived.
269. Defendant Fisk and Plaintiff had a contractual relationship based on understanding Defendant Fisk never intended to carry out.
270. As a direct and proximate cause of Defendant Fisk's fraudulent concealment of information Plaintiff suffered injury and damages.
271. Plaintiff has suffered damages due to the injuries caused by Defendant Fisk, in an amount to be determined at trial.

FOR AN EIGHTH CAUSE OF ACTION
(Mental Health Facility Failure to Control Patient)

272. Paragraphs 1-271 are incorporated herein by reference.
273. Defendant Miracle Hill's conduct does not meet the standard of care required of a mental health facility in this circumstance.

274. Under the circumstances as described herein Defendant Miracle Hill owed Plaintiff a heightened standard of care, under the law.
275. Defendant Miracle Hill failed to take any steps to protect anyone from Defendant Miller while she was an inpatient at Renewal.
276. Defendant Miracle Hill failed to take any steps to control the conduct of Defendant Miller in regards to Plaintiff while she was an inpatient at Renewal.
277. Defendant Miracle Hill negligently treated a voluntary patient, namely Defendant Miller, in a mental health setting.
278. Defendant Miracle Hill's failure as a mental health provider caused Plaintiff injury when Defendant Miller executed her plan to injure Plaintiff,
279. Defendant Miracle Hill is liable to Plaintiff for damages he has suffered as a result of injury inflicted upon him by Defendant Miller.

FOR A NINTH CAUSE OF ACTION
(Fraud)

280. Plaintiff relied on the information provided him by Toby Woodard and the Renewal website,
281. Plaintiff had a right to rely on this information and it was material to Plaintiff's decision to assist his wife in gaining entry into the Renewal program,
282. The information claiming Renewal administrated a Biblically based, Alcoholics Anonymous based, and best practices based, addiction treatment protocol is false,

283. Defendant Miracle Hill's misrepresentations caused Plaintiff to suffer emotional trauma sufficient to cause him to attempt suicide and in so doing he incurred medical bills for which Defendant Miracle Hill is liable.

284. Defendant Miracle Hill made no effort to investigate the efficacy of their treatment protocol and was therefore ignorant of the claims made regarding their methods,

285. additionally, Defendant Miracle Hill has no incentive to provide a legitimate treatment protocol. Unlike mental health providers who receive enumeration, Miracle Hill's funding source is unconcerned with the success or failure of Miracle Hill's efforts to treat addiction. Therefore, Defendant Miracle Hill is blissfully ignorant of the situation regarding their abysmal results at Renewal.

WHEREFORE, having fully complained of each cause of action, Plaintiff prays this Court will Order the following relief:

- for all causes of action, Plaintiff be awarded actual and special damages in an amount to be determined by this Court and punitive damages as this Court deems just and proper,
- for such other relief as this Court deems just and proper.

(signature next page)

So says Plaintiff, pro se,



Harold Estes Blackwell, Jr.

315 Glendale Road

Union, South Carolina 29379

(864) 303-7000

halblackwell@gmail.com

June 8, 2017

PLAINTIFF'S EXHIBIT A

Sections from Plaintiff and
Defendant Miller's divorce litigation

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GEEENVILLE	)	2015-DR-23-4000
HAROLD ESTES BLACKWELL, JR.,	)	
	)	
Plaintiff,	)	ANSWER AND DEFENSES
	)	
vs.	)	
	)	
ANITA MILLER BLACKWELL,	)	
	)	
Defendant.	)	

COMES NOW Defendant Anita Miller Blackwell, by and through her undersigned attorney, and responds to plaintiff's Complaint as follows:

1. With respect to the introductory paragraph, it is admitted that plaintiff seeks a divorce upon the grounds alleged, but denied that such grounds are currently present.
2. With respect to the jurisdictional paragraph, jurisdiction of the Court over the parties is admitted.
3. The factual allegations of paragraphs one and two are admitted.
4. With respect to the factual allegations of paragraphs three through seven, defendant admits she had four adulterous sexual encounters in a two month period during 2011.
5. The factual allegations of paragraph eight are admitted, except that the last two sentences are denied.
6. The factual allegations of paragraphs nine through thirteen are admitted.
7. The factual allegations of paragraphs fourteen through sixteen are admitted, except it is denied that the defendant drank heavily at this time.
8. The factual allegations of paragraph seventeen are denied.

14. The Plaintiff, in February, 2014, arranged for the couple to rent a nice house at 9 Wiscasset Way in Greenville, SC, in anticipation of the Defendant getting the psychiatric help she had promised. At the time the Defendant was working for as the Assistant to the Rector at Christ Episcopal Church in Greenville and was to get help through their employee assistance program.

15. It was upon moving to 9 Wiscasset Way that the Defendant began to drink heavily.

16. The Defendant drank so heavily, in fact, she would often have bruises on her body from falling down and bumping into walls and furniture. On one occasion, while opening a cabinet door, the Defendant blacked her eye severely. The Plaintiff is informed and believes that upon her return to work on one of these occasions when bruised, the Defendant indicated to her coworker Amy Malleck, the Plaintiff had been violent toward her. At the end of January 2015, as the Plaintiff was preparing to move out, Ms. Malleck drove by the home at 9 Wiscasset Way and, seeing both cars in the driveway, called the police to do a wellness check on the Defendant. The police arrived to find the Defendant intoxicated but certainly in no danger from the Plaintiff.

17. In early December of 2014 the Plaintiff discovered the Defendant had not been getting the psychiatric help as she claimed and because of the Defendant's ever increasing drunkenness, immediately made plans to move out of the house. The Defendant was told of the Plaintiff's intentions and given the reasons of her intoxication and failure to follow through with her treatment commitment.

18. The Defendant's first marriage was ended in a divorce where she was found to be guilty of habitual drunkenness.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Harold Estes Blackwell, Jr.,

Plaintiff,

vs:

Anita Jane Miller, Miracle Hill Ministries,
Inc., and William Fisk,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. No. 2017-CP-23-03754

**NOTICE OF MOTION AND MOTION
TO DISMISS OF DEFENDANT
MIRACLE HILL MINISTRIES, INC.**

TO: HAROLD ESTES BLACKWELL, JR., PLAINTIFF *PRO SE*

YOU WILL PLEASE TAKE NOTICE, that Defendant Miracle Hill Ministries, Inc. ("Miracle Hill") will move at a date and time to be set by the Court, pursuant to Rule 12 of the *South Carolina Rules of Civil Procedure*, for an order dismissing Plaintiff's claims against Miracle Hill. This motion is based upon the following grounds:

1. Plaintiff has failed to allege facts sufficient to constitute a cause of action against Miracle Hill;
2. Plaintiff has failed to allege that Miracle Hill intentionally or recklessly inflicted severe emotion distress or was certain or substantially certain such distress would result from its conduct;
3. Plaintiff has failed to allege that Miracle Hill's conduct was so extreme or outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community;
4. Plaintiff has failed to allege that the actions of Miracle Hill caused Plaintiff's emotional distress;

5. Plaintiff has failed to allege that the emotional distress suffered by Plaintiff was so severe that no reasonable person could be expected to endure it;

6. Plaintiff has failed to allege that Miracle Hill owed any legal duty to Plaintiff;

7. Plaintiff has failed to allege that Miracle Hill breached any legal duty owed to Plaintiff;

8. Plaintiff has failed to allege that Miracle Hill's breach of duty is the proximate cause of the damages suffered by Plaintiff;

9. Plaintiff has failed to allege a combination of two or more persons for the purpose of injuring Plaintiff;

10. Plaintiff has failed to plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint; *see Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16 (Ct. App. 2009);

11. Plaintiff has failed to allege special damages due to the alleged civil conspiracy claim, *see Hackworth*, 385 S.C. at 116;

12. Plaintiff has failed to allege a breach of a fiduciary duty owed by Miracle Hill to Plaintiff;

13. Plaintiff has failed to allege that Miracle Hill owed any fiduciary duty to Plaintiff;

14. Plaintiff has failed to allege that Miracle Hill breached any fiduciary duty owed to Plaintiff;

15. Plaintiff has failed to allege any damages proximately caused by Miracle Hill's breach of a fiduciary duty;

16. Plaintiff has failed to allege a breach of fiduciary duty owed by any individual or entity to Plaintiff;

17. Plaintiff has failed to allege Miracle Hill's knowing participation in the breach;
18. Plaintiff has failed to allege damages proximately caused by Miracle Hill's alleged aiding and abetting of the breach of fiduciary duty;
19. Plaintiff has failed to allege a false and a defamatory statement made by Miracle Hill;
20. Plaintiff has failed to allege an unprivileged publication made to a third party;
21. Plaintiff has failed to allege that Miracle Hill was at fault;
22. Plaintiff has failed to allege either actionability of the statement regardless of the existence of special harm or the existence of special harm caused by the publication;
23. Plaintiff has failed to allege any fiduciary or confidential relationship between Plaintiff and Miracle Hill;
24. Plaintiff has failed to allege that Miracle Hill owed any duty to disclose certain information to Plaintiff;
25. Plaintiff has failed to allege that Miracle Hill had a special relationship with Defendant Miller and/or Plaintiff;
26. Plaintiff has failed to allege that Miracle Hill was aware or should have been aware of a specific threat made by Defendant Miller to harm Plaintiff;
27. Plaintiff has failed to allege all elements of fraud with particularity in violation of Rule 9(b), SCRCP;
28. Plaintiff has failed to allege a representation made by Miracle Hill that was false, and material;
29. Plaintiff has failed to allege that Miracle Hill knew of the statement's falsity, or exhibited reckless disregard regarding its truth, and intended that the representation be acted upon;

30. Plaintiff failed to allege that he was ignorant of the statement's falsity, had a right to rely upon the statement, and suffered damages proximately caused by his reliance upon the statement; and

31. Miracle Hill is entitled to an order dismissing Plaintiff's claims against Miracle Hill.

This motion is based upon the pleadings filed in this action, the *South Carolina Rules of Civil Procedure*, upon any future memorandum of law submitted by the movant, and upon applicable common and statutory law.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Defendant Miracle Hill
Ministries, Inc.

July 20, 2017
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Harold Estes Blackwell, Jr.
Plaintiff

vs.

Miracle Hill Ministries, Inc.
Anita Jane Miller (a.k.a. Anita M. Blackwell)
William Fisk
Defendants

2017 AUG 18 PM 3:26

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, SC, SC

IN THE COURT OF COMMON
PLEAS
THIRTEENTH JUDICIAL
CIRCUIT

Case No: 2017-CP-23-03754

Memorandum In Opposition to
Defendant Miracle Hill's Motion to
Dismiss

ENTERED COMPUTER

Plaintiff comes now before the Court in opposition to Defendant Miracle Hill Inc.'s (Miracle Hill) Motion to Dismiss pursuant to Rule 12 South Carolina Rules of Civil Procedure (SCRCP). Plaintiff trusts the Court will recognize Miracle Hill's legal strategy for the "Hail Mary" that it is, a response certainly available to "guilty-as-alleged" Defendants seeking to avoid answering a plaintiff's complaint.

Plaintiff propounds his Complaint alleges facts sufficient to state a claim to survive Defendant's Rule 12 Motion to Dismiss since dismissal is such a drastic remedy. *"Since it is a **drastic remedy**, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues."* Baughman v. American Tel. & Tel. Co., 1991.

Plaintiff avers he has stated a claim for each of his causes of loss as Defendant is guilty of the torts of intentional infliction of emotional distress, fraud, civil conspiracy, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, defamation per se and negligence per se, as defined by the Second

Restatement of Torts, if the Court considers all facts alleged by Plaintiff as true and all inferences in a light most favorable to the non moving party as required by law.

Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997).

Since "all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party" (*Vermeer Carolina's v. Wood/Chuck Chipper, 518 SE 2d 301 - SC: Court of Appeals 1999*), Plaintiff avers he surpasses the standard to survive a Rule 12 Motion to Dismiss based on his current Complaint.

Plaintiff has pled facts, not merely conclusatory statements, sufficient to infer Plaintiff is entitled to relief on many theories of the case and therefore his Complaint must survive a motion to dismiss in the instant case. ("facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995)*).

Any dismissal of this action as Defendant Miracle Hill attempts to move the Court would fail to allow Plaintiff, as a pro se litigant, the lesser pleading standards he is entitled. (*Mo- Bennett v Kitchin 400 S.W. 2d 97 (1960)*).

In the Alternative

In the alternative, Plaintiff request he be granted leave to amend his complaint, with "notice of the deficiencies" from the Court as the law prescribes, ("Before the court "may dismiss a *pro se* complaint for failure to state a claim, it"

must provide the pro se litigant with notice of the deficiencies of his or her complaint and an opportunity to amend the complaint prior to dismissal." (Fox v. Richards, Dist. Court, WD Washington 2007)), should the Court find he has not stated a claim for any cause of loss contained in listed in his Complaint.

Therefore, Plaintiff prays this Court will deny Defendant Miracle Hill's Motion to Dismiss and order Defendant Miracle Hill to answer Plaintiff's Complaint within 15 days as prescribed by the Rules.

So says Plaintiff, pro se



Harold E. Blackwell, Jr.
315 Glendale Road
Union, SC 29379

At Union, SC
August 16, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF GEEENVILLE)

IN THE CURCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

HAROLD ESTES BLACKWELL, JR.,) 2017 AUG 18 PM 3:26
2017-CP-23-3754

Plaintiff,

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

vs.

CERTIFICATE OF SERVICE

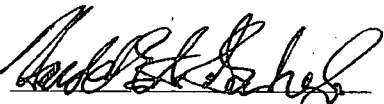
MIRACLE HILL, INC,
ANITA JANE MILLER
WILLIAM FISK

Defendant.

The undersigned, being the Plaintiff in this action, acting *pro se*, does hereby certify that service of the Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss was made upon Defendant Miracle Hill by placing the same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 9th day of May, 2017, addressed as follows:

Adam C. Bach
Eller, Tonnsen Bach
1316 S. Church Street
Greenville, SC 29605

by:


Harold Estes Blackwell, Jr.
Union, South Carolina 29379
(864) 303-7000

Union, South Carolina
August 16, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Harold Estes Blackwell, Jr.,

Plaintiff,

vs.

Anita Jane Miller, Miracle Hill Ministries,
Inc., and William Fisk,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. No. 2017-CP-23-03754**DEFENDANT MIRACLE HILL
MINISTRIES, INC.'S MEMORANDUM
IN SUPPORT OF ITS MOTION TO
DISMISS AND IN OPPOSITION TO
PLAINTIFF'S MOTION FOR A
TEMPORARY INJUNCTION**

Defendant Miracle Hill Ministries, Inc. ("Miracle Hill") respectfully submits this memorandum in support of its motion to dismiss filed July 20, 2017 and in opposition to Plaintiff's motion for a temporary injunction filed September 11, 2017.

I. BLACKWELL'S ALLEGATIONS

This case concerns a number of allegations brought by Plaintiff Harold Estate Blackwell, Jr. ("Blackwell") against the defendants relating to his former wife's treatment at a facility owned and operated by Miracle Hill. The rambling complaint is 69 pages long and contains 285 paragraphs of allegations that can be distilled into the following into the following essential allegations:

Blackwell alleges that he and Defendant Anita Jane Miller ("Miller") experienced marital trouble due to her infidelity and alcohol abuse. Blackwell sought a separation from Miller and enlisted the help of Defendant William Fisk ("Fisk"), a church elder, to help him cope with his marital situation. Miller was subsequently admitted to the "Renewal" program operated by Miracle Hill which was advertised as a "Christian adaption of the 12-step recovery model, a Biblically-based approach to the 12 step of Alcoholics Anonymous."

Although they frequently corresponded by letter during Miller's first month in the Renewal program, Blackwell learned that he was placed on Miller's "no contact" list. On the first day she was allowed to see visitors, Miller saw Blackwell for three hours. During this visit, Blackwell alleges that an employee of Miracle Hill accused him of being intoxicated, which he denied, and she threatened to ban him from the premises. Additionally, Blackwell called Miller twice a week until May 28, 2015 when Miller stopped responding to his phone calls to Renewal. Blackwell claims that Miller and Miracle Hill mutually decided to ignore Blackwell's phone calls until June 29, 2015. This period of silence caused Blackwell emotional distress and fails to comport with the best practices of treatment.

On July 18, 2015, Blackwell drove to Renewal to meet Miller. Mr. Slocum, an employee of Miracle Hill, noticed Blackwell and called the police, telling them that Blackwell had committed a crime. Two officers approached Blackwell in the parking lot and recommended that Blackwell speak with Slocum. Slocum then stated that Miller did not want to see Blackwell and that Blackwell had been intoxicated during previous visits to Renewal. Blackwell left the premises emotionally distressed.

On July 27, 2015, Blackwell met with Fisk and Mr. Lehman, a employee of Miracle Hill. Blackwell states Lehman informed him that Miller decided not to communicate with Blackwell; that Blackwell should refrain from further attempts to contact her; and that Lehman could not offer an explanation for Miller's decision.

Subsequently, Fisk agreed to talk with Miller separately and determine why she chose not to speak to Blackwell and her plans for their marriage. After meeting with Miller, Fisk called Blackwell on August 1, 2015 and gave Blackwell unsatisfactory answers regarding Miler's silence.

Fisk refused to provide further information and later attended Miller's graduation from Recovery without Blackwell's knowledge, which deepened Blackwell's emotional suffering.

On September 23, 2015, Blackwell filed for divorce. Three months later, on December 9, 2015, Blackwell claims he attempted to commit suicide due to emotional distress caused by the defendants. Police stopped Blackwell's suicide attempt, and Blackwell was taken to a hospital for a mental evaluation and was discharged on December 17, 2015. The family court issued the couple's divorce decree on October 1, 2016.

Filed on June 9, 2017, Blackwell's complaint alleges nine causes of action against Miracle Hill: (i) intentional infliction of emotional distress; (ii) gross negligence; (iii) civil conspiracy; (iv) breach of fiduciary duty; (v) aiding and abetting breach of fiduciary duty; (vi) defamation; (vii) fraudulent concealment; (viii) "mental health facility failure to control patient;" and (ix) fraud.

On July 20, 2017, Miracle Hill filed the instant motion to dismiss

II. ANALYSIS

A. THIS COURT SHOULD GRANT MIRACLE HILL'S MOTION TO DISMISS THE COMPLAINT

A defendant may move to dismiss the plaintiff's complaint for "failure to state facts sufficient to constitute a cause of action" pursuant to Rule 12(b)(6), SCRPC. In considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001).

i. Intentional Infliction of Emotional Distress

South Carolina recognizes that "one's wilful, malicious conduct proximately causing another's emotional distress may be actionable" as intentional infliction of emotional distress or the tort of outrage. *Ford v. Hutson*, 276 S.C. 157, 161, 276 S.E.2d 776, 778 (1981). In order to state a claim for intentional infliction of emotional distress, a party must establish (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 401, 596 S.E.2d 42, 48 (2004). Where evidence is undisputed that the defendant acted in good faith and in a reasonable manner, his conduct cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community. *Manley v. Manley*, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987).

Here, Plaintiff has failed to state facts sufficient to constitute any extreme or outrageous conduct. In essence, Blackwell alleges that Miracle Hill's encouragement of Miller not to communicate with her husband during treatment amounts to extreme and outrageous conduct that exceeds all possible bounds of decency. Our courts have never found any similar conduct to be sufficiently outrageous or extreme. As the South Carolina Court of Appeals held in *Todd v. S.C. Farm Bur. Mut. Ins. Co.*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct. App. 1984), *rev'd on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985), the tort of intentional infliction of emotional distress is not a "panacea for wounded feelings rather than reprehensible conduct."

According to the complaint, the “decision not to provide an explanation for Defendant Miller’s silence was entirely Defendant Miller [sic] decision and that Renewal clients routinely made such decisions without the influence of Renewal Staff.” *See* Compl., at 24, ¶ 117(g). Even if Miracle Hill acted as alleged to encourage Miller’s silence, it was ultimately Miller’s decision whether to contact Blackwell or not, and such a decision would not be unique in the context of those recovering from addiction. As the South Carolina Court of Appeals once stated, “not all conduct involving personal interaction and causing emotional distress in a business setting may serve as a basis for an action alleging outrage.” *Folkens v. Hunt*, 290 S.C. 194, 203, 348 S.E.2d 839, 845 (Ct. App. 1986). In this setting, Miracle Hill was acting in good faith to advise its patient in her recovery, and since Miller chose not to contact her separated spouse, Miracle Hill’s implementation of her wishes could hardly be described as incompatible with the bounds of decency in a civilized community.

ii. Gross Negligence

A plaintiff prosecuting a negligence claim must demonstrate (1) the defendants owed him a duty of care; (2) the defendants breached that duty by a negligent act or omission; and (3) he suffered damage as a proximate result of that breach. *Bloom v. Ravoir*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). “First, the court must determine, as a matter of law, whether the law recognizes a particular duty.” *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). If the plaintiff fails to prove the defendants owed him a legal duty of care, he fails to prove actionable negligence. *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007).

In the instant case, Blackwell alleges that Miracle Hill was grossly negligent in its treatment of his former wife, Miller. For example, the complaint states that Miracle Hill “established a duty

of care to Plaintiff” by “admitting Plaintiff’s wife into the Renewal program,” “providing Plaintiff’s wife with marriage counseling services while she was married to Plaintiff,” “continued Renewal’s execution of providing a protocol for the treatment of addiction which has proven to be ineffective,” and other allegations of Miracle Hill’s failure to adequately treat Miller. *See* Compl., ¶ 221. The only relationship between Miracle Hill and Blackwell is that he was married to Miller. Blackwell does not allege that he ever received treatment from Miracle Hill.

In South Carolina, a malpractice claim can only be maintained by the patient. *Bishop v. S.C. Dept. of Mental Health*, 331 S.C. 79, 91 (1998). “If a physician deviated from accepted standards of professional care in treating a patient, he breached a duty of care to the patient and not a third party.” *Id.* Other jurisdictions agree with this requirement and do not allow injured third parties to recover. *See Moya v. United States*, 735 F.Supp. 179 (E.D.N.C. 1990) (holding that there must be a physician-patient relationship between victim and doctor before the court will find a doctor owes a victim harmed by his patient a duty of care to properly evaluate and treat patient); *Russell v. Adams*, 125 N.C.App. 637, 482 S.E.2d 30 (1997) (stating that psychologists, like other health care providers, may be held liable in medical malpractice only to their patients).

In *Bishop*, the South Carolina Department of Mental Health (the “Department”) determined that the plaintiff child’s mother was not mentally ill and released her. *See Bishop*, 331 S.C. at 84-85. The next day, the mother was permitted to remove the child from her grandmother’s care, and the child was subsequently abused by the mother. *Id.* The grandmother brought a negligence action against the Department, contending that the Department owed a duty to the child to properly diagnose and treat the mother. *Id.* The South Carolina Court of Appeals affirmed the dismissal of the case, ruling that “the Department’s duty to properly diagnose and treat was owed only to the mother, and not to the child.” *Id.* at 91.

Similar to the plaintiff in *Bishop*, Blackwell has failed to state facts sufficient to constitute a legal duty of care owed by Miracle Hill to Blackwell. Under the facts as alleged by the complaint, Miracle Hill may owe a legal duty of care to Miller as a patient, but the same cannot be said for Blackwell. No allegations contend that Blackwell received any treatment from Miracle Hill. Rather, his only connection to Miracle Hill is that he was married to its patient. Consequently, Blackwell has failed to allege facts sufficient to constitute a duty of care owed to him by Miracle Hill.

iii. Civil Conspiracy

The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988). The “essential consideration” in civil conspiracy “is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff.” *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986).

General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. *Sheek v. Lee*, 289 S.C. 327, 328–29, 345 S.E.2d 496, 497 (1986). Special damages, on the other hand, are not implied at law because they do not necessarily result from the wrong. *Id.* at 329, 345 S.E.2d at 497. Special damages must, therefore, be specifically alleged in the complaint to avoid surprise to the other party. *Id.* “If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.” *Hackworth v. Greywood at Hammett, LLC*, 335 S.C. 110, 117 (Ct. App. 2009).

Here, Blackwell has failed to allege any special damages caused by the alleged conspiracy between Miracle Hill and Miller. Blackwell claims that the alleged civil conspiracy proximately caused him “to experience emotional duress sufficient to cause Plaintiff to attempt suicide...and incur medical charges.” *See* Compl., at 57, ¶ 229. However, the very same damages are requested in Blackwell’s first cause of action for intentional infliction of emotional distress. Identically to his civil conspiracy claim, Blackwell claims that the defendants’ outrageous conduct caused him “emotional distress” and that he “attempted to take his own life.” *See* Compl., ¶¶ 216-17, 220. The civil conspiracy claim must be dismissed. *See Hackworth*, 335 S.C. at 117; *see also Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) (“The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred.”)

iv. Breach of Fiduciary Duty / Aiding and Abetting Breach of Fiduciary Duty

A confidential or fiduciary relationship exists when “one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). Generally, “a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him.” *Brown v. Pearson*, 326 S.C. 409, 422-23 (Ct. App. 1997).

The question of whether a fiduciary duty should be “imposed between two classes of people is a question for the court.” *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458–59, 578 S.E.2d 711, 715 (2003). “Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers,

brokers, corporate directors, and corporate promoters.” *Id.* Beyond these relationships, our courts have typically refused to impose such a fiduciary relationship. *See id.* (“We decline to recognize the relationship between advisor and student as a fiduciary one.”); *see also Brown*, 326 S.C. at 422-23 (holding that no implied fiduciary duty exists between a church district superintendent and a parishioner).

Here, Blackwell has failed to allege either a mutual or implied imposition of a fiduciary duty between himself and Miracle Hill. As explained by the *Brown* case, a claimant cannot unilaterally impose a fiduciary duty upon another party. Rather, the fiduciary duty is one that must either be accepted by the alleged fiduciary or implied by the nature of the parties’ relationship. As to a mutual fiduciary duty, the complaint contains only allegations describing Blackwell’s desire to unilaterally create a fiduciary duty between himself and Miracle Hill. *See* Compl., ¶ 232 (“Plaintiff imposed a special confidence in each Defendant...”). While the complaint alleges the existence of a fiduciary duty between Blackwell and both Miller, *see id.* at ¶ 131, and Fisk, *see id.* at ¶ 131, Blackwell alleges neither the *existence* of a fiduciary duty between himself and Miracle Hill nor the *affirmative acceptance* of such a duty by Miracle Hill. *See id.*, ¶¶ 7-213.

As to an implied fiduciary duty, there is no basis under South Carolina law to impose an implied fiduciary duty between Blackwell and Miracle Hill. As discussed extensively above relating to Blackwell’s negligence claims, a medical provider owes no legal duty to a patient’s spouse who did not receive any medical treatment from the institution. *See supra*, at 5-6. Accordingly, Blackwell has failed to state facts sufficient to allege the existence of a fiduciary duty between Blackwell and Miracle Hill.

The elements for a cause of action for aiding and abetting a breach of fiduciary duty are (1) a breach of a fiduciary duty owed to the plaintiff, (2) the defendant’s knowing participation in

the breach, and (3) damages. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct. App. 2008). "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996). Although Blackwell alleges the existence of a fiduciary duty between himself and Miller and/or Fisk, the complaint does not contain a single factual allegation that Miracle Hill both knew of that fiduciary duty and took an affirmative acted to assist Fisk or Miller in a breach of his or her duty.

v. Defamation

The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Id.* at 506.

First, Blackwell has not alleged any legally presumed or special damages. The complaint alleges that Miracle Hill slandered Blackwell when its employee reported to police officers that Blackwell was intoxicated and therefore "committed defamation per se against Plaintiff." See Compl., ¶¶ 250, 255. In South Carolina, only four types of slander are actionable without the existence of special damages, which "include statements that impute unchastity, a criminal offense, a loathsome disease, or matter incompatible with business or trade." *Holtzscheiter*, 332 S.C. at 525-26, 506 S.E.2d at 510. Intoxication is not one of these categories, thus Blackwell must plead the existence of special damages. "Special damage is simply a manifestation of this injurious

effect which is computable in money or is capable of being assessed at monetary value.” *Capps v. Watts*, 246 S.E.2d 606, 610 (S.C. 1978) (internal quotation marks omitted). The complaint contains no allegations relating to any economic damages suffered by Blackwell as a result of the alleged slander by Miracle Hill, see Compl., ¶¶ 258 and 259. Accordingly, Blackwell’s defamation claims must be dismissed.

Second, the alleged statements are subject to privilege. The complaint alleges that Miller “falsely accused Plaintiff of adultery under oath in her divorce proceedings,” ¶ 246, and that Miller and Miracle Hill “published this.” ¶ 247. Our Supreme Court has held that “defamatory matter contained in pleadings filed according to law in a court having jurisdiction, if relevant and pertinent to the issues in the case, are absolutely privileged.” *McKesson & Robbins, Inc. v. Newsome*, 206 S.C. 269, 33 S.E.2d 585 (1945). Accordingly, Miller’s accusations of adultery in divorce proceedings cannot form the basis of a defamation claim against Miracle Hill.

Furthermore, Miracle Hill’s alleged statements to police officers are also privileged. “A communication made in good faith on any subject matter in which the person communicating has an interest...is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation.” *Conwell v. Spur Oil Co. of Western South Carolina*, 240 S.C. 170, 178 (1962).

In this case, Blackwell alleges that Miller “accus[ed] Plaintiff of domestic abuse to the staff at Miracle Hill.” See Compl., ¶ 215(a)(iii). Therefore, Miracle Hill had at least a moral obligation to protect Miller, its patient, from someone “she felt ...sought to do her physical harm again.” See *id.*, ¶ 194. This communication was made in good faith by Miracle Hill and limited in scope only to police officers who had a corresponding interest to protect Miller, Miracle Hill’s staff, and its

other patients from a potential threat. Accordingly, because Miracle Hill's statement was privileged, the complaint must be dismissed.

vi. Fraudulent Concealment

With regard to Blackwell's seventh cause of action for fraudulent concealment, this claim appears to be directed solely to Defendant Fisk. See ¶¶ 260-271. None of the allegations mention Miracle Hill or the defendants generally. *Id.* Accordingly, the complaint fails to allege facts sufficient constitute a cause of action for fraudulent concealment against Miracle Hill.

vii. Mental Health Facility Failure to Control Patient

South Carolina law does not recognize a general duty to warn of the dangerous propensities of others. *Sharpe v. S.C. Dep't of Mental Health*, 292 S.C. 11, 354 S.E.2d 778 (Ct. App.1 987). However, when a defendant has the ability to monitor, supervise, and control an individual's conduct, a special relationship exists between the defendant and the individual, and the defendant may have a common law duty to warn potential victims of the individual's dangerous conduct. *Rogers v. S.C. Dep't of Parole & Community Corrections*, 320 S.C. 253, 464 S.E.2d 330 (1995). This duty to warn arises when the individual has made a specific threat of harm directed at a specific individual. *Id.* "[A]ll that is required is the defendant be aware or should have been aware of the specific threat made by the patient to harm a specific person." *Bishop*, 331 S.C. at 87-88.

Here, Blackwell has not alleged that Miller communicated any threat to Miracle Hill. The complaint merely states that Miracle Hill "negligently treated a voluntary patient" and "Defendant Miller executed her plan to injure Plaintiff." See *Compl.*, ¶¶ 273-279. None of these allegations concern a threat communicated by Miller to Miracle Hill about her intention to harm Blackwell. Moreover, as analyzed extensively in regard to Blackwell's negligence claim, Miracle Hill owes

no duty in negligence to Blackwell because it never treated him. *See supra*, at 5-6. Accordingly, Blackwell's eighth cause of action must be dismissed.

viii. Fraud

To establish fraud, the following elements must be shown: (1) a representation; (2) the falsity of the representation; (3) the materiality of the representation; (4) knowledge of its falsity, or reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). "Failure to allege all elements is fatal to a claim of fraud." *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 511 (Ct. App. 1994). "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally." Rule 9(b), SCRPC.

Here, Blackwell has failed to allege all nine elements of fraud with particularity as required by Rule 9(b). With respect to the nine elements enumerated in the *Ardis* case, Blackwell has alleged that false information was communicated to him (elements 1 and 2), *see* Compl., ¶ 282; (ii) that he had a right to rely upon that information which was material (elements 8 and 3), ¶ 281; (iii) that he relied upon the information (element 7), ¶ 280; and (iv) that his reliance proximately caused damages (element 9), ¶ 283. However, the complaint does not allege that Miracle Hill knew of the falsity of the information or was recklessly ignorant (element 4); that Miracle Hill intended that its representation be acted upon by Blackwell (element 5); or that Blackwell was ignorant of the falsity of the information (element 6). Rather, Blackwell alleges that Miracle Hill was "ignorant of the claims made regarding their methods" and that Miracle Hill "has no incentive

to provide a legitimate treatment protocol.” *See* Compl, ¶¶ 284-285. Neither of these allegations is sufficient to establish Miracle Hill’s knowledge or recklessness of the statement’s alleged falsity. Furthermore, these statements contain no information about whether Miracle Hill intended for Blackwell to rely upon them or whether Blackwell was ignorant of the falsity. Because Blackwell failed to allege three out of nine elements of fraud, the complaint must be dismissed.

B. THIS COURT SHOULD DENY PLAINTIFF’S MOTION FOR A TEMPORARY INJUNCTION

On September 11, 2017, Blackwell filed a motion entitled “Request for Temporary Injunction.” In his motion, Blackwell requests that the Court require Miracle Hill to “immediately cease providing treatment for the disease of addiction and remove all references to their claims their treatment program bears any semblance to ‘the 12 Steps’ in their handbooks and on their websites.”

For a preliminary injunction to be granted, the plaintiff must establish that (1) he would suffer irreparable harm if the injunction is not granted; (2) that he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). “The remedy of an injunction is a drastic one and ought to be applied with caution.” *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

First, Blackwell has not established that he would suffer any irreparable harm if the injunction is not granted. Primarily, the relief requested is not related to any harm suffered by Blackwell. Rather, Blackwell contends that Miracle Hill’s former clients are “dying at a significantly high rate than other addiction treatment facility ‘graduates.’” *See* Pltf. Mot. for Temp. Inj. Filed Sept. 11, 2017. The motion contains no information about any damage that Blackwell himself would suffer if Miracle Hill were not forced to cease all treatment of its patients or removal

all references from their website and handbook. Blackwell does not allege that he is currently receiving treatment from Miracle Hill. Instead, Blackwell alleges in his memorandum in support that he “will suffer guilt and remorse he did not know sooner he could file for injunctive relief to prevent Miracle Hill’s treatment program from further damaging members of his community.” See Pltf. Memo. in Supp., at 10-11. These damages are nonsensical and wholly insufficient to form the basis of injunctive relief concerning individuals wholly unrelated to this litigation or its litigants. Rather, if the injunction were granted, Miracle Hill’s patients would suffer irreparable damage if the institution were forced to close its doors to those receiving treatment. See *Strategic Resources Co.*, 367 S.C. at 544, 627 S.E.2d at 689 (“In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case.”).

Second, Blackwell is not likely to succeed on the merits of the litigation. Participation in Miracle Hill’s Renewal program is entirely voluntary and its patients choose to enter the program. Blackwell is not a patient, has never received treatment from Miracle Hill, and has no standing to represent third parties who voluntarily chose to undergo the Renewal program. His allegations and motion for temporary injunction are purely for harassment and are meritless. Furthermore, without repeating the arguments exhaustively analyzed above, Blackwell’s complaint should be dismissed as a matter of law. See *supra*, at 3-14.

Finally, Blackwell has not established that there is no adequate remedy at law. Neither Blackwell’s motion nor his memorandum in support explain how there is no adequate remedy at law for his claims. To the contrary, Plaintiff’s complaint contains nine legal causes of action, all

of which may be reduced to a money judgment if Blackwell is successful at trial. Accordingly, this Court should deny Plaintiff's motion for a temporary injunction.

III. CONCLUSION

For the foregoing reasons, Defendant Miracle Hill Ministries, Inc. respectfully requests that the Court grant its motion to dismiss the complaint and deny Plaintiff Harold E. Blackwell, Jr.'s motion for a temporary injunction.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Defendant Miracle Hill
Ministries, Inc.

September 29, 2017
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO. 2017-CP-23-03754

Harold Estes Blackwell, Jr.,

Plaintiff,

vs.

Miracle Hill Ministries, Inc., Anita Jane Miller
(a.k.a Anita M. Blackwell), and William Fisk,

Defendants.

ORDER

This matter came before me on motions to dismiss and to quash filed by Defendant Miracle Hill Ministries, Inc. ("Miracle Hill"). Present at the hearing on behalf of Miracle Hill was Adam C. Bach of the law firm Eller Tonnsen Bach, LLC. M. Lee Daniels, Jr. of the law firm M. Lee Daniels, Jr., P.C. appeared at the hearing on behalf of Defendant Anita Jane Miller ("Miller"), and Carrie H. O'Brien of the law firm Willson Jones Carter & Baxley, P.A. appeared on behalf of Defendant William Fisk ("Fisk"). The plaintiff appeared on his own behalf.

I. MIRACLE HILL'S MOTION TO DISMISS

Miracle Hill sought dismissal on the grounds that the plaintiff failed to allege facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6), SCRCP. The plaintiff's complaint makes numerous allegations related to Miracle Hill's admission and treatment of Miller, who is his former wife, in its "Renewal" program for alcohol treatment. Blackwell alleges that Miracle Hill encouraged Miller to refuse all contact with him during her treatment, that Miracle Hill employees falsely informed police that Blackwell committed a crime, and that Miracle Hill assisted Fisk's failure to act on Blackwell's behalf to address Miller's silence. Blackwell alleges that Miracle Hill's actions caused him emotional distress, eventually causing him to attempt to

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commit suicide on or about December 9, 2015. The complaint includes nine causes of action against Miracle Hill: (i) intentional infliction of emotional distress; (ii) gross negligence; (iii) civil conspiracy; (iv) breach of fiduciary duty; (v) aiding and abetting breach of fiduciary duty; (vi) defamation; (vii) fraudulent concealment; (viii) "mental health facility failure to control patient;" and (ix) fraud.

A defendant may move to dismiss the plaintiff's complaint for "failure to state facts sufficient to constitute a cause of action" pursuant to Rule 12(b)(6), SCRCP. In considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001).

A. *Intentional Infliction of Emotional Distress*

The complaint fails to allege facts sufficient to constitute a cause of action for intentional infliction of emotional distress. In order to state a claim for intentional infliction of emotional distress, a party must establish (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiff's emotional distress; and (4) the emotional distress

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suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 401, 596 S.E.2d. 42, 48 (2004).

Here, the complaint contains no allegations of sufficiently extreme or outrageous conduct on the part of Miracle Hill. In essence, Blackwell contends that Miracle Hill's alleged encouragement of Miller not to communicate with Blackwell amounts to extreme and outrageous conduct that exceeds all possible bounds of decency. As Miracle Hill argued at the hearing, there is no reported decision in South Carolina finding any similar conduct to be sufficiently outrageous or extreme for the tort of intentional infliction of emotional distress, and Blackwell brought no such authority to this Court's attention. Rather, as counsel for Miracle Hill contended, the complaint demonstrates that Miracle Hill acted in good faith to advise its patient in her recovery and to carry out the wishes of its patient not to communicate with her separated spouse. *See* Compl., at 24, ¶ 117(q) ("Mr. Lehman stated the decision not to provide an explanation for Defendant Miller's silence was entirely Defendant Miller [sic] decision and that Renewal clients routinely made such decisions without the influence of Renewal Staff."). Further, Blackwell argued at the hearing that Miller's decision not to contact him was her choice and decision, which he interpreted as "code" that she wanted to be contacted. Keeping in mind that the tort of intentional infliction of emotional distress is not a "panacea for wounded feelings rather than reprehensible conduct," *see Todd v. S.C. Farm Bur. Mut. Ins. Co.*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct. App. 1984), the Court finds that the alleged conduct on the part of Miracle Hill is not sufficiently outrageous or reprehensible to constitute a claim of tort of intentional infliction of emotional distress.

B. *Gross Negligence*

The complaint fails to allege facts sufficient to constitute a cause of action for gross negligence. In order to state a claim for intentional infliction of emotional distress, Blackwell must show that (1) the defendants owed Blackwell a duty of care; (2) the defendants breached that duty by a negligent act or omission; and (3) Blackwell suffered damage as a proximate result of that breach. *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). "First, the court must determine, as a matter of law, whether the law recognizes a particular duty." *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). If the plaintiff fails to prove the defendants owed him a legal duty of care, he fails to prove actionable negligence. *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007).

Here, Blackwell has failed to allege any duty owed to him by Miracle Hill. In South Carolina, a negligence action against a medical provider may only be maintained by the patient. *See Bishop v. S.C. Dept. of Mental Health*, 331 S.C. 79, 91 (1998) ("If a physician deviated from accepted standards of professional care in treating a patient, he breached a duty of care to the patient and not a third party."). While the complaint contains numerous allegations relating to potential duties owed by Miracle Hill to Miller, it does not allege that Blackwell was ever treated by the institution. *See Compl.*, ¶ 221. Accordingly, the Court finds that the complaint fails to sufficiently allege any legal duty owed by Miracle Hill to Blackwell, thus Blackwell's claim for gross negligence must be dismissed.

C. *Civil Conspiracy*

The complaint fails to allege facts sufficient to constitute a cause of action for civil conspiracy. The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages.

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LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988). "A claim for civil conspiracy must allege additional facts in furtherance of a conspiracy rather than reallege other claims within the complaint." *Hackworth v. Greywood at Hammett, LLC*, 335 S.C. 110, 115 (Ct. App. 2009). Similarly, a plaintiff must allege special damages specifically caused by the civil conspiracy. *See id.*, at 117 ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."); *see also Vaughn v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) ("The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred.")

Here, the plaintiff's claim for civil conspiracy fails for three reasons. First, the complaint contains no allegations related to the commission of any act in furtherance of a conspiracy. Rather, a comparison of the plaintiff's intentional infliction of emotional distress allegations, *see* Compl. ¶¶ 215-220, with the civil conspiracy allegations, *see id.* at ¶¶ 226-229, reveals essentially the same factual allegations. Second, the complaint contains no allegations of any special damages as a result of the conspiracy. The damages claimed in respect to the plaintiff's claim for intentional infliction of emotional distress essentially mirror those of his claim for civil conspiracy. *See id.* at ¶¶ 215-200, 226-229. Third, Blackwell's allegations are that Miracle Hill's treatment of Miller incidentally caused him harm and not that the purpose of her treatment was to harm Blackwell. The Court finds that these deficiencies merit the dismissal of Blackwell's claim for civil conspiracy.

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D. *Breach of Fiduciary Duty / Aiding and Abetting Breach of Fiduciary Duty*

The complaint fails to allege facts sufficient to constitute a cause of action for breach of fiduciary duty or aiding and abetting a breach of fiduciary duty. Generally, "a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him." *Brown v. Pearson*, 326 S.C. 409, 422-23 (Ct. App. 1997). The question of whether a fiduciary duty should be "imposed between two classes of people is a question for the court." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458-59, 578 S.E.2d 711, 715 (2003). "Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters." *Id.*

Similar to the plaintiff's claim for gross negligence, the complaint must contain sufficient facts to allege a fiduciary relationship between Blackwell and Miracle Hill. However, the complaint contains neither a mutual imposition of a fiduciary duty or an implied fiduciary duty under the law. As to the first point, the complaint contains no allegation stating that Miracle Hill agreed to assume a fiduciary duty with respect to Blackwell. *See* Compl., at 57-58, ¶ 232(b). Rather, the complaint appears to assume an implied fiduciary relationship between Blackwell and Miracle Hill. As discussed above regarding the plaintiff's negligence claim, the plaintiff has provided no authority for his position that the law imposes a fiduciary relationship between a medical provider and a patient's spouse who did not receive any medical treatment. *See Bishop*, 331 S.C. at 91. For this reason, the Court finds that no such fiduciary duty should be presumed between Blackwell and Miracle Hill, and the plaintiff's claim for breach of fiduciary duty should be dismissed.

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With respect to the plaintiff's cause of action for aiding and abetting a breach of fiduciary duty, the Court finds that this cause of action should be similarly dismissed. For example, while the complaint contains bare, general allegations about "each defendant," it contains no allegations stating that Miracle Hill knew of a fiduciary duty owed by some third party to Blackwell and knowingly assisted that third party in breaching said duty. *See* Compl., at 59-62, ¶ 233, 236-240.

E. *Defamation*

The complaint fails to allege facts sufficient to constitute a cause of action for defamation. The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). The complaint cites three occasions where Blackwell alleges he was defamed by Miracle Hill: (i) when Miracle Hill "published" "to third parties" information relating to Miller's accusations of Blackwell's "adultery under oath in her divorce proceedings," *see* Compl., at 64, ¶¶ 246-247; (ii) when Miracle Hill's employee stated to police officers that Blackwell "was guilty of public intoxication and domestic abuse," *see id.*, at 64, ¶ 250; and (iii) when Miracle Hill's employee "published defamatory material to a marriage counselor" who Miracle Hill provided to Miller. *See id.*, at 64, ¶ 252.

With respect to the first and second claims of defamation, these statements are subject to privilege. Our Supreme Court has held that "defamatory matter contained in pleadings filed according to law in a court having jurisdiction, if relevant and pertinent to the issues in the case, are absolutely privileged." *McKesson & Robbins, Inc. v. Newsome*, 206 S.C. 269, 33 S.E.2d 585 (1945). Accordingly, Miller's accusation of Blackwell's adultery in the context of a divorce

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proceeding in a South Carolina Family Court is absolutely privileged and cannot form the basis of a defamation claim against Miracle Hill.

Similarly, Miracle's communications with police cannot form the basis of a defamation cause of action. In *Conwell v. Spur Oil Co. of Western South Carolina*, 270 S.C. 170, 178, 125 SE2d 270 (1962), our Supreme Court held that communications made in good faith on a subject matter where the persons involved in the communication share a common interest are privileged, even though the communication may otherwise be actionable if no privilege were involved, even where the common interest is not a legal one, but only a moral or social one. As the complaint alleges, Miller "accus[ed] Plaintiff of domestic abuse to the staff at Miracle Hill." See Compl., at 43, ¶ 215(a)(iii). Therefore, Miracle Hill had at least a moral or social obligation to protect its patient from someone who "she felt...sought to do her physical harm again." See *id.*, at 40, ¶ 194. Since these communications were between only Miracle Staff and police officers, this Court finds that such statements were privileged.

Finally, the complaint contains no allegations relating to legally presumed or special damages relating to the "defamatory material" communicated to a marriage counselor. In South Carolina, only four types of slander are actionable without the existence of special damages, which "include statements that impute unchastity, a criminal offense, a loathsome disease, or matter incompatible with business or trade." *Id.*, 332 S.C. at 525-26, 506 S.E.2d at 510. The complaint states only that "defamatory material" was communicated to a marriage counselor provided by Miracle Hill to Miller. See Compl., at 64, ¶ 252. The complaint does not specify what comprised the "defamatory material," thus there are no allegations implicating any of the four categories described for legally presumed damages. Furthermore, none of the allegations set forth any specific harm to Blackwell's reputation because as a result of Miracle Hill's communications with

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the marriage counselor. Accordingly, the Court finds that the complaint does not set forth sufficient allegations to constitute a cause of action for defamation

F. *Fraudulent Concealment*

Blackwell's seventh cause of action for fraudulent concealment appears to be directed solely at Defendant Fisk. See ¶¶ 260-271. None of the allegations mention Miracle Hill or the defendants generally. *Id.* Accordingly, the complaint fails to allege facts sufficient constitute a cause of action for fraudulent concealment against Miracle Hill.

G. *Mental Health Facility Failure to Control Patient*

The complaint fails to allege facts sufficient to constitute a cause of action against Miracle Hill for its failure to control Miller. South Carolina law does not recognize a general duty to warn of the dangerous propensities of others. *Sharpe v. S.C. Dep't of Mental Health*, 292 S.C. 11, 354 S.E.2d 778 (Ct. App. 1987). However, when a defendant has the ability to monitor, supervise, and control an individual's conduct, a special relationship exists between the defendant and the individual, and the defendant may have a common law duty to warn potential victims of the individual's dangerous conduct. *Rogers v. S.C. Dep't of Parole & Community Corrections*, 320 S.C. 253, 464 S.E.2d 330 (1995). This duty to warn arises when the individual has made a specific threat of harm directed at a specific individual. *Id.* A defendant must "be aware or should have been aware of the specific threat made by the patient to harm a specific person." *Bishop*, 331 S.C. at 87-88.

Here, the complaint does not allege that Miracle Hill knew of any threat to the plaintiff. The complaint states that Miracle Hill "failed to take any steps to control the conduct of Defendant Miller" and "negligently treated a voluntary patient" who "executed her plan to injure Plaintiff." See Compl. at 67, ¶¶ 275-278. These allegations attempt to describe a negligence cause of action

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against Miracle Hill regarding its treatment of Miller, however Miracle Hill owes no duty to Blackwell with regard to Miller's treatment. Importantly, these allegations do not describe a specific threat made by Miller against Blackwell or Miracle Hill's knowledge of any such threat. Therefore, the plaintiff's eighth cause of action fails to constitute a claim against Miracle Hill and shall be dismissed.

H. *Fraud*

To establish fraud, the following elements must be shown: (1) a representation; (2) the falsity of the representation; (3) the materiality of the representation; (4) knowledge of its falsity, or reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). "Failure to allege all elements is fatal to a claim of fraud." *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 511 (Ct. App. 1994). "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Rule 9(b), SCRPC.

Here, all nine elements of fraud have not been plead with particularity as required by Rule 9(b). With respect to the nine elements enumerated in the *Ardis* case, Blackwell has alleged that false information was communicated to him (elements 1 and 2), *see* Compl., at 67, ¶ 282; (ii) that he had a right to rely upon that information which was material (elements 8 and 3), ¶ 281; (iii) that he relied upon the information (element 7), ¶ 280; and (iv) that his reliance proximately caused damages (element 9), at 68, ¶ 283. None of the allegations describe Miracle Hill's knowledge of the falsity of the information or reckless ignorance (element 4); Miracle Hill's intention that its representation be acted upon by Blackwell (element 5); or Blackwell's ignorance of the falsity

(element 6). Rather, Blackwell alleges that Miracle Hill was "ignorant of the claims made regarding their methods" and that Miracle Hill "has no incentive to provide a legitimate treatment protocol." See Compl. ¶¶ 284-285. These allegations, if proven at trial, would not establish Miracle Hill's knowledge of falsity, its intended inducement of Blackwell's reliance, or Blackwell's ignorance of falsity, the cause of action for fraud must be dismissed. None of the causes of action against Miracle Hill meet the standard required under Rule 12(b)(6), SCRC.P.

Accordingly, the motion to dismiss filed by Defendant Miracle Hill Ministries, Inc. is hereby **GRANTED** and all of the plaintiff's causes of action against Miracle Hill contained within the complaint are hereby **DISMISSED WITH PREJUDICE**.

II. PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

On September 11, 2017, the plaintiff filed a motion entitled "Request for Temporary Injunction." In his motion, the plaintiff requests that the Court require Miracle Hill to "immediately cease providing treatment for the disease of addiction and remove all references to their claims their treatment program bears any semblance to 'the 12 Steps' in their handbooks and on their websites."

For a preliminary injunction to be granted, the plaintiff must establish that (1) he would suffer irreparable harm if the injunction is not granted; (2) that he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). "The remedy of an injunction is a drastic one and ought to be applied with caution." *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

First, the plaintiff cannot establish that he would suffer any irreparable harm if the injunction is not granted. As the plaintiff contends, Miracle Hill's former clients are "dying at a

significantly high rate than other addiction treatment facility ‘graduates,’” and that he will “suffer guilt and remorse he did not know sooner he could file for injunctive relief to prevent Miracle Hill’s treatment program from further damaging members of his community.” *See* Pltf. Mot. for Temp. In. filed Sept. 11, 2017. Importantly, the plaintiff does not allege that he is currently or has ever been treated by Miracle Hill. Neither the plaintiff’s motion nor his arguments at the hearing provide any indication that the plaintiff would personally suffer any harm if the injunction were not granted. To the contrary, Miracle Hill and its patients would suffer harm from being forced to halt the treatment program. *See Strategic Resources Co.*, 367 S.C. at 544, 627 S.E.2d at 689 (“In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case.”).

Second, the plaintiff is not likely to succeed on the merits of this litigation. As the parties conceded, participation in Miracle Hill’s Renewal program is entirely voluntary and its patients choose to enter the program. Blackwell is not a patient, has never received treatment from Miracle Hill, and has no standing to represent third parties who voluntarily chose to undergo the Renewal program. Furthermore, as analyzed exhaustively above, Blackwell is not likely to succeed on the merits against Miracle Hill in light of the Court’s dismissal of his causes of action against Miracle Hill.

Finally, the plaintiff has not established that there is no adequate remedy at law. Again, the plaintiff cannot establish his right to bring any cause of action against Miracle Hill on behalf of current or former patients. Since he has no standing to represent these individuals, he cannot establish that he has any remedy under the law for such claims. Regarding the claims has failed in this case, he has alleged nine causes of action against Miracle Hill, and all nine claims may be

reduced to a money judgment if Blackwell is successful at trial. Accordingly, the plaintiff's motion for a preliminary injunction is **DENIED**.

III. MIRACLE HILL'S MOTION TO QUASH SUBPOENAS

On October 3, 2017, Miracle Hill filed a motion to quash two subpoenas served to Miracle Hill employees commanding their appearance at the Greenville County Courthouse on October 4, 2017 at 9:00 AM. A hearing on the parties' pending motions was scheduled to begin that same time and location. The first subpoena was served upon Reid Lehman on or about September 18, 2017 and the second subpoenas was served upon Bill Slocum on or about September 28, 2017.

Pursuant to Rule 45(c)(1), SCRCP, "[a] party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." The court "shall quash or modify" a subpoena that subjects any person to an undue burden. *See* Rule 45(c)(3)(A), SCRCP.

First, the plaintiff intended to offer testimony from Lehman and/or Slocum in response to the defendants' separate motions to dismiss the complaint. A ruling on a motion to dismiss under Rule 12 "must be based solely upon the allegations set forth on the face of the complaint." *Tousaint v. Ham*, 292 S.C. 415, (1987). Therefore, these subpoenas impose an undue burden upon these witnesses as their purported testimony would not unnecessary to the Court's determination of the sufficiency of the pleadings. *See HDSherer, LLC v. Nat. Molecular Testing Corp.*, 292 F.R.D. 305, 308 (D.S.C. 2013) ("This undue category encompasses situations where the subpoena seeks information irrelevant to the case.").

Second, the plaintiff intended to offer these witnesses' testimony in support of his motion for a preliminary injunction. As analyzed above, the plaintiff cannot prove that he would suffer irreparable harm, that he is likely to succeed on the merits in this litigation, or that there is an

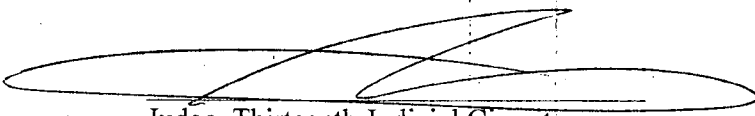
inadequate remedy at law. The Court finds that the subpoenas issued to Reid Lehman and Bill Slocum are hereby quashed pursuant to Rule 45(c), SCRCP. Accordingly, Defendant Miracle Hill Ministries, Inc.'s motion to quash is **GRANTED**.

IV. CONCLUSION

THEREFORE IT IS ORDERED THAT: (i) the motion to dismiss filed by Defendant Miracle Hill Ministries, Inc. is hereby **GRANTED** and all causes of action asserted against Defendant Miracle Hill Ministries, Inc. are hereby **DISMISSED WITH PREJUDICE**; (ii) the motion for a preliminary injunction is **DENIED**; and (iii) the motion to quash the subpoenas filed by Defendant Miracle Hill Ministries, Inc. is **GRANTED**.

IT IS SO ORDERED.


_____, 2017
Greenville, South Carolina


Judge, Thirteenth Judicial Circuit
2587

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Harold Estes Blackwell, Jr.
Plaintiff

vs.

Miracle Hill Ministries, Inc.
Anita Jane Miller (a.k.a. Anita M. Blackwell)
William Fisk
Defendants

IN THE COURT OF COMMON
PLEAS

THIRTEENTH JUDICIAL
CIRCUIT

Case No. 2017-CP-23-03754

PLAINTIFF'S MOTION TO
RECONSIDER

2017 NOV 16 PM 4:15
FILED-CLERK OF COURT
PAUL B. WICK
GREENVILLE

Plaintiff comes now to move this honorable Court to reconsider its Order dismissing this case from the bar pursuant to Rule 60(b)1 of the South Carolina Rules of Civil Procedure (SCRCP). The Court dismissed all of Plaintiff's causes of action on the grounds that the plaintiff failed to allege facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6), (SCRCP).

LEGAL STANDARD

Plaintiff avers the Court has abused its discretion in regards to both law and its reliance on factual conclusions that do not have evidentiary support. (An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, without evidentiary support. *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565 (1987)). As such, justice demands the Court's Order must be rescinded.

Factual Conclusions Without Evidentiary Support Relied Upon by the Court

1. The Order's statement, "The plaintiff's complaint makes numerous allegations related to Miracle Hill's admission and treatment of Miller, who is his

former wife." (see Order at 1 ¶2) is a factual conclusion not supported by the evidence. The complaint's minutia is not for the court's disgruntlement but to articulate the profound difference in Miller's silence and her refusal to explain her silence. The complaint alleges Miller's refusal to explain her silence is the lynchpin of plaintiff's case. (see Compl. at ¶¶ 59, 62, 63, 68, 75, 76, 77, 78, 80, 83, 85, 87, 88, 91, 109, 117(q)(b), 118(b)(e), 121, 129, 146, 149, 157, 181, 190 and 197) Had Miller sent a one-line letter stating she wanted a divorce or needed time to think, plaintiff would have known she was at Miracle Hill of her own volition and the illegal acts of the defendants would have never occurred. Plaintiff is suing no one because he received "the silent treatment" from Miller.

2. The Order's statement, "In essence, Blackwell contends that Miracle Hill's alleged encouragement of Miller not to communicate with Blackwell amounts to extreme and outrageous conduct that exceeds all possible bounds of decency" is a factual conclusion not supported by the facts alleged in the complaint. (Ibid). "In essence" is not a conclusion a reasonable person could draw from 27 contrary allegations in the complaint. The Order's contention, "Miller not communicate with Blackwell" is not reflective of Miller's refusal to provide an explanation for her silence and is therefore a factual conclusion not supported by the evidence in the complaint.

3. The Court's Order referring to Miller as a "patient" (see Order at 3, ¶2) of Miracle Hill is a factual conclusion not supported by the evidence as such an

allegation is not on the face of the complaint and is directly contradicted in the complaint. (see Compl. at ¶ 117(r)).

4. The statement in the Court's Order, "its patient not to communicate with her separated spouse" (see Order at 3, ¶2) is a factual conclusion not supported by the evidence. (see Compl. at ¶¶ 59, 62, 63, 68, 75, 76, 77, 78, 80, 83, 85, 87, 88, 91, 109, 117(q)(b), 118(b)(e), 121, 129, 146, 149, 157, 181, 190 and 197).

5. The statement in the Court's Order that plaintiff seeks a "panacea for wounded feelings" is factual conclusion not supported by the evidence. (see Compl. at ¶182). Plaintiff avers suicide is a far cry from "wounded feelings."

6. The Order's statement, "Here, Blackwell has failed to allege any duty owed to him by Miracle Hill" is a factual conclusion not supported by the evidence. (see Compl. at ¶221(a)). Plaintiff asserts his pleading in regards to a duty of care owed to him by Miracle Hill is sufficient for a pro se litigant (Supra).

7. The Order's statement, "Accordingly, the Court finds that the complaint fails to sufficiently allege any legal duty owed by Miracle Hill to Blackwell thus Blackwell's claim for gross negligence must be dismissed" is a factual conclusion not supported by the evidence. (see ¶¶ 6&7 above).

8. The Order's statement, "Third, Blackwell's allegations are that Miracle Hill's treatment of Miller incidentally caused him harm" (see Order at 5, ¶2) is a factual conclusion not supported by the evidence. Plaintiff alleges through the complaint Miller's actions were the product of her rage, were calculated to cause him harm and that Miracle Hill encouraged and participated in Miller's scheme.

Plaintiff avers the Court's understanding that plaintiff's case is about Miller's silent treatment instead of her refusal to explain her silence is again manifest. (Ibid).

9. The Order's statement, "the complaint contains no allegation stating that Miracle Hill agreed to assume a fiduciary duty with respect to Blackwell" and "the Court finds that no such fiduciary duty should be presumed between Blackwell and Miracle Hill and the plaintiff's claim for breach of fiduciary duty should be dismissed" (see Order at 6, ¶2) are factual conclusions not supported by the evidence. (see Compl. at ¶232(b)(4)).

10. The Order's statement, "it (complaint) contains no allegations stating that Miracle Hill knew of a fiduciary duty owed by some third party to Blackwell and knowingly assisted that third party in breaching said duty" (see Order at 7, ¶1) is a factual allegation not supported by the evidence. Plaintiff alleges Reid Lehman, acting in the scope of his employment, required Fisk to take on a fiduciary role. (see Compl. at ¶232(b)(4) and 233(e)(2))

11. The Order's statement, "With respect to the first and second claims of defamation, these statements are subject to privilege" is a factual conclusion not supported by the evidence. The complaint nowhere states who heard Slocum make his report to the police nor states Slocum was alone when he making his report to the police.

12. The Order's statement, "Since these communications were between only Miracle Hill and police officers" is a factual conclusion not supported by the evidence. (see previous item 11).

13. The Order's statement, "None of the allegations describe Miracle Hill's knowledge of the falsity of the information or reckless ignorance" is a factual conclusion not supported by the evidence. Plaintiff attached to his complaint a rendition of contradictions (Exhibit E) between what Lehman knew was right and what he actually did. Plaintiff also states Miracle Hill was ignorant of their protocol's lack of efficacy due to a failure to investigate and proffers a modicum of consideration due a pro se litigant would allow the short step to an allegation of recklessness. (see Compl. at ¶284).

14. The Order's statement, "Miracle Hill's intention that its representation be acted upon by Blackwell (element 5); or Blackwell's ignorance of the falsity (element 6)." are factual conclusions not supported by the evidence. The clear inference of having a 30 minute conversation to confirm what was published on the website shows Miracle Hill, using the medium of Toby Woodard, fully intended for plaintiff to act and he did by asking Woodard facilitate Miller's acceptance into the Renewal program. Plaintiff also clearly alleges he was deceived. (see Compl. at ¶34, 35, 36, 37, 38, 39, & 40).

Mistakes of Law Contained in the Court's Order

15. The absence of consideration which should be afforded Plaintiff's complaint due to his pro se status is an abuse of the Court's discretion. A Rule

12(b)(6) motion to dismiss tests the sufficiency of the complaint. ("As Dean Lightsey and Professor Flanagan point out in their treatise, a Rule 12(b)(6) motion "is directed to the factual and legal sufficiency of the complaint ... and only that document is considered." H. Lightsey and J. Flanagan, South Carolina Civil Procedure at 276 (1985)) Woodall v. Allen 307 S.C. 297, 298 (1992) 414 S.E.2d 794). Therefore, the court must decide whether plaintiff has sufficiently met the pleading standard set out in Twobel as applied to a pro se litigant's. ("The Supreme Court articulated the appropriate standard a court must follow in deciding a 12(b)(6) motion to dismiss in Twobel. First, a court must accept all factual allegations set forth in the complaint as true. Tellabs, Inc. v. Makor Issues and Rights, Ltd., 551 U.S. 308, 322 (2007)). ("In determining if a petition states a claim or cause of action, the averments of the petition are to be given a liberal construction, according the averments their reasonable and fair implication should be indulged from the facts stated. So considered, a petition should be held sufficient if its averments invoke substantive principles of law which entitle plaintiff to relief. A petition is not to be held insufficient merely because of a lack of definiteness or certainty in allegation or because of informality in the statement of an essential fact." Boyer v. Guidicy Marble, Terrazzo & Tile Co., Mo.Sup., 246 S.W.2d 742; Gerber v. Schutte Inv. Co., 354 Mo. 1246, 194 S.W.2d 25; Stephens v. Kansas City Gas Co., 354 Mo. 835, 191 S.W.2d 601; Section 509.250, RSMo 1949, V.A.M.S." Zuber v. Clarkson Const. Co., 363 Mo. 352, 355, 251 S.W.2d 52, 54)), ("More specifically, if the court can reasonably read the pleadings to state a valid claim on which a pro se plaintiff

could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his or her confusion of various legal theories, his or her poor syntax and sentence construction, or his or her unfamiliarity with pleading requirements."

Burkhart v Corrections Corp of America 2009 OK CIV APP 76:224 P.3d 1278 (Div 4, 2009) and ("It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson." Puckett v. Cox, 456 F.2d 233 (1972) (6th Cir. USCA). The Court's Order obviously did not afford plaintiff any of the required accommodations. In fact, plaintiff avers the Order holds him to an exceedingly high standard of sufficiency.

16. The Order states, "The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief." Plyler v Burns, 373 S.C. 637, 645, 647 S.E. 2d 188, 192 (2007)). This statement's lack of acknowledgement plaintiff appears pro se shows clearly the court has not given Plaintiff's complaint the lenient consideration demanded by precedent as cited above. Plyler was not a pro se litigant and therefore, in regards to the instant case, is not analogous. (Ibid).

17. Plaintiff avers his suicide attempt, alleged in the complaint to be the result of Miracle Hill's wanton and reckless acts (see Compl. at ¶190), greatly diminished his "client" appeal as he sought legal representation in this matter. Plaintiff's diminished credibility due to the harm he suffered at the hands of Miracle Hill, stacked with the potential cost of the litigation and the charitable

nature of Miracle Hill's reputation, in effect, precluded plaintiff from acquiring an attorney on a contingency basis. To bring this suit without funds to pay an attorney "up front" left plaintiff no option but to file pro se. As such, justice demands plaintiff be afforded each advantage and every consideration the law might provide a pro se litigant. (Ibid Burkhart). The court's order is void of any indication like consideration was used to evaluate the sufficiency of the complaint or even that such consideration was applicable. Therefore, the Court's Order is in error per the law and the demands of justice regarding the entire Order.

Intentional Infliction of Emotional Distress

18. The court's Order statement, "As Miracle Hill argued at the hearing, there is no reported decision in South Carolina finding any similar conduct to be sufficiently outrageous or extreme for the tort of intentional infliction of emotional distress, and Blackwell brought no such authority to the court's attention." is not taken from the face of the complaint as required (Twoble, Ibid). Plaintiff did bring to the court's attention in his proposed order that presumably the able barrister Mr. Bach would have cited any case in which "similar conduct" was found to not be outrageous. As such, Mr. Bach's observation only accentuates the uniqueness and rarity of Miracle Hill's conduct, a characteristic by definition of "sufficiently outrageous or extreme" conduct. By construing Mr. Bach's observation as exculpatory, the court has failed to construe "all ambiguities, conclusions, and inferences" in a light most favorable to plaintiff as the law requires. (*All ambiguities, conclusions, and inferences arising from the evidence must be*

construed most strongly against the moving party." Vermeer Carolina's, Inc., Appellant, v. Wood Chuck Chipper Corporation, Respondent. 336 S.C. 53 (1999), 518 S.E.2d 301). Additionally, plaintiff is not required to show authorities to survive a Rule 12(b)(6) Motion to Dismiss. ("More specifically, if the court can reasonably read the pleadings to state a valid claim on which a pro se plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his or her confusion of various legal theories, his or her poor syntax and sentence construction, or his or her unfamiliarity with pleading requirements." (*Burkhart* Ibid)

19. Additionally, the court errs in accepting and relying on the aforementioned determining metric proffered by opposing counsel in determining if the level of outrage is sufficient by making a comparison of conduct in previous court decisions. The level of distress suffered by plaintiff is the superior metric according to the law. ("Where physical harm is lacking, the courts should look initially for more in the way of *extreme* outrage as an assurance that the mental disturbance claimed is not fictitious. Hansson v. Scalise Builders of S.C., 374 S.C. 352). There is no more extreme reaction to emotional distress than suicide and the court's determination plaintiff's allegations are an attempt to assuage hurt feelings is incongruent with the complaint's content in every respect.

20. In a light construed most favorably to plaintiff, Miracle Hill's role in plaintiff's suicide attempt is plainly on the face of the complaint. "It is for the court to determine whether on the evidence severe emotional distress can be found; it is

for the jury to determine whether, on the evidence, it has in fact existed. Under the heightened standard of proof for emotional distress claims, a party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by simply alleging, "I suffered emotional distress" would be irreconcilable with the South Carolina Supreme Court's development of the law in this area. The court must look for something more -- in the form of third party witness testimony and other corroborating evidence -- in order to make a prima facie showing of "severe" emotional distress." (Ibid)). The court's statement on page 3, "the court finds that the alleged conduct on the part of Miracle Hill is not sufficiently reprehensible to constitute a claim of tort of intentional infliction of emotional distress" is beyond the court's purview as the order states this as fact and fatally flaws the court's order to dismiss this case pursuant to Rule 12(b)(6). (Ibid).

21. Another metric of measuring outrage given more weight by the court than examples of outrage deemed sufficient is the ease with which the conduct could have been modified to avoid causing extreme emotional distress. Plaintiff's avers in his complaint all he wanted was legitimate confirmation Miller was at Miracle Hill of her own volition (which was Fisk's only charge that Fisk negotiated for himself in his counter offer to plaintiff in the telephone call after the July 20 meeting). (See Compl. at ¶127, 128, 129 & 130)). Plaintiff asked Miracle Hill to simply suggest to Miller a five (5) minute telephone call or a short note in Miller's

handwriting (Miller's note of June 27, 2015, was insufficient because plaintiff did not see the conditions under which she wrote the note and it did not speak to her willingness to be at Miracle Hill. (See Compl. at ¶¶ 78, 80, 81, 82, 85 & 87)).

Miracle Hill refused this simple request. Also, Miracle Hill refused to return plaintiff's telephone calls, answered his mail or his email in the six weeks between May 28, 2015 and July 18, 2015, which would have been a simple accommodation.

22. Plaintiff alleges in his complaint Miracle Hill's refusal to facilitate an answer from Miller was for absolutely no other reason than to torture plaintiff. (See Compl. at ¶¶ 85 & 86 for inference). As alleged, Miracle Hill's goal for plaintiff was to "teach him a lesson" (See Compl. at ¶¶ 72, 73) through the use of this torture and this torture was the nexus for his decision to take his own life. (See Compl. at ¶ 220)

23. The court's order, page 3, statement, "Rather, as counsel for Miracle Hill contented, the complaint demonstrates that Miracle Hill acted in good faith to advise its patient in her recovery and to carry out the wishes of its patient not to communicate with her separated spouse" is not ascertainable from the face of the complaint. Plaintiff is baffled at the court's citation of item number 24 of the complaint as it has nothing to do with anything in the above statement. The court also cites item number 117(q) of the complaint as evidence Miracle Hill was acting in good faith but 117(q) is merely a recounting of a statement made by Reid Lehman in the July 27, 2015, meeting as an explanation for why Miller's silence would not be explained. Plaintiff alleges in the complaint the real reason was to

teach plaintiff a lesson (See Compl. at ¶ 72) and that Miller's refusal to provide an explanation had nothing to do with her recovery but was a sign Miller would soon relapse. (See Compl. at ¶¶ 10, 11, 12, 20). Since the court's statement on page 3 referenced above cannot be ascertained from the complaint and the court obviously weighs opposing counsel's proffer, defendant's motion is one for summary judgment. (see Brown v Leverette "The order of the trial court does not specifically indicate the court considered the respondents' supporting affidavits in ruling on the 12(b)(6) motion and heard the motion as a motion for summary judgment. However, it is apparent the trial court necessarily looked beyond the complaint and considered the respondents' affidavits in ruling on the motion in order for the court to conclude in its order that "at the time of the matters alleged in the Complaint, [respondents] were not charged with the duty of maintaining the county highways and traffic control devices on the county highways of Lexington County." This conclusion is not ascertainable from the face of the complaint and could only have been discerned from the affidavits. The trial court gave no notice to the parties that it was going to consider the affidavits and hear the 12(b)(6) motion as a motion for summary judgment. The first indication that the respondents' affidavits would be used to support the 12(b)(6) motion was the trial court's order of dismissal.) As such, the Order must be found to be outside the law as no notice was given plaintiff of a summary judgment hearing.

24. The court's order under section B entitled *Gross Negligence* states, "In order to state a claim for intentional infliction of emotional distress." Plaintiff is

baffled as to how "intentional infliction of emotional distress" has anything to do with "gross negligence" in this context. It is nonsense and fatally flaws the court's dismissal of plaintiff's claim for Gross Negligence.

25. The Order continues the aforementioned sentence, "Blackwell (plaintiff) must show," then list the elements of a claim for negligence. Plaintiff is not required to "show" anything but that he is entitled to relief due to the alleged facts and their reasonable inferences to survive a Motion to Dismiss pursuant to Rule 12(b)(6) (See Rule 8(a)(2) SCRPC and *Twoble* (Ibid). This is also a mistake of law and fatally flaws the Court's dismissal of plaintiff's negligence claim.

26. Subsequently, in the same paragraph, the Court states, "If the plaintiff fails to prove the defendants owed him a duty of care, he fails to prove actionable negligence" citing *Doe v Greenville County Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007). In *Doe* the Court was making a ruling on summary judgment, not a Rule 12(b)(6) Motion to Dismiss and the case is therefore irrelevant as cited in the Order inferring plaintiff must "prove" allegations. This is another mistake of law that fatally flaws the Court's dismissal of plaintiff's negligence claim.

27. In the second paragraph under the heading Gross Negligence, the Order states, "In South Carolina, a negligence action against a medical provider may only be maintained by the patient" citing *Bishop v. S.C. Dept. of Mental Health*, 331 S.C. Dept. of Mental Health, 331 S.C. 79, 91 (1998). In *Bishop*, a grandmother brought a case against the mental health providers for injuries to a granddaughter caused by her daughter who had just received treatment from the

defendants. Citing *Bishop* in the instant case is a mistake at law. The relationship between the parties is not analogous to plaintiff's attempt to establish a duty of care in an action for negligence in the instant case even if the Court's assertions that plaintiff alleged Miracle Hill is a medical provider and plaintiff did not allege treatment by Miracle Hill is supported by the complaint's allegations (which is not the case). (Supra).

28. The Order in the same paragraph states, "Accordingly, the Court finds that the complaint fails to sufficiently allege any legal duty owed by Miracle Hill to Blackwell, thus Blackwell's claim for gross negligence must be dismissed." The Court's use of "Accordingly" shows inarguably the Court has relied upon mistakes at law as grounds for its determination to dismiss plaintiff's claim of negligence.

29. Also, the statement plaintiff does not allege he was treated by the "institution" is not supported by the allegations in the complaint (supra). Accordingly, the Court's dismissal of plaintiff's claim for negligence pursuant to Rule 12(b)(6) is a mistake in law.

Breach of Fiduciary Duty / Aiding and Abetting Breach of Fiduciary Duty

30. The Court's statement under the heading *Breach of Fiduciary Duty / Aiding and Abetting Breach of Fiduciary Duty*, "As discussed about regarding the plaintiff's negligence claim, the plaintiff has provided not authority for his position that the law imposes a fiduciary relationship between a medical provider and a patient's spouse who did not receive any medical treatment." is fraught with error. (Supra)

31. In the first place, plaintiff is not required to provide authority for his position in his pleading. (See Rule 8 SCRCF and Burkhart 2009 OK CIV APP 76 224 P.3d.1278 (Div 4, 2009)). In the second place, a pro se litigant's cause of action cannot be dismissed for failing to provide authorities. (Ibid) The Order's reliance on plaintiff's failure to cite authority to dismiss the case is fatally flawed.

32. The Order states, "With respect to the first and second claims of defamation these statements are subject to privilege." (see Order at 7, ¶3). This statement does not construe the facts in the best light of the nonmoving party as required. (Twoble, Ibid). The complaint makes no mention of who was in the room when Slocum was speaking on the phone to the police. The Order's assumption no one was in Slocum's presence cannot be properly derived from the record. The Order's on assertion of privilege is predicated on who heard the alleged utterances. (see Order at 8, ¶1). The police report is redacted so we only know someone from Miracle Hill made the statement. The complaint states upon information and belief Slocum made the call to the police dispatcher but does not speak to who might have been in the presence of the person making the call.

33. Additionally, the Order asserts Miracle Hill's interaction with police was done in good faith which is another wholly improper construction of the allegations decided in Miracle Hill's favor in error of law. (see Twoble, Ibid). Once the Order's foundation of good faith is not considered, no moral or social obligation existed.

34. The Order's assertion, "Since these communications were between Miracle Hill staff and police officers, this Court finds that such statements were privileged" adds to the face of the complaint. The police report is redacted and there is no indication of who might have been privy to the caller's side of the conversation. There is no evidence the communications were only between police and Miracle Hill staff.

35. The Order's states, "The complaint does not specify what comprised the "defamatory material," thus there are no allegations implicating any of the four categories described for legally presumed damages." The complaint does allege, at least by inference incorporated by reference, Miracle Hill told the marriage counselor plaintiff was a stalker, a domestic abuser and had had a restraining order placed against him. (see Compl. at ¶¶170, 171). These allegations, construed in their every day meaning as required, obviously could be determined by a jury as allegations of criminal behavior. ("words must be given their ordinary popular meaning, and if they are susceptible of two meanings, one slanderous and the other innocent, it must be left to the jury to determine from all of the circumstances attending the publication, in what sense the defendant used them." Nettles v. MacMillan Petroleum Corporation, 210 S.C. 200, 42 S.E. (2d) 57; Duncan v. Record Pub. Co., 145 S.C. 196, 143 S.E. 31; 485*485, Williamson v. Askin & Marine Co., 138 S.C. 47, 136 S.E. 21; Davis v. Niederhof, 246 S.C. 192, 143 S.E. (2d) 367. "If the evidence is susceptible to more than one reasonable

inference, the case should be submitted to the jury." Quesinberry v.

Rouppasong, 331 S.C. 589, 594, 503 S.E.2d 717, 720 (1998).

36. The Order's dismissal of plaintiff's cause of action for defamation is fatally flawed per the aforementioned mistakes at law.

Conclusion

37. The Order is fatally flawed containing both mistakes at law and mistakes where the Court's determinations are shown to not be supported by the evidence. The Court must find these many mistakes compelling. Plaintiff prays the Court will reconsider and rescind its Order to dismiss plaintiff's claims for outrage, gross negligence, breach of fiduciary duty and defamation then allow plaintiff to amend his complaint as justice demands.

So says Plaintiff, pro se,



Harold E. Blackwell, Jr.

at Union, SC

November 16, 2017

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2017-CP-23-03754

Blackwell

2017 NOV 16 PM 4:15

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

Miracle Hill

Plaintiff,)
Defendant.)

Plaintiff's Attorney: <u>Harold Blackwell pro se</u> Bar No. _____ Address: <u>315 Glendale Rd, Union, SC 29379</u> Phone: _____ Fax: <u>864-303-7000</u> E-mail: _____ Other: <u>hal.blackwell@gmail.com</u>		Defendant's Attorney: <u>Adam Bach</u> Bar No. _____ Address: <u>Greenville</u> Phone: _____ Fax: _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Reconsider</u> Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>Adam Bach</u> Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted: <u>11/16/17</u>			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>SN</u> Date Filed: <u>11-16-17</u> ☒ MOTION FEE COLLECTED: \$ <u>25</u> ☐ CONTESTED - AMOUNT DUE: \$ _____ <u>RECEIPT # 352801</u>			

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2303754**

Harold Estes Blackwell Jr

Anita M Blackwell

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ 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: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2158

Judge Code

12/11/2017

Date

For Clerk of Court Office Use Only

This judgment was entered on **December 11, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **December 11, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Harold Estes Blackwell Jr 315 Glendale Road Union, SC
29379

Amy Miller Snyder 1000 E. North St. Suite 200 Greenville,
SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Harold Estes Blackwell, Jr.,)

Plaintiff,)

vs.)

Miracle Hill Ministries, Inc., Anita Jane)
Miller, a/k/a Anita M. Blackwell, and)
William Fisk,)

Defendants.)

IN THE COURT OF COMMON PLEAS

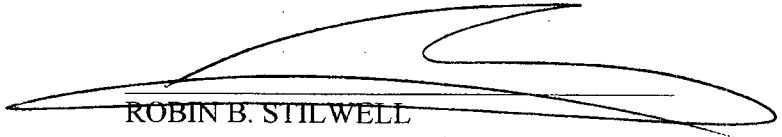
THIRTEENTH JUDICIAL CIRCUIT

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER**

C. A. No.: 2017-CP-23-03754

This matter comes before the Court pursuant to the Plaintiff's Motion for Reconsideration of the Court's Order dated on or about November 8, 2017. After having had the opportunity to carefully review the Motion, the Court respectfully denies the same.

AND IT IS SO ORDERED.


ROBIN B. STILWELL

December 11, 2017
Greenville, South Carolina

FILED-CLERK OF COURT
PAUL R. MCNEIL
GREENVILLE, SC

2017 DEC 11 AM 11:45

ENTERED COMPUTER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Harold Estes Blackwell, Jr.

Plaintiff

vs.

Miracle Hill Ministries, Inc.
Anita Miller Blackwell
William Fisk

Defendants

IN THE CIRCUIT COURT
COUNTY OF GREENVILLE

Case No. 2017-CP-23-3754

Plaintiff's

Motion to Amend Orders

2017 DEC 13 PM 3:20
CLERK OF COURT
JULIE M. WOODARD

Comes now Plaintiff to move this honorable Court to reconsider and amend its orders dismissing the instant case against Defendant William Fisk and Defendant Anita Jane Miller pursuant to Rule 60 SCRPC. Plaintiff also moves the Court to rule specifically on each issue raised herein so as to preserve the appealability all issues raised.

1. Plaintiff received notice of both Court's orders granting Defendants Fisk and Miller dismissal of Plaintiff's claims against them, pursuant to Rule 12(b)(6), on November 14, 2017¹, and could not filed this motion pursuant to Rule 59(e) and/or Rule 52 SCRPC, due to time constraints imposed by having to produce so many complex legal documents within the rule's 10 day filing limit. Among Plaintiff's legal disabilities is no legal software or subscription to a legal data service or "boilerplate" recommendations of any kind, in addition to being a *pro se* litigant.

¹ Plaintiff did not receive notice of the Court's Order in the Woodard litigation (2016-CP-23-6547) until November 18, 2017.

Plaintiff avers these motions to amend or vacate these Orders of the Court are submitted, at this level of competence, at the earliest possible moment.

Introduction

2. Plaintiff, pursuant to Rule 60 SCRPC, moves the Court for consideration under said rule's provision for allowances due to excusable neglect and/or mistake. Plaintiff prays this Court will amend or vacate its orders granting Defendants Fisk and Miller a dismissal in this action pursuant to Rule 12(b)(6) on the grounds articulated infra and to permit Plaintiff to amend his Complaint regarding all three defendants in this case.

Constitutional Issues

3. Plaintiff, as a *pro se* litigant, has been required to produce and file complex legal documents with this Court in order to litigate two cases before Judge Stilwell. Maintaining the appealability of all the issues Plaintiff might raise to the Court of Appeals has been denied Plaintiff as both cases now seem to run concurrently where previously staggered litigation processes made the work load manageable. The other case was filed on November 16, 2016, the instant case on July 7, 2017.

4. Plaintiff, *pro se*, due to the time demands of preparing four motions protecting the appealability of the many issues he seeks to preserve, has been foreclosed from completing these motions within 10 days of receiving notice of the Court's Order (Order) per the Rules due purely to the aforementioned time requirements.

5. Therefore, Plaintiff is denied his right to due process and equal protection under the law guaranteed by the U.S. Constitution's Fourth, Fifth and Fourteenth Amendments , in particular.

Plaintiff's Request for Consideration

6. Plaintiff prays the Court will rule in a timely fashion on his motions so that the issues herein can be included in his initial brief to the South Carolina Court of Appeals, if such a filing is required.

7. Whether or not Plaintiff had an opportunity to raise the issues previously is the litmus test for allowing an issue to be raised in a Rule 60(b) motion. (*"a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment. Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct.App.1995). Plaintiff has had no such opportunity.

8. The Court took the most drastic action allowed in dismissing Plaintiff's Complaint at this stage of the litigation. Plaintiff has not been heard on these matters except as they pertain to the fending off of a Rule 12(b)(6) motion to dismiss. Therefore, the issues raised herein are allowed to be raised by motion under Rule 60(b) SCRCP.

9. These motions were filed prior to Plaintiff mailing each opposing counsel a Notice of Appeal.

10. Plaintiff avers having all issues raised herein ruled upon specifically by the Court before Plaintiff submits his anticipated initial brief to the Court of Appeals is logical and thrifty.

Improper Dismissal at the Pleading Stage of Pro Se Action

11. The Court abused its discretion by dismissing this case without providing a notice of deficiencies and an opportunity for Plaintiff to amend his complaint to cure the deficiencies. (*"[A] pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action."* Lucas v. Dep't of Corr. 66 F.3d 245, 248 (9th Cir. 1995)) and. *"Moreover, in the event a complaint fails to state a claim, unless amendment would be futile, the District Court must give a plaintiff the opportunity to amend her complaint."* (Shane v. Fauver, 213 F.3d 113, 116 (3d Cir.2000)). The District of Columbia Court of Appeals ruled to remanded a case ground in the lower court's failure to provide this accommodation to a pro se litigant. *"Because the District Court did not follow these dictates, we will reverse in part and remand."* Phillips v County of Allegheny, 515 F3d 224 (2008).

12. The Court abuses its discretion by not holding a Rule 12(b)(6) motion is to be decided on the allegations contained on the face of the Complaint while providing allowance for Plaintiff's pro se status. (see Order at 1, ¶3) *"More specifically, if the court can reasonably read the pleadings to state a valid claim on which a pro se plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his or her confusion of various legal theories, his or her*

poor syntax and sentence construction , or his or her unfamiliarity with pleading requirements." Burkhart v Corrections Corp of America (2009) Ok Civ. App. 76 224 P.3d 1278 (Div 4, 2009) and "It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in *Conley v. Gibson*." Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA), "The trial court's ruling on a Rule 12(b)(6) motion must be bottomed and premised solely upon the allegations set forth by the plaintiff." Holy Loch Distribs. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787 (Ct.App.1998).

13. The Court can only deny a *pro se* Plaintiff's motion to amend pursuant to a Rule 60 motion, made in a timely fashion, unless it is "absolutely clear" his Complaint cannot cure its defect by amendment. "Where a pro se litigant's complaint fails to state a claim upon which relief can be granted, the Court generally grants him the opportunity to amend the complaint. However, the Court may deny leave to amend if "it is absolutely clear that no amendment can cure the defect." Lucas v. Dep't of Corrections, 66 F.3d 245, 248 (9th Cir. 1995) (per curium). Plaintiff avers the Court was correct in omitting language from its order dismissing Fisk's (Fisk Order) claims stating Plaintiff's complaint is irreparable. Also, Plaintiff notes the high standard of "absolutely clear" cited in Lucas. (Ibid).

14. Plaintiff also notes both Orders misapply Stiles v Onorato 318 S.C. 297, 457 S.E.2d 601 (1995) in that the Court leaves out the qualifier "generally" in its paraphrase of the language contained in Stiles. (see Fisk Order at 1, ¶3, see Miller Order, at 2, ¶2) "Generally, in considering a Rule 12 (b)(6), SCRCp, motion to

dismiss, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Stiles (Ibid). Plaintiff therefore avers this Court's consideration of Plaintiff's *pro se* status is not prohibited by Stiles (Ibid) and since the Court did not give consideration to Plaintiff's *pro se* status this Court made a mistake and the error is an abuse its discretion which obviously prejudices Plaintiff.

Failure to Allow Plaintiff to Amend Complaint

15. The Court abused its discretion by dismissing this case without permitting Plaintiff the opportunity to amend his complaint to address deficiencies as required. Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) ("*[A] pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action.*"). For this reason Plaintiff must be granted leave to amend his Complaint. The only reason for denying Plaintiff motion to amend is if his Complaint cannot be repaired. Where a *pro se* litigant's complaint fails to state a claim upon which relief can be granted, the Court generally grants him the opportunity to amend the complaint". Lucas v. Dep't of Corrections, 66 F.3d 245, 248 (9th Cir. 1995) (per curium). "However, the Court may deny leave to amend if *"it is absolutely clear that no amendment can cure the defect."* *Id.* Dismissing Plaintiff's claims without an opportunity to amend his complaint and failing to consider his *pro se* status are mistake contemplated by Rule 60, SCRCP.

COURT'S GRANT OF DISMISSAL - FISK:

Outrage Claim- Fisk

16. The Fisk Order makes a factual conclusion not supported by the evidence by stating, "*The Plaintiff has alleged that Defendant Fisk intentionally inflicted emotional duress upon the Plaintiff for a number of reasons, which are identified in Paragraph 215(b).*" The evidence shows Plaintiff never opines regarding Fisk's motives. This determination by the court is a mistake and taints the entire dismissal of Plaintiff's claim for outrage because it shows the Court ruled on matters not in evidence.

17. Plaintiff avers the Court fails to consider Plaintiff did not select Fisk. (Fisk Order at 3, ¶2). Reid Lehman created a role in the July 27, 2015, meeting then offered to let Fisk, and no one else, act in that role. For this reason the Court's characterization of the Plaintiff's and Fisk's relationship "as an agreement between friends" (Fisk Order at 7, ¶2) is not complete, and materially inaccurate, tainting each determination made in the Fisk Order and prejudices Plaintiff.

18. Plaintiff telephoned Fisk to recant his authorization of agency. (see Compl. at ¶121, 127). Fisk browbeat Plaintiff into reauthorizing him as Plaintiff's agent by stating Plaintiff was not being submissive to authority, underestimating the expertise he could bring to the problem, not acting Biblically by availing himself of his services as an elder, displaying a doubt about his ability to discern the right thing to do and displaying distrust in general. (see Compl. ¶128). Considered in a light most favorable to the nonmoving party as required, (Plyler v Burns, 373 S.C.

637, 645, 647 S.E.2d 188, 192 (2007), the Court makes a factual conclusion the relationship was "one friend asking another" (Fisk Order, Ibid) which is not supported by the evidence.

19. Plaintiff claims, due to his extreme codependent personality, Fisk desperately wanted to be involved to the extent he was not acting for the benefit of Plaintiff but himself. (see Compl. ¶¶ 30, 31, 129) Plaintiff alleges, attempts to allege or would allege, Fisk commandeered Plaintiff's personal crisis and used it for his own gratification. Again, this is evidence the relationship was not as the Court considered in making its findings regarding Fisk. The Court failed to consider the allegations in a light most favorable to the nonmoving party as required. (Plyler, Ibid)

20. Plaintiff alleges, attempted to allege, or would allege, Defendant Fisk did not carry his son's medicine around for two years for the benefit of his son, (see Compl. at ¶¶ 30, 31) just as he did not take on his role in Plaintiff's crisis for the benefit of Plaintiff (see Compl. at ¶ 128). Plaintiff propounds the insidious aspect of codependency is the by-all-appearances benevolent, always giving, long-suffering persona the codependant fashions with impressive expertise. The codependant party's selfishness is hidden by the nature of their dysfunction. The codependent personality is just as dysfunctional as a substance abuser's personality and just as capable of cunningly vicious conduct, they just hide it better than substance abusers.

21. The Court fails to make its determinations considering Fisk is highly dysfunctional in situations such as litigated herein. The Court's failure to recognize Fisk's true nature as alleged is not to construe the pleadings in a light most favorable to the nonmoving party, as required. (Plyler, Ibid)

22. Plaintiff alleges by inference, attempts to allege or would allege, Fisk's lie that he would respect Plaintiff's wishes regarding his mission, grossly stupid decisions in direct contrast to the wishes of Plaintiff, the inaccurate information he provided Plaintiff and his therapist along with Fisk's subsequent lies to cover up his stupidity, show Fisk had "acquired" Plaintiff's desperate situation for his own satisfaction, with no regard for Plaintiff's emotional wellbeing or respect for his wishes.

23. Plaintiff's conclusory statement Fisk was using Plaintiff's misery and vulnerable circumstance as a platform for his self-gratification is completely plausible given the facts pled and the absence of any other apparent motive.

24. Therefore, Plaintiff's assertion that Fisk was out for self-gratification meets the fact-pleading requirements of South Carolina courts. *"That is, while legal conclusions can provide the framework of the complaint, they have to be supported by factual allegations that plausibly give rise to an entitlement to relief. Plausibility refers to a complainant pleading enough factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct. (Bell Atlantic Corporation v. Twombly, 550 U.S. 1949, 1950 (2007).*

25. Further, Plaintiff alleges Fisk then gratified himself by inflicting emotional duress on Plaintiff by not sharing the information he was sent to gather and, along the way, decided he would join the other two defendants in their efforts to "teach" Plaintiff "a lesson" using various forms of manipulation. (see Compl. at ¶¶140-146). Facts stated in the Complaint supporting the plausibility of this inference are:

- i. Fisk immediately volunteered to act as Reid Lehman described in the July 27, 2015, meeting. (see Compl. ¶113).
- ii. Fisk, as alleged, has demonstrated extreme codependent personality disorder characteristics in the past, particularly in his attempts to cure his son. (see Compl. ¶¶30, 31).
- iii. Fisk, for no apparent reason except as alleged, became upset when told he was not going to be permitted to represent Plaintiff on a visit to Miller. (see Compl. at ¶128).
- iv. Fisk did not follow Plaintiff's instructions in regarding Miller for no apparent reason other than alleged. (see Compl. ¶129).
- v. Fisk visited Miller secretly when the possible benefit paled in comparison to the vast devastation he knew Plaintiff would suffer upon learning of his deceit, for no apparent reason other than alleged. (see Compl. ¶148).
- vi. Fisk attended Miller's graduation from Renewal on his own initiative without telling Plaintiff for no apparent reason other than alleged. (Ibid)

vii. Fisk lied to Plaintiff about his interactions with Renewal staff for no apparent reason other than alleged. (see Compl. ¶142).

viii. Fisk lied to Plaintiff about the role he was playing in Plaintiff's life during the months of August, September and October of 2015, for no apparent reason other than alleged. (see Compl. at ¶¶260-271).

ix. Fisk, evidenced by his documented efforts at concealment, believed he did not need input from Plaintiff in deciding how he was going to address each issue as each appeared, for no apparent reason other than alleged. (see Compl. ¶¶141, 142, 143, 144, inter alia).

26. In light of the Court's failure to consider Plaintiff's allegations Fisk used Plaintiff's crisis for his own indulgence, as all doubt and inferences are required to be perceived, (Pye v. Estate of Fox, 633 SE 2d 505, 369 SC 555), and since the notion Fisk is a raging codependent is obviously plausible, the Order's statement, "*At their heart, the Plaintiff's allegations simply describe disagreements between himself and Defendant Fisk*" (see Order at page 3, ¶1) is a factual conclusion not supported by the evidence. This failure of the Court's discernment regarding Plaintiff's allegations is material to evaluating his claim for outrage when determining the level of extremeness or outrageousness of Fisk's conduct.

27. The Court's factual conclusion concerning Plaintiff's foundation for claiming Fisk's conduct is extreme and outrageous, (see Order, page 3, ¶3), was made by the Court without contemplation Fisk's codependency masked his nefarious intent. Therefore, the Court must vacate its grant of Fisk's motion to

dismiss in regards to the claim of outrage because the Court has not evaluated the conduct Plaintiff alleges is extreme and outrageous which represents a second legitimate inference that raises doubt regarding the Court's interpretation of the evidence. *"In ruling on motions for directed verdict and judgment notwithstanding the verdict, a trial court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party resisting the motions and must deny the motions if either the evidence yields more than one inference or its inferences are in doubt"*. Vacation Time of Hilton Head Island, Inc. v. Lighthouse Realty, Inc., 286 S.C. 261, 332 S.E. (2d) 781 (Ct. App. 1985). Therefore, the Court makes an error in law and fact which greatly prejudices Plaintiff and can only be cured by vacating its order.

28. Plaintiff acknowledges Defendant Fisk, at first blush, appears to be the sacrificial, good Samaritan he thinks he is. Plaintiff craves the opportunity to show this misconception regarding personalities such as Defendant Fisk's codependent personality is common, but easily shown to be conduct otherwise motivated. Plaintiff propounds expert testimony will overwhelmingly affirm of what he alleged, or attempted to allege, or would allege, i.e. that the "selfishness" capacity of such a person as Defendant Fisk is alleged to be, is only restrained by the personality's need to maintaining a "martyr's persona." Such expert testimony is abundant and irrefutable. Plaintiff also craves the opportunity for the Court to measure the defense's ability to produce a scintilla of evidence to the contrary.

29. Reasonable persons could certainly disagree over whether Fisk's conduct in pursuit of his own personal fulfillment, not the flavor of conduct the Court so unfavorably construed, (that Fisk is an innocent elder just trying to help), which prejudices Plaintiff allegation Fisk's conduct rises to the level of extreme and outrageous conduct. Therefore, the Order makes a factual conclusion Fisk's conduct did not rise to the level of extreme and outrageous necessary to maintain his claim for outrage in a light most favorable to the nonmoving party as required (Plyler, Ibid) and was determined without considering Fisk had nefarious intent as described herein above. As such, the Court's grant of Fisk's Rule 12(b)(6) Motion to Dismiss regarding the claim of outrage must be vacated. (Vacation Time, Ibid).

30. In any case, the Court did not construe the evidence in a light most favorable to Plaintiff and by virtue of this, the Order must be vacated regarding Plaintiff's claim for outrage. (Vacation Time, Ibid).

31. Additionally, the level of distress suffered by plaintiff is the superior metric according to the law in determining whether conduct rises to the level of jury consideration. (*"Where physical harm is lacking, the courts should look initially for more in the way of extreme outrage as an assurance that the mental disturbance claimed is not fictitious.* Ford v. Hutson, (1981) 276 S.C. 166, 276 S.E.2d at 780 (citing William L. Prosser, *The Law of Torts* § 12 (4th ed.1971). There is no more extreme reaction to emotional distress than suicide. Therefore, the Court's grant of dismissal must be vacated as this important measure of outrage, which colors the entire claim, was not considered. (Pye, Ibid).

32. Obviously, there can be at least two interpretation to the facts alleged contained in the Complaint, one articulated by Plaintiff above (and supported by the evidentiary record) and the Order's rendition. Since there are two inferences that can be drawn from the facts, Fisk's Rule 12(b)(6) motion to dismiss must be denied, or in this case, vacated. (Vacation Time, Ibid).

Gross Negligence- Fisk

33. The Order's statement, "*In sum, the Plaintiff has alleged that Defendant Fisk violated an agreement between the two men whereby Defendant Fisk would communicate with Defendant Miller on behalf of Plaintiff,*" (Order, page 3 ¶3), is a factual conclusion not supported by the evidence and does not construe the Complaint in a light most favorable to the nonmoving party. "*In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.*" (Pye v. Estate of Fox, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)).

34. Plaintiff alleges he and Fisk had a contractual relationship, not just an "agreement." (see Compl. at ¶131). Resolving every doubt in favor of Plaintiff as required, (Pye, Ibid), the Court must rule as though a contract between Fisk and Plaintiff was entered into on July 27, 2015. (see Compl. at ¶131). (Plyler, Pye, Ibid)

35. The Order's statement, "*Specifically, Plaintiff has alleged that Defendant Fisk was communicating with Defendant Miller outside the bounds of his agreement with Plaintiff.*" (see Order, page 3, ¶3) is a mistake under Rule 60

SCRCF which fatally flaws the Court's ruling granting Fisk dismissal on the claim of gross negligence. Plaintiff, specifically, alleges Fisk acted in a manner he knew or should have known was going to injure Plaintiff when he kept his communications with Miller a secret. (see Compl. at ¶¶140-147).

36. Fisk's repeated deceptions is the foundation of Plaintiff's allegation Fisk's betrayal led him to attempted suicide, not communications outside the bounds of the agreement. To read the Complaint thusly is to not read it in a light most favorable to the nonmoving party and is a factual conclusion not supported by the facts. Therefore, the Court must vacate its order granting dismissal of Plaintiff's negligence claim against Fisk. (Pye, Ibid).

37. Plaintiff also avers the Court's finding that Plaintiff failed to allege Fisk owed him a legal duty of care is in error. "*An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.*" Hendricks v. Clemson Univ., 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). "*Ordinarily, the common law imposes no duty on a person to act. Where an act is voluntarily undertaken, however, the actor assumes the duty to use due care.*" Id. at 456-57, 578 S.E.2d at 714 (citing Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)). That Plaintiff alleged Fisk acted voluntarily (see Compl. at, inter alia, ¶¶121, 128 and 129) cannot be disputed. That Fisk's acts give rise to a legal duty of care is the reading of the Complaint most favorable to Plaintiff and is supported by the evidence Fisk volunteered and had a contractual relationship with Plaintiff. Finding Fisk did not owe Plaintiff a duty of

care is therefore an abuse of the court's discretion and the Court's grant of dismissal of Plaintiff's claim for negligence against Fisk must be vacated.

38. The Order's finding Plaintiff failed to allege Fisk owed him a duty of care is in error. (see Fisk Order at 5, ¶2). Court infers by its finding that Plaintiff failed to allege Fisk volunteered in error, (see Compl. at ¶ 221(C)(i)(ii)(iii)(vi) inferring Fisk's acts were voluntary) or that a contract existed between the parties in error.

39. Finding Fisk had no duty to Plaintiff is a factual conclusion not supported by the evidence. Plaintiff, *pro se*, alleges, attempts to allege, or would alleged, Fisk owed him a duty of care by virtue of the voluntary nature of his complained of acts and, in the interest of justice, the Court must amend the Order to allow Plaintiff to amend his Complaint (Ibid, Russell) or vacate its order granting Fisk dismissal on Plaintiff's claim for gross negligence.

40. The Order's statement that Plaintiff's claim for negligence rest on Fisk communicating outside the agreement (see Order at 4, ¶2) is in error. Plaintiff alleges, attempts allege or would allege in an amended complaint, more rigorously that Fisk commandeered Plaintiff's marital crisis and the crisis of his wife's illness, for his own gratification. Therefore the Order's finding Plaintiff's claim rested as recounted *infra*, is a factual conclusion not supported by the evidence and a failure of the Court to consider the evidence in a light most favorable to the nonmoving party as required. (Pye, Ibid) Therefore, the Order granting defendant dismissal of Plaintiff's negligence claim must be vacated. (Pye, Ibid).

41. The Order's contention, "*Additionally, there is no law or other valid restriction preventing Defendant Fisk from communicating with Defendant Miller*" (see Order, page 4, ¶2) is factually incorrect. Defendant Miller, being at the Renewal facility, was restricted to contact with immediate family members only and Defendant Fisk's participation initially was entirely at the discretion of Plaintiff. As the Order depends on this incorrect factual conclusion the Order must be vacated.

42. The Order's finding Plaintiff has not articulated any legal duty of Fisk, nor can he articulate any duty, (see Order, page 4, ¶2) is a factual conclusion not supported by the evidence and therefore requires the Court to vacate its grant of dismissal to Fisk on the claim of gross negligence as the Court only finds Plaintiff claims lack said allegation of a legal duty of care.

43. Therefore, since Fisk plausibly had a legal duty due to the voluntary nature of his acts and the existence of an alleged contract, Plaintiff's pleading alleges or infers sufficiently, (see Compl. at ¶221 (i-viii)), Fisk had a duty of care to Plaintiff, therefore the Fisk Order's grant of dismissal is factually and legally flawed and the Court must vacate its dismissal of Plaintiff's claim of negligence.

Civil Conspiracy- Fisk

44. Plaintiff admits he has not stated a claim for civil conspiracy but avers he could given the opportunity to amend his Complaint. Plaintiff relies on the Pye Court's finding to support his averment he could cure admitted deficiencies, "*Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Civil*

conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence.... An action for civil conspiracy is an action at law; the trial judge's findings will be upheld on appeal unless they are without evidentiary support. Id. (omission by court) (citations and internal quotation marks omitted). The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se. [A]n unlawful act is not a necessary element of the tort. Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." (Pye, Ibid).

45. The nature of Plaintiff's claims are that those with the incurable disease of addiction's have a particular vulnerability due to the nature of the requirements to keep the disease in remission, i.e. participating in the recovery community. Plaintiff alleges the conspirators acted to destroy Plaintiff's reputation within that community as a vengeful act.

46. The special damages Plaintiff alleges, attempts allege, or will allege, are the particular requirements of a person "in recovery" in respects to the special dependence that person has on the "recovery community" and his relations within that community. In other words, Plaintiff alleges a person who lives in a community has a right to not have his relationship with within that community's recovery community interfered with, especially with malice.

47. Plaintiff alleges Defendant Miller doing so out of her rage and need to destroy Plaintiff by labeling him a "domestic abuser" to offer a plausible explanation for her inexcusable behavior and Fisk's facilitation of her efforts, inter alia, resulted in special damages which constitute the gravamen of a civil conspiracy claim. (Pye v. Estate of Fox, 633 SE 2d 505, 369 SC 555).

48. Additionally, the Plaintiff clearly alleges the conspiracy was to injure him and that is the essential consideration of the Court. (*"The 'essential consideration' in civil conspiracy 'is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff."* Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986)).

49. Plaintiff simply made a mistake as contemplated under Rule 60 when pleading his claim for civil conspiracy and asks the Court to allow him to amend his complaint in order to cure the deficiencies.

Breach of Fiduciary Duty- Fisk

50. The Court abused its discretion by not finding the relationship between Plaintiff and Fisk was not that of a fiduciary as Plaintiff clearly alleges he imposed a special confidence in Fisk. (see Compl. at ¶121). This special confidence, and it could be called nothing else, supports the factual conclusion a fiduciary relationship existed. (*"A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good*

conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." Island Car Wash, Inc. v. Norris, 292 S.C. 595).

51. Another abuse of discretion flows from the Order's use of the analogy of "student/teach" in Hendrick to apply to the instant case instead of counselor/counselee relationship inherent in an elder/congregant relationship. Such would have been to construe the evidence in a light most favorable to Plaintiff.

52. The nature of a counselor/counselee relationship fits immeasurably better than student/advisor in the instant case and the counselor/counselee relationship has been ruled a fiduciary relationship under certain circumstances. (*The third claim alleges that the fiduciary duty breached by Grabrian and the diocese arose as a result of the counseling relationship entered into by Robert and Edna with Grabrian. As we concluded in reviewing Edna's first claim for relief, we believe that the nature of the counseling relationship alleged here gives rise to a clear duty on Grabrian's part to engage only in activity or conduct calculated to improve the Destefanos' marriage. This duty to refrain from any conduct which carries with it a risk of harm to the marital couple extends to both Robert and Edna.* Horak v. Biris, 130 Ill. App. 3d 140, 474 N.E.2d 13, 85 Ill. Dec. 599 (1985).

53. In Horak, the plaintiffs, a married couple, engaged a priest through their Catholic diocese to provide marital counseling. When the wife stopped participating in the counseling session, the session became ad hoc between husband and priest. Nevertheless, the Horak court found a fiduciary relationship existed in that instance. The relationship of Plaintiff and Fisk is perfectly analogous.

54. In the instant case, Fisk volunteered to counsel Plaintiff and when Plaintiff attempted to end the relationship, Fisk responded with a counter offer, which Plaintiff accepted. As alleged, Fisk became angry with Plaintiff, and Plaintiff, being in an understandably distraught emotional state, which was obvious to Fisk, who then "browbeat" Plaintiff into allowing him to act in the capacity he craved so much. (see Compl. at ¶130).

55. The occurrence of Plaintiff trusting Fisk came about at the behest of Fisk. Therefore, Fisk, by virtue of his making a counteroffer to induce the relationship, surpasses the threshold to be considered a fiduciary under the Horak standard by a wide, wide margin.

56. As alleged, Plaintiff told Fisk he no longer wanted his help when Fisk browbeat Plaintiff into acquiescing to his involvement. (see Compl. at ¶130). The Order's contention finding a fiduciary relationship did not exist between two friends when "*one asks another for assistance with a personal matter*" (see Order, page 7, ¶2) is not apropos in this case. Plaintiff avers there could be no more poignant example of why the Code, or *stare decisis*, categorically refuses to limit, or narrowly define, the development of a fiduciary relationship. "*Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring.*" Armstrong v. Collins, 621 S.E.2d 368, 376 (S.C. Ct. App. 2005) quoting Island Car Wash, Inc. v. Norris, 358 S.E.2d 150, 152 (S.C. Ct. App. 1987).

57. Plaintiff clearly alleges the relationship between himself and Fisk was contractual (see Compl. at ¶130) and a question of whether or not a contract existed is one for the jury. *"Under the common law, a trial court should submit to the jury the issue of existence of a contract when its existence is questioned and the evidence is either conflicting or admits of more than one inference"*. Capital City Garage and Tire Co. v. Electric Storage Battery Co., 113 S.C. 352, 101 S.E. 838 (1920); Benya v. Gamble, 282 S.C. 624, 321 S.E. (2d) 57 (Ct. App. 1984); 17A C.J.S. *Contracts* § 611 (1963).

58. Plaintiff clearly alleges Fisk assumed his fiduciary role by entering into a contract by virtue of Plaintiff's acceptance of Fisk's a counter offer to Plaintiff during the conversation which occurred when Plaintiff telephoned Fisk telling him he did not want Fisk to meet with Defendant Miller as his representative. (see Compl. at ¶130) *"As a general rule, a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him."* (Steele v. Victory Sav. Bank, 295 S.C. 290). The Complaint clearly alleges Fisk induced Plaintiff to place confidence in him by making a counteroffer to create a contractual relationship when Plaintiff attempted to rescind the original agreement made in the earlier meeting with Reid Lehman. (see Compl. at ¶130).

59. The Order's characterization of the relationship as being *"between two friends, when one asks the other for assistance with a personal matter"* (see Order, page 7, ¶2), is simply wrong and such a determination is an abuse of discretion by

the Court. Construed in a light most favorable to Plaintiff as required, (Pye, Ibid) the Court clearly fails to contemplate that it was Reid Lehman (Director of Defendant Miracle Hill) who selected Fisk for the role Lehman created, not Plaintiff, which further discredits, if not destroys, the Court's order of dismissal of breach of fiduciary duty grounded in the perception this occurrence was one *"between two friends, when one asks the other for assistance with a personal matter."* As such, the Order granting dismissal of Plaintiff's claim for breach of fiduciary must be vacated. (Pye, Ibid).

60. Plaintiff asked Fisk to the meeting on July 23, 2015, because Lehman required another person to be at the meeting for "accountability" purposes. (see Compl. at ¶113). Secondly, the Court must recognize the Plaintiff alleges, attempts to allege, or would allege, Fisk conspired to "teach Plaintiff a lesson" and in the process allowed his betrayal of Plaintiff to play a significant, maybe the most significant role, in causing Plaintiff to attempt to take his own life. (see Compl. at ¶233(f)). The Court must recognize, as alleged, attempted suicide is not the result of *"when one asks the other for assistance with a personal matter"* (Ibid) goes wrong. The law requires the Court to evaluate of an alleged characterization of an event by the end result to determine the true nature of a circumstance. (Ford, Ibid, also see Hansson v. Scalise Builders of S.C.).

61. Plaintiff avers the obviously Court has assumed Plaintiff, in attempting to take his own life, acted in a hyperbolic fashion or with a heightened level of sensitivity. Plaintiff points to the fact he was discharged from Patrick

Harris hospital without so much as a prescription for an antidepressant, (see Compl. at ¶188), the doctors having concluded that suicide was not an unreasonable reaction to what Plaintiff had experienced at the hands of those who include Defendant Fisk. The Court's determination Plaintiff acted in a hypersensitive fashion, belied by its failure to consider his suicide attempt as a measure of the gravity of the situation, is not construing the allegations in the Complaint in a light most favorable to Plaintiff, as required. (Pye, Ibid).

62. The Courts have ruled alcoholism is a disease. Powell v. Texas, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed. (2d) 1254 (1968). Fisk reassured Plaintiff vociferously that he knew how to deal with those suffering from this disease when he did not. (see Compl. at ¶127-131). Being forced to rely on Fisk in the situation as described in the current case at bar is not, "*an agreement between friends to attempt to address a personal matter.*" (see Order at 7, ¶2). This determination by the Court is material but is not a determination which construes the evidence in a light most favorable to Plaintiff. Therefore, the Court's dismissal of Plaintiff's breach of fiduciary claim against Fisk is an abuse of the Court's discretion and must be vacated. (Pye, Ibid).

63. Were the situation at bar "*an agreement between two friends*" (Order, Ibid) the power of the persons involved would have been equal. "*The term 'fiduciary' implies that one party is in a superior position to the other and that such a position enables him to exercise influence over one who reposes special trust and confidence in him.*" (Burwell v. South Carolina Nat'l Bank, 288 S.C. 34). Fisk

thought himself in a relationship with Plaintiff in which he assumed Plaintiff had no ability to thwart whatever course of action Fisk thought best. Fisk, just as a fiduciary does, held a position of power, making the Order's language "*between two friends*" (Order, Ibid) not reflective of the case as alleged in the Complaint. This determination by the Court is material and construes the evidence in a light most favorable to the moving party. Therefore, the Court's dismissal of Plaintiff's breach of fiduciary claim against Fisk is an abuse of the Court's discretion and must be vacated. (Pye, Ibid).

64. The Court abused its discretion by determining the alleged contract was not a contract but an agreement (see Order, page 7, ¶2) and that the effort was to "*address a personal matter.*" (see Order, page 7, ¶2). The Order's conclusions do not match the alleged facts in the complaint in this regard plainly, besides such a determination is one for the jury. "*Agency is a question of fact. The relationship of agency need not depend upon express appointment and acceptance, but may be, and frequently is, implied from the words and conduct of the parties and the circumstances of the particular case. If there are any facts tending to prove the relationship of agency, it then becomes a question for the jury.*" Reid v. Kelly, 274 S.C. 171, 262 S.E. (2d) 24 (1980); Hunter v. Hyder, 236 S.C. 378, 114 S.E. (2d) 493 (1960); City of Greenville v. Washington American L.B. Club, 205 S.C. 495, 32 S.E. (2d) 777 (1945).

65. The Court abused its discretion in not reading the Complaint in a light most favorable to the nonmoving party, as required, in regards to whether or not

Fisk was a contracted agent of Plaintiff. Fisk by definition was an agent of Plaintiff. (Black's Law Dictionary, 6th ed., p. 63. "Agent: A person authorized by another (principal) to act for or in place of him; one instructed with another's business.")

66. As an agent of Plaintiff, Fisk in a fiduciary relationship with Plaintiff, had a duty to disclose what he is alleged not to have disclosed. "*The duty of an agent to make full disclosure to his principal of all material facts relevant to the agency is fundamental to the fiduciary relationship of principal and agent.*" Bost v. Bankers Fire & Marine Ins. Co., 242 S.C. 274, 283, 130 S.E.2d 907, 911-12 (1963); see also Designer Showrooms, Inc. v. Kelley, 304 S.C. 478, 405 S.E.2d 417 (Ct.App.1991). Therefore Fisk breached his fiduciary duty to Plaintiff, as alleged.

67. Plaintiff clearly alleges Fisk's conduct risked harm to his marriage. (see Compl. ¶265). Plaintiff described for Fisk in the telephone call after the July 27, 2015, meeting his fears in regards to having Fisk be his representative. (see Compl. at ¶130). The Court cannot ignore the accuracy of Plaintiff's warnings to Fisk. Plaintiff predicted with 100% accuracy in that conversation, and many subsequent emails, that if Fisk involved himself past getting the answer to four questions, he would negatively affect Plaintiff's marriage and Defendant Miller's chances for long-term sobriety. (see Compl. ¶¶129, 130, *inter alia*). Fisk ignored Plaintiff and dismissed the risk Plaintiff foresaw independently which was a recklessness and wantonly negligent act and a breach of his fiduciary duty.

68. Plaintiff clearly alleges Fisk engaged in activities like those contemplated to be prohibited in the parties' contract that were not calculated to

improve his marriage. (see Compl., ¶143-146, *inter alia*) First, Plaintiff alleges, attempts to allege, or would allege, Fisk risked harm to Plaintiff by his communicating secretly with Defendant Miller which is an act he knew would have terrible consequences should Plaintiff find out. In Mazza v Huffaker (1983), the Court considered whether the counselor knew his adulterous affair with his client's wife would cause the principal harm then he breached his fiduciary duty by ignoring that risk. *"The evidence tends to show a willful act by defendant Huffaker of having sex with his patient's wife, and an awareness, although disregarded, of the risks such an act posed towards his patient, Dr. Mazza. This evidence was sufficient to support an inference by the jury that defendant Huffaker acted with conscious disregard of the mental well-being of Dr. Mazza, the very mental well-being with which defendant Huffaker had been entrusted. Hence, the evidence was sufficient to support submission of a punitive damage issue in the medical malpractice case."*

Mazza v Huffaker, 300 S.E.2d 833 (1983).

69. While Fisk is not alleged to have had an adulterous affair with Miller, Mazza is still analogous. Fisk knew the risks and made a conscience decision to ignore them. (Compl., Ibid). The level of trust between a shepherding elder and congregant is analogous to the counselor/counselee relationship in that a breached trust in both cases caused the principal predictable and severe emotional harm.

70. Fisk was entrusted by Plaintiff with his emotional well-being and Fisk betrayed Plaintiff by determining Plaintiff needed to be "taught a lesson" and operating in the matter of Plaintiff's marriage secretly. (see Compl. ¶¶145, 146, 200,

222(v)). Discovery of what Fisk had done was a devastating emotional injury to Plaintiff which lead directly to Plaintiff's suicide attempt. (see Compl. at ¶190). Fisk breach his fiduciary duty by destroying the very thing with which he had been entrusted.

71. The Order's determination there was no contract between Fisk and Plaintiff is an abuse of the Court's discretion. Plaintiff alleges there was a contract between the parties (see Compl. ¶131). The allegation there was a contract is supported by the evidence and must be construed as true for the purposes of determining a motion to dismiss for failure to state a claim. *"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party."* Summer v. Carpenter, 328 S.C. 36, 494 S.E.2d 55 (1997).

72. Whether or not the Court agrees with Plaintiff's determination, there can be no denying the Court has evaluated the instant case without considering Fisk was selected by Reid Lehman to act on behalf of Plaintiff, not at Plaintiff's request, thus nullifying the Court's assertion the reality of the parties relationship was that of one friend asking another with a personal matter. This obvious abuse of discretion alone shows the Court did not construe the Complaint in a light most favorable to the nonmoving party (Ibid) and its conclusion the relationship between Fisk and Plaintiff was "one friend asking the other for help with a personal matter" is not supported by the facts alleged.

73. As such, the Court has clearly abused its discretion in this regard and the Order's reliance on such a characterization of the relationship factual conclusion of the Court's which the evidence does not support and is, therefore, a mistake. The Court's dismissal of Plaintiff's claim for breach of fiduciary duty based on a material mistake must be vacated. (Rule 60(b)(2) authorizes relief from a final judgment on grounds of mistake, inadvertence, surprise, or excusable neglect. "*An abuse of discretion arises where the deciding judge was controlled by some error of law or where his order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.*" Renney v. Dobbs House, Inc., 275 S.C. 564, 274 S.E. (2d) at 291).

74. Additionally, there can be no doubt more than one conclusion can be drawn from Plaintiff's allegations regarding Fisk's alleged role as a fiduciary, as demonstrated. Therefore, as a matter of law, the Order must be vacated. "*Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.*" Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct.App.2004).

Aiding and Abetting the Breach of a Fiduciary Relationship

75. Plaintiff admits Defendant Fisk is not guilty of "Aiding and Abetting" as he has come to believe Defendant Miller owed him no fiduciary duty.

Defamation of Character

76. Though Plaintiff is informed and believes discovery will yield evidence Defendant Fisk defamed him, Plaintiff chooses not to pursue his claim against Fisk for Defamation of Character in the event discovery pursuant to Plaintiff's other claims produces "concrete" evidence for this cause of action.

Fraudulent Concealment

77. The Order's statement, "*The Plaintiff has asserted a claim against Defendant Fisk for fraudulent concealment based on Defendant Fisk's alleged failure to "speak candidly" (with Plaintiff) regarding his knowledge of Plaintiff's wife after Plaintiff and Defendant's telephone conversation on July 27, 2015*" (see Order, page 9, ¶4) is a factual conclusion not supported by the evidence and constitutes an abuse of discretion by the Court..

78. In dismissing Plaintiff's claim for fraudulent concealment, the Court finds Fisk acted in good faith regarding his secret meetings and communications with Miller and Miracle Hill staff. Fisk's intention to never act as he represent to Plaintiff he would is evident and alleged by Plaintiff in the Complaint. (see Compl. ¶¶260-271).

79. The Court's citation of Ardis v Cox, (see Order at 10, ¶2), "*The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their*

dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties." grounds the Court's findings.

80. The Court then reaffirms its finding (disputed by Plaintiff) that there was no fiduciary relationship between Fisk and Plaintiff and states the Complaint did not meet the first class of legitimate claimants. (Order, Ibid). The Court then goes on to say, in blatant error, that Plaintiff did not qualify for the second or third classes listed because "both contemplate the involvement of a commercial or financial component" (see Order. page 10, 11 at ¶¶4 and 1, respectively). To bolster its contention, the Court cites the word "transaction" as excluding Plaintiff's allegation from the second class. This is a blatant mistake as the agreement between Fisk and Plaintiff was for the one transaction permitted by Reid Lehman.

81. In an abuse of discretion, the Court ignores Ardis' language describing the second class, "*or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied.*" while ruling based on the Court's "reading between the lines" to determine "transaction" is financial in nature. The Order's blindness to the words, "or else" and/or the word "or" in Ardis' language setting out the parameters of those who had reposed trust in someone to have implied trust and confidence sufficient to maintain a cause of action for fraudulent concealment, flaws

the Court's finding starkly. (see Order, page 10 at ¶3). Obviously, Plaintiff's case meets the criteria set out for the second class due to the very specific language "*circumstances of the case, the nature of their dealings, or their position towards each other.*" which does not contain the words "transaction" or "contract" nor infers a restriction of nonfinancial transactions.

82. The Order's supposition the above-referenced criteria only pertains to commercial settings is not cited. (Ibid). Plaintiff avers the Ardis court did not include any language excluding nonfinancial transactions or noncommercial cases though it had the perfect opportunity.

83. The Court makes new law by excluding Plaintiff's claim because it is not financial or commercial in nature.

84. The Court obviously did not construe the Complaint in a light most favorable to the nonmoving party as required. (Pye, Ibid).

85. Therefore, the Order's statement Plaintiff does not satisfactorily answer the "first question in the case at bar" is a factual conclusion not supported by the evidence. For the reasons articulated above, taken singularly and as a whole, the Order's grant of Fisk's motion to dismiss Plaintiff's claim for fraudulent concealment must be vacated as it is grounded in errors in law and factual conclusions not supported by the evidence.

86. Plaintiff's allegations considered in a light most favorable to the nonmoving party shows the Court has seriously misconstrued the evidence in this case as precluding Plaintiff from maintaining a claim for fraudulent concealment by

virtue of the Ardis court's findings. As such, any determination by the Court that Plaintiff's allegations do not entitle Plaintiff to relief under any theory of the case is based on factual conclusions not supported by the evidence. Therefore, the Court's finding must be considered a determination Plaintiff's Complaint fails the Ardis test in error. Because the Court relied on this factual conclusion which is not supported by the evidence, the dismissal of Plaintiff's claim of fraudulent concealment must be vacated.

COURT'S GRANT OF DISMISSAL MILLER:

General Objections

87. Plaintiff objects to the Court's Order (Miller Order) granting Defendant Miller dismissal of Plaintiff's claims pursuant to Rule 12(b)(6) SCRC, for failure to state a claim upon which relief can be granted. Plaintiff avers the following errors and mistakes made by the Court in rendering its decision regarding Miller shows the Court abused its discretion by making factual conclusions not supported by the evidence and errors in law. The following objections, taken individually and as a whole, are the specific objections upon which Plaintiff grounds his assertions:

88. Plaintiff objects to the Court's contention Fisk was, "enlisted by Plaintiff to assist him with his marital situation." (Miller Order, page 1, ¶2). Reid Lehman selected Fisk to visit Miller, not Plaintiff. (see Compl.117(p)).

89. Plaintiff objects to the Court's determination Plaintiff's *pro se* status is not due consideration in this Rule 12(b)(6) motion to dismiss. Plaintiff makes

reference to the Court's citation of Stiles as the criteria for rendering a decision in this matter where there is no mention of consideration for a *pro se* litigant. (Miller Order, page 2, ¶2). As such, the Court has abused its discretion. (Burkhart, Ibid)

90. Plaintiff objects to the Court reliance on its factually incorrect finding in law that, *"Thus, the Court must consider in the first instance whether the "cruel acts" alleged against Miller, taking them as true for the purposes of this motion, would constitute, as a matter of law, "conduct so extreme and outrageous as to exceed all possible bounds of decency, (which).. must be regarded as atrocious and utterly intolerable in a civilized society,"* citing Ford v Hudson, 276 S.C. 157, 276 SE2d 776 (1981). A reading of the Court's citation in Ford shows the Ford court makes no determination or statement regarding what the Court must consider "in the first instance." So determining is an abuse of the Court's discretion.

91. The Order's citation from Ford is only the Court of Appeals statement of the second element of the tort of outrage as provided by *Restatement (Second) of Torts* § 46, not a finding of what the Court must consider first when making a determination on a claim for outrage. The Plaintiff, therefore, objects to this reliance and use of Ford to justify dismissal of Plaintiff's claim for outrage.

92. Additionally, Ford (Ibid) states, *"Applying the standards approved hereinabove, we dismiss the contentions of the defendant. When evidence is in conflict and susceptible of more than one reasonable inference, it is the province of the jury to make a factual determination."* which infers the Court must first consider whether there is more than one reasonable inference to be drawn from the

evidence. The Plaintiff, therefore, objects to the reliance and use of Ford to justify considering whether the "acts" of Miller rise to the level of outrage before any other consideration.

93. Furthermore, the Court, in Rhodes v Security Finance, states, "*For example, where plaintiff alleged that she suffered a nervous breakdown after defendant had used vile, profane, and abusive language, we held that a cause of action had been stated. However, we have been careful to distinguish between legally stating a cause of action and successfully proving the claim. Thus, we have said: "[T]here is no liability for emotional distress without a showing that the distress inflicted is extreme or severe ... [and no recovery is justified where] [t]here is no showing that [the defendant's conduct was] unreasonable or abusive, nor that [plaintiff's] emotional upset was other than transient and trivial.*" Rhodes v. Security Finance Corp. of Landrum, 268 S.C. 300, 233 S.E. (2d) 105 (1977). As such, the Court is required to measure the likelihood the alleged of acts are outrageous by their result, which, in the instant case, is Plaintiff's decision to take his own life. The Order obviously fails use of this metric of outrage as required. Therefore, Plaintiff objects to the Court's ruling reasonable persons might disagree as to the outrageousness of Miller's actions based on the absence of like "acts" being ruled by a court as "outrageous."

94. Plaintiff objects to the Court determination the "cruel acts" alleged do not meet the standard set out in the Ford case (see Miller Order, page 3, ¶1). and granting Miller dismissal of Plaintiff's claim for outrage as the consequence.

95. The Ford Court set out the following as a standard of measuring the outrageousness of alleged **conduct** (emphasis added), "[However, **conduct** which] demonstrated a callous disregard for [plaintiff's] well-being [and was] clearly unreasonable and abusive [may be actionable]." The Plaintiff makes allegations regarding Miller's **conduct**. Even the Order's citation of Shupe deals with conduct, "The Court must make an initial determination as to whether the **conduct** (emphasis added) " Shupe v. Settle 315 S.C. 510, 457 SE2d 651 (Ct. App. 1994).

96. The Court's grant of dismissal is grounded solely and incorrectly in an evaluation of Miller's "acts," (see Order page 2, ¶4) "the Court must consider in the first instance whether the "cruel acts" alleged..."). labeled "cruel acts" in the Complaint, instead of Miller's "conduct" as Ford and Shupe require.

97. The Order clearly demonstrates the Court's finding is a result of its categorization of Miller's acts by "kinds" of acts, then determined the list of acts sanctioned by the Court as "outrageous" had no items in common with the list of acts alleged in the Complaint. (see Miller Order, page 3) "the kind of act(s)." The Court's exercise is farcical. No "kind of acts" have ever been found to meet a standard for maintaining a claim for outrage, only conduct.

98. Acts and conduct are not the same. To shout, "fire" is an act. To shout, "fire" in a crowded theater is conduct, or acts taken in context. Webster's defines "conduct" thusly, "the act, manner, or process of carrying on." Many like "acts" may constitute "conduct." Many "conducts" do not constitute "an act." Webster defines "act" as, "the doing of a thing."

99. The Supreme Court's Order in Ford does not contain the word "act" except to quote Prosser at §12, opining on "intentional acts" as evidence of tortuous conduct. (Ford, Ibid). Therefore, Plaintiff objects to the Court's use of "evaluated acts" instead of "evaluated conduct" in making its determination regarding Plaintiff's claim for outrage.

100. Plaintiff avers the conduct of a supervisor increasing a workload in an effort to build a case for dismissal of an employee or conduct which causes an employee to have to leave work early, as the Order cites in Shipman v. Glenn (see Miller Order, page 3, ¶1), as being analogous to Miller's action in the instant case, is far off base. The Court has held to determine a given conduct's level of outrageousness the severity of injury sustained is a strongest indicator. (Hansson, Ibid) Losing one's job is not analogous to losing one's life.

101. In Ford the Court reasoned, *"The evidence is susceptible of the inference that the conduct complained of herein was not a mere complaint by a dissatisfied homeowner, but was instead a continuing pattern of highly questionable conduct over a period of almost two years."* Plaintiff's claim for outrage in the instant case alleges Miller's conduct must be considered cumulatively (see Compl. ¶216) yet the Court affords Plaintiff none of the consideration the Court used Ford. The instant case is perfectly analogous to Ford in this regard, therefore Plaintiff objects.

102. The Order's statement a claim for outrage is not a "panacea for wounded feelings," citing Todd v Farm Bur. Mut. Ins. Co., (see Order, page 3, ¶1), reveals the inescapable, factual conclusion the Court, considering Plaintiff's claims

he attempted suicide are true as it must, has determined suicide qualifies merely as a "wounded feeling." Obviously, a decision to commit suicide is evidence of more than just "wounded feelings." Therefore, Plaintiff objects to the citing and use of Todd in this instance and context.

103. In fact, the Ford court found the level of outrageousness, everything else being equal, is to be determined by the level of outrage displayed by injured party. (Ford, *Ibid*). As such, the Court's erroneous finding that suicide is akin to "wounded feelings" severely prejudices Plaintiff in this case.

104. The court's finding regarding Plaintiff's attempted suicide shows the Court used an inference or doubt in a light most favorable to the moving party, which is prohibited. (*Pye, Plyler, Ibid*). Therefore, Plaintiff objects to this practice of the Court in granting Miller dismissal of Plaintiff's claim for outrage as it is a mistake.

105. The Order states, "*The question of whether the emotional distress alleged is 'so severe that no reasonable person could be expected to endure it' is a question for the Court in the first instance.*" (see Miller Order, page 4, ¶1). This statement is to be deemed error because the Order provides no citation for its assertion and it is in error.

106. The Court's proper standard of review is stated in Flemming v Rose, 338 S.C. 524 (2000), 526 S.E.2d 732, "*Inasmuch as this court has already implicitly indicated that conduct intended to invade freedom from severe emotional distress is tortious, we now lend express recognition to this proposition. We adopt the rule of*

liability stated in § 46 of the Restatement (Second) of Torts relating to intentional infliction of emotional distress: § 46. Outrageous Conduct Causing Severe Emotional Distress (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm."

Plaintiff avers no description could fit Miller's conduct as alleged than the court in Rose, "conduct intended to invade freedom from severe emotional distress." (see Compl. ¶¶ 70, 74, 76, 82, 85, 88, 109, 182).

107. Plaintiff alleges, attempts to allege, or most certainly would allege, Miller's conduct is precisely this type conduct, and the Rose's Court's description of the tortuous conduct is "spot on" to what actually occurred in the instant case. Reading the description of the properly contemplated conduct, Plaintiff, *pro se*, is impressed with the wise wording in the Restatement which seems to be contemplating Miller's conduct as the opinion was being crafted.

108. The Order states in error, "*Thus, even with plaintiff's extensive factual allegations, there is simply no case here for a jury to consider, as the cruel acts of which plaintiff complains do not meet the legal threshold for the tort of intentional infliction of emotional distress (outrage).*" (see Order, page 4, ¶2). As Plaintiff observed (*infra*), no acts have ever been found to meet the legal threshold for a claim of outrage because there is no legal threshold for "acts," only "conduct." As such, the Court fails to make a ruling on Miller's conduct as required. The Court's finding regarding "cruel acts" is nonresponsive to its charge under the law to make

a determination of defendant's conduct. Therefore, the Order's foundation for granting defendant Miller dismissal of Plaintiff's claim for outrage never existed.

109. As explained above the Court has made an evaluation of Miller's "acts" not "conduct" and therefore, as a matter of law, has abused its discretion in making a decision other than as *stare decisis* demands.

110. Plaintiff notes the Court did not rule whether or not Plaintiff's allegation, incorporated by reference in his claim for outrage, that Miller's conduct in trying to lure Plaintiff into a compromising situation on November 29, 2016, in order to affect his arrest, meets the standard of conduct which reasonable persons could disagree was outrageous and unacceptable in a civilized society. Plaintiff respectfully prays for the Court's specific determination in this matter.

111. Plaintiff's suicide attempt is prima facie evidence Miller's conduct was extreme, outrageous and intolerable in a civilized society. Plaintiff notes the Court's factual conclusion had to be that Plaintiff acted in a hyperbolic fashion and that Plaintiff's reaction was not commensurate with defendant's alleged actions. Plaintiff avers there is no evidence Plaintiff acted hyperbolically on December 9, 2015 and any factual conclusion to the contrary is a mistake contemplated under Rule 60, SCRCP.

112. The Court must have determined, based on its finding the alleged conduct juxtaposed against a reasonable person's level of outrage "occur regularly in our society", Plaintiff acted hyperbolically, which is not construing the allegations

and their inferences in a light most favorable to a nonmoving party, and a pro se nonmoving party at that, as required. (Plyler, Puckett, Ibid).

Gross Negligence- Miller

113. Plaintiff admits he did not adequately plead Miller owed him a duty of care. Plaintiff avers however Miller's act of luring Plaintiff to be falsely arrested, inter alia, provides sufficient grounds for Plaintiff to be allowed to amend his Complaint to cure its deficiencies regarding Plaintiff's claim of negligence against Miller.

Civil Conspiracy-Miller

114. Plaintiff relies on the Pye court's finding, "*Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence.... An action for civil conspiracy is an action at law; the trial judge's findings will be upheld on appeal unless they are without evidentiary support. Id. (omission by court) (citations and internal quotation marks omitted). The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se. [A]n unlawful act is not a necessary element of the tort. Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.*" (Pye, Ibid), to assert he can cure the deficiencies in his claim for civil conspiracy.

115. The nature of Plaintiff's claims are that those with the incurable disease of addiction's have a particular vulnerability due to the nature of the requirements to keep the disease in remission, i.e. participating in the recovery community. Plaintiff alleges the conspirators acted to destroy Plaintiff's reputation within that community as a vengeful act.

116. The special damages Plaintiff alleges, attempts allege, or will allege, are the particular requirements of a person "in recovery" in respects to the special dependence that person has on the "recovery community." In other words, Plaintiff alleges a person who lives in a community has a right to not have his relationship with within that community's recovery community interfered with, especially with malice. Plaintiff alleges Miller doing so out of her rage and need to destroy Plaintiff by labeling him a "domestic abuser" to offer a plausible explanation for her inexcusable behavior. Plaintiff alleges Miller took the opportunity to use her unique ability to damage Plaintiff in this special way, and did so with vigor (luring Plaintiff on November 29, 2016) and malice.

117. Plaintiff simply made a mistake as contemplated under Rule 60 when pleading his claim for civil conspiracy and asks the Court to allow him to amend his complaint as a cure.

Breach of Fiduciary Duty and Aiding and Abetting

118. Plaintiff admits Miller did not have a fiduciary duty to Plaintiff.

Defamation Claim

119. The Court makes several errors in its granting Miller dismissal pursuant to Rule 12(b)(6) of Plaintiff's claim for defamation.

120. First, Conwell v. Spur Oil Co. of Western South Carolina, 270 S.C. 170, 178, 125 SE2d 270 (1962) is only applicable if the Court construes the Complaint as alleging Miller acted in good faith, as it does. (see Order, page 9, ¶2). Plaintiff avers Miller's attempt to lure Plaintiff into a compromising situation to affect his arrest in November 29, 2016, *inter alia*, as clearly alleged and supported by direct evidence, is an act done in ultimate bad faith.

121. There is no evidence Miller had a change of heart between the time she was at Renewal and November 29, 2016, when she executed yet another attempt to have Plaintiff arrested by falsely reporting to others (Amy Malik, William Slocum and his wife, Toby Woodard, *inter alia*), including the authorities, that Plaintiff was a threat to her physical wellbeing and had in the past committed domestic abuse against her during their marriage. Miller's "reporting" as referenced above, was/is alleged to falsely accuse Plaintiff of illegal domestic abuse. (see Compl. at ¶30, 31).

122. The Order's recitation of the occasions Plaintiff alleges Miller defamed him (see Order, pages 9 & 10) is in error. The occasions listed do not include Plaintiff's allegations in items 21 & 22, incorporated by reference in Plaintiff's claim of outrage, clearly alleging Miller defamed Plaintiff in regards to communications with Amy Malik and evidenced by a visit from the Greenville Police Department's to 9 Wiscasset Way at the first of February in 2015.

123. Plaintiff made a mistake by not elaborating on all the occasions in which Miller can be shown to have defamed him. Not knowing his divorce pleadings are privileged, Plaintiff alleged defamation he thought was credible evidence. Given the opportunity to amend his Complaint, Plaintiff avers he can sufficiently substitute other publications made by Miller for the ones in the divorce action.

124. The Court's assumption persons involved in the communication shared a common interest (see Order, page 9, ¶2) is to construe the Complaint in a light most favorable to the moving party, as prohibited. (Plyler, Ibid). The police report on the bottom of page 3 clearly shows someone other than Miller and Miracle Hill staff were present during the reporting of Plaintiff to the police on July 18, 2015.

125. Finally, Plaintiff objects to the Order's statement and apparent reliance on the determination, "No extrinsic allegations are included." Webster's defines "extrinsic" thusly, "not part of the essential nature of someone or something; coming or operating from outside." Plaintiff can find no mandate he must include extrinsic allegations to state a claim for which relief can be granted regarding a claim for defamation.

126. Further, Plaintiff avers all of the deficiencies described by the Court on page 9, can be cured. Plaintiff proffers cases like the instant case, are what the Court was contemplating in Burkhart. Plaintiff avers in dismissing his claim for defamation the Court holds Plaintiff to an unreasonably high pleading standard in light of the fact he had no opportunity to amend his Complaint.

127. Based on all errors and mistakes Plaintiff cites relating to the Court's granting of Miller's motion to dismiss Plaintiff's claim for defamation, as explained and authorized, Plaintiff objects to each error and mistake individually and collectively and thusly, the Order's dismissal of said claim must be vacated per the citation associated with each error or mistake.

Conclusion

128. Plaintiff, upon grounds articulated above, asserts the Court's determination, "plaintiff's complaint is legally deficient in matters which are fatally defective and cannot be cured by amendment." (see Miller Order, page 1¶2) is based on factual conclusions not supported by the evidence and errors in law. The citation of the Courts errors and mistakes, along with the authority cited, are indisputable as stated herein.

129. Plaintiff has alleged facts that show what the Court perceives as the "rigors" of a marriage's dissolution in the case of Miller and "one friend helping another" in the case of Fisk is something different entirely. Plaintiff understands completely why and how an uneducated Court would draw the conclusions the Court has drawn. Chronic misunderstanding of the issues cited by Plaintiff is part and parcel of the deceptive nature of addiction and codependency.

130. Plaintiff avers the finder of fact will easily perceive this case is not one with "another aspect for consideration" but one which is not at all as it appears or as the Court has characterized it.

131. The theory of the case articulated herein is different from the theory used by the Court to produce the Order.

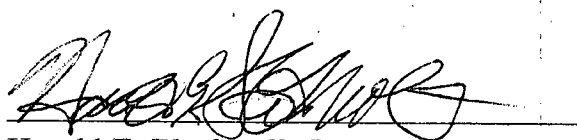
132. The theory of the case relied upon herein is plausible.

WHEREFORE, Plaintiff prays the Court will rule specifically on each issue raised herein.

WHEREFORE, Plaintiff prays the Court will vacate its grant of dismissal of Plaintiff's claims for outrage, gross negligence, breach of fiduciary duty and fraudulent concealment, against Fisk and Plaintiff's claims for outrage, negligence, and defamation against Miller. Plaintiff's prayer is pursuant to Rule 60's provision for relief.

In the alternative, Plaintiff prays the Court will allow him to amend his complaint pursuant to Rule 15 and/or any other relief the Court deems is in the interest of justice.

So says Plaintiff, pro se,



Harold E. Blackwell, Jr.

Signed this 12th day of December, 2017,
at Union, South Carolina.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
13 JUDICIAL CIRCUIT

COUNTY OF Greenville)

CASE NO.: 2017-CP-23-3754

Harold Estes Blackwell, Jr.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

Miracle Hill Ministries, Inc.
William Fisk
Anita Jane Miller

Defendant.)

Plaintiff's Attorney:
Harold E. Blackwell, Jr., Bar No. pro se
Address:
315 Glendale Rd, Union, SC 29379
Phone: 864 303-7000 Fax
E-mail: halblackwell@gmail.com Other:

Defendant's Attorney:
Lee Daniels & Carrie O'brien, Bar No. _____
Address:
Phone: _____ Fax _____
E-mail: _____ Other: _____

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

SECTION I: Hearing Information

Nature of Motion: Rule 60(b) Motion to Amend

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

12/12/2017
Date submitted

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, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by SDN Date Filed: _____

☒ **MOTION FEE COLLECTED: \$ 25.00**

☐ **CONTESTED - AMOUNT DUE: \$** _____

M.O. # 24802981367

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Harold Estes Blackwell, Jr.,

Plaintiff,

vs.

Miracle Hill Ministries, Inc., Anita Jane
Miller, a/k/a Anita M. Blackwell, and
William Fisk,

Defendants.

2018 JAN 18 PM 2:02

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO SC

IN THE COURT OF COMMON PLEAS

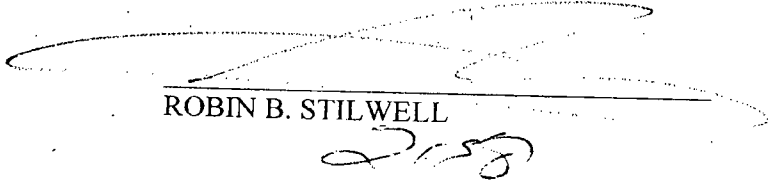
THIRTEENTH JUDICIAL CIRCUIT

**ORDER DENYING PLAINTIFF'S
MOTION TO AMEND ORDERS**

C. A. No.: 2017-CP-23-03754

This matter comes before the Court pursuant to the Plaintiff's Motion to Amend Orders pursuant to Rule 60 of the South Carolina Rules of Civil Procedure which was filed on December 13, 2017. After having had the opportunity to carefully review the Motion, the Court respectfully denies the same.

AND IT IS SO ORDERED.


ROBIN B. STILWELL

January 18, 2018
Greenville, South Carolina