The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2017-001996

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SC Court of Appeals

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11, John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and Father Doe 245, and John Doe 297,

Appellants

v.

The Bishop of Charleston, a Corporation Sole, Robert Gugliemone, The Bishop Of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC.,

Respondents

RECORD ON APPEAL
VOLUME THREE

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO. 2013-CP-10-4176
John Doe 194,)	
)	
Plaintiff,)	
)	
v.)	Negligence; Gross Negligence
)	Fraudulent Concealment
The Bishop of Charleston, a)	Civil Conspiracy
Corporation Sole; Robert)	Professional Negligence
Gugliemone, The Bishop Of)	Breach of Fiduciary Duty
Charleston, in his official capacity;)	Injunctive Relief
Rev. Monsignor Martin Laughlin,)	UTPA
former Administrator of the)	
Diocese of Charleston, in his)	Jury Trial Requested
official capacity; Robert J. Baker,)	
former Bishop of Charleston, in his)	
official capacity;)	
Lawrence E. Richter, Jr.,)	
David K. Haller, and)	
Richter and Haller, LLC.)	
)	
Defendants.)	
)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. John Doe 194 is an adult citizen and resident of Minnesota who, as a child lived in the Charleston area and as a child participated in activities sponsored by the Defendant Diocese of Charleston and was sexually abused by Frederick Hopwood, a priest of the Diocese of Charleston.

2. The pseudonym John Doe 194 is used for the Plaintiff due to the sexual abuse injury, which is the subject of this complaint.

3. The Bishop of Charleston, a Corporation Sole, is the formal title of the various entities comprising the Catholic Church throughout South Carolina, including in Charleston County, known generally as the Diocese of Charleston. It is referred to in this complaint as the Diocese. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. The acts associated with the abuse of the Plaintiff and the negligent supervision of Hopwood took place in part in Charleston County, where decisions were made about Hopwood's assignments and the degree of supervision he required, which as applied by the Diocese Defendants was generally inadequate.

4. On information and belief, Frederick Hopwood entered a plea of guilty to charges of sexual misconduct with minors. No effort was made to locate the victims of Frederick Hopwood, including the Plaintiff.

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

6. All persons working for the Diocese, anywhere in South Carolina, are subordinate to the Bishop of Charleston.

7. Prior to the tenure of Bishop Guglielmone, from October 2007, to March 2009, no person held the title of Bishop of Charleston. Under the rules by which the Diocese of Charleston is governed, the Diocese of Charleston was administered by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina who, during his tenure as administrator, did business in Greenville County. Msgr. Laughlin is sued in his official capacity.

8. Prior to the tenure of Administrator Laughlin, from July 1999 to August 2007, the Bishop of Charleston was Robert J. Baker, presently a resident of, and citizen of, Alabama. During his tenure, he did business in, and resided in, Charleston County. He is sued in his official capacity.

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

10. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically solicited, through advertising placed in the Post and Courier newspaper, participation by members of the public into a 2006 class action that was not at that time disclosed to be a collusive class action settlement, but which was in fact a collusive settlement.

11. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically solicited, through advertising placed in the Post and Courier newspaper, participation by members of the public into a 2006 class action that was not at that time disclosed to be a collusive class action settlement, but which was in fact a collusive settlement.

12. Richter & Haller, LLC, at all times pertinent to this complaint, had its principal place of business in Charleston county, did business in South Carolina, and in that capacity engaged

in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, Richter & Haller, LLC did business in Charleston County, and specifically solicited, through advertising placed in the Post and Courier newspaper, participation by members of the public into a 2006 class action that was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

13. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the "Richter defendants" unless otherwise particularly specified.

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

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

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

17. The Diocese defendants are already aware of the identity of John Doe 194, as they have already rejected his request for assistance with the effects of his abuse. Other defendants will be informed of the identity of the Plaintiff upon their agreement to reciprocate in providing information in discovery, upon their agreement to maintain the Plaintiff's identity as confidential as to the public record, and upon their actual performance of participating in reciprocal discovery as opposed to just promising reciprocal discovery without actually providing discovery.

18. The Plaintiff fits the definition used in a collusive 2006 class settlement in that he was born on or before August 30, 1980, and as a minor, was sexually abused by an agent or employee of the Diocese of Charleston. The Plaintiff has not previously made a claim that was adjudicated, resolved, or released.

19. John Doe 194 was situated similarly to other individuals ostensibly within that

definition of a class first pled by the Richter defendants in 2005, settled by the Richter defendants as a class in 2006, and certified as a class in 2007 by a South Carolina court as part of a class action involving individuals who were sexually abused by persons employed by the Bishop of Charleston. That class action was collusive. In addition, because he lived outside of South Carolina the Plaintiff received no notice of the class action, thus the Plaintiff had no opportunity to be heard or participate in the litigation, either in person or through counsel, or to opt out of the class action and thereby preserve his own claim.

20. Defendant Haller, on behalf of the Richter Defendants, has admitted that the members of the class who live out of state, received no Due Process in the 2006 class action. No effort was made to give the Plaintiff notice.

21. In the 2006 class action settlement the Richter defendants colluded with the Diocese defendants so as to abandon the interests of those persons within the class definition and to protect the Diocese defendants by the collusive class action.

22. In 2005 a class action was first alleged by the Richter defendants on behalf of persons sexually abused by persons affiliated with the Diocese of Charleston.

23. In April, 2006, the Richter defendants filed suit in Jasper County for an adult sexual abuse victim who had repressed the memories of his childhood abuse. That suit was filed against a Diocese other than the Diocese of Charleston, and against a Bishop other than the Bishop of Charleston. By their own account, class counsel were extensively affiliated with the Diocese of Charleston.

24. At no time was the class informed of the extensive affiliation of class counsel with the Diocese of Charleston.

25. The class action settlement with the Bishop of Charleston was arrived at during a

mediation held in June, 2006, in which the Richter defendants participated on behalf of class members. In this complaint, the class action settlement achieved in 2006 from the 2005 class action is referred to as "the 2005 class action."

26. At the time of the 2006 mediated settlement agreement, the Richter Defendants were aware that some sexual abuse victims lived outside of South Carolina.

27. The 2006 mediated settlement agreement was approved by a Dorchester County judge who presided over the class action proceedings during 2006 to 2013. By 2009 the class members had been identified and an arbitration had determined awards to various class members. By March, 2008 those awards had been paid.

28. By order of the South Carolina Supreme Court issued March 19, 2009, the 2005 class action was ordered to be concluded in six months, or by September 19, 2009.

29. The trial court overseeing the class action ignored the March 19, 2009 order of the South Carolina Supreme Court, and took no action by September 19, 2009 to review the distributions to class members or to make a post-award review of class counsel's fee.

30. The Dorchester County trial judge who oversaw the class action had extensive social and professional ties with class counsel.

31. At no time were those extensive social and professional ties disclosed to the class.

32. In 2012, class counsel, acting on behalf of no class member from the 2005 class action, as all class member claims had been resolved, but acting instead on behalf of himself and the Richter defendants, filed a pleading in the closed Dorchester County class action case.

33. On January 24, 2013, the Dorchester County trial judge who had presided over the class action signed an order which stated, in its entirety, "I hereby recuse myself from hearing any further matter on the above-captioned case." The caption on that order was the first of the

cases which comprised the class action.

34. The Dorchester County trial court who presided over the class action had been asked to recuse herself by a motion in 2008. That motion was denied. She recused herself in 2013.

35. All defendants colluded in the 2005 class action so as to permit the Diocese defendants, starting in 2009 and continuing into 2013, to maintain the position that the class action precluded any and all claims for abuse, and the Diocese defendants have refused the Plaintiff any relief for his sexual abuse.

36. The defendants cooperated among themselves in the 2006 class action to prevent the Plaintiff from either participating in the class action or being able to remove himself from the class action by opting out. Being within the putative definition of the 2005 class action as the Defendants agreed to define the class of sexual abuse victims, the Plaintiff ostensibly was formerly represented by, until he was abandoned by, the Richter defendants, who served as class counsel.

37. Alternatively, and at minimum, the Richter defendants assumed fiduciary duties as to the Plaintiff by defining the class, with the knowing cooperation of the Diocese defendants, so as to ostensibly include the Plaintiff, and by making in that class definition no exception for any person who resided in Minnesota and who was sexually abused by a priest of the Diocese of Charleston.

38. Each Defendant was aware that persons within the class definition of the 2005 class action might reside out of state. Class counsel elected to cooperate to serve the objectives of the Diocese defendants at the expense of the class members they represented, and did so by making no allowance for out of state class members in the class action definition, or in the notice given to the class, or in the orders they sought from the Dorchester County trial court

that oversaw the class action. These actions were taken to cause the Plaintiff special harm in the form of precluding him from making any claim against the Diocese, particularly any claim outside the class action. The representation of the Plaintiff by the Richter defendants in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

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

40. But for the Richter defendants having breached the duties each of them owed to the Plaintiff by abandoning the Plaintiff in the class action, which was done in agreement with and full complicity with the other Defendants, the Plaintiff would have been protected from any preclusive effect of the 2005 class action and the 2006 class action settlement.

Nature of Wrongdoing

41. As a child, the Plaintiff was exposed to Frederick Hopwood through his participation in events sponsored by the Diocese of Charleston and was sexually abused by Frederick Hopwood.

42. Hopwood was known to have a sexual interest in young boys and had a long history of sexually molesting young boys to which he had access because Hopwood was a priest.

43. The Diocese Defendants knew, or should have known, that Frederick Hopwood was dangerous to children, and that the Plaintiff was sexually abused as a child by Frederick Hopwood.

44. This Complaint sets out various causes of action built around four different levels of

disregard for others, and corruption.

a. First, the disregard by the Diocese Defendants in operating a system which actively disregarded and concealed the risks to children and families for sexual assault of children by their priests and other employees, and which then actively, and fraudulently, concealed the abuse that had happened and concealed the dangers to children the Diocese Defendants solicited into danger.

b. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy, in exchange for a legal fee to class counsel, relief for the Diocese defendants in the form of a layer of what was hoped, by those corrupt lawyers, would be protection for the Diocese from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese defendants.

c. Third, the corruption of particular lawyers who in serving as class counsel assumed a duty to act for sexual abuse victims, including the Plaintiff, but who then acted in a professionally negligent way, willfully and wantonly abandoning their client so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese Defendants in exchange for their cooperation in trying to both limit relief to victims and protect the Diocese Defendants from future cases, and from claims by this Plaintiff and other sexual abuse victims. The danger to the Diocese Defendants of future cases was that future cases might be brought by lawyers actually adverse to the Diocese Defendants, as opposed to the lawyers who were affiliated with the Diocese defendants and entered into the collusive class agreement with them.

d. Fourth, overt misrepresentations of fact by the lawyers and Diocese Defendants, to the court which approved the 2006 class action settlement, and fraudulent concealment of that misrepresentation, continuing to the present.

45. Class action counsel were so confident in their ability to manipulate the state court judge they and counsel for the Diocese had selected and maneuvered the class cases before, and in gaining the cooperation of the supposedly adverse Diocese Defendants, that the Richter defendants submitted blatantly false and inflated time records to justify their large fee without objection to those false and inflated time records by the Diocese Defendants. In exchange for class counsel's cooperation to disadvantage all members of the class from making any claim other than through the 2006 class settlement, which capped victim recovery to an acceptable limit, it was later discovered that the Diocese Defendants

a. agreed to take no position on whether the class should be certified,

b. agreed not to mention that any of the time records submitted by the Richter defendants were false,

c. agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee,

d. agreed to make no objection to an unethical fixed fee for class counsel while class counsel simultaneously obtained only variable compensation for class members,

e. agreed to make no objection to the fee being awarded before any member of the class member was even identified, and before any class member claimant had submitted a claim or was paid,

f. agreed to other procedural manipulations, as set forth below, which violated

South Carolina rules of court and South Carolina law, and

g. agreed to seek no post-award fairness hearing under SCRCP 23.

46. In turn, the Richter Defendants agreed to assist the Diocese Defendants in overtly misrepresenting to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement, and once the court relied on that representation the Richter defendants enabled the Diocese Defendants to ignore the representations that had been made. Alternatively, if class counsel claims he was did not participate in the overt misrepresentations to the court by the Diocese Defendants, class counsel's representation of the class fell below the applicable standard of care in that class counsel failed to secure by order those concessions supposedly made by the Diocese defendants. Class counsel failed to secure those concessions by written order even though class counsel was fully aware the Diocese Defendants are untrustworthy and would comply only with orders it could be compelled to honor.

47. Class counsel either was complicit in the misconduct of the Diocese Defendants or was negligent in being outmaneuvered by the Diocese Defendants.

48. The duplicity by the Diocese defendants was disclosed to this Plaintiff only in 2012, when the class action was asserted to preclude him from any relief even though he had been given no notice of the class action at the time of the class action.

49. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the Plaintiff is regarded as being bound by the *res judicata* effect of the collusive class action to which the Diocese was party. As alleged more fully below, Plaintiff ostensibly falls within a class defined in that action, but all of the Defendants were aware that in adopting that class definition without exclusions for persons who lived out of state and were

to be by design given no notice, that claims by such persons might be compromised. Defendants colluded so as to attempt to make any recovery by the Plaintiff impossible. All Defendants cooperated together to better protect the Diocese by the way the class was defined, as well as the manner in which notice was given, and the Defendants cooperated so as to actively mislead the court in seeking approval for the limited notice that was proposed with the false promise by the Diocese, known to the Richter defendants to have been false when made by the Diocese and acquiesced in by the Richter defendants, that within the minimal relief offered within the class action the Diocese would protect the interests of persons such as the Plaintiff who received no notice and who later made claims.

50. Until 2012 the Plaintiff had no information about a class action or that the Defendants had cooperated to make false promises to the class action court or that the Plaintiff's interest had been compromised by a collusive class action.

51. Until May 19, 2009, when the South Carolina Supreme Court ordered that the proceedings in the 2005 class action be concluded by September 19, 2009, the Richter defendants were charged with correcting the known deficiencies in the class definition and the class action notice. The Richter defendants took no steps to correct either deficiency. Had they done so it would have interfered with their collusion with the Diocese that was intended to protect the Diocese and to obtain for the Richter defendants the fixed fee they had arranged to obtain, at the expense of their client class members and the putative members of the class.

52. By 2012 the Richter defendants had been sued a number of times by persons whose claims for sexual abuse were compromised by their professional work as lawyers, and to protect their own interests they filed a motion on behalf of a class that no longer exists, and ostensibly on behalf of clients adverse to them, to seek for themselves protections from the

Dorchester County trial court overseeing the class action. After the Dorchester County trial court received that motion, the trial judge recused herself.

53. Before another Dorchester County judge at a hearing held April 12, 2013, the Richter defendants admitted that abuse victims, such as this Plaintiff, who lived out of South Carolina got in the class action no Due Process from the notice given in the class action.

54. In that hearing, class counsel stated, on the record at page 32 of the transcript, that persons living out of the area of the limited notice given in the class action, "never got their due process rights of notice and an opportunity to be heard."

55. Similarly, until September 19, 2009, the date the South Carolina Supreme Court ordered that the proceedings in the 2005 class action be concluded, the Diocese Defendants were aware that various persons within the class had received no notice, but did nothing to clarify overt misrepresentations by the Diocese Defendants to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

56. The Diocese Defendants each knew, or should have known, about the Plaintiff and his abuse by Frederick Hopwood. When Hopwood was convicted of sexual abuse the Diocese Defendants should have, but did not, make an effort to locate other victims of Hopwood.

57. Until 2012, the Plaintiff was unaware of

a. any class settlement by the Diocese Defendants,

b. that the Diocese Defendants claimed to have waived charitable immunity for any person in the class definition,

c. that the Diocese Defendants claimed to have waived the statute of limitations for any person in the class definition.

58. Plaintiff was unaware of any of those things because, by agreement of all Defendants,

the Plaintiff got no notice of any of those things, and had no opportunity to preserve his claim by opting out of the 2005 class action.

59. In its order approving the class action, the state court appeared to have provided for absent members of the class, such as the Plaintiff. However, beginning in 2009 the Diocese Defendants began to contend, successfully, that the court's order of July 31, 2007 does not mean what it says, and starting in 2009 the Diocese Defendants began to argue that none of them has a duty to any absent class member who is within the class definition but who received no notice of the class settlement or the various waivers of defenses by the Diocese Defendants. In doing so the Diocese Defendants perpetuate the fraud the Diocese Defendants intended to achieve in 2007 through the class action, and either through cooperation with the Richter defendants or through outmaneuvering the Richter Defendants, to limit recovery for persons known to have been sexually abused by persons affiliated with the Diocese Defendants.

60. Plaintiff is an absent member of a class who, by either design among Defendants, or by conduct by class counsel that fell below the standard of care, received no notice of the class action and had no opportunity to opt out of the collusive class action. As such, Plaintiff should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of his interests. The Plaintiff's representation in the class action by the Richter defendants was inadequate, and fell below the applicable standard of care as set forth more fully below. Any of those grounds is a sufficient basis to relieve the Plaintiff of the *res judicata* effect of the class action.

61. If the Diocese agrees, or the court finds, that the Plaintiff is not precluded, by the class action, from bringing claims against the Diocese Defendants, either because the class action court's rulings leave room for persons not receiving notice, or due to inadequate representation

by class counsel, or because the Defendants in the class action were aware that not all class members would get notice of the class proceedings and the class action orders preserve the Plaintiff's Due Process rights and his claims, then the causes of action against the Richter Defendants alone, other than the Conspiracy cause of action, are irrelevant. However, if the court finds that the Plaintiff is precluded for any reason from pursuing his claims against the Diocese Defendants, including the *res judicata* effect of the class action, charitable immunity (which the Diocese Defendants waived for those within the class definition), or by the statute of limitations (which the Diocese Defendants waived for those within the class definition), then causes of action against the Diocese Defendants alone, other than the Conspiracy cause of action, are irrelevant, and claims are properly made against those who conspired against the Plaintiff, and against the Richter Defendants for failing to properly represent the Plaintiff in the representation of the Plaintiff that the Richter Defendants undertook.

62. In March, 2009, the South Carolina Supreme Court ordered that all proceedings in the class action be concluded by September 19, 2009. In 2013 the South Carolina Supreme Court was informed that the class action had never been formally closed, that the Dorchester County trial judge had recused herself from further proceedings, and on April 30, 2013, the S.C. Supreme Court assigned the class action to another circuit judge to "hear and dispose of any remaining matters."

63. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No changes are sought as to the orders affecting the class action. As to the class action this action seeks only an interpretation as to the preclusive effect of the class action as applied to the Plaintiff.

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

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

65. The defendant Bishop of Charleston employed Frederick Hopwood as a priest.

66. In his capacity as priest, Frederick Hopwood was placed by the Diocese Defendants in a position of trust and confidence, and had access to the Plaintiff and other children. In that capacity, Frederick Hopwood sexually molested the Plaintiff and many other children.

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

68. Alternatively, the Diocese Defendants operated various schools, activities, and churches that were intended to, and did, attract children and families, including the Plaintiff and his family. The Diocese Defendants encouraged people, including Plaintiff and his father, to use their facilities, and to attend the various activities and functions offered on the premises of the Diocese. In making that invitation, the Diocese Defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers, and from known dangers such as Frederick Hopwood, by representing to the public, and to the Plaintiff, nothing to the contrary. The Diocese Defendants particularly owed a duty to the Plaintiff, who was a minor, and his father, who were charged with looking after his interests, a greater degree of care because as a child the Plaintiff relied on the Diocese Defendants for his safety within the Diocese, was unable to fully appreciate risks and danger and protect himself from Frederick Hopwood. The Diocese Defendants falsely represented to its invitees, and their parents or

guardians, including the Plaintiff, that its facilities and its priests were safe, and that persons would be protected from harm when using its facilities and when interacting with its personnel.

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

70. The Diocese defendants were negligent in failing to warn the Plaintiff or his father about Frederick Hopwood. The Bishop of Charleston performed that duty in a grossly negligent manner.

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

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

73. As a result of the negligence and gross negligence by the Diocese Defendants in failing to either prevent abuse or identify abuse victims by its agent or employee Frederick Hopwood,

the problems for the Plaintiff were first caused, and then exacerbated, by the delay of the Diocese Defendants in rectifying the abuse by Hopwood.

74. As set forth more fully below, the Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese Defendants, among other things, accounts for the delay in this action being brought against the Diocese Defendants. The most recent act of fraudulent concealment by the Diocese defendants as to the Plaintiff was in 2012, discovered by the plaintiff only in 2012. This action is brought within three years of that most recent act of fraudulent concealment, and fraudulent conduct, by the Diocese defendants, and within three years of its discovery by the Plaintiff.

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

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

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

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

78. The Diocese Defendants each had a duty to discover and to disclose to Plaintiff or his parents their knowledge that Frederick Hopwood was known to have a sexual interest in children. That duty arises from

a. the preexisting fiduciary relationship between the Plaintiff and the Diocese Defendants, which relationship the Diocese Defendants solicited;

b. from the father of the Plaintiff having expressly reposed his trust and confidence in the Diocese Defendants so as to entrust putting the Plaintiff into the presence of Frederick Hopwood, which placed the Plaintiff in a vulnerable position with respect to Frederick Hopwood. That position of trust and confidence was implicit from those circumstances of Plaintiff being entrusted to the presence of Frederick Hopwood, as well as from the nature of the dealings between the Plaintiff, his father, and the Diocese Defendants, who promoted to the Plaintiff's father that he should leave the Plaintiff in the presence of Frederick Hopwood,

c. from the essential nature of the Diocese Defendants and their inducement to the Plaintiff's father to have the Plaintiff participate in activities with Frederick Hopwood as being beneficial to the Plaintiff, or at least not harmful to him,

d. from the secrecy provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese Defendants to discover, but then to maintain secrecy about, "other persons solicited" by any person such as Frederick Hopwood, who commits the "unspeakable crime" of sexually abusing a child, and

e. by the undertaking which the Diocese Defendants assumed, negligently (and in the case of the individuals included in the designation of the "Diocese Defendants," grossly negligently), during 2005 - 2012, to locate victims such as the Plaintiff.

79. The Plaintiff was sexually abused by Frederick Hopwood after 1962.

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

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

82. Specifically, the Diocese Defendants created a culture of secrecy that caused the Diocese to make no inquiry for victims of Hopwood after it was known that Hopwood had sexually abused children.

83. This complaint concerns actions and inactions by the Diocese Defendants within the course and scope of their role within South Carolina by each of the Diocese Defendants which violated South Carolina law and resulted in the sexual abuse of the Plaintiff. The allegations do not involve religious belief, and in this Complaint the court is not called upon to involve itself in, or to interpret, religious beliefs of the Catholic Church or any of the Defendants but to assess their actions and inactions against the requirements of South Carolina law.

84. The actions and inactions of the Defendants are governed, in part, by the administrative practices required by the internal operating procedures of the Diocese Defendants.

85. Administrative practices adopted by the Diocese Defendants under the Code of Canon law established a practice of secrecy as to sexual abuse. All references to the Code of Canon law refer to the Code of Canon law approved in 1983.

86. The Diocese Defendants operated with an archive.

87. The archive is required by Canon 486 of the Code of Canon law.

88. The archive is, in part, accessible only by the Bishop of Charleston and chancellor of the Diocese of Charleston.

89. Having an archive with limited access is required by Canon 487.

90. Documents in that limited access archive may not be removed from the archive except for a brief time, and only by permission of either the Bishop of Charleston or the moderator of the curia.

91. That restriction on documents within the limited access archive is required by Canon 488.

92. Canon 489 requires that the Diocese of Charleston was also to create for administrative purposes a Secret Archive.

93. In that Secret Archive Canon 489 requires that "documents are to be kept secret" and "protected most securely."

94. Canon 489, Section 2 states: "Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained."

95. The administrative practices for secrecy required by the Code of Canon law and the "Instruction," alleged below, are arbitrarily adopted administrative practices and are separate

and apart from the religious practices protected by the First Amendment of the United States Constitution. Review of those provisions is sought only to the extent those provisions govern action of the Diocese Defendants.

96. Only the Bishop of Charleston is to have the key to the secret archive, and documents are not to be removed from the archive, a restriction required by Canon 490.

97. The Bishop of Charleston was authorized to include in the secret archive any matter which can be regarded as scandalous.

98. The administrative practices of the Diocese of Charleston is to consider topics of sexual abuse to be scandalous, hence secretive.

99. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Frederick Hopwood's sexual abuse of the Plaintiff and other children, were regarded as scandalous, and were maintained in the Secret Archive.

100. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Frederick Hopwood's sexual abuse of children including Plaintiff when the Plaintiff was a child, because those matters were regarded as scandalous, were maintained in the Secret Archive and were destroyed as called for by the Code of Canon law in the routine administrative practice by the Diocese Defendants to destroy evidence of known criminal activity.

101. The Diocese Defendants operate under the authority of the Holy See, which is based in Rome, Italy.

102. In 1962 the Diocese defendants expanded on the administrative secrecy required concerning sexual abuse. The Holy See published an "Instruction" which applied to the Diocese Defendants.

103. By its terms, at p. 1, the "Instruction" was to be stored in the Secret Archive. In the "Instruction," matters involving priests who "solicit or provoke" ("Instruction," p. 1 ¶ 1) a penitent "toward impure and obscene matters" ("Instruction," p. 1 ¶ 1), is deemed "a secret of the Holy Office" ("Instruction," p. 3 ¶ 11), "under the penalty of excommunication" ("Instruction," p. 3 ¶ 11). The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." ("Instruction," p. 4 ¶ 12. See also, "Instruction," p. 5 ¶ 23 and "Instruction," p. 6 ¶ 28).

104. These are administrative practices related to actions and inactions of secrecy, not provisions about beliefs protected by the First Amendment.

105. Plaintiff fits within the meaning of "penitent" referred to in the "Instruction."

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

107. Nothing about the Catholic faith requires that children be sexually abused or that sexual abuse of children be concealed.

108. Frederick Hopwood and the Plaintiff are each male. The conduct by Frederick Hopwood towards the Plaintiff qualified under the 1962 "Instruction" as "the worst crime."

109. Among other things, the 1962 Instruction directs the Diocese Defendants to assume the duty of locating "other persons solicited by the same confessor" ("Instruction," p. 7 ¶ 29). In this instance, the "Instruction" calls for the Diocese Defendants to act so as to locate other persons solicited by Frederick Hopwood for sexual contact. The "Instruction" at p. 9 ¶ 37 also refers to an "Instruction of the Holy Office, February 20, 1867," in directing the

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

110. The Diocese Defendants assumed the administrative duty to locate Hopwood's victims as defined in the 1962 "Instruction," but the Diocese Defendants performed that duty in a grossly negligent manner. The Diocese Defendants failed to locate the Plaintiff, failed to locate many other Hopwood abuse victims, and made no competent inquiry to locate them. The Diocese Defendants purposefully avoided making the type of inquiry that would have elicited discovering the Plaintiff.

111. The 1962 "Instruction" was approved as an administrative practice by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 "Instruction." It applied to the Diocese Defendants.

112. In the Appendix to the 1962 "Instruction" are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the Plaintiff. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff," according to page 17 of the 1962 "Instruction." By this means the administrative practice of secrecy is encouraged, but even backed by excommunication, the secrecy provisions of the administrative practices are arbitrarily adopted administrative practices with no doctrinal significance to protected First Amendment activities.

a. "Whatever type of pretext" overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the

1962 "Instruction" for complying with civil authority, and any interpretation otherwise is void as contrary to the law of South Carolina and against public policy.

113. Unless the Pope himself has specifically approved otherwise, administrative secrecy was and is to be maintained not only by the Plaintiff, but also by every member of the Diocese Defendants, and by even witnesses to sexual abuse. That administrative secrecy is to be made despite any law, court order, or oath which would otherwise require disclosure of sexual abuse. Under the 1962 "Instruction," the highest obligation, higher than any law, oath, or court order, is to maintain the administrative practice of secrecy for the benefit of the Diocese Defendants, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese Defendants can all be expected to be obedient to the administrative secrecy called for in the 1962 "Instruction," to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese Defendants have, to date, done so.

114. The call for secrecy in the administrative practices derived from the 1962 "Instruction" and the Code of Canon law constitutes spoliation of evidence, as well as fraudulent concealment. Among the spoliation was evidence related to Frederick Hopwood's known sexual interest in children, and the sexual abuse of the Plaintiff.

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

116. In 2006 the Diocese Defendants sought a new level of deception and manipulation to limit the damage to the Diocese Defendants from its taking responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its history of abuse and concealment. The Diocese Defendants engaged with other Defendants to conspire to evade accountability, as set forth below, and to try to prevent the Plaintiff from making any claim. The acts of civil conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse.

117. The conspiracy cause of action concerns the Plaintiff's deliberate exclusion from the class, and preventing the Plaintiff from being able to protect his claim, so hinges on the proper interpretation of the orders in the class action, and whether the actions of the Richter defendants constituted merely greed, fraud, and self-interest, as opposed to professional negligence, in excluding from the class action, by design, the Plaintiff and many others who were within the class definition. If there was professional negligence, then the acts of professional negligence predominate, and the damages from the exclusion are properly paid by the Richter defendants. If the actions do not rise to professional negligence, and the Richter defendants and Diocese Defendants were merely corrupt, then the damages for the exclusion are properly shared among all Defendants for their conspiratorial actions in excluding the Plaintiff by design. And if the Plaintiff is not precluded from his claims against the Diocese Defendants by the *res judicata* effect of the class action, and the Richter defendants were

merely corrupt, then the Plaintiff requires no relief for the professional negligence by the Richter defendants, and can seek relief against the Diocese Defendants.

118. This cause of action presumes that the Plaintiff is not precluded in making this claim by the 2005 collusive class action involving the Diocese Defendants, and can make his claim for

a. lack of Due Process in those proceedings as to this Plaintiff,

b. lack of competent representation so as to not bind this Plaintiff to the class action,

c. the collusive nature of the class settlement, or

d. because by their terms the class action orders do not apply to the Plaintiff.

119. To date the terms of the class action order have been interpreted to not apply to the Plaintiff or to any other abuse victim who resides out of state, meaning the Plaintiff would be excluded from relief and barred from making a claim.

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

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

121. Allegations above, other than claims for relief above, are incorporated into this cause of action as if fully stated. This cause of action presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect, despite insufficient Due Process from the collusive class action which was designed by all Defendants to limit the Plaintiff's ability

to state his claim, so this cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese Defendants related to sexual abuse, and also presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

122. Defendants have conspired with others to injure the Plaintiff, and by those actions have caused special damage to the Plaintiff.

123. As set forth below in detail, the Defendants have acted in concert in numerous ways, which reflect the joint assent with minds to injure the Plaintiff, and Defendants have taken overt acts to pursue the common design to injure the plaintiff.

124. Some actions that have been taken have been legal; other actions were legal but violated professional standards in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the Plaintiff by making sure he and other putative class members could neither participate in the state court class action nor opt out of it, and by those means could be prevented from bringing his own action.

125. In exchange for an amount of money deemed sufficient by corrupt lawyers as a fee, the lawyers who purported to represent the Plaintiff, the Richter defendants, agreed to act against the Plaintiff's interests, and collaborated with the Diocese defendants to work against the Plaintiff's interest and in the interest of the Diocese Defendants.

126. Class counsel had, but did not disclose to the class, connection and allegiances to the Diocese defendants.

127. This cause of action presumes that class counsel was not merely professionally negligent, and outmaneuvered by the Diocese Defendants, but actively collaborated with the Diocese Defendants.

128. Specifically, in exchange for an amount of money as a fee deemed to be sufficient, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, the lawyers who purported to represent the Plaintiff, the Richer defendants, agreed to abandon the Plaintiff, and to define the class so as to include him, despite proposing notice to the class that was known to be insufficient to actually provide notice to the Plaintiff. The Richter defendants defined the class action classes so as to ostensibly include the Plaintiff, purported to secure benefits for the Plaintiff but then failed (a) to secure those benefits by written order, and (b) failed to give notice calculated to reach the Plaintiff, and instead gave notice that could not possible reach the Plaintiff. This cause of action presumes that those acts were not professionally negligent actions but conscious undertakings by the Richter defendants to disadvantage the Plaintiff from making a claim against the Diocese, so as to not jeopardize the fee for themselves that the Richter defendants made the highest priority of the 2006 class action settlement.

129. By purporting to undertake his representation in how the class was defined, but making no provision for the Plaintiff, the Richter defendants breached a duty to the Plaintiff that the Richter defendants assumed, either through the attorney-client relationship or through the fiduciary duty South Carolina law imposes on any counsel who elects to bring a complaint that alleges a class action, and the fiduciary duty South Carolina law imposes on any counsel who elects to define a class so as to include the Plaintiff.

130. The Richter defendants have publicly denied undertaking any duty to absent members of the classes they defined, reflecting either their degree of professional ignorance of the obligations of class counsel or their intention to align with the interests of the Diocese, or both. This cause of action assumes not the professional negligence of the Richter defendants

but the intention of the Richter defendants to align themselves with the interest of the Diocese Defendants as the *quid pro quo* for the Diocese Defendants collaborating by silence on their fee as class counsel.

131. The Richter defendants elected to abandon their putative class member clients who lived outside of South Carolina so as to prevent the Plaintiff, and others similarly situated, from being able to make claims against the Diocese Defendants. As the class allegations acknowledged, the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, filed in Charleston County, and in the identical John Doe #53 Complaint redundantly filed in Dorchester County as case 06-CP-18-1636 for the purpose of judge-shopping.

132. If "too many" of those hundreds of victims participated in the class action, including the Plaintiff, the Richter defendants would jeopardize the large fee the Diocese Defendants had agreed to enable them to get, and if the 2006 class settlement was jeopardized the Diocese Defendants might not get the ostensible protection from future suits it was colluding with the Richter defendants to obtain at the lowest possible cost. Consequently, defining the class so as to ostensibly include the Plaintiff without securing any benefit for him was either professional negligence or intentional conduct by the Richter defendants to defeat the Plaintiff's ability to make a claim against the Diocese. As noted, this cause of action presumes that the Richter defendants were not professionally negligent but intentionally acted with the Diocese Defendants to limit the Plaintiff's ability to claim against the Diocese Defendants, with whom the Richter defendants shared an illicit interest in defeating the Plaintiff's potential claims.

133. For the Richter defendants, both their class counsel fee, and the interests of the Diocese Defendants, were more important to them than were the interests of their absent putative class member clients such as the Plaintiff.

134. In exchange for the Richter defendants abandoning the Plaintiff and all of their other putative class member clients who lived out of state, the Diocese defendants agreed with the Richter defendants to

a. maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCP 23,

b. agreed to take no position on class certification,

c. agreed to make only the weakest possible argument about the fee sought by the Richter defendants,

d. agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request,

e. agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class,

f. agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known, and

g. agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from those Charleston County judges that might exert independent scrutiny of the class action, to a state court judge in Dorchester County known to have extensive social and professional ties to the Richter

defendants, in the aspiration and expectation that a more pliable oversight would be received for the class settlement from that judge.

135. In the 2006 class settlement the Diocese Defendants undertook a duty to the classes as identified, which included the Plaintiff, to identify abuse victims, such as the Plaintiff. To get approval of the class settlement, the Diocese Defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement away from independent judges in Charleston County to a judge in Dorchester County who was hand-picked by the Richter defendants because of the expectation that judge would apply a more pliable oversight of the class action.

136. In circumventing the requirement in SCRCP 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester County judge, the Defendants violated judicial norms and rules as well as professional standards.

137. The Diocese Defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case pending simultaneously in circuit court in both Charleston County and Dorchester County.

138. As the Dorchester County version of the class action had already been settled before filing through the 2006 class settlement, the Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge.

139. The Diocese Defendants also agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

Details of the Civil Conspiracy Among Defendants

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

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

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

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

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

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

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

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

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

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

150. From December 2005 until June 2006, neither the Richter defendants, as class counsel, nor the Diocese Defendants, as a defendant in a case alleging a class, made any effort to seek class certification for the class alleged in the December class action complaint in Charleston County.

151. In that time period of December 2005 to June 2006, the public records show there were no motion hearings held in any of the three cases mentioned above. When the

Charleston County court twice attempted to schedule pending motions, and sent out hearing notices, the Defendants collaborated to ask that the motions be continued rather than heard.

152. In June 2006, the Defendants met in a mediation conference. At that time, no class action had been certified, and no case then pending alleged a class for spouses or parents of sexual abuse victims.

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

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

155. The agreement reached in that mediation is attachment A to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the 2006 class settlement agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the Plaintiff through the class definitions making no exception for his residing in Minnesota. Each Defendant intended to include the Plaintiff in the class definition.

156. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 class settlement reached during a mediation of the Charleston cases.

157. In January, 2007 the typewritten version of the 2006 class settlement agreement was approved by The Holy See.

158. The 2006 class settlement agreement was funded by approval of The Holy See.

159. As reflected in the attached handwritten version of the 2006 class settlement agreement, the Defendants agreed that the individual plaintiffs in the pending actions filed in Charleston County and the purported class representative from the Charleston case which alleged a class, would split $460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese Defendants would pay only $460,000 to resolve the pending Charleston cases, which were the only cases then pending.

160. Claims of absent class members were proposed to be resolved on terms materially different than the terms received by the purported class representative or representatives. Instead of a cash payment the same, or similar to, what the purported class representative or representatives were to receive, absent class members were to be required to first relinquish their right to bring suit and, then and only then, submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive from the pre-defined maximum amount available for all such claims and each such claim, minus the additional fee for class counsel. Class members had to relinquish all rights for review to qualify for the arbitration, which was binding arbitration. Only the persons included in the 2006 agreement knew in advance what amount they would receive for a settlement.

161. As alleged below, not fewer than seven devices were chosen by overt agreement among the Defendants to further the conspiracy against this Plaintiff, along with other absent putative members of the classes, from being included in any recovery for the class, to limit the

class recovery from being "too much," and to prevent this Plaintiff from later being able to make a claim for his childhood sexual abuse.

162. If the 2006 class settlement included "too many" claimants, under the 2006 class settlement agreement the Diocese Defendants would be entitled to withdraw from the agreement. Class counsel would jeopardize his class counsel fee if there were "too many" claimants and the Diocese Defendants withdrew.

163. The Diocese Defendants wanted the 2006 class settlement agreement to be approved so they could later argue, as they in fact have argued, and have argued specifically as to this Plaintiff, that no other sexual abuse claims for sexual abuse prior to 2006 could be made against the Diocese Defendants if those claims were brought after the 2006 class settlement approval.

164. The Diocese Defendants knew that the 2006 class settlement agreement had been negotiated and reached with an "adverse" attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese for another client. The Richter defendants wanted to assure themselves of a large fee in the class action without jeopardizing that fee by getting too many class claimants against class counsel Richter's own Diocese and these Diocese Defendants. So all Defendants conspired to create methods to be able to limit the number of class members who could make claims under the 2006 class settlement agreement, to limit the amount those class member claimants would recover, and to protect the Diocese Defendants from any future claims, for those childhood abuse victims prior to the conclusion of the 2006 class action settlement.

165. The 2006 class settlement agreement among Defendants established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge-Shopping to Pick the Judge

166. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver the 2006 class settlement agreement from the Charleston class action to be presided over not by any judge in Charleston County, where the putative class case was filed and the class case settlement was reached, but to "shop" for a judge they selected to make those determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to unwittingly overlook breach of court rules and fraudulent filings was desired.

167. Instead of complying with SCRCP 23, and submitting the attached 2006 class action settlement to a judge in Charleston County for approval under SCRCP 23, the Defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese Defendants accept service of, newly filed class action cases in Dorchester County that were already settled before being filed.

168. The Richter defendants filed on August 15, 2006 in Dorchester County cases 06-CP-18-1310 and 06-CP-18-1311.

169. After those two cases were filed, on October 6, 2006, the settled Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193*, was redundantly re-filed in Dorchester County, with the same caption

(other than the changed county name from "Charleston" to "Dorchester" and the case number being a case number for Dorchester County, 06-CP-18-1636).

170. The allegations of the John Doe 53 class complaint in Dorchester County were identical to the John Doe 53 class complaint in Charleston County.

171. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending and already settled Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to avoid independent judges in Charleston County and to shop for the desired judge in Dorchester County.

172. This procedural maneuver agreed to among the Defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose, when it was used in 2006.

173. Filing duplicative class actions to have the same case pending simultaneously in two different venues is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court (by all Defendants) and to the Plaintiff (by the Richter Defendants). The Plaintiff was ostensibly included among the duplicative Dorchester complaints through the class definition used in each of those complaints.

174. 2006 class action filings in Dorchester County, the Plaintiff was deprived of Due Process through the conduct of the Defendants.

175. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending, and all were included within the 2006 class settlement agreement.

176. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, and service of that case was accepted, the John Doe 53 class action was, by agreement among the Defendants, simultaneously pending in two separate counties.

177. Dorchester County was chosen by agreement of the Defendants so as to "judge shop" for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a more pliable, and less demanding, oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, any pre-award fairness hearing, and any post-award fairness hearing. The shopped-for judge was expected to unwittingly tolerate factual misrepresentations and fraudulent filings by the Defendants, an expectation that was rewarded when fraudulent filings were made, by agreement among the Defendants, and the pliable, shopped-for judge took no action concerning those fraudulent filings, either before the fraudulent nature of those filings was explicitly disclosed or after the fraudulent nature of those filings was explicitly disclosed.

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

179. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the shopped-for judge designate the cases as complex, and assign the cases to the shopped-for judge, as requested by all Defendants. That designation was improper under the rules at the time, as set forth in more detail below, as Defendants joined together to misrepresent facts to the shopped-for judge in order to obtain complex case designation.

180. Alternatively, the shopped-for judge was informed of the false representations of fact when the request for complex case status was made, and the shopped-for judge agreed to permit the false representations of fact. This Complaint presumes the shopped-for judge was mislead by Defendants rather than actively participating in misconduct of Defendants.

181. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the 2006 class settlement. If the same request had been made and granted in Charleston, only a single judge would have presided over all aspects of the settlement. But the Defendants feared that any Charleston judge might require complex case designation to actually meet the criteria of the pertinent Supreme Court order that governed complex case designation, and the Defendants feared that any Charleston judge would exert independent oversight of the 2006 class settlement. The Defendants each sought to avoid truly independent judicial oversight.

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

183. As soon as the shopped-for judge assigned the Dorchester actions to herself, the Defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

184. No motion was filed in Charleston to approve the 2006 class settlement reached in the Charleston cases. All Defendants consented to not filing such a motion.

185. SCRCP 23 was not complied with in the pending Charleston County cases as to the 2006 class settlement reached in the Charleston class action. All Defendants consented to not complying with SCRCP 23 in Charleston County, and all Defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge in Dorchester County.

186. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases. Nor was any notice given to the Charleston County judge that the parties to the Charleston County cases sought a voluntary dismissal without prejudice of any case that alleged a class.

Conspiracy Technique Two: Using Complex Case designation Improperly.

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

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

189. The July 26, 2006 order of the South Carolina Supreme Court, which at that time enabled complex case designation, approved of a particular form for use with motions to seek complex case designation. Among other things, that approved form required the Defendants to represent that certain facts applied to the action for which complex case status was sought. The form states, with emphasis added:

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

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

191. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases.

192. By agreement among the Defendants, no notice was given to the Administrative judge for Charleston County at that time, Judge Jefferson, that when the Defendants sought a voluntary dismissal without prejudice of the pending Charleston County cases that one of those cases alleged a class of plaintiffs.

193. Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached at the time the Defendants sought complex case designation. Alternatively, the Defendants disclosed to the shopped-for judge that they fraudulently sought complex case designation, under a false representation of facts, and the shopped-for judge agreed to overlook the false application. As a second alternative, Defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status. This Complaint presumes that the shopped-for judge in Dorchester County was unwittingly misled by the Defendants.

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

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

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

196. As set forth in the affidavit of Michael Virzi, attachment B to this complaint and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese Defendants to agree to it, and to raise no objection to it. At no time was the proposed fee disclosed to the Plaintiff, and the Plaintiff at no time consented to the Richter defendants negotiating such a settlement, or such a fee.

197. At page 13, paragraph 6B, in the typed version of the 2006 class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure set forth in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

198. The Defendants agreed among themselves that the Richter Defendants would not disclose, and the Diocese Defendants would remain silent about, the fee provision being unethical.

199. Representation of the Plaintiff by the Richter defendants in proposing an unethical fee was inadequate, and did not comply with applicable professional standards. Alternatively, that representation breached a fiduciary duty to the Plaintiff that South Carolina law imposes on any attorney who files a complaint that alleges a class action.

200. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits the Diocese Defendants and the Holy See were willing to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid

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

201. The Richter defendants sacrificed the interests of absent putative class members, such as the Plaintiff, in exchange for the fixed fee they negotiated for themselves. The Diocese Defendants agreed to maintain silence as to that class counsel fee as the price of obtaining the illicit cooperation of the Richter defendants in structuring the 2006 class settlement resolution to provide only a fraction of the relief the Richter defendants would agree to accept in a case against a Diocese other than Richter's own Diocese, the Diocese of Charleston.

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

202. The fourth technique to conspire against the Plaintiff was to make no disclosure to him, or other class members, of either the superior settlement terms agreed to by the Diocese Defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who opted out of the 2006 class settlement.

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

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

205. In addition, the terms for the opt-out abuse victims exceeded the low bar of recovery the Richter defendants agreed to set for class member recoveries, later known to have

been set low to further protect Richter's own Diocese, the Diocese of Charleston. The opt-out victims received more than was received by any comparable abuse victim who participated in the 2006 class settlement.

206. The shopped-for judge approved a fee to the Richter Defendants of $2.5 million, which was the fee for all counsel involved in the class action complaint.

207. The Richter Defendants charged the class more than $2.5 million, even though the shopped-for judge had approved only $2.5 million.

208. In addition to the fee approved by the Court, the Richter defendants charged class members who participated in the 2006 class settlement an additional fee to go through the arbitration mechanism of the 2006 class settlement. The court approved fixed fee of $2.5 million was not disclosed to participating class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing because no post-award fairness hearing to date has been held.

209. Either the shopped-for judge was unaware that a post-award fairness hearing was proper or the shopped-for judge agreed to not have any post-award fairness hearing so as to not jeopardize class counsel's fee recovery in the 2006 class settlement. This complaint presumes the shopped-for judge was unwittingly maneuvered by the Defendants into having no post-award fairness hearing.

210. No notice was given to any class member, including the Plaintiff, about the terms of the settlement for persons who opted-out of the 2006 class settlements. Had the Plaintiff been given notice of the terms available for the class, and the terms negotiated by the opt-out abuse victims, and the terms applicable to the class representatives, he could have exercised a choice to receive one or the other recoveries, attempted to influence those recoveries, or to opt out and

preserve his claim against the Diocese Defendants. The Plaintiff was abandoned by his attorneys, the Richter defendants, with the collaboration of the Diocese Defendants. Alternatively, the fiduciary duties South Carolina law imposed on the Richter Defendants when they elected to allege a class in a complaint whose definition included the Plaintiff were breached by Defendants agreeing to define the class so as to ostensibly include the Plaintiff, but then give only notice that could not possibly reach the Plaintiff. As alleged below, the abandonment by the Plaintiff was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the Plaintiff, or was a breach of the fiduciary duty imposed by South Carolina law on the Richter Defendants and assumed by the Richter defendants towards the Plaintiff. In this cause of action those duties were consciously abandoned in cooperation with the Diocese Defendants so as to not interfere (from class counsel's perspective) with the fee class counsel obtained, and so as to not interfere (from the perspective of the Diocese Defendants) with the protection the 2006 class settlement enabled them to assert.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Limit Total Recovery for Victims and to Depress the Value of Victim Claims

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

212. The first general term in the 2006 class settlement was that there would be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

213. The second general term in the 2006 class settlement was to provide a $12 million settlement fund without risk to the Diocese that the fund would under any circumstances be exceeded. The effect of that provision, when combined with the notice to only the in-state

victims, was to compromise the interests of sexual abuse victims. By avoiding "too many" victims, the Diocese was unable to withdraw from the settlement, but the operation of the 2006 class settlement operated to protect the Diocese Defendants by either eliminating, or depressing, any other recovery for any other potential claimant, such as the Plaintiff.

214. The third general term in the 2006 class settlement was "Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims."

215. The fourth term in the 2006 class settlement was that the court would be asked to approve a fixed fee for class counsel "between $950,000 & $2.5 million."

216. The fifth general term in the 2006 class settlement was to establish that four individuals would allocate among themselves $460,000.

217. The sixth general term in the 2006 class settlement was that the four individuals would be paid whether or not the court approved a class settlement.

218. The seventh general term in the 2006 class settlement was that the seven terms are an offer from the Diocese and "shall be acted upon with reasonable promptness" by the four individuals who would allocate $460,000 among them.

219. The four individuals referred to in the 2006 class settlement agreement accepted the offer from the Diocese, and allocated among themselves $460,000. None of those individuals received more than $160,000. It is not yet known what portion was allocated to a legal fee for class counsel.

220. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class. Their claims were resolved upon acceptance, in 2006.

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

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

223. After June, 2006, those individuals who purportedly represented the classes in the 2006 class settlement, whose claims had been "resolved" in 2006, did not in 2007 qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006 or after class approval in 2007.

224. Nevertheless, by cooperation and agreement among the Defendants those individuals were falsely designated as class representatives in subsequent Dorchester County cases, falsely put forth in the Dorchester County cases as class representatives, and falsely approved as class representatives even though they did not meet the definition of the class.

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

226. In the handwritten version of the 2006 class settlement, when the parties reserved details for later specificity ("Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims"), those details were reserved so the Defendants could work backwards from the settlement fund, minus class counsel's fixed fee, to enable adjustments to be made to the notice to the class and the recovery to the class members, so the recovery to class members would not be "too much." Neither the fee for the Richter Defendants nor the finality desired by the Diocese Defendants would be

jeopardized by having "too many" sexual abuse victims making claims under the 2006 class settlement agreement.

227. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of class members, because the highest priority of the Richter Defendants, ahead of the interests of their clients or ostensible class members such as the Plaintiff, was to preserve class counsel's fixed fee and to get payment of class counsel's fixed fee. That is why the fee to class counsel is fixed, that is why the fixed fee to class counsel takes priority over the recoveries of the class members who participate in making claims under the 2006 class settlement agreement, and that is why class counsel insisted on being paid his fee before any class member had even been identified.

228. The highest priority of the Diocese Defendants, after their willingness to pay class counsel's fixed fee and to collude with class counsel to remain silent as to the unethical aspects of the fee, was to either exclude persons such as Plaintiff, or to try to limit as best they could the possibility of any future recovery to persons such as Plaintiff, so that within the relatively modest limits of the class settlement fund proposed (which resolved sexual abuse claims for a fraction of the cost of similar claims by the same counsel against a Diocese other than class counsel's own Diocese, the Diocese of Charleston), the Diocese could get the class approved then later argue a *res judicata* benefit from the amount paid for the 2006 class settlement without having to pay meaningful relief to all persons who had been sexually abused. That is among the reasons that the Diocese Defendants were prepared to remain silent about class counsel's fee being fixed but the recovery to the class to be variable, and why all Defendants proposed to the shopped-for judge a notice designed to not inform all persons within the class definitions of the settlement.

229. The Diocese Defendants knew, or should have known, that the history of systematic administrative practices of deceit and deception about sexual abuse practiced by the Diocese Defendants exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

230. The Diocese Defendants knew that juries in Charleston County had placed a high value on the intangible nature of sexual abuse claims.

231. To try to limit future sexual abuse claims, the Diocese Defendants elected to consent to the 2006 class settlement, hoping that settlement would define a class so as to alter enable them to argue to exclude the Plaintiff by means of *res judicata.* In that manner the Diocese Defendants could achieve a possible protection for the Diocese at a fraction of the cost of a proper settlement with all sexual abuse victims. The Diocese Defendants realized they could capitalize on the close ties the Richter Defendants had to the Diocese Defendants, and the willingness of the Richter defendants to sacrifice, for a fee, the interests of this Plaintiff, and to enabled the Diocese Defendants to try to minimize recoveries to all sexual abuse victims yet still get a class settlement approved.

232. All Defendants needed to avoid meaningful court oversight of the 2006 class settlement to achieve their collective goals of limiting the interests of absent members of the class, so all Defendants agreed to "judge shop" to avoid oversight by any Charleston judge, and to obtain a unwittingly lax oversight by the shopped-for judge they desired.

233. When the Defendants realized that "too many" victims, such as the Plaintiff, might come forward, either within in the class action or later in time outside of the class action, they changed, by agreement, the notice to the class proposed to the shopped-for judge, to limit how

many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

234. The Defendants also agreed to misrepresent to the shopped-for judge, but to not submit in written form, a proposal to address persons, such as the Plaintiff, who were absent members of the class because they got no notice of the 2006 class settlement. The Defendants collectively represented to the shopped-for judge that relief would be offered to the Plaintiff and others, when in fact the Defendants had no intention of providing relief to the Plaintiff or others.

235. Because the Richter Defendants had no intention of providing relief to the Plaintiff or others, the Richter Defendants failed to secure in any written order those supposed benefits for class members who got no notice.

236. Because the Diocese Defendants had no intention of providing relief to the Plaintiff or others, the Diocese Defendants refused to treat the Plaintiff as each represented to the shopped-for judge the absent class members who got no notice would be treated.

237. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiff. All Defendants took deliberate action to permit victims to be identified by the Diocese Defendants, rather than insisting on giving meaningful notice to putative class members. Doing so was also negligence by the Defendants, but this cause of action presumes that the conduct was intentional, and was done so as to exclude the possibility of this Plaintiff being able to make a claim for his childhood sexual abuse.

238. Paying class counsel his fixed fee before any notice to the class, before any class claimant had been identified, and before any claims by class members had been submitted, was

another way of limiting the recovery to the class and of suppressing the value of any later claims that could be brought against the Diocese Defendants.

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

240. No Defendants disclosed that the Richter defendants were submitting fraudulent information to the shopped-for judge, or that the Diocese Defendants were colluding by agreeing to overlook the fraudulent information submitted by the Richter defendants to the shopped-for judge to support the fee class counsel claimed. No Defendant disclosed that the Diocese Defendants were colluding to make no mention of those various fraudulent time entries by the Richter defendants. Nor had any of the Defendants disclosed to the class that they had colluded so as to agree to request no post-award fairness hearing.

241. To date, no Defendant has requested a post-award fairness hearing for the 2006 class settlement.

242. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the extent of psychological injury caused, was another way to limit the recovery to the class, and to lower to value of any claim for sexual abuse against the Richter Defendants' own Diocese.

243. The Defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as the Plaintiff, and then set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, all as means calculated to harm the Plaintiff by excluding him from making any recovery.

244. The Defendants all calculated that the shopped-for judge would be an unwitting participant in defeating claims by persons such as the Plaintiff, and would approve the mechanisms to do so that were sought by the colluding Defendants.

245. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter Defendants would be paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese Defendants to abandon clients such as the Plaintiff, impair the Plaintiff's ability to make his claim in the future, and to generally depress the recoveries to sexual abuse victims, to serve the interests of the Diocese defendants. Alternatively, the Richter Defendants were out maneuvered by the Diocese Defendants.

246. The Richter Defendants colluded to serve the interests of the Diocese Defendants. Alternatively, the Richter Defendants were out maneuvered by the Diocese Defendants.

247. The Richter Defendants abandoned absent class members such as the Plaintiff, by making no provision for the Plaintiff and by failing to obtain in any written order the relief the Richter Defendants claimed on the record to have achieved for absent class members such as the Plaintiff.

248. All other Defendants cooperated with that abandonment by class counsel of the Plaintiff.

249. Unless the orders which approved the class settlement mean what they say, specifically in the July 30, 2007 order at page 4, where the court appears to have accommodated absent class members such as the Plaintiff by ruling, "any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement," so in other words unless the Plaintiff is not precluded from

bringing his claims against the Diocese Defendants, the 2006 class settlement through its notice and arbitration structure caused damage to the Plaintiff. Unless the Plaintiff is not bound by the *res judicata* effect of the class action, he has been specially harmed by the conspiracy engaged in by the Defendants.

Conspiracy Technique Six: Providing False Information to the unwitting Court

250. The sixth technique used to cause special harm to the Plaintiff was that the Defendants cooperated in filing false information with the unwitting shopped-for Dorchester County judge. When false information was filed by one Defendant, all other Defendants acquiesced, despite knowing the filing was false. Even after the information was identified as false, no action was taken to protect the Plaintiff, unless the class action order means that persons who received no notice are not barred by *res judicata*.

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

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

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

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

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

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

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

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

259. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among Defendants, false time records by the Richter defendants (including individual lawyers billing in a single day compilations of 30, 40, 51.5,

60, 80, and even 92 hours; and billings for multiple "February 30" days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

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

261. If the *res judicata* effect of the class action bars the Plaintiff from making claims against the Diocese Defendants, or the Plaintiff is barred from those claims by the charitable immunity defense (otherwise waived as to persons in the class definition), or the Plaintiff is barred form those claims by the statute of limitations (waived as to persons in the class definition), or the Plaintiff's claims against the Diocese are barred for any other reason, then duties to him in the class action were breached by the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy of the Defendants.

Conspiracy Technique Seven: Obtaining no written order for absent class members who got no notice.

262. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was to include the Plaintiff in the class definition, claim on the record to have protected the Plaintiff, but then fail to follow up with seek a written order to secure representations made on the record to the shopped-for judge about relief supposedly available to absent members of the class members who got no notice. This cause of action assumes those failures by the Richter defendants were intentional, not merely professionally negligent, to protect the Diocese Defendants from future claims in exchange for class counsel's fixed fee.

263. By agreement of all defendants, the class definition did not exclude the Plaintiff.

264. Unless the order approving the class settlement means what it says and this Plaintiff is not bound by the *res judicata* effect of the class settlement, the Defendants have conspired so as to cause special damage to the Plaintiff.

265. The Richter defendants abandoned the Plaintiff as a putative member of the class in agreeing to change the notice requested from the shopped-for judge to provide no notice to the Plaintiff. Either the Plaintiff was a client of the Richter Defendants, or the law of South Carolina imposed on the Richter defendants a fiduciary duty to the Plaintiff when they chose to plead a class action which included him, and the Richter defendants assumed a duty to the Plaintiff when it negotiated a class settlement which included the Plaintiff in the class definition negotiated with the Diocese Defendants.

266. The Richter Defendants originally proposed notice that might reach the Plaintiff.

267. All Defendants then agreed among themselves to modify that proposed notice and conspired together to submit for court approval by the shopped-for judge a proposed notice that was calculated to omit absent members of the class such as the Plaintiff, and all persons situated similarly to the Plaintiff.

268. Class counsel Defendant Haller, on behalf of the Richter Defendants, has admitted that all persons, such as the Plaintiff, who resided outside the zone of the limited notice given in the class action did not receive Due Process in the class action. Referring to those persons such as the Plaintiff for whom no notice was given, class counsel Haller stated, "they never got their due process rights of notice and an opportunity to be heard."

269. Class counsel Haller was among the Richter Defendants who were obligated in the class action to protect the due process rights of the Plaintiff, among others.

270. Class counsel Haller's remarks acknowledge and admit that class counsel failed to protect the Due Process rights of the Plaintiff, among others, a breach of the standard of care.

271. It was the obligation of the Richter Defendants to assure that class members, such as the Plaintiff, received Due Process in the class action.

272. The Diocese has contended, and continues to contend, that the 2006 class settlement agreement bars the Plaintiff from being able to make any claim due to the *res judicata* effect of the class action, without having to compensate him for Hopwood's sexual abuse.

273. The Diocese has made the same contention as to other absent members of the class.

274. The Diocese defendants conspired with the Richter defendants in failing to submit for court approval by the shopped-for judge any order which provided relief or exclusion for absent members of the class who got no notice. This cause of action presumes that failure was calculated to prevent the Plaintiff, and all persons situated similarly to him, from having any recovery against the Diocese Defendants. Other causes of action presume that class counsel was simply professionally negligent, and was out-maneuvered by the Diocese Defendants.

275. No effort was made to protect absent members of the class, such as the Plaintiff, either by how the class was defined, by the notice given to the class, or by any order which embodied how persons who got no notice would be treated. Notice was known to be insufficient for the persons within the class definition, and the Defendants all claimed on the record to the shopped-for judge that relief would be provided, for the Plaintiff and others, who got no notice. Those representations were false, and were embodied in no written order.

276. If the Plaintiff is are barred from making claims against the Diocese by the *res judicata* effect of the class action, or by charitable immunity (which was waived as to those within the class definition), or by the statute of limitations (which was waived as to those

within the class definition), or for any other reasons, then duties to the Plaintiff in the class action were breached by the civil conspiracy among the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy among the Defendants.

277. As an overt act taken in furtherance of the common plan among the Defendants to reduce the number of class claimants, the parties failed to embody in any order in the class action any protections for the Plaintiff, and others similarly situated. That failure has operated to eliminate claims by the Plaintiff, among others, by enabling the argument that all absent class members were barred by *res judicata*. The conduct by all Defendants demonstrate that the representation of the class by class counsel was inadequate, but this cause of action presumes not just that class counsel was professionally negligent but consciously abandoned the Plaintiff so as to not jeopardize class counsel's fixed fee and so as to protect his own Diocese from the greater relief that even class counsel himself insisted on, in another case, from a Diocese other than his own.

278. The defendants conspired specifically to defeat the interests of persons such as the Plaintiff, to cause him special harm by giving him not even a chance at notice of the class action, or the ability to opt out, or the ability to protect his claims from the prohibitions of the class action.

279. The injury to the Plaintiff from the conspiracy engaged in by the Defendants harmed the Plaintiff in a manner different from other causes of action. The Plaintiff was improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the Plaintiff being unable to influence the corrupt course of the class action, and its corrupt features, because he was unable to participate in the class action or opt out of the class action. Plaintiff was deprived of the opportunity to influence the class suit, and to try to assist

himself and other abuse victims from not being limited to the corrupted procedures and manipulations of the class suit. Among other things, the Plaintiff was unable to participate to influence the modest recoveries permitted in the class action, including the miniscule recovery allocated for parent and spousal claims because they were not brought for the class using the common law "loss of services" cause of action. The conduct of the Defendants was, by agreement, designed to limit recoveries of subsequent sexual abuse victims making claims against the Diocese Defendants.

280. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiff was damaged, and is entitled to actual and punitive damages from the Defendants as a result.

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

281. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese, and that the Richter defendants did not intentionally cooperate with the Diocese Defendants to exclude the Plaintiff but were merely professionally negligent in excluding the Plaintiff from relief.

282. The Richter Defendants claimed no prior experience in handling a class action.

283. The Richter Defendants had no prior experience in handling a class action.

284. The Richter Defendants were unaware, and have affirmatively denied, that South Carolina law imposes fiduciary duties to absent members of a class on any lawyer who files a complaint which alleges a class. South Carolina law imposes such a duty.

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

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

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

288. When the 2006 class settlement agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese Defendants, the illicit agreement by Defendants on "judge shopping" had been accomplished, and the 2006 class settlement arrived at in the mediation of Charleston cases was now claimed to be a proposed settlement of all prior cases, both the Charleston cases listed in the 2006 class settlement and the Dorchester County class actions.

289. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the Plaintiff.

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

291. The October 2006 Motion by class counsel was styled, "Motion to Certify Classes and For Preliminary Approval of Class Settlement." That motion proposed nationwide notice of the class settlement.

292. The January, 2007 Motion by class counsel was also styled, "Motion to Certify Classes and For Preliminary Approval of Class Settlement." That revised motion removed the proposed nationwide notice of the class settlement that had been made in the motion of October, 2006.

293. On the record before the shopped-for judge in Dorchester County, at a hearing held July 13, 2007, the Diocese Defendants agreed that relief would be provided for absent members of the class who got no notice of the class settlement. Those representations were false, but this cause of action presumes the Richter Defendants were not intentionally falsifying that representation but were professionally negligent in failing to seek a written order to secure the representations made on the record.

294. On January 19, 2007, the proposed class definitions that included persons such as the Plaintiff, who lived outside of South Carolina, with notice proposed to be given only in a geographically limited area, none of which would be given in the state in which the Plaintiff resided, was approved without objection from the Diocese Defendants.

295. In their Charleston and Dorchester County class action cases against the Diocese Defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the Plaintiff, and by operation of South Carolina law fiduciary obligations to the Plaintiff were imposed on the Richter Defendants. The Richter Defendants breached those obligations to the Plaintiff. In abandoning the Plaintiff, the Richter defendants performed in a professionally negligent manner the duty they had assumed, and the

duties which South Carolina law imposed, to absent putative class members such as the Plaintiff.

296. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they abandoned the Plaintiff and acted so as to harm his interest, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the Plaintiff reasonably informed, failed to provide him with information with respect to obtaining his informed consent, failed to consult with him about the means for accomplishing his objectives, represented him without his consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal, as set forth in the affidavit of Michael Virzi.

297. No provision of any type, at any point, was made in the orders of the shopped-for judge overseeing the class action to protect absent putative class members who in 2006 had no recollection of their childhood sexual abuse.

298. The Richter Defendants abandoned their absent putative class member clients, such as the Plaintiff, by failing to secure in a written order the provisions which supposedly gave the Plaintiff mild protection in the form of the modest recovery of the class action.

299. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the Court, by failing to secure in any written order protection for the Plaintiff's interest, by failing to give notice reasonably calculated to reach the Plaintiff.

300. The Plaintiff was abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action or after the class action and jeopardize

the fixed fee the Richter Defendants had negotiated for themselves, at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

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

302. As a result of his attorneys, the Richter defendants, abandoning the Plaintiff, he had no opportunity to participate in the class action, or to opt-out of the class and pursue either the more favorable terms available to those other persons who opted out or pursue his claim independently. The acts and omissions of the Richter defendants have caused damage to the Plaintiff, assuming the Plaintiff is prevented from his claims against the Diocese for any reason. A barrier was created to the Plaintiff's claims that would not have existed but for the negligent conduct of the Richter defendants.

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

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

304. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese, and the Richter Defendants did not

intentionally exclude the Plaintiff but were merely professionally negligent in excluding the Plaintiff from having a preserved claim.

305. The Richter defendants agreed to define the classes in the class actions so as to have no geographical limit on the classes.

306. All Defendants agreed on how the classes were defined.

307. In choosing to define the classes so as to include the Plaintiff, the Richter defendants each assumed, and South Carolina law imposed, fiduciary obligations from the Richter Defendants to the Plaintiff, who was an absent putative member of one of the classes they defined.

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

309. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiff by:

a. failing to give him notice of the 2006 class settlement,

b. failing to secure for him even the modest relief of the class action,

c. failing to preserve his ability to make his claim independent of the modest relief obtained by the Richter defendants for sexual abuse victims, and

d. agreeing to a structure which worked to significantly depress the value of claims against the Diocese Defendants, to which class counsel had extensive loyalties and entanglements which were not disclosed to the class.

310. The state court judge overseeing the class action was shopped-for by all Defendants.

311. The state court judge was not asked to preserve in any written order any rights for absent members of the class who got no notice of the 2006 class settlement.

312. The Richter Defendants assumed the duty to protect the Plaintiff but then failed to do so. The Richter defendants were negligent in failing to do so, and were out maneuvered by the Diocese Defendants, who had made representations on the record but then succeeded in keeping those representations from being embodied in any court order.

313. Once the Richter Defendants were paid their court-approved fee, they were ineffectual in securing the rights of the Plaintiff to preserve his ability to make a claim.

314. The Richter defendants in its 2005 Charleston class action filing, and in the 2006 class settlement agreement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the Plaintiff, and those duties were imposed by South Carolina law upon the Richter Defendants.

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

316. The Richter defendants contend that they had no obligations to absent class members, indicating conclusively their lack of understanding of the obligations undertaken by class counsel and imposed on class counsel by South Carolina law.

317. The Richter defendants each breached their fiduciary duties to the Plaintiff, and as a result, the Plaintiff has been refused any compensation by the Diocese Defendants, who have used the 2006 class settlement as a shield. The Richter defendants were negligent in failing to protect the Plaintiff's interest.

318. Having "too many" claimants also was believed by the Richter defendants to not be in the interest of the Diocese Defendants, and to protect their own interest in their fixed fee the

Richter defendants had to also act to protect the interests of the Diocese more than the interests of the Plaintiff. The Richter defendants have close and longstanding ties and involvement with the Diocese Defendants. Those involvements were never disclosed to the class, or to the Plaintiff. To promote the interests of the Diocese Defendants in trying to later enable the Diocese defendants to argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the Plaintiff their own interest in their fixed fee, the Richter defendants failed to secure in any written orders any protections for absent members of the class such as the Plaintiff, even though the class compensation was among the lowest-known compensation for sexual abuse victims.

319. As a result of the Richter defendants abandoning the interests of the Plaintiff, and breaching the fiduciary duties the Richter defendants owed to him, the Plaintiff has been damaged by having his claims against the Diocese Defendants interfered with, and a barrier created to those claims that would not have existed but for the negligent conduct of the Richter Defendants.

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

For a Sixth Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty by Diocese Defendants

321. Allegations above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiff is unable, for any reason, to make his claim for childhood sexual abuse against the Diocese.

322. The Diocese Defendants aided and abetted the breach of fiduciary duty by the Richter defendants.

323. In pleading a class action the Richter defendants assumed, and South Carolina law imposed, a fiduciary duty to the Plaintiff of which the Diocese was aware.

324. In the conduct to "shop for' the Dorchester County judge, to define the class, and to limit notice, as alleged above, the Diocese Defendants participated with the Richter defendants in limiting the ability of the Plaintiff to make his claim against the Diocese for childhood sexual abuse.

325. The Diocese Defendants joined with the Richter defendants in making representations on the record to the shopped-for judge that supposedly protected the interest of the Plaintiff into either his being able to bring his claim at a later time or in being able to participate, at minimum, in the intentionally depressed recovery available to class members in the 2006 class settlement. The Defendants then failed to secure those representations in any written order, enabling the Diocese Defendants to deny the representations, and act as if those representations had never been made.

326. The Diocese Defendants knowingly participated in the breach of the fiduciary duty owed to the Plaintiff by the Richter defendants.

327. The Plaintiff has been damaged by the aiding and abetting by the Diocese Defendants and is entitled to actual and punitive damages as a result.

For a Seventh Cause of Action
Unfair and Deceptive Trade Practices by the Richter Defendants

328. Allegations of paragraphs above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiff is precluded, for any reason, from maintaining his claims against the Diocese Defendants.

329. The Richter Defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

330. In practicing law in Charleston County the Richter Defendants each engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Richter Defendants advertised and offered for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. In electing to bring a class action complaint for sexual abuse victims of the agents and employees of the Diocese Defendants, the Richter Defendants specifically offered a service to the people of South Carolina, and purported to alter the legal rights of the public as to that sexual abuse, including the Plaintiff's rights.

331. In making that invitation, the Richter Defendants assumed the duty to ensure that its offer of services did not disadvantage the Plaintiff, and assumed the duty that its services would be free of unfair and deceptive trade practices.

332. In 2006 the Richter Defendants entered into a class settlement agreement with the Diocese for victims of sexual abuse by agents and employees of the Diocese Defendants. The 2006 class settlement was ostensibly to address the known history of priests and other employees who sexually abused minors, but as effectuated by the Richter Defendants, the primary purpose of that class action was to enrich the Richter Defendants at the expense of sexual abuse victims and, through unfair and deceptive trade practices, to protect not his clients but the Diocese Defendants from future claims for sexual abuse by absent class members.

333. Unfair and deceptive trade practices were pursued in furtherance of the class action, as alleged above, including false representations to the court, violations of professional standards, judge-shopping, collusive conduct, abuse of court rules and procedures, and actions which violate professional standards, as pleaded with specificity above.

334. The public interest was affected by the 2006 class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited

to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved by the court predicated on false representations made to the unwitting Court about how the person such as the Plaintiff who got no notice would be accommodated.

335. Among the false statements made at the time by the Defendants was Bishop Baker's public statement that the proposed class resolution was "for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades." At the time that claim was made, all Defendants were aware that the 2006 class settlement proposed relief about which only persons in and around South Carolina were to be informed, and that no provision had been made for persons, such as the Plaintiff, who resided out of state. In its public statements, acquiesced in by the Richter defendants, the Diocese Defendants overtly misrepresented the reach of the proposed 2006 class settlement. No party disclosed that in fact the 2006 class settlement agreement was designed, as its first priority, to obtain a fee for class counsel, with all relief to clients secondary to that fee, and that the 2006 class settlement agreement was designed so as to omit and preclude relief to many persons who had been sexually abused, and was designed to provide among the worst recoveries for sexual abuse victims in any case nationwide, and was designed by class counsel to protect the Diocese Defendants from future claims.

336. A circuit court judge to oversee and approve the class settlement was "shopped for" and selected by the Richter Defendants, with collaboration of the Diocese defendants. The Richter defendants did not want any Charleston County judge to preside over the 2006 class settlement agreement, out of concern that the judge might be fully independent.

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

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

339. The Richter Defendants had extensive and life-long ties to the Diocese Defendants, and was known to the Diocese Defendants to be willing to compromise the interests of the absent class members, including the Plaintiff, in exchange for a fixed fee payment.

340. With the cooperation of the Diocese Defendants, the Richter Defendants conceived of a plan to commit a fraud on the Court and the public by representing to the Court and the public, falsely, a rationale upon which the Court could approve a class settlement defined with no geographic limits, while giving only geographically limited notice to the class and in affirmatively misrepresenting to the Court the relief which would be available to persons such as the Plaintiff, who got no notice. As long as their fee was paid, and paid first, before any class member had received notice and before any class member had made a claim, the Richter Defendants were expected to by the Diocese defendants, and were in fact willing, to abandon the interests of absent class members and instead to accommodate the interest of the Diocese Defendants at the expense of the absent members of the class the Richter Defendants represented.

341. All Defendants collaborated to submit false information to the unwitting shopped-for Dorchester County trial court, and no Defendant objected when any of the false information was submitted by any of them or by their experts. Part of the collaborative agreement among the Defendants was to remain silent while false information was submitted.

342. To gain court approval of the class settlement from the shopped-for judge without disclosing his actual intention to compromise the interest of the absent class members such as the Plaintiff, the Richter Defendants made overtly false representations of fact to the court. Among those false representations was that there was an "understanding" among all Defendants in this action "as to what would happen" to any person within the class definition who "shows up" (as put by the Diocese Defendants) outside of the class notice procedure. That "understanding" communicated to the Court was never placed in any written order by the shopped-for judge and no such "understanding" exists that the Diocese Defendants agree to. Nor is there any way to enforce the claimed "understanding" because it is not embodied in any order.

343. It was falsely represented to the shopped-for judge overseeing the 2006 class settlement that if "someone pops back up who should have gotten notice who didn't get notice," the Diocese represented, with the Richter defendants:

> I think we [the Diocese and class counsel] have an understanding as to what would happen to those particular folks, which would really be our problem, and I think that what we've discussed allows us to proceed with the agreement we've signed on January 12th [2007]. And then if that person shows up then we [the Diocese] would have to deal with that.

344. That representation by the Diocese Defendants to the Court appears on page 3 of a transcript dated July 13, 2007. The representation was either false when made, and known to have been false when made, or it was at that time true but is contained in no written orders of

the court, so is unenforceable. The Richter defendants, who were acting in the interests of the Diocese Defendants rather than the Plaintiff, intended the representation to be unenforceable or would have secured the representation by an order. The representation was made in a hearing in the class action proceedings for which no notice had been given to any of the other parties who were known by their prior appearances to be interested in the class proceeding. Only in 2009 was the transcript disclosed in the course of other litigation over the collusive class action proceedings.

345. In that same transcript of July 13, 2007, the Diocese Defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. It was acquiesced in by the Richter Defendants. In fact, the Richter Defendants were aware, and had alleged, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves.

346. To get approval that protected the Diocese from, among other things, the Plaintiff's sexual abuse claim, the Defendants falsely represented to the Court, on page 14 of the same transcript, that when an absent class member did not get notice, and later identified himself or herself, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

347. The Richter defendants, on pages 16 - 17 of that same transcript, summarized to the shopped-for judge, falsely, that the supposed position of the Diocese as "what the Diocese has come to is that if anybody is missed . . . the diocese waives all the same defenses that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards."

Those terms were supposedly submitted by letter by the Diocese Defendants, but were entirely false. When the Plaintiff communicated with the Diocese, the Plaintiff's request for compensation was rejected, as the Richter Defendants knew or should have known in 2007 would occur after the class action was concluded, which is among the reasons why the Richter Defendants submitted to the shopped-for judge who oversaw the 2006 class settlement no written orders to embody the "understanding."

348. Nor did the Richter Defendants disclose that the representations were false when the shopped-for judge observed, as to the Diocese, on page 25 of that same transcript, "what they [the Diocese] say is if you come forward in the future we will treat you just the same as we have treated these individuals and the relief is available for you."

349. The Richter Defendants intended on July 13, 2007, to create the false impression with the Court that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend relief to that victim. In making the false representation that they made no effort to embody in any court order, the Richter Defendants were operating not in the interest of the Plaintiff and other absent members of the class, but in the interest of the Diocese Defendants. The Richter Defendants intended that the shopped-for judge would rely on the statement, and the court did rely on the statement. However, the court did not embody the understanding in its order, and the Diocese Defendants refuse to comply with the "understanding." That representation by the Richter defendants was false when made, and was known to have been false when made.

350. As to this Plaintiff, the Defendants concealed until 2012 the falsity of the representations to the shopped-for judge. The true position of the Diocese has been, starting in 2009, to deprive other sexual abuse victims of any relief, using the class action suit as the

rationale for doing so. That fraudulent concealment by the Diocese became known to the Plaintiff only in 2012.

351. The shopped-for judge who oversaw the 2006 class action settlement relied on the statements by the Richter Defendants, and silence by the Diocese, to extend in the court's order of July 30, 2007 approving the class settlement, at page four, this statement:

> The Diocese has further stated that it understands that **any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement**. Further the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Emphasis added. While one might expect that the order's language would reflect the conduct of the Diocese Defendants or what a court would enforce, in fact the shopped-for judge reflected only what the Diocese has "stated," which has proven to date to be an unenforceable order, as the Richter Defendants intended in 2007.

352. Along with the Richter Defendants, the Diocese Defendants intended that the shopped-for judge overseeing the 2006 class settlement would rely on their collective statements, silences, and conduct to form the impression recorded in the court's 2007 order, even though the impression was false and neither the Richter Defendants nor the Diocese Defendants had any intention, in 2007 or since, of honoring the assurances given to the shopped-for judge overseeing the 2006 class settlement.

353. When this Plaintiff in 2012 informed the Diocese of Hopwood's abuse, the Diocese (as the Richter defendants intended in 2007), refused to honor the assurances given to the trial court by the Richter Defendants, and which the Court noted in its July 30, 2007 order at page 4 without actually ordering. Instead, the Diocese asserted the defenses it had waived for class

members, claimed as to this Plaintiff the *res judicata* effect of the class action which the Diocese Defendants had disclaimed, and acted exactly contrary to the assurances to the Court by the Richter Defendants, and contrary to the public statement by then Bishop Robert Baker in January, 2007, that the Diocese intended a just resolution for every person who had been abused within the Diocese of Charleston.

354. The false statements by the Richter Defendants, and the irregular conduct in the course of the class action by the Richter Defendants, and the Richter Defendants acting in the interest of the Diocese Defendants rather than in the interests of the absent members of the class, constitute unfair and deceptive trade practices which have damaged the Plaintiff.

355. The Richter Defendants made their false representations to the shopped-for judge overseeing the 2006 class settlement for the purpose of gaining that unwitting court's approval of a class settlement with only limited notice to the class and with no protections for absent members of the class. When the 2007 order mentioned the "understanding" but appeared not to have ordered it, the Richter Defendants did nothing to seek modification of the order.

356. The Richter Defendants committed fraud on the Court, on the public, on this Plaintiff, and on all sexual abuse victims of the Diocese Defendants who were born before August 30, 1980, the definition used in the 2006 class settlement, who were given no notice of the class action, and whose relief was limited by the class action. In doing so the Richter Defendants also engaged in unfair and deceptive acts and practices in violation of South Carolina law, which have disadvantaged the Plaintiff. In doing so the Richter Defendants were acting in the interests of the Diocese Defendants, not in the interests of the absent Plaintiff whose interests they purported to represent.

357. All of the conduct by the Richter Defendants, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the 2007 representations made to the Court by the Richter Defendants and acquiesced in by the Diocese Defendants. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action, have since been refused relief by the Diocese when they made a claim for relief.

358. The disregard by the Richter Defendants for absent members of the class, the misconduct throughout the class action, and the disingenuous representations by the Richter Defendants to the unwitting judge who had been hand-picked by the Defendants to oversee the 2006 class settlement agreement are unfair and deceptive acts or practices that affected the relief awarded in the class action, and affected the Plaintiff by disabling his claim against the Diocese for his childhood sexual abuse.

359. The conduct by the Richter defendants is part of an intentional effort to mislead the Court, and to act against the interests of the absent members of the class and instead to act in the interest of the Diocese Defendants, with whom the Richter Defendants are entwined.

360. The Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Richter Defendants. Specifically, the Plaintiff was unable to obtain the relief promised by the Richter Defendants, was unable to preserve his claim after he was abandoned by the Richter Defendants, and due to the misconduct of the Richter Defendants, to date has been unable to maintain his claim against the Diocese. As a result the Plaintiff is entitled to recover actual damages, trebled as provided by law, for the unfair and deceptive trade practices of the Richter Defendants, with costs and disbursements and attorneys fees as provided by statute.

361. The secretive and disingenuous conduct by the Richter Defendants, and the misconduct displayed during the class action, is offensive to public policy, is immoral, unethical, and oppressive. The Richter Defendants made a calculated business decision to advance ahead of their class member clients' interests, and ahead of the interests of the absent members of the class, first the Richter Defendants' own financial interests, then the interests of the Diocese Defendants.

362. The Richter Defendants collaborated with the Diocese Defendants to design a compensation program for sexual abuse victims which specifically, and intentionally, excluded many victims, reduced the financial recovery for victims, depressed the financial recovery for other victims, and cut off the ability of absent members of the class to make claims. Each of those goals by the Richter Defendants was illicit, and was an unfair and deceptive trade practice for an action which purported to bring a benefit to a class. For those reasons the Richter Defendants collaborated with the Diocese Defendants to "shop" for an unwitting hand-picked Dorchester County judge to oversee the 2006 class settlement so as to avoid independent scrutiny of the 2006 class settlement that a Charleston County judge would impose. The Richter Defendants engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the Plaintiff.

363. The Richter Defendants took no appeal from the July 30, 2007 order, and sought no modification of that order, or for any subsequent order of the unwitting shopped-for judge who oversaw the 2006 class settlement.

364. The Richter Defendants are bound by the July 30, 2007 order in the class action, and by the representations made to the court to obtain that order. Those terms abandon the absent class members such as the Plaintiff.

365. As intended by the Richter Defendants in 2007 as the *quid pro quo* for their fee, when the Diocese was contacted in 2012 by the Plaintiff, who had received no notice of the class action, the Diocese refused him relief and asserted against victims who did not get notice, exactly as the Richter defendants had assured the shopped-for judge they would not, the *res judicata* effect of the class settlement, as well as the defenses it had waived on the record for persons within the class definition. As was known by the Richter Defendants in 2007 both at the time of the July 13, 2007 hearing, and subsequently, in a hearing held August 9, 2007 (for which other persons who had appeared in the class action also did not receive notice) when starting at p. 57 of the transcript the Diocese asked for clarification, the Diocese Defendants had no intention of including other victims who "for whatever reason" received no notice, and would undertake no relief for victims the Diocese Defendants were not compelled to undertake.

366. The Richter Defendants intended the collusive class action to terminate liability by the Diocese for abuse victims, to limit overall compensation paid to abuse victims, and to do so at a fraction of the recovery a truly adversarial counsel might have demanded. The Richter Defendants acted in the interest of themselves and the Diocese, ahead of its ostensible clients, such as the Plaintiff.

367. The unfair and deceptive acts and practices of the Richter Defendants have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese Defendants have repeatedly refused

relief (as intended by the Richter Defendants) for multiple persons who have come forward having not gotten notice of the collusive 2006 class settlement. The practices engaged in by the Richter Defendants, violating professional standards and court rules, violating legal ethics, making misrepresentations to the court, and (in collaboration with the Diocese Defendants) making misrepresentations to the public were all done to advance the Richter Defendants' own interests.

368. The Richter Defendants calculated that their personal and professional connections to the unwitting shopped-for judge would permit false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, the Richter Defendants were correct, as even after evidence of the false practices were laid before the shopped-for judge no inquiry was made, and no post-award fairness hearing was held.

369. The Plaintiff is neither politically connected nor a personal friend of any powerful person, and has no choice but to rely on the theoretical interest that a judge is supposed to have as to misrepresentations to the court, and on the prohibitions of the Unfair Trade Practices Act.

370. The false and deceptive practices of the Richter Defendants will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Richter Defendants in compromising the interests of absent members of the class they purported to represent has been actually repeated, as well as has the potential for repetition, in the form of the sexual abuse victims who got no notice of the 2006 class settlement and who have requested, and been denied, relief, as the Richter Defendants intended and enabled the Diocese Defendants to do.

371. The Richter Defendants should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating,

altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to the conduct of the Charleston or Dorchester County cases in which any of the Diocese Defendants were supposedly adverse parties.

372. The 2006 collusive class settlement was achieved without a single motion having been argued, and without a single court ruling on any aspect of any of the Charleston cases then pending at the time of the 2006 class settlement. The parties had successfully sought to have the Charleston court continue each hearing the Charleston court proposed to engage on the supposed issues of the case. That settlement was collusive, and placed the interests of the Richter Defendants ahead of the interests of those who became class members and ahead of absent members of the class.

373. The Richter Defendants violated the UTPA willfully, in that each of them knew or should have known that their conduct was a violation of S.C. Code § 39-5-20, and they purported to obtain relief for the Plaintiff that in fact they did not obtain in any written order.

374. The Plaintiff has suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Richter Defendants. The Plaintiff ought to have been entitled to either (a) the relief the Richter defendants maintained, falsely, to the court in 2007 would be available to the Plaintiff, or (b) should be able to maintain his own action against the Diocese Defendants. The Plaintiff's relief should not be restricted to the low maximum amount the Richter Defendants used to protect the Diocese. Conduct by the Richter Defendants was willful, and each of the Richter Defendants knew, or should have known, that his conduct was unfair and deceptive.

375. The plaintiff is entitled to treble damages as a result of the conduct of the Richter Defendants in the conduct of the 2006 class settlement which affected the Plaintiff's interests, as well as to actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

Demand for Jury Trial

376. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

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

378. Costs and disbursements of this action,

379. Attorneys fees as authorized by law,

380. Punitive damages as authorized by law, and for

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

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

Respectfully submitted,



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Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

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

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

John Doe #53
v.
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity
CASE NO.: 2005-CP-10-4913

Settlement Agreement

See Terms attached on Exh. #1

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

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

_____ _____

By: _____ By: _____
(Print Name) (Print Name)
Its: _____ Its: _____
Dated: _____ Dated: _____

EXHIBIT "4"

Attachment A - 000001

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to Create Settlement Class, subject to Court approval of:

   (a) ACTUAL VICTIMS OF DIOSECE ABUSE

   (b) SPOUSAL &/or Parent claim deriving from victims abused

2. Class Settlement FUND will be for $12,000,000 FUNDED AS FOLLOWS:

   (a) $5,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with $7,000,000 limits once the $5,000,000 Letter of Credit has been drawn down to $1,000,000.

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

Attachment A - 000002

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

5. Mr. T Redacted * shall be paid _____

Mr. S Redacted * shall be paid _____

Mr. N Redacted * shall be paid _____

Mr. M Redacted * shall be paid _____

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

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

~~7. Class opt outs + objections~~

Attachment A - 000003

(5)

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

James Healy, Attorney

June 14, 2006

ON BEHALF OF DEFENDANTS

Attorney-in-fact with authority of the Deceased of Confidence.

Attachment A - 000004

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

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

1. I am offering this affidavit, pursuant to S.C. Code Ann. § 15-36-100(b), as an expert witness on behalf of the plaintiff, Jane Doe 12, (hereinafter "Plaintiff") to support her Complaint against defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Defendants") for professional negligence.

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

A. I am a lawyer licensed to practice law in South Carolina, and my practice focuses exclusively on matters of legal malpractice and legal ethics;

B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Professional Responsibility and Ethics Advisory Committees, and I served a three-year term as Chair of the Ethics Advisory Committee;

C. I have authored three published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;

D. I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice and ethics, and I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and

E. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

My opinion is based on review of the following documents:

A. Complaint captioned Jane Doe 12 v. The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin; former Administrator

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Attachment B - 000001

of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, Case No. 12-CP-10-_____ (blank line in original);

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

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

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

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

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

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

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

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

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

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

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Attachment B - 000002

Attachment B - 000002

R. App. 001025

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

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

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

iii. Affidavit of Angela Pittard, with attached timesheets;

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

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

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

N. Transcript of July 13, 2007, hearing before Judge Goodstein.

O. Order Approving Settlement, dated July 30, 2007, and filed July 30, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636

Attachment B - 000003

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

4. Based on my experience, education, training, knowledge of the standard of care for lawyers, and on my review of the above-listed documents, it is my opinion that Defendants engaged in negligent acts and omissions in their representation of the Plaintiff including the following:

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5. It appears from the above-referenced documents that Defendants represented a class of persons of which Plaintiff was a member. Whether an unnamed class member becomes a client upon the filing of a class action or upon certification of the class is a much-debated issue; however, class certification is generally regarded as creating an attorney-client relationship if one did not already exist. Furthermore, prior to class certification, class counsel owes fiduciary duties to unnamed class members upon the filing of a class action, regardless of whether breach of those duties is regarded as malpractice or professional negligence. Defendants owed to Plaintiff and other unknown class members the same duties surrounding the allegations in this case that they owed to the named plaintiffs in the class action. Those duties included competent, diligent, and loyal pursuit of Plaintiff's interests in the litigation against the Diocese and related defendants, and reasonable communication starting with notice by publication.

6. It appears Defendants failed to protect Plaintiff's interest in the class action in several ways. Statements by Richter at the July 13, 2007, hearing indicated that any class member that did not receive notice (a group that includes Plaintiff) would be entitled to bring claims after the claims period and that the Diocese would waive all defenses to such later claims. Other discussions at that hearing involved the same waiver and late-claim entitlement issues specifically with respect to several individual class members who had contacted the Diocese previously regarding allegations of abuse. The July 30, 2007, order preserves the late-claim rights of (i.e., requires the Diocese to waive defenses as to) only those individuals that had previously contacted the Diocese, not of other class members who are entitled to notice but did not receive it, such as Plaintiff. In a June 15, 2011, order Judge Harrington ruled that the July 13, 2007, hearing colloquy and the July 30, 2007, order referred only to the individuals who had previously come forward with abuse claims but not received actual notice, and not to the broader

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Attachment B - 000004

group of class members, like Plaintiff, who lived outside the area of notice by publication. Regardless of whether Defendants intended at the July 13 hearing to address this broader group or only the individuals who had come forward already, Defendants failed to protect the interests of the broader group, of which Plaintiff is a member, either by not addressing their rights at the hearing or by addressing them at the hearing but making no effort to secure their rights in a final order. Defendants then acted directly adverse to Plaintiff and this group when Defendant Haller filed a motion in 2012 to enforce the class-action settlement, purportedly on behalf of Plaintiff and others whom Haller knew to be represented by other counsel. Haller took a position in the motion that is adverse to Plaintiff and others outside the notice zone and advantageous to Defendants.

6. It appears that Defendants engaged in additional acts and omissions that were both disadvantageous to Plaintiff and advantageous to Defendants themselves, including consenting to the dismissal of the Charleston County cases without client consent in furtherance of Defendants' efforts to obtain a favorable order regarding their fees, which fees themselves were unethical in several ways, including that they sought and received a fixed fee simultaneously with a common-fund recovery pool available to claimants, and that they were based on blatantly false attorney time records. Defendants also reduced the extent of notice to class members to the exclusion of nearly the entire country outside of South Carolina, despite identifying (and ultimately obtaining certification of) a nationwide class, and authorized the claims arbitrator to adjust awards so that the total claims would not exceed the remainder of the pool after payment of Defendants' $2.5 million fee. Because a significant increase in the number of claimants responding to notice could jeopardize Defendants' fees, this reduction in notice favored Defendants' own interests to the detriment of all class members, but particularly Plaintiff

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Attachment B - 000005

and other class members outside the notice zone of South Carolina and neighboring cities. Defendants thus not only favored their own interests above their clients', including Plaintiff's, but also provided the Diocese with an argument in its defense against subsequent claims by class members outside the notice zone, including Plaintiff, sacrificing their clients' rights in favor of the opposing party. Defendants also agreed to reduce their clients' recovery but not their own fees, if the claims exceeded the pool, and agree to possibly reducing the claimants' pool by $100,000, which would be contributed toward a settlement between the Diocese and several opted-out class members, all to the detriment of the class members including Plaintiff, and to the financial benefit of Defendants themselves. Haller's 2012 motion to enforce the settlement now attempts to force Plaintiff and other class members outside the notice zone to be bound by the bad deal Defendants struck on their behalf in 2007.

7. It further appears that Defendants engaged in a broad scheme to generally obtain results favorable to the Diocese, with whom Defendant Richter had a life-long affiliation and for whom Richter continued to perform official services during the pendency of the class action, without the knowledge or consent of his clients. The scheme appears to have included:

A. forum shopping, requiring Defendants to consent to the dismissal of the Charleston County cases, which they did without the knowledge or consent of their clients and to the detriment of their clients, including Plaintiff;

B. misrepresenting to the Dorchester County court that the action had not been settled when it had, in order to obtain a favorable forum and complex case designation; and

C. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review, and further sacrificing clients'

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Attachment B - 000006

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

8. It further appears that Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-class-representative clients, including agreeing to subject some clients to a damages matrix and claim scrutiny to which class representatives were not subjected, settling the claims of the class representatives prior to class certification and court approval of the class settlement, and expressly agreeing to settlement terms for the class representatives regardless of court approval of the class settlement.

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

Attachment B - 000007

many of the time entries are clearly false in that they are nonsensical and/or impossible, including:

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

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

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

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

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

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

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

Attachment B - 000008

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

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

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

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

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

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

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

Attachment B - 000009

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

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

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

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

Attachment B - 000010

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

7. As a result, it is my opinion that Defendants' conduct fell below the degree of skill, knowledge and judgment usually possessed and exercised by members of the legal profession in South Carolina, and that they breached duties of competence, diligence, communication, and loyalty to Plaintiff.

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

Further affiant sayeth naught.

Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 31st day of July, 2012

Notary Public

My Commission Expires : My Commission Expires October 18, 2020

Attachment B - 000011



JEFF ANDERSON & ASSOCIATES PA

REACHING ACROSS TIME FOR JUSTICE

ATTORNEYS
JEFFREY ANDERSON
REGISTERED FOREIGN LAWYER
(UNITED KINGDOM)
Minnesota
Wisconsin
Illinois
Colorado
New York
Pennsylvania

MICHAEL FINNEGAN
Minnesota
Wisconsin
California

GREGG MEYERS
Minnesota
South Carolina

J. MICHAEL RECK
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New York
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Alabama

ELIN LINDSTROM
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Wisconsin

ANNIE KOPPLIN
Minnesota

OF COUNSEL
ANTHONY DEMARCO
California

OFFICE LOCATIONS
St. Paul, Minnesota
Pasadena, California
Chicago, Illinois
Milwaukee, Wisconsin
Charleston, South Carolina
New York, New York
London, England

July 16, 2013

Via FedEx

Julie Armstrong
Clerk of Court for Charleston County
100 Broad Street
Charleston, SC 29401

Re: John Doe 194 v. The Bishop of Charleston, a Corporate Sole, et al.

Dear Sir or Madam:

Enclosed please find an original Civil Action Coversheet, Summons, and Complaint for a new action. Also enclosed is our check for $150 for the filing fee. Please file the original documents and I will undertake service of the pleadings once they are filed.

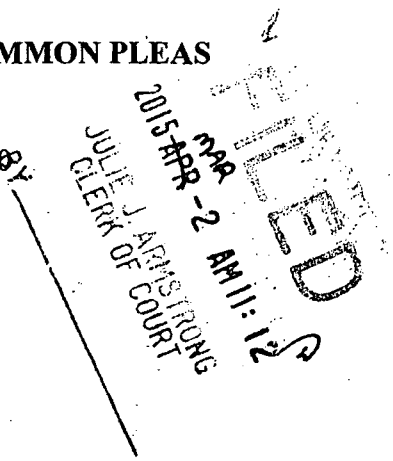
Best personal regards,

Gregg Meyers
gregg@Andersonadvocates.com

GM:tld
Enclosure

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS



John Doe 2 and Jane Doe 4,) CASE NO.: 2010-CP-10-5520
)
Plaintiffs,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 10,) CASE NO.: 2010-CP-10-7233
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

Jane Doe 11,) CASE NO.: 2012-CP-10-5559
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 193,) CASE NO.: 2013-CP-10-3733
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

Father Doe 194,	)	CASE NO.: 2013-CP-10-4175
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The Bishop of Charleston, et. al.	)	
	)	
Defendants.	)	

John Doe 194,	)	CASE NO.: 2013-CP-10-4176
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The Bishop of Charleston, et. al.	)	
	)	
Defendants.	)	

RICHTER DEFENDANTS' NOTICE OF MOTION AND MOTION FOR LIMITED COLLATERAL REVIEW AND FOR SUMMARY JUDGMENT

TO: PLAINTIFFS AND GREGG MEYERS, THEIR COUNSEL

YOU WILL PLEASE TAKE NOTICE that the Defendants Lawrence E. Righter, Jr. and Richter and Haller, LLC will move before the Honorable J. C. Nicholson, Jr. at the Charleston County Judicial Center, Charleston, South Carolina on the tenth (10^{th}) day following service hereof, or as soon thereafter as counsel can be heard, for an Order pursuant to John Doe, et. al. v. The Bishop of Charleston, et. al., 407 S.C. 128, 754 S.E.2d 494 (2014) and Rule 56, SCRCP, as follows:

1. Conducting a limited collateral review of the class action settlement in *John Doe #53, et. al. v. The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity,* Case Nos. 2006-CP-18-1310, 1311 and 1636 ("the Underlying Class Action");

2. Upon conducting a limited collateral review of the Underlying Class Action settlement, finding that the settlement reached therein does not preclude the plaintiffs in these cases who did not reside in South Carolina in 2007 (the "Nonresident Plaintiffs") from bringing claims against the Diocesan Defendants for sexual abuse at the hands of priests;
3. Upon conducting a limited collateral review of the Underlying Class Action settlement, finding that the settlement reached therein does not preclude John Doe 193, who alleges that he repressed the memory of his sexual abuse until June 2010 (the " Repressed Memory Plaintiff "), from bringing claims against the Diocesan Defendant for sexual abuse at the hands of priests;
4. Upon concluding that the Nonresident Plaintiffs and the Repressed Memory Plaintiff are not precluded from bringing claims against the Diocesan Defendants for sexual abuse at the hands of priests by the settlement in the Underlying Class Action, then finding and concluding that the Nonresident Plaintiffs and the Repressed Memory Plaintiff's allegations against the Lawyer Defendants in their Complaints are irrelevant, as alleged, and that the Lawyer Defendants are entitled to summary judgment as a matter of law; and
5. Finding and concluding that there are no genuine issues as to any material facts relating to the Lawyer Defendants and that the Lawyer Defendants are entitled to summary judgment as a matter of law.

These motions will be based upon the pleadings in these matters, the record in the Underlying Class Action, such memoranda and affidavits as may be hereafter served and filed and the law in such cases as have been made and provided. You are intended to attend and take part as you may deem just and proper.

James L. Bruner
Caitlin C. Heyward
BRUNER POWELL WALL & MULLINS, LLC
P. O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for the Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC

February 25, 2015

* *

CERTIFICATE OF SERVICE

I, Kaye White an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC, do hereby certify that on February 25, 2015, I served a copy of the documents listed below on counsel of record by depositing a copy of same in the U.S. Mail, first-class, postage prepaid and addressed as follows:

Pleadings served:

1. Richter Defendants' Notice of Motion and Motion for Limited Collateral Review and for Summary Judgment

Counsel served:

Gregg Meyers, Esq.
Jeff Anderson & Associates, PA
366 Jackson Street, Suite 100
St. Paul, MN 55101
Attorney for the Plaintiff

A. Peter Shahid, Jr., Esq.
Shahid Law Office, LLC
89 Broad Street
Charleston, SC 29401
Attorneys for the Diocesan Defendants

Susan Taylor Wall, Esq.
McNair Law Firm, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401
Attorney for David K. Haller

James C. Geoly, Esq.
Burke Warren Mackay & Serritella, PC
330 N. Wabash Avenue, Ste 2100
Chicago, Illinois 60611
Attorneys for the Diocesan Defendants

Kaye White

STATE OF SOUTH CAROLINA)	
)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF CHARLESTON)	
John Doe 2 and Jane Doe 4,)	CASE NO.: 2010-CP-10-5520
Plaintiffs,)	
v.)	
The Bishop of Charleston, et. al.)	
Defendants.)	
John Doe 10,)	CASE NO.: 2010-CP-10-7233
Plaintiff,)	
v.)	
The Bishop of Charleston, et. al.)	
Defendants.)	
Jane Doe 11,)	CASE NO.: 2012-CP-10-5559
Plaintiff,)	
v.)	
The Bishop of Charleston, et. al.)	
Defendants.)	
John Doe 193,)	CASE NO.: 2013-CP-10-3733
Plaintiff,)	
v.)	
The Bishop of Charleston, et. al.)	
Defendants.)	

FILED
2015 APR 13 PM 3:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Father Doe 194, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2013-CP-10-4175
John Doe 194, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2013-CP-10-4176

Lawyer Defendants' Memorandum in Support of Motion for Limited Collateral Review of Class Action Settlement and for Summary Judgment

These six cases are brought by alleged victims of sexual abuse, or their spouses or parents, at the hands of priests employed by the Diocesan Defendants. They have been consolidated for purposes of discovery. Each of the plaintiffs except for John Doe 193 alleges in their Complaint that they do not reside in South Carolina (the "Nonresident Plaintiffs"). John Doe 193 is a South Carolina resident but alleges that he repressed the memory of his sexual abuse until June 2010 (the "Repressed Memory Plaintiff"). All of the Plaintiffs have sued the Diocesan Defendants for the sexual abuse the victims suffered.

While Plaintiffs' primary claims are against the Diocesan Defendants, Plaintiffs have also, out of an abundance of caution, brought a series of alternative claims against the lawyers who represented a class of sexual abuse victims in an earlier class action settlement with the Diocesan Defendants. Lawrence E. Richter, Jr., David A. Haller and their firm Richter & Haller,

LLC (the "Lawyer Defendants") represented victims of abuse in John Doe #53, et. al. v. The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity, Case Nos. 2006-CP-18-1310, 1311 and 1636 ("the Underlying Class Action"). Plaintiffs' purpose in suing the Lawyer Defendants is to protect themselves should the Court hold that their claims against the Diocesan Defendants are barred by the *res judicata* effects of the Underlying Class action. Plaintiffs expressly allege that if they are not bound by the class action settlement and can sue the Diocesan Defendants, then their allegations against the Lawyer Defendants are "irrelevant".

In their alternative claims against the Lawyer Defendants, the Plaintiffs allege that they did not receive notice of the class action settlement. If they are bound by the settlement and cannot sue the Diocesan Defendants for the sexual abuse they suffered, then they allege that the Lawyer Defendants conspired with the Diocesan Defendants to deprive them of their rights without due process.

Through this motion, the Lawyer Defendants ask the Court to determine that the Plaintiffs are not bound by the class action settlement. Therefore, their allegations against the Lawyer Defendants are irrelevant and the Lawyer Defendants are entitled to dismissal. Moreover, the Lawyer Defendants contend that they are entitled to summary judgment because there is no evidence to support any claim against them if the Plaintiffs are not bound by the Underlying Class Action settlement.

The Underlying Class Action

In the Underlying Class Action, the Lawyer Defendants were class counsel for alleged victims of sexual abuse at the hands of priests employed by the Diocesan Defendants. On June 30, 2006, they filed a Complaint against the Diocesan Defendants in Dorchester County, South

Carolina. Negotiations in the Underlying Class Action resulted in a settlement, which was preliminarily approved by the class action court on January 19, 2007, at which time the court also certified the class. (See Exhibit A, Order Certifying Classes and Giving Preliminary Approval to Settlement, January 19, 2007, p.4)

The terms of the settlement were reflected in a Settlement and Arbitration Agreement dated January 12, 2007 (the "Settlement Agreement") and approved by the Court.[1] Generally the agreement provided that a.) the Diocesan Defendants would provide $12 million to a fund for those claimants who had been sexually abused by the Diocese Defendants; b.) members of the class could make a claim against the fund; and c.) the amount each claimant would receive was to be determined by an arbitrator by applying criteria set forth in an agreed-upon matrix. For purposes of the settlement, the Diocesan Defendants waived their statute of limitations and charitable immunity defenses. Each abuse victim would receive a payment of between $10,000 and $200,000, depending on the severity and longevity of the abuse. Each consortium claimant would receive $20,000.

In its January 19, 2007 Order, the Court ordered that notice be provided directly to all individuals identified in the Diocesan Defendants' records as individuals who may have suffered sexual abuse. In addition, the Court ordered publication of a Notice of Proposed Settlement of Class Action in ten (10) South Carolina newspapers and the Augusta *Chronicle*, reflecting the geographic reach of the Diocese of Charleston.

[1] The Settlement and Arbitration Agreement is attached as Exhibit A to the Order Certifying Classes and Giving Preliminary Approval to Settlement, January 19, 2007.

On March 9, 2007, the Court held a Fairness Hearing. Plaintiffs' counsel appeared representing other clients and raised several objections, all of which were resolved. Thereafter, on July 30, 2007, Judge Goodstein entered a final Order Approving Settlement.[2]

The Present Complaints

The primary claims in these cases are the various Plaintiffs' substantive claims against the Diocesan Defendants for the horrific sexual abuse committed by Diocesan priests and the Diocesan Defendants' reprehensible failure to prevent it. Claims against the Lawyer Defendants are only alleged as a precaution in the event that Plaintiffs' claims against the Diocesan Defendants are precluded by the *res judicata* effect of the underlying class action. Indeed, Plaintiffs' explicitly allege that if they are not precluded by the class action from bringing claims against the Diocese, then the causes of action against the Lawyer Defendants are irrelevant because Plaintiffs can make their claims against the Diocese. (Case No. 2010-5520, John Doe 2 and Jane Doe 4, Complaint ¶ 23); (Case No. 2010-7233, John Doe 10, Complaint ¶ 30); (Case No. 2012-5559, Jane Doe 11, Complaint ¶¶ 165, 205, 245); (Case No. 2013-3733, John Doe 193, Complaint, ¶58); (Case No. 2013-4175, Father Doe 194, Complaint ¶¶ 62, 123); (Case No. 2013-4176, John Doe 194, Complaint ¶¶ 61, 121)

As an alternative to their primary claims against the Diocesan Defendants, the Nonresident Plaintiffs allege that they fall within the definition of the class but did not receive notice because they reside outside of South Carolina. Thus, they contend that if they are precluded from asserting their claims for sexual abuse against the Diocesan Defendants because of any *res judicata* effect of the class action, then they are entitled to sue the Lawyer Defendants for conspiring with the Diocese to deprive them of their right to do so.

[2] The Order Approving Settlement is attached as Exhibit B to the Affidavit of Lawrence E. Richter, Jr. on file with the Court.

As an alternative to his primary claims against the Diocesan Defendants, the Repressed Memory Plaintiff alleges that he also fit within the definition of the class but could not have appreciated the notice of the class action settlement because, at the time of the settlement, his memory of the sexual abuse was repressed. He contends that if he is now precluded from suing the Diocesan Defendants by any *res judicata* effects of the class action settlement, then he is entitled to sue the Lawyer Defendants for not explicitly excluding repressed memory individuals from the class. (John Doe 193 Complaint, ¶38)

As noted, by order of the class action court, notice of the class action settlement was sent directly to individuals identified in the Diocesan Defendants' records as potential victims, and notice was also published in ten (10) South Carolina newspapers and one in Georgia at least once a week for six weeks and in the Diocesan Defendants' own periodical, the *Catholic Miscellany*, in three consecutive issues.[3] The publication area generally mirrored the geographic boundaries of the Diocese. All claimants were to opt out of the class or file a claim under the terms of the settlement within 120 days of the initial notice of final approval of the settlement or be barred from recovery. However, if a claimant could show that he should have received actual notice but did not, that claimant would be allowed to participate in the arbitration process.[4]

Inasmuch as the Plaintiffs' claims against the Lawyer Defendants are contingent upon the Plaintiffs being bound by the settlement of the Underlying Class Action, the Lawyer Defendants

[3] Publication was also made in the *Augusta Chronicle*, a newspaper that reaches areas of South Carolina and Georgia, once a week for six weeks. None of the Nonresident Plaintiffs reside in a state where publication was made with the exception of John Doe 2 and Jane Doe 4, who reside in Ringgold, Georgia and Martinez, Georgia respectively. Judge Roger Young already determined that the Nonresident Georgia Plaintiffs are not bound by the settlement agreement in Case No. 2010-CP-10-5520. (See Order Denying in Part and Granting in Part Defendants Motion to Dismiss, June 27, 2011 attached hereto as Exhibit B).

[4] The class action court added this provision to the Settlement Agreement after raising concerns that certain plaintiffs entitled to actual notice would not be notified in light of an "Instruction" from the Vatican.

ask the Court to conduct a limited collateral review of that settlement. Upon such review, the Lawyer Defendants submit that the Court will find that Plaintiffs are not bound by the settlement of the Underlying Class Action and that the Lawyer Defendants are entitled to summary judgment on all claims alleged against them.

Argument

I. A limited collateral review is appropriate in this case, and upon such review, the Court should find Repressed Memory Plaintiff and Nonresident Plaintiffs are not bound by the Settlement Agreement.

Because Plaintiffs' claims against the Lawyer Defendants are predicated on concern that they may be bound by the prior class action, the logical first question is whether this concern is legitimate. It is not, because Plaintiffs are not bound by the prior class action.

To determine whether individuals who may have been absent class members are bound by a prior class action, the court must conduct a limited collateral review of the prior class action's procedures as applied to the individuals at issue.[5] Hospitality Mgmt. Associates, Inc. v. Shell Oil Co., 356 S.C. 644, 660, 591 S.E.2d 611, 619 (2004). In class actions brought under Rule 23, SCRCP, the named plaintiffs must provide absent class members with meaningful notice and an opportunity to exclude themselves from the class. Under the Due Process Clause

[5] In a separate but related case, the Supreme Court noted in a footnote that review of procedures provided in a domestic class action "does not implicate the Full Faith and Credit clause and raises no similar constitutional tension with the guarantees the Due Process clause provides to absent class members." The Court then stated that "[w]e do not reach the question whether plaintiffs seeking to avoid the preclusive effect of a domestic class action are entitled to anything more than the limited collateral review under Hospitality." The Court held the trial court "failed to engage in ***even*** a limited collateral review," suggesting the possibility that absent class members may be entitled to something more than a limited review in the context of domestic class actions such as this. Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014). Because a limited collateral review leads to the conclusion that Plaintiffs are not bound, the court need not determine whether a broader scope of review applies to domestic class actions.

of the U.S. Constitution, an absent class member can only be bound if the class action court adopted procedures appropriately designed to give that individual sufficient notice. Id. at 655.

A limited collateral review is a two-step analysis. The Court must determine: (1) whether there was a process in place to guarantee sufficient notice to the potential class member; and (2) whether that process was, in fact, applied. Id. at 660. The recent Supreme Court decision in Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014) makes this process clear.

Upon limited collateral review, the Lawyer Defendants submit that this Court will find the procedures in the class action were not designed to give notice to the Nonresident Plaintiffs or the Repressed Memory Plaintiff. Therefore, Nonresident Plaintiffs and Repressed Memory Plaintiff are not bound by the Underlying Class Action Settlement Agreement.

A. Nonresident Plaintiffs are not bound by the Settlement Agreement because the Settlement of the Underlying Class Action was not designed to give them notice.

A potential absent class member can only be bound by a prior class action when the notice plan was "the best practicable, 'reasonably calculated, under all the circumstances, to apprise [that individual] of the pendency of the action and afford them the opportunity to present their objections.'" Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1950). Here, the notice plan was designed to reach the geographic footprint of the Diocese of Charleston. *i.e.*, the State of South Carolina, and was not designed to provide notice outside of that footprint.[6] Accordingly, it is clear that the notice plan was not intended, much less reasonably calculated, to reach Nonresident Plaintiffs, who hail from states as far away as California, New York, and Minnesota.

[6] Hospitality Management provides an example of a notice plan designed to reach non-resident plaintiffs. It included millions of individual mailings, a toll-free telephone number for settlement inquiries, and a national advertising campaign. Hospitality Management at 660-663.

This ends the inquiry and requires that the Court hold that Nonresident Plaintiffs are not bound by the prior class action.

Moreover, in Case No. 2010-CP-10-5520 (John Doe 2 and Jane Doe 4), Judge Roger Young has already ruled on this identical issue. (See Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, dated June 27, 2011, attached as Exhibit B). John Doe 2 and Jane Doe 4 reside in Ringold, Georgia and Martinez, Georgia respectively. Judge Young conducted a limited collateral review of the procedures used by the certifying court in the Underlying Class Action and found "the procedures were not designed to ensure notice to any potential class members living outside of South Carolina who were not otherwise given actual notice of the class action and settlement" and that "the class action was not designed to be a national settlement." Id., at page 4. As such, Judge Young held the nonresident plaintiffs in Case No. 5520 are not bound by the Settlement Agreement because constructive notice was not reasonably calculated to apprise the out-of-state plaintiffs of the pendency of the action who had not otherwise received actual notice of the settlement. Id.

Consistent with Judge Young's Order and the notice plan's design to reach in-state individuals only, the Court should conclude that the Nonresident Plaintiffs are not bound by the class action settlement. Since Nonresident Plaintiffs' claims against the Lawyer Defendants are expressly contingent upon them being bound by the class action settlement, those claims must be dismissed as a matter of law.

B. Repressed Memory Plaintiff is not bound by the Settlement Agreement because he could not have received meaningful notice at the time of the agreement.

In Case No. 2013-CP-10-3733, John Doe #193 alleges he repressed the memory of his abuse and did not become aware of his claim against the Diocesan Defendants until 2010. (See

John Doe #193 Complaint, ¶ 22) As such, Repressed Memory Plaintiff was not aware he had a claim for sexual abuse at the time the class action notice was published. His repressed memory thus precluded him from receiving a meaningful opportunity to opt out of, object to, or participate in the settlement.

It would be a fundamental violation of a repressed memory victim's due process rights to include a repressed memory victim in a class action when at the time of class notice, he had no memory of his sexual abuse, and thus, could not choose to either opt-out of the class or submit a claim for recovery as a member of the class. This conclusion is consistent with Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000), in which the Supreme Court of South Carolina held a plaintiff may assert the discovery rule in a case involving repressed memories of sexual abuse.

Here, there was no means of providing notice to those alleged sexual abuse victims with repressed memory at the time of class notice. They could not be, and were not in fact, part of the class action settlement. Consistent with the holding in Moriarty, repressed memory victims such as John Doe #193 have a right to proceed with their claim against the Diocese Defendants when their memory returns to them. Because John Doe #193 or any other potential repressed-memory plaintiffs could not have received meaningful notice of the class action settlement, they are not bound by the Settlement Agreement. Therefore, any claim by Repressed Memory Plaintiff against the Lawyer Defendants must also be dismissed as a matter of law.

II. Since the Plaintiffs are not Bound by the Settlement in the Underlying Class Action, they are free to Present Their Claims for Sexual Abuse against the Diocesan Defendants, and the Lawyer Defendants should be granted Summary Judgment.

Summary judgment is appropriate when there are no genuine issues of material facts and the moving party is entitled to judgment as a matter of law. Rule 56, S.C. R. Civ. P. Since a

limited collateral review of the settlement in the Underlying Class Action reveals that the Nonresident and Repressed Memory Plaintiffs are not bound by that settlement, nothing about that settlement has caused, or could possibly have caused, these Plaintiffs any harm. Every complaint in these cases affirms that proposition to be so when the Plaintiffs affirmatively plead that their claims against the Lawyer Defendants are irrelevant if they can sue the Diocesan Defendants.

> 23. If the Diocese agrees, or the court finds, that the plaintiffs are not precluded by the class action from bringing claims against the Diocese ... **then the causes of action against the Richter defendants ... are irrelevant** because plaintiffs can make their claims against the Diocese. (Emphasis added)
>
> Complaint, ¶23, Case No. 2010-CP-10-5520.
>
> 30. If the Diocese agrees, or the court finds, that the plaintiff is not precluded by the class action from bringing claims against the Diocese ... **then the causes of action against the Richter defendants .... are irrelevant** because plaintiff can make his claims against the Diocese. (Emphasis added)
>
> Complaint, ¶30, Case No. 2010-CP-10-7233.
>
> 165. ... **Unless the Plaintiff is not bound by the *res judicata* effect of the class action**, she has been specially harmed by the conspiracy engaged in by the Defendants.
>
> 205. ... This cause of action [professional negligence] **presumes that the Plaintiff is precluded** ... from making claims against the Diocese.
>
> 245. This cause of action [breach of fiduciary duty] **presumes that the Plaintiff is precluded** from making claims against the Diocese ...
>
> Complaint, ¶¶ 165, 205 and 245, Case No. 2012-CP-10-5559.
>
> 58. If the Diocese agrees, or the court finds, that the Plaintiff is not precluded by the class action from bringing claims against the Diocese Defendants ... **then the causes of action against the Richter defendants ... are irrelevant** because Plaintiff can make his claims against the Diocese Defendants.
>
> Complaint, ¶58, Case No. 2013-CP-10-3733.

> 62. If the Diocese agrees, or the court finds, that the Plaintiff is not precluded, by the class action, from bringing claims against the Diocese Defendants ... then **the causes of action against the Richter Defendants alone, other than the Conspiracy cause of action, are irrelevant.**
>
> 123. ... This cause of action [civil conspiracy] **presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect** ... so this cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese Defendants related to sexual abuse, ...
>
> Complaint , ¶¶ 62, 123, Case No. 2013-CP-10-4175.
>
> 61. If the Diocese agrees, or the court finds, that the Plaintiff is not precluded, by the class action, from bringing claims against the Diocese Defendants ... **then the causes of action against the Richter Defendants alone, other than the Conspiracy cause of action, are irrelevant.**
>
> 121. ... This cause of action [civil conspiracy] **presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect** ... so this cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese Defendants related to sexual abuse.
>
> Complaint, ¶¶ 61, 121, Case No. 2013-CP-10-4176.

In each case, the Plaintiffs acknowledge and agree in their respective pleadings that in order for them to have been harmed by the Lawyer Defendants' conduct and have a cause of action to assert against the Lawyer Defendants, they must be precluded from making their claims against the Diocesan Defendants by reason of the settlement in the Underlying Class Action. They are not. Therefore, they have no claims to assert against the Lawyer Defendants, and summary judgment should be granted in the Lawyer Defendants' favor.

III. The Plaintiffs have no evidence to offer against the Lawyer Defendants.

Each of the plaintiffs has been deposed. They have no knowledge of the Lawyer Defendants or anything the Lawyer Defendants did to harm them.

A. John Doe #2 testified:

Q. John Doe 2, you have filed a lawsuit, and your pseudonym under the lawsuit is John Doe 2. Do you know either Mr. Richter or Mr. Haller, Larry Richter or David Haller?

A. No.

Q. Have you ever had any contact with either one?

A. No.

Deposition Excerpts of John Doe #2, September 4, 2014, p. 18, lines 12-19. Exhibit C attached.

B. Jane Doe #4 testified:

Q. Jane Doe 4, you are aware that you are the plaintiff in this lawsuit that we're here about?

A. Yes, sir.

Q. Who is Larry Richter?

A. I don't know.

Q. Do you know who David Haller is?

A. No.

Q. These gentlemen are lawyers in Charleston. Have you ever met them?

A. No.

Q. Have they ever been your lawyers?

A. No.

Q. Are you aware of anything that either of those gentlemen have done to you to cause you financial harm?

A. No.

Q. Let me introduce to you -- that's Mr. Richter sitting at the end of the table, and that's Mr. Haller sitting over here next to him. These are the gentlemen I just mentioned to you. Mr. Richter and his law firm are my clients, okay?

A. Okay.

Q. Mr. Haller is represented by Mrs. Wall. Mr. Richter and Mr. Haller used to practice together but do not now. The reason I asked you those questions was because you have sued Mr. Richter and Mr. Haller in your lawsuit. Here is my question. Do you know why you have sued them?

A. I don't -- I'm not sure.

Deposition Excerpts of Jane Doe #4, June3, 2014, p. 8, line 5 through p. 9, line 10. Exhibit D attached.

C. John Doe #10 testified:

Q. Who is Larry Richter?

A. I know the name from lawsuits, but I don't know the person.

Q. Do you know what he does?

A. An attorney, as far as I can tell.

Q. Has he ever been your lawyer?

A. I mean, he was in the lawsuit, so -- I mean, I've never spoken with him about it, but I don't know.

Q. For your information, this is Mr. Richter seated at the end of the table.

A. Oh.

Q. Do you know why you sued Mr. Richter in this lawsuit?

A. No.

Q. You've never spoken to him?

A. No.

Q. To your knowledge has Mr. Richter ever done anything to you to cause you financial harm?

A. To me?

Q. Uh-huh.

A. Not to my knowledge, no.

Deposition Excerpts of John Doe #10, June 4, 2014, p. 9, lines 4-25. Exhibit E attached.

D. Jane Doe #11 testified:

Q. Who is Lawrence Richter?

A. I don't know.

Q. Who is David Haller?

A. I am not sure who that is either.

Q. What is Richter & Haller?

A. I am not sure.

Q. Have either of those gentlemen ever been your lawyer? ... You can answer.

A. No, not that I'm aware of.

Q. Are either of those gentlemen your lawyer at this time?

...

THE WITNESS: No.

Q. Okay. I can always tell if I'm asking a good question because they object. Ma'am, are you aware of anything that either of those gentlemen have done in the past that caused you any financial harm?

A. No, I'm not.

Deposition of Jane Doe #11, September 4, 2104, p. 23, line 25 through p. 25, line 1. Exhibit F attached.

E. John Doe #193, the Repressed Memory Plaintiff, testified:

Q. Now, I'm going to ask you a few questions about some people in the case that we are here on. Do you know who Lawrence Richter is?

A. No, sir.

Q. Do you know who David Haller is?

A. No, sir.

Q. All right, sir. Do you know what the firm Richter & Haller, LLC, is?

A. No, sir.

Q. That is a law firm in Charleston, South Carolina, and the gentlemen whose names I just asked you about are lawyers in Charleston. Have either Mr. Richter or Mr. Haller ever been your lawyer?

...

Q. You can answer.

A. Not that I know of.

Q. And, of course, they are not your lawyers now, are they?

...

A. No.

Q. John Doe 193, do you know of anything that either Mr. Richter or Mr. Haller have done in the past that has caused you financial harm?

...

A. Not knowing them, I don't know.

Deposition Excerpts of John Doe #193, July 16, 2014, p. 6, line 17 through p. 7, line 24. Exhibit G attached.

F. Finally, John Doe #194 testified:

Q. Who is Lawrence Richter?

A. I've never met the man. He's an attorney, a part of this case.

Q. You've never met him or talked to him?

A. No.

Q. Do you understand he's a lawyer?

A. Yes, sir.

Q. And how do you have that understanding?

A. I learned about it from Mr. Meyers.

Q. Okay. Has he ever been your lawyer?

A. No.

...

Q. So has Mr. Richter ever been your lawyer?

A. Not that I know of.

Q. Do you know of anything that Mr. Richter has done that caused you financial harm?

A. My understanding is I've been excluded from a class action suit.

Q. And do you think that's caused you financial harm?

A. Hard to say.

Q. Do you know who David Haller is?

A. I know the name.

Q. How do you know the name?

A. Same as Mr. Richter.

Q. Do you understand that Mr. Haller is also an attorney?

A. Yeah.

Q. Has he ever been your lawyer?

...

THE WITNESS: Not that I know of.

Q. Okay. Do you know of anything Mr. Haller has done to cause you financial harm?

A. Not directly.

Deposition Excerpts of John Doe #194, July 25, 2014, p. 4, line 2 through p. 6, line 2. Exhibit H attached.

The only information about the Lawyer Defendants that any plaintiff possessed was what he learned from his lawyer, Mr. Meyers. Other than that, the Plaintiffs not only do not

know who the attorneys are that they have sued, but they also do not know why they sued these defendants. In short, they bring no information to bear to oppose summary judgment, and, accordingly, summary judgment must be granted.

IV. The Alleged Co-Conspirators deny any Conspiracy and there is no evidence to support a conspiracy claim.

In addition to legal malpractice and breach of fiduciary duty claims, each Complaint in these cases also alleges that the Lawyer Defendants and the Diocesan Defendants conspired to cause the Plaintiffs harm. While all of these claims must be dismissed for the reasons outlined above, the conspiracy claim must be dismissed for the additional reason that there is no evidence to support the allegations of any conspiracy. Since the conspiracy allegations are made contingent upon the Plaintiffs being precluded from making their claims against the Diocesan Defendants, and since the Plaintiffs are not so precluded, these claims fail before they start.

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. Pye v. Estate of Fox, 369 S.C. 555 (2006); LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66 (1988). Although not identified as an "element" in the case law, an overt act that causes special damage must occur. Lee v. Chesterfield Gen. Hosp. Inc., 344 S.E.2d 379, 382 (S.C. Ct. App. 1986). To prove special damages, as an element of a civil conspiracy claim, a plaintiff has to show that the special damages arose specifically because of the conspiracy itself, and not caused by any related causes of action. Alonso v. McAllister Towing of Charleston, Inc., 595 F. Supp. 2d 645 (D.S.C. 2009); AJG Holdings, LLC v. Dunn, 708 S.E.2d 218 (S.C. Ct. App. 2011).

The apparent basis for Plaintiffs' conspiracy claims seems to be that the Lawyer Defendants conspired with the Diocesan Defendants to preclude the Plaintiffs from suing the Diocese by entering into a Settlement Agreement that bound the Plaintiffs to the settlement

without notice. The crux of Plaintiffs' allegations is that in exchange for a fee and an agreement by the Diocese Defendants to be silent, the Lawyer Defendants agreed to abandon the Plaintiffs. The fee to which Plaintiffs refer is the class counsel fee approved by the Judge Goodstein in the Underlying Class Action. Plaintiffs' allegations are pure fiction and the product of a creative imagination.

First, there is no evidence of a combination of two or more people for the purpose of harming the Plaintiffs. Affidavits have been submitted to the Court from Mr. Richter and Bishop Baker. According to the Plaintiffs, these are the gentlemen who conspired to harm them. These affidavits are not opposed by any evidence that would be admissible at trial and paint quite a different picture of the settlement negotiations than the Plaintiffs attempt to paint in their complaints. Contrary to the allegations in the complaints, the negotiations between the Lawyer Defendants and the Diocesan Defendants were not direct but were all conducted through counsel. The Lawyer Defendants and other Class Counsel represented the class of victims of abuse and Messrs. Shahid and Geoly represented the Diocesan Defendants.

Both Mr. Richter and Bishop Baker deny any misrepresentation or collusion in their sworn affidavits. Rather, the negotiations appear to have been rather hostile, adversarial and intense. Given the subject matter of the claims, the hostility is understandable. Bishop Baker was not even present for the mediation at which the alleged conspiracy was hatched. He also says he had no communication with the Lawyer Defendants or Judge Goodstein about the settlement agreement.

Mr. Richter categorically denies that he or Mr. Haller conspired or colluded with the Diocesan Defendants or its lawyers in any way in settling the Underlying Class Action. Mr. Richter denies any direct communications with Bishop Baker during the settlement discussions.

Simply put, both gentlemen say that everything the Plaintiffs have alleged in their complaints against them is not true.

Second, the Plaintiffs do not have a clue as to why they have sued the Lawyer Defendants. This was a typical response to that question:

> Q. Are you aware of anything that either of those gentlemen have done to you to cause you financial harm?
> A. No.
>
> Q. Let me introduce to you -- that's Mr. Richter sitting at the end of the table, and that's Mr. Haller sitting over here next to him. These are the gentlemen I just mentioned to you. Mr. Richter and his law firm are my clients, okay?
>
> A. Okay.
>
> Q. Mr. Haller is represented by Mrs. Wall. Mr. Richter and Mr. Haller used to practice together but do not now. The reason I asked you those questions was because you have sued Mr. Richter and Mr. Haller in your lawsuit. Here is my question. Do you know why you have sued them?
>
> A. I don't -- I'm not sure.
>
> Deposition Excerpts of Jane Doe #4, June3, 2014, *supra,* Exhibit D.

Or this response from John Doe #10:

> Q. Do you know why you sued Mr. Richter in this lawsuit?
>
> A. No.
>
> Q. You've never spoken to him?
>
> A. No.
>
> Q. To your knowledge has Mr. Richter ever done anything to you to cause you financial harm?
>
> A. To me?
>
> Q. Uh-huh.
>
> A. Not to my knowledge, no.

Deposition Excerpts of John Doe #10, June 4, 2014, *supra*, Exhibit E.

Since the Plaintiffs do not know of any harm caused to them by the Defendant Lawyers and do not know why they have sued them, it is not a leap to conclude that they have no special damages.

> Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct. Loeb v. Mann, 39 S.C. 465, 469, 18 S.E. 1, 2 (1893). 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.
>
> Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 116-17, 682 S.E.2d 871, 875 (Ct. App. 2009)

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. Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App.1989).

"Special damages" means damages that are different than those otherwise suffered by the Plaintiffs. They are damages flowing specifically from the conspiracy and that were the intended purpose of the conspiracy. Here, once we conclude that the settlement does not preclude the Plaintiffs from making their claims against the Diocesan Defendants, the Plaintiffs have no damages – special or otherwise.

These conspiracy allegations have no basis in fact and are not supported by any evidence. To the contrary, the evidence proves that there is no genuine factual issue to be submitted to a jury. Because Plaintiffs have failed to produce even the slightest evidence to support any claim against the Lawyer Defendants, there is no genuine issue of material fact, and summary judgment for the Lawyer Defendants should be granted.

V. The Plaintiffs still have a remedy.

Notwithstanding the dismissal of the claims against the Lawyer Defendants, the Plaintiffs still have remedies against the Diocese.

A. Several Plaintiffs may have been entitled to Actual Notice from the Diocese.

In the Order Approving Settlement, the class action court noted the following:

> **1. Notice to All Members of the Class**
>
> The "INSTRUCTION" raised concerns with the Court that some individuals did not or would not receive proper notice of the class settlement in order to object to or participate in the settlement proposed for the class The parties and the Court considered several options on how best to address this concern and to protect the interests of both the absent class members and the Dioceses right to have the conclusive effect of class action.
>
> As stated above the Diocese undertook on its own to notify the potential members of the class known to it Normally this burden would fall on the plaintiffs *Eisen v. Carlisle & Jacquline*, 417 U.S 156 (1974). Nevertheless because of the nature of the allegations the Diocese believed that it would be more appropriate for it to undertake this responsibility in order to ensure the confidentiality of those who have come forward to it. *See* Rule 23 SCRCP (giving the Court the authority to establish how notice may be sent).
>
> *See* Order Approving Settlement, Exhibit B to Affidavit of Bishop Baker, pp. 3-4.

Moreover, the Diocese affirmatively represented to the court that if any individual should have received actual notice of the settlement from it and did not, for any reason, then such person would not be bound by the *res judicata* effect of the settlement. Id., page 4.

Several of the Plaintiffs were arguably entitled to receive actual notice from the Diocese but did not. John Doe #2 and Jane Doe #4 are brother and sister. Both claim to have been abused by Father James McCarthy. Their mother testified that their father drove to Charleston to speak

with the Bishop when he found out that all of his children had been abused by Father McCarthy.[7] She also testified that no one from the Diocese ever contacted them.

While the Diocesan Defendants may dispute that this contact took place, if the mother's testimony is believed, then the Diocese should have had a record of the contact and should have given these siblings and their mother actual notice of the settlement. Since the Diocese did not give actual notice to these individuals, then they are entitled to participate in the settlement as the Diocese represented to the class action court. They have a remedy.

B. The Statute of Limitations will not bar the Nonresident Plaintiffs' claims.

The case of Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014) was an appeal by John Doe #2 and Jane Doe #4's siblings and mother from a dismissal of their cases against the Diocese on the pleadings. Unlike John Doe # 2and Jane Doe #4, their siblings and mother lived in South Carolina. The trial court had dismissed their claims holding that they were bound by the settlement in the Underlying Class Action and that their claims against the Diocese were also barred by the statute of limitations.

The Supreme Court reversed holding that 1.) dismissal on the pleadings was improper without a limited collateral review of the settlement in the Underlying Class Action, 2.) the Diocese did not waive its statute of limitations defense as to future claimants, and 3.) the statute of limitations on their negligent supervision claims would be tolled if the plaintiffs' proved their allegations that the Diocese deliberately concealed its knowledge of the sexual abuse.

The first holding in Doe is the reason the Lawyer Defendants seek a limited collateral review of the settlement in the Underlying Class Action. The third holding ensures these plaintiffs of their remedy. Each plaintiff in these cases makes the same allegations as were made

[7] Exhibit I, Deposition Excerpts of Jane Doe #1, July 24, 2014, page 16, line 14 through page 18, line 14.

in Doe regarding the "Instruction" from the Vatican and the Diocese's intentional concealment of its knowledge of the abuses taking place. The "Instruction" is in evidence.[8] Its import is clear.[9] There can be little question but that each of the Nonresident Plaintiffs' claims will be decided by a jury. These Nonresident Plaintiffs will clearly have their day in court against the Diocese.

Likewise, the Repressed Memory Plaintiff will have his remedy courtesy of Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). In Moriarty, the Supreme Court held:

> We hold that a plaintiff may bring a cause of action based on repressed memory syndrome to recover damages for sexual abuse she allegedly suffered as a child. A repressed memory plaintiff may assert the discovery rule contained in S. *C. Code Ann.* § 15-3-535 (Supp.1999). However, the plaintiff must present-both at the summary judgment stage and at trial objectively verifiable evidence to corroborate a repressed memory claim in order to use the discovery rule. Such corroborating evidence may consist of direct or circumstantial evidence. The plaintiff must use expert testimony to establish the abuse and the fact of the repressed memories. The application of the discovery rule, as well as the existence of corroborating evidence, are questions of fact for the jury to determine when the parties present conflicting evidence. Id., at 340.

In his Complaint, the Repressed Memory Plaintiff has plead his way into compliance with the Moriarty holding and has an expert to corroborate his repressed memory claim. Since the issues will then be for a jury to determine, the Repressed Memory Plaintiff will have his day in court against the Diocese.

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[8] Exhibit J, Instruction on the Manner of Proceeding in Cases of Solicitation, Vatican Press, 1962.

[9] Exhibit J, ¶11, provides: "11. Because, however, what is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and given over to execution, they are to be restrained by a perpetual silence (Instruction of the Holy Office, February 20, 1867, n. 14), each and everyone pertaining to the tribunal in any way or admitted to the knowledge of the matters because of their office, is to observe the strictest ++7++ secret, which is commonly regarded as a secret of the Holy Office, in all matters and with all persons, under the penalty of excommunication ...".

C. The Diocese has money left over from the settlement of the Underlying Class Action.

The Diocese agreed to provide $12 million for the settlement of the Underlying Class Action. The Settlement and Arbitration Agreement required any funds left over to be returned to the Diocese. Settlement and Arbitration Agreement, page 14, ¶6.C. From the Final Accounting filed with the class action court on March 10, 2008,[10] we can see that there was $1,716,323.90 (including interest) left over after the settlement was consummated. That amount was available to be returned to the Diocese. Thus, not only do the plaintiffs have a remedy, the Diocese has money left over from the settlement with which to compensate these Plaintiffs.

Conclusion

A limited collateral review of the settlement in the Underlying Class Action as to the Nonresident Plaintiffs and the Repressed Memory Plaintiff is appropriate in all of these cases. Judge Roger Young has already conducted such a review in Case No. 2010-CP-10-5520. He concluded that the Nonresident Plaintiffs in that case were not bound by the settlement and thus were not precluded from making their claims against Diocesan Defendants. The same result is appropriate here in the remaining cases.

The Lawyer Defendants do not believe that any of these Plaintiffs should be precluded from making their claims against the Diocesan Defendants. These Plaintiffs deserve their day in court against the Diocesan Defendants for the wrongs done to them. But these wrongs were not at the hands of the Lawyer Defendants. The Lawyer Defendants have done nothing but advocate for the rights of victims of abuse such as the Plaintiffs. Since the Plaintiffs are not precluded from making their claims against the Diocesan Defendants because of the settlement of the Underlying Class Action, the Lawyer Defendants have done nothing to cause harm to the

[10] See Exhibit K, Final Accounting.

Plaintiffs. Therefore, the Plaintiffs' claims against the Lawyer Defendants fail as a matter of law, and the Lawyer Defendants are entitled to summary judgment.

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April 10, 2015

CERTIFICATE OF SERVICE

The undersigned James L. Bruner, attorney for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC, does hereby certify that on April 10, 2015, I served a copy of the documents listed below on counsel of record by electronic mail and by depositing a copy of same in the U.S. Mail, first-class, postage prepaid and addressed as follows:

Pleadings served:

1. Richter Defendants' Memorandum in Support of Motion for Limited Collateral Review of Class Action Settlement and for Summary Judgment

Counsel served:

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FILED
2015 APR 13 PM 3:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

James L. Bruner

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE No. 06-CP-18-1310
	CASE No. 06-CP-18-1311
	CASE No. 06-CP-18-1636
John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated, Plaintiffs, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	ORDER CERTIFYING CLASSES AND GIVING PRELIMINARY APPROVAL TO SETTLEMENT

THIS MATTER is before the court on motion by the plaintiffs for certification of two classes and for approval of a settlement reached between the class representatives and the defendants. After a review of the full record before the court and the law applicable to the issues hereto, the motion to certify the requested classes is GRANTED and the proposed settlement agreement is preliminarily approved, subject to the objection period and Fairness Hearing as set out in this order.

FINDINGS OF FACT

Plaintiffs John Doe #53, John Doe 66, John Doe 66A, and John Doe 67[1] are individuals who, as minors, were sexually abused by priests assigned to the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole, and The Bishop of

[1] Hereinafter all of the plaintiffs will be referred to as "Representatives."

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Charleston, in his official capacity (hereinafter "the Diocese"), are the designated governing entities for the Roman Catholic Church in South Carolina. The Corporation Sole was chartered by the General Assembly in the 1880s and its reach is statewide. John Doe #53 claims to have been abused by Father Lawrence Sheedy while John Doe was a minor living at the Charleston orphanage operated by the Diocese. John Does 66, 66A, and 67 were students at Nativity School who were abused by Father James Nyhan while Nyhan was assigned there. Jane Doe 1 is the wife of John Doe #53 and Rachel Roe is his mother. Jane Doe 2 is the wife of John Doe 66A. Each of the proposed class representatives were abused in their minority and brought this action beyond the one year statute of limitations for those reaching majority.

Over the past several decades a number of priests or other agents of the Diocese have been accused, investigated, criminally charged, and/or criminally convicted of sexual activities on minors. Based on information provided by the Diocese of Charleston to the Representatives, between 1950 and 2006, the total numbers of Diocese personnel who are alleged to have committed one or more acts of sexual misconduct on a minor are 28. Of these, 26 were clerical and the remainder non-clerical. The total number of claimed victims during this time period is 50. Some of these victims have brought claims against the Diocese. In almost all of them, the Diocese has asserted the statute of limitations, charitable immunity, and lack of notice/negligence, among other things, in defense of the claims. Additionally, a common issue in cases involving sexual abuse claims is the calculation of damages for mostly psychological damages. Each of the representatives have had the defenses and issues raised here asserted in their own claims. This action is almost identical to actions brought in other states in which the plaintiffs

have alleged sexual abuse upon them by priests and the failure of the Catholic Church in that area to adequately act in response.

Counsel for the representatives has extensive experience in complex plaintiffs' litigation, including potential class actions and cases in which sexual abuse of the plaintiff is the basis for the underlying claim.[2]

ISSUES

1. Should the plaintiffs' request for certification of classes be granted pursuant to SCRCP Rule 23?
2. Is the Settlement Agreement reached between the parties in the best interests of the class such that it should be preliminarily approved?

LAW/ANALYSIS

A. Certification of the Classes

SCRCP Rule 23 provides that a case may be certified as a class action where the proposed class satisfies the following criteria:

1. the class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interests of the class; and
5. In cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Plaintiffs have requested that the following classes be certified:

[2] The Diocese, while denying the seminal allegations of the complaint, took no legal or factual position on the motion for class certification.

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A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused[3] at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")

B. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

I find that certification of these class is appropriate.

1. **Numerosity/ Impracticability of Joinder.**

The first element, commonly referred to as 'numerosity,' requires that the court balance the number of potential members of the class and the ability to join each of the individuals in one suit. There is no definitive standard as to what number is sufficient to be numerous. *Haywood v. Barnes*, 109 F.R.D. 568 (E.D.N.C. 1986). Courts have certified classes where the number has been as small as 14 members. *Manning v. Princeton Consumer Discount Co.*, 390 F.Supp. 320 (ED Pa 1975)(cited by *Middleton v. Sunstar Acceptance Corp.*, 98-CP-07-1131 (SC Court of Common Pleas, Jan. 13, 2000). Further, the exact number does not have to be known. Wright, Miller, & Kane Federal Practice and Procedure (2d) § 1762. The record before the court must reasonably infer numerosity. *Id.* Determining whether numerosity exists requires a liberal interpretation of the rule. *Id.* The key is not simply the number of potential class members, but also the practicability of joining all in one action.

[3]"Sexual abuse," for these purposes, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

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The record before me shows four representatives of the Primary Class and three of the Consortium Class. There have been no less than 28 priests or agents of the Diocese who have been accused, investigated, charged, and/or convicted of sexual abuse crimes on minors. However, the total number is likely to be higher because of the nature of the allegations and many of these priests have had multiple victims. As the representatives have shown, it is difficult for claimants to face up to sexual abuse. This is more true where the abuse has been accomplished by a person such as a priest, who is held by high esteem by the victim.

Further, the Diocese operates statewide and, hence, the breadth of individual claims is particularly great. The size of the Diocese's reach also weighs on the ability of individuals to be joined in the case. In addition, this court may easily take judicial notice that Catholic Dioceses around the country have been taking on the issue of priest sexual abuse in the litigation forum over the last several years. The problem of sexual abuse by priests has been in the forefront of national news which is indicative of the potential number of claimants here.

As to the Consortium Class, because members of the class are the spouses and parents of those who have actually suffered abuse, the number of members for that class is likely to be larger than in the Primary Class. It is not difficult for this court, then, to reasonably infer that the number of potential class members is such that the joinder of all is impractical. Hence, this first prong is met.

2. Commonality/Typicality

The second and third prongs of Rule 23 are general considered to be identical and are most often analyzed together. Commonality is the requirement that common question of

law or fact predominate over other questions in the case. "In fact, a single common issue will suffice if it is important enough." *McGann v. Mungo*, 287 S.C. 561, 340 S.E.2d 154 (Ct.App. 1986). Typicality requires that the claims or defenses of the class be identical. SCRCP Rule 23(a)(3). I find that the claims of the class are common and typical to each of the members.

The key issues of the case, as set out in the complaints, include the responsibility of the Diocese to monitor its agents, its knowledge of their conduct, the acts taken by the Diocese in the face of the knowledge, the type of damage (namely psychological), the applicability of the statute of limitations and defenses thereto, and the applicability of the affirmative defense of charitable immunity. Each of these issues must be addressed in the case of each individual class member in order for a resolution of the matter. Accordingly, the claims of each class member are common and typical to one another.

3. **Adequacy of Representation**

The fourth prong of Rule 23 is the adequacy of representation. There are two parts to this prong: (1) the plaintiffs' attorney must be qualified, experienced, and generally able to conduct the proposed litigation; (2) the plaintiffs must not have interests antagonistic to those of the class. The plaintiffs here meet these criteria.

First, the record reflects that class counsel is "qualified, experienced, and generally able to conduct the proposed litigation." It is presumed that plaintiffs' counsel is qualified unless the defense shows inadequacy of representation. *McGlothin v. Connors*, 142 F.R.D. 626 (W.V.A. 1992). The record before me shows that plaintiffs' counsel has a history of being involved in numerous complex pieces of litigation and class actions and with great success. The reputation of class counsel is known to the court and, given

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their past history and their work in this matter heretofore, I have no question in finding them qualified.

Second, the class representatives' interests are not antagonistic to those of the rest of the class. The representatives have resolved their claims and agreed to be bound by the resolution in the face of whether this court approved class certification or not and the Diocese agreed to pay them regardless of whether the class was approved or not. They have nothing more to gain from the case. Accordingly, the representatives are not in an antagonistic position to the rest of the class.

4. $100 requirement.

Last, SCRCP Rule 23(a)(5) requires that the amount in controversy exceed $100 for each member of the class. In order for the amount in controversy prong to be met, the plaintiffs must show that the amount to be gained in the suit exceeds $100 per class member. *Gardner v. Newson Chevrolet-Buick, Inc.*, SC 328, 404 S.E.2d 200 (1991). The claim for the class here is the medical bills, pain, suffering, psychological injury, and loss of consortium as a result of the Diocese's acts or omissions. These damages clearly seek a gain in excess of $100 per class member. I find that the amount in controversy element is satisfied.

For the reasons set for above, the elements of SCRCP Rule 23 are met for the classes sought to be certified and, accordingly, I grant the motion to certify the classes herein.

B. Preliminary Approval of the Settlement

The parties have presented a Settlement Agreement for preliminary approval by the court pursuant to SCRCP Rule 23. At this point, the court conducts a two-step process:

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1) a review of the settlement to determine whether it is within the realm of approval; and 2) instructions on providing notice to the class for purposes of objection with Notice of a Fairness Hearing for purposes of final approval of the settlement. *Clark v. Experian Information Solutions*, WL 2566433 (D.S.C. 2004).

I have given a full review of the Settlement Agreement with counsel for both parties and I believe that the settlement is fair, reasonable, and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim which encourages individuals to make the same, among other things.

I order a Fairness Hearing be held March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina. The parties are required to follow the following procedure to effectuate final approval of the settlement.

A. Notice. Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: The Charleston *Post & Courier*, The Myrtle Beach *Sun*; *The State*; The Augusta *Chronicle*; The Rock Hill *Herald*; Beaufort *Gazette;* Greenville *News* Spartanburg *Herald;* Orangeburg *Times-Democrat*; Florence *Morning News* and the Aiken *Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

B. Objection. Any potential Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel prior to February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

C. Prayer for Attorneys Fees. The Court will also consider at this hearing an award of attorneys' fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys' fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement.

Therefore, it is ordered that the plaintiffs' motion for class certification is GRANTED; and

IT IS FURTHER ORDERED that the Settlement Agreement reached between the parties is preliminarily approved by this court; and

IT IS FURTHER ORDERED that a Fairness Hearing for final approval of the hearing be held before me on March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina subject to the notice and other terms and conditions contained herein.

AND IT IS SO ORDERED!!!

The Honorable Diane S. Goodstein
Presiding Judge

This 19 day of January, 2007

At Summerville South Carolina

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, CODE OF LAWS OF SOUTH CAROLINA (1976).

STATE OF SOUTH CAROLINA)) COUNTY OF DORCHESTER)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE No. 06-CP-18-1310 CASE No. 06-CP-18-1311 CASE No. 06-CP-18-1636
John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of classes of people similarly situated, Plaintiffs, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	SETTLEMENT AND ARBITRATION AGREEMENT

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12th day of January, 2007, by and between the John Doe #53, John Doe 66, John Doe 66A, John Doe 67, individually and as representatives of a class of other persons similarly situated as victims of sex abuse allegedly committed by agents or employees of the defendants in this action, and/or Jane Doe 1, Jane Doe 2, and Rachel Roe, individually and as representatives of parents or spouses who have suffered a loss of consortium as a result of sexual abuse upon John Doe #53, John Doe 66, John Doe 66A, and John 67 or members of their class, and The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity (hereinafter "the Diocese"). This Agreement may be signed in counterparts. This Agreement represents the formal "Settlement and

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Arbitration Agreement" formalizing the agreement reached between the Representatives[1] and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

WHEREFORE, for and in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. FORMATION OF CLASSES. Plaintiffs shall move in a timely manner for the creation of plaintiff classes against the defendants as follows:

A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused[2] at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")

B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

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1 The class representatives will be referred to throughout this Agreement as "the Representatives."

[2]"Sexual abuse," as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

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The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement fund, pursuant to the terms and conditions set forth in this agreement and the order approving class certification. The individuals in either class shall hereinafter be referred to as "Claimants."

2. APPROVAL OF AGREEMENT BY COURT. In addition to the plaintiffs requesting that the classes stated above be certified, the plaintiffs shall also submit this Settlement and Arbitration Agreement for approval by the court pursuant to SCRCP Rule 23. Should the court deny approval of the certification of the classes substantially defined in paragraph 1 above, the court will be separately asked to approve the conditions of paragraph 4, below. Plaintiffs reserve their right of appeal of any denial of class certification. Approval of the settlement shall be on such terms and conditions as the court may fix. All participation is subject to any term and condition of the approval of the classes set out in the court's order. Provided, however, that this is voluntary settlement agreement and that either the Diocese or the Representatives may interpose an objection to any of the court's rulings on the settlement agreement or claims process and may withdraw from this settlement if its terms are materially altered by the court.

3. SETTLEMENT FUND AND DISTRIBUTION METHOD. The parties agree to jointly ask the court to approve the terms of the Settlement Agreement, as mediated June 13 and 14, 2006, as follows:

a. The Diocese shall fund the settlement with two irrevocable letters of credit or other guaranteed pool of funds in the amounts of $5 million and $7 million, respectively. Upon disbursement from the initial letter of credit or from an aggregate amount equaling or

EXHIBIT A TO MEMORANDUM

exceeding $4 million, then in that event, the Diocese shall take such action necessary to have the secondary $7 million dollars immediately available for disbursement. Both letters of credit (or other pools of funds) shall be guaranteed by the issuing bank to be available as of the date of the approval of this Agreement. In the event the Diocese is unable to obtain letters of credit, it will nevertheless be obligated to pay all sums awarded by the court or the Arbitrator and to deposit funds for this purpose as set forth above. This Agreement supersedes any prior agreement of the parties.

b. With regard to the claim of any Claimant, the Diocese will pay the Claimant to settle such claim an amount of money to be determined through the arbitration process set forth herein. The arbitration shall be conducted by Marvin Infinger, Esq. (hereinafter "the Arbitrator"). If for any reason Mr. Infinger is unable to continue to serve as arbitrator, the parties shall agree to a successor arbitrator. If the parties are unable to agree to a successor arbitrator one shall be appointed by the court.

c. Awards shall be based on the criteria set forth herein and the Arbitrator will make awards as follows:

Type of Alleged Abuse	Minimum Payment	Maximum Payment
Limited inappropriate touching on the victim	$10,000.00	$18,500.00
Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts.	$20,000.00	$55,000.00
Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances.	$60,000.00	$125,000.00
Egregious acts, such as sodomy, any act		

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accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage.	$150,000.00	$200,000.00
Loss of consortium (Parent or Spouse)	$20,000.00	

The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be $20,000.00 for each parent of the Claimant, and $20,000.00 for the spouse of the Claimant. The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as lack of negligence or notice, statute of limitations, and charitable immunity. The award issued by the Arbitrator shall be left to the sole discretion of the Arbitrator and shall not be subject to objection, review, appeal or suit brought by any Claimant or the Diocese.

d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that a Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fide*, the claim shall be denied and the Claimant shall receive no award. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fide*, and the amount of any damages which were suffered.

e. Any individual, including his/her parents and spouse, whose claim has been otherwise adjudicated, settled or resolved, is barred from filing a claim or collecting from any funds of this class.

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f. The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.

g. Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:

1. The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship;

2. Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser; [i.e. priest/altar boy; coach/ basketball player]

3. A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;

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4. A brief summary of any claimed injury or damages;

5. Name of parents, whether they are living or deceased;

6. Name of spouse (if any);

7. The form must be signed and dated; and

8. Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein.

h. Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.

i. Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.

j. The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

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shall control. In any event, as to all issues, the orders of the court shall control.

k. While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.

l. Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).

m. If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.

n. If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

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permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner or the Claimant's membership in one of the plaintiff classes and of the *bona fides* of the claim, and his decision shall be final and not subject to appeal. If at any time prior to the Arbitration of the claim for damages the Arbitrator determines that the Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fides*, the Arbitrator shall notify the parties of such determination and shall not proceed with the Arbitration on the claim for damages. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

o. Upon submission of the claim, Class Counsel will notify the Claimant that he or she has the opportunity to have a psychological assessment and counseling by Dr. L. Randolph Waid. The Claimant may make this election at the time of his or her claim being filed. The Diocese agrees to pay Dr. Waid, on behalf of the Claimant, for no more than three (3) sessions. Any assessment of any Claimant by Dr. Waid will be provided to the Claimant who may submit it to the Arbitrator as part of the Claimant's damages proof; however, this assessment shall be kept confidential and will not be shared with the Diocese. The payments of counseling fees to Dr. Waid shall be over and above any award made by the Arbitrator and shall not be charged to the Claimant, but shall be paid from the fund.

p. At the Claimant's hearing, a presentation shall be made by or on behalf of the Claimant concerning his or her damages suffered as a result of the alleged abuse. Each arbitration

EXHIBIT A TO MEMORANDUM

hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or his or her attorney may present other evidence relating to the abuse and injury, including without limitation, affidavits under oath or under the pains and penalties of perjury, from persons with relevant information, medical records, and/or forensic evaluation. Claimant may submit any information, records or testimony bearing upon damages for consideration by the Arbitrator, including videotape and audiotape testimony. Counsel for the Claimant may make comment upon the damages sustained by the Claimant. Before the close of the Claimant's arbitration hearing, Counsel for the Claimant may notify the Arbitrator that the Claimant intends to supplement the information, records or testimony submitted at Claimant's arbitration hearing with written records or information which is to be received by the Arbitrator no later than 21 days after the close of the arbitration hearing. The Arbitrator shall consider no information, records or testimony unless submitted by the Claimant or Claimant's Counsel with the exception of the Diocese's written statement as described in paragraph (q), below. In the event that the Claimant does not appear in person, the Claimant must appear by telephone or video conference. The Claimant may submit a forensic evaluation or a statement from a health care professional, but shall not be required to do so. The Claimant may have any person or persons of his or her choosing speak at the hearing.

q. Counsel for the Diocese shall not be present at said arbitration hearing regarding damages; however, the Diocese shall be entitled to provide a written submission concerning the Claimant's damages. No person other than the arbitrator shall be present at the hearing.

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without the consent of the Claimant. If the Claimant requests, a representative of the Diocese, who is not an attorney, may be present at Claimant's arbitration hearing for purposes of pastoral support. The Claimant shall be entitled to have present at said hearing any of his/her family, friends, health providers, or other individuals requested by the Claimant.

r. After the Arbitrator has rendered his decision, but not before, the Claimant may be invited to meet one on one with the Bishop of Charleston or his designee for religious, spiritual, and pastoral support. No Claimant is obligated to meet with the Bishop or his designee.

s. Any materials of whatever nature submitted by Claimant or on his behalf to the Arbitrator, in connection with the arbitration process which is in any way related to the arbitration awards issued by the Arbitrator shall be returned to the Claimant or his or her counsel by the Arbitrator with the award. The Arbitrator shall not reveal the evidence or written arguments presented during the course of the arbitration hearing to anyone other than those present in the Arbitration or Class Counsel.

t. The Arbitrator shall issue a written award in conformance with the requirements of paragraph 3(d) no later than twenty (20) days after the close of the Arbitration hearing to and deliver same to Class Counsel, counsel for the Diocese, and Claimant and/or Claimant's counsel. Anyone connected with the claims process in any fashion is bound to maintain the confidentiality of each individual Claimant.

u. All costs associated with the management of the class shall be paid from the settlement fund. The fees and costs described herein include those incurred by the Arbitrator, Class Counsel, the escrow agent, Dr. Waid and any other fees and costs approved by the court.

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v. The court approving this Agreement has the authority to enforce any Arbitration award. The Diocese consents to judgment being entered against it in any federal and/or state Court having jurisdiction. The parties release the Arbitrator from any liability arising from any act or omission in connection with the arbitration hearing conducted herein. By participating in the claims process, each Claimant and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

4. SETTLEMENT OF REPRESENTATIVE'S AND POINT CLAIMANT'S CLAIMS. In consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues relevant, the class representatives and/or point plaintiffs shall receive settlement funds as follows:

John Doe #53	$160,000.00
John Doe 66	$100,000.00
John Doe 66 A	$100,000.00
John Doe 67	$100,000.00
Jane Doe A	$30,000.00
Jane Doe B	$30,000.00
Rachel Roe	$30,000.00

It is understood and agreed that the claims of these claimants are released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.

5. ATTORNEYS FEES. In consideration of the substantial efforts of plaintiffs' counsel (past

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and future), their substantial accomplishments in effectuating the settlement, and the work past and future and their role as class counsel, the parties agree to submit to the court the determination of the amount of attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall such counsel receive fees of neither less than $950,000.00 nor more than $2.5 million to be paid to such counsel by the Diocese from the fund referred to in paragraph 3, above, all as determined by the court. Such payment shall be made to Richter & Haller, LLC on behalf of itself no later than ten (10) days after award by the court. The award of attorneys fees as set forth above in this paragraph specifically contingent upon the Court approval of this class certification and settlement agreement.

6. PAYMENT OF CLAIMS.

A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.

B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided

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to Class Counsel and the Diocese, if necessary.

C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.

D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

7. PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.

The parties understand and acknowledge that the Diocese has done or will do the following:

a. Comprehensive Policies. For the protection of children and the care of sexual abuse survivors, the Diocese has adopted a set of comprehensive policies called "The Policy of the Diocese of Charleston Concerning Allegations of Sexual Misconduct Or Abuse Of A Minor By Church Personnel" (the "Policies"). The Policies set forth the Diocese's unmitigated condemnation of child sexual abuse and its commitment to work to prevent sexual abuse, deal responsibly with accusations, and reach out with pastoral care for victims. The Policies are reviewed and updated every two years.

b. Reports Of All Accusations To Solicitor. Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the

accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.

d. Sexual Abuse Advisory Board. Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.

e. Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board. The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

8. RELEASE. When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).

9. DISMISSAL OF ACTIONS. The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.

10. MISCELLANEOUS PROVISIONS. This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

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claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

Executed this 12 day of January, 2007.

FOR THE CLASSES:

Lawrence E. Richter, Jr.
CLASS COUNSEL

Witness

FOR THE DEFENDANTS:

The Most Rev. Robert J. Baker
THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY AND FOR THE BISHOP OF CHARLESTON, A CORPORATION SOLE

Witness

EXHIBIT 1

CLAIMANT'S GENERAL RELEASE

_____ ("the Claimant") for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ("the Diocese"); any present or former bishops, archbishops or cardinals of the Diocese, in both their individual and official capacity; any entities affiliated with the Diocese; and present or former priests, deacons, other clergy, brothers, nuns, agents, servants, officers, trustees, directors, supervisors, attorneys, employees, volunteers, insurers, predecessors, successors, assigns, subsidiaries and affiliates of the Diocese, including without limitation any such person accused of committing or negligently causing or permitting sexual abuse with respect to the Claimant or members of the Claimant's family (all of the foregoing hereinafter collectively referred to as the "Released Parties") of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit. With respect to any claims arising from or related to an act or acts of abuse which have formed the basis of a claim or suit against the Diocese

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or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the ____ day of _____, 200____.

_____ _____
Print Claimant's Name Claimant's Signature

_____ _____
Witness Witness

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Rx Date/Time JUL-09-2003(WED) 19:09 843 881 1400 P.031
01/30/07 TUE 13:02 FAX 843 881 1400 RICHTER AND HALLER LLC 031

EXHIBIT 2

DIOCESE LIMITED RELEASE

The Roman Catholic Bishop of Charleston and the Bishop of Charleston in his official capacity, a Corporation Sole ("Diocese"), for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby forever remises, releases and forever discharges _____ ("the Claimant") and Claimant's heirs, attorneys (including their law firms, agents, servants, or employees), executors, predecessors, parents, successors, agents, servants, employees, and assigns of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities which were or could have properly been raised in any form or fashion arising from the incidents alleged by Claimant in his claim submitted pursuant to the Order Approving Class Certification and Settlement Agreement (date to be inserted) in cases numbers 06-CP-18-1310 and 06-CP-18-1311, Claimant's participation in the class process set out in said Order, including any assertions of the Bishop arising from the validity or fraudulent nature of any claim, and/or any defense or claim which was or may have been raised by the Bishop in defense to the Claim or any suit which was or could have been filed against the Bishop but for the Claimant's participation in the claims process set out in the Order referenced herein, whether such claims are now known or unknown. It is the intention of the parties that the Diocese is fully and finally releasing the Claimant from any liability asserted by it against him or her arising from the Claimants assertion of sexual abuse.

IN WITNESS WHEREOF, the Bishop of Charleston has set his hand and seal to this Release

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as of the date written below.

_____
The Bishop of Charleston, a Corporation Sole

By:_____

Its: _____

Date: _____ Witnessed by: _____

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 10-CP-10-5520

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, a Corporation Sole; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, in his Official Capacity, REV. MONSIGNOR MARTIN LAUGHLIN, former Administrator of the Diocese of Charleston, in his Official Capacity; ROBERT J. BAKER, former Bishop of Charleston, in his Official Capacity; LAWRENCE E. RICHTER, JR., DAVID K. HALLER, and RICHTER AND HALLER, LLC.,

Defendants.

FILED
2011 JUN 27 PM 12:30
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

Plaintiffs' Attorney:	Gregg Meyers
Defendants' Attorney:	A. Peter Shahid, Jr., for Diocese of Charleston Susan Taylor Wall, for David Haller James L. Bruner, for Lawrence E. Richter, Jr. and Richter and Haller, LLC
Date of Hearing:	March 31, 2011

INTRODUCTION

This lawsuit was filed on July 9, 2010, and alleges a number of alternative wrong-doings by the various Defendants. Each of the Defendants responded by filing motions to dismiss which this Court heard on March 31, 2011. For the following reasons, this Court finds the motions must be denied in part and granted in part.

***Res Judicata* and the Class Action Settlement**

The Plaintiffs' first cause of action alleges the Diocese knew or should have known that one of its priests was a pedophile who molested the Plaintiffs, and as a result, the Diocese was negligent and grossly negligent in supervising this priest. They also allege the Diocese was negligent and grossly negligent in failing to warn the Plaintiffs or their parents about this pedophile priest. They further allege the Diocese Defendants maintained a decades-long policy and practice of engaging in fraudulent concealment when their agents and employees were known to sexually abuse children.

The Diocese asks the Court to dismiss the negligence and gross negligence cause of action because it is barred by the doctrine of *res judicata*, collateral estoppel and the statute of limitations.

The *res judicata* argument arises out of a class action lawsuit filed in Dorchester County that was approved by Circuit Court Judge Diane Goodstein. The Defendants argue that the negligence and gross negligence claims of the Plaintiffs were encompassed in that class action lawsuit and are therefore barred as a matter of law. The factual background is extensively laid out in detail in the Complaint.

However, by way of background for this preliminary issue, it should be pointed out that the Plaintiffs alternatively allege the Diocese Defendants and the Attorney Defendants, after reaching a settlement, colluded to dismiss a class action lawsuit that had been filed in Charleston County, and re-filed the same class action lawsuit in Dorchester County in order to seek a more favorable settlement approval by a circuit court judge who was a long-time friend of Defendant Richter. Procedurally, the Plaintiffs want to be able to bring their negligence and gross negligence claims against the Diocese Defendants; however, if they are barred because of the *res*

judicata effect of the Dorchester County Class Action settlement (or any of the defenses the Diocese Defendants waived by agreeing to the Dorchester County Class Action settlement), then they seek to sue the Diocese Defendants and the Attorney Defendants for civil conspiracy, and the Attorney Defendants for various causes of actions they allege flow from the actions of the Attorney Defendants in their role as class action counsel.

Since all of the Defendants have raised the defense of *res judicata* as a bar to the various causes of actions brought in the current lawsuit, this Court must address this issue first.

This Court must give collateral recognition of the Dorchester County Class Action settlement if it can be shown that the Plaintiffs were afforded due process in that action; i.e., they were given reasonable notice of the class action settlement and class counsel adequately represented them. The South Carolina Supreme Court has held that it is appropriate for a court to conduct a limited collateral review of another court's class action settlement for the sole purpose of determining if procedural due process requirements were met as it pertains to the party seeking review. This limited review looks at two factors: (1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied. Hospitality Management Associates, Inc, v. Shell Oil Company, 356 S.C. 644, 591 S.E.2d 611 (2004).

Fundamentally, due process requires that absent class members be given notice. Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812, 105 S.Ct. 2965 (1985). The standard for notice is that it must be "the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Shutts, 472 U.S. at 812, 105 S.Ct. 2965 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15, 70 S.Ct. 652 (1950)).

I have conducted a limited collateral review of the procedures used by the circuit court in the Dorchester County Class action and find the procedures were not designed to ensure notice to any potential class members living outside of the state of South Carolina who were not otherwise given actual notice of the class action and settlement.[1] The Plaintiffs allege that they live outside the state of South Carolina and they did not receive actual notice of the settlement under the guidelines set forth in the settlement order. The newspaper notices of the class action were only published in South Carolina newspapers (with the exception of the Augusta daily newspaper which is immediately adjacent to South Carolina and is distributed in an area of South Carolina not otherwise serviced by a daily newspaper). The Defendants had originally proposed national publication of the settlement in the *USA Today* newspaper to Judge Goodstein; however, they specifically withdrew their request to have this notice published outside of South Carolina in a publication of national distribution. This is clearly evidence that the class action was not designed to be a national settlement, but rather was a settlement intended to bind only South Carolina residents who did not otherwise receive actual notice. I find, therefore, that the constructive notice of the Dorchester County Class Action settlement attempted by the in-state newspaper publications was not reasonably calculated, under all the circumstances, to apprise these out-of-state Plaintiffs of the pendency of the action and afford them an opportunity to present their objections.

The Plaintiffs also argues that the following language from Judge Goodstein's order of July 30, 2007 should estop the Diocese Defendants from raising the *res judicata*; to wit:

> The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward as a later date and can show

1 Nothing herein should be considered as adjudicating the issue of whether in-state class members received adequate notice.

> that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

At first glance, this language certainly seems to support the Plaintiffs' position. However, at a hearing on August 9, 2007, Judge Goodstein was asked to clarify her intent of this language, and as a result she issued an Order on August 31, 2007 in which she stated that language was only intended to apply to potential class members who had *actually* contacted the Diocese at some point in the past with allegations of child sexual abuse and were therefore entitled to receive *actual notice* of the proposed class settlement. Therefore, I find the language in the July 27th Order would not have the estoppel effect advanced by the Plaintiffs.

Nevertheless, this does not affect this Court's finding that the class notice was not intended to reach non-South Carolina residents who had not otherwise received actual notice of the settlement.

Due process rights preclude any claimant who did not receive notice of the class action from being bound by any judgment rendered in it. See Hoiengs v. County of Adams, 245 Neb. 877, 516 N.W.2d 223 (1994). Therefore, the Court finds the Plaintiffs are not bound by the judgment of the Dorchester County Class Action and are free to pursue their claims of negligence and gross negligence, subject to the findings below.

Statute of Limitations and Negligence/Gross Negligence Causes of Action

Having found the Plaintiffs are not bound by the Dorchester County Class Action, the Diocese Defendants move to dismiss the negligence and gross negligence causes of action on the grounds the claims fall outside the applicable statute of limitations.

The Plaintiffs claims arise out of allegations of childhood sexual abuse that allegedly occurred between 1965 and 1971. Therefore, these claims are subject to the limitations period

found in S.C. Code § 15-3-535 for actions arising prior to 2001, and S.C. Code § 15-3-555 for actions arising after 2001.

The facts plead in the Complaint allege Plaintiffs John Doe 2 and Jane Doe 4 would have been born at the latest in 1965. Consequently, the Plaintiffs would have turned 18 in 1983. Under § 15-3-535, the Plaintiffs would have had three years from the date of discovery of the tort to bring his or her claim. These Plaintiffs do not claim they were unaware of the alleged tort at the time it happened, between 1965 and 1971, or at any time after 1971. Giving each Plaintiff the benefit of the age of majority, three years after turning 18 in 1983, the statute would have been tolled until 1986, and three years after turning 21 would be 1989. None of these claims were brought by 1989.

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996); Bayle v. S.C. Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App.2001), cert. denied. In Dean, the Supreme Court stated:

> According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. Id. at 363, 364,468 S.E.2d at 647 (emphasis in original) (citations omitted); Young v. South Carolina Dept. of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App.1999) (stating the statute of limitations runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct).

Applying the tolling effect provided by § 15-3-555, each Plaintiff would be able to bring his or her claim within six years of turning 21 years old. Construing the facts alleged in the

Complaint in the light most favorable to the Plaintiffs, each Plaintiff would have turned 21 no later than 1986. Therefore, at the very latest their claims were barred by the limitations period in 1992. The Plaintiffs fail to allege they were unaware of the sexual abuse allegedly committed against them, or unable to discover the causal relationship between any injuries and the alleged sexual abuse.

The Plaintiffs argue the Diocese Defendants should be bound by their waiver of statute of limitations defenses in the Dorchester County Class Action. That waiver was only for class members and this Court has found the Plaintiffs are not bound by that class action. Therefore, the Plaintiffs cannot avail themselves of a waiver which only applies to a class action they wish to avoid.

The Plaintiffs further argue fraudulent concealment should bar the Diocese Defendants from raising the statute of limitations defense. The claims in the Plaintiffs' fraudulent concealment cause of action and defense are rooted in a document dated from 1962 entitled "The Instruction." The Plaintiffs claim the Vatican instructed a certain degree of secrecy to all local dioceses (including the current Diocese Defendant) in this document, the execution of which led to the concealment that is the core of the Plaintiffs' Complaint. The underlying crux of the Plaintiffs' Complaint for fraudulent concealment, which allegedly gives them a right to a remedy, is that the Diocese Defendants concealed certain information at the direction of this 1962 document.

In order to succeed on a claim of fraudulent concealment, a plaintiff must plead facts indicating an "inducement for delay" in filing the lawsuit. Hedgepath v. American Telephone & Telegraph Co., 559 S.E.2d. 327, 338 (Ct. App. 2001). In order to successfully avoid the application of the statute of limitations on this theory that the Diocese Defendants are or had engaged in acts constituting "fraudulent concealment," the Plaintiffs must allege and establish the

following:

> [A] defendant is estopped from benefitting from the statute of limitations as a defense because the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. The conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped the party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts. Kelly v. Logan. Jolley. & Smith. L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1,4 (Ct. App., 2009) (internal citations omitted).

The claim of fraudulent concealment fails to bar the application of the statute of limitations in this case because the Plaintiffs do not allege how the Diocese Defendants actions with regards to "The Instruction" caused the Plaintiffs to be unaware of the personal injuries they allege they suffered or of the name the alleged perpetrator. They do not allege any defect in memory or any other reason why they are unaware of their own personal injury. They do not allege that the Diocese Defendants ever made a misrepresentation or took any action that caused them to delay the filing of their lawsuit. Absent such allegations, the Plaintiffs cannot maintain a claim of fraudulent concealment in tolling the statute of limitations.[2]

Therefore, the Court finds the Plaintiffs' negligence and gross negligence claims are barred by the applicable statute of limitations and the Diocese Defendants motion to dismiss those causes of action must be granted.

UNFAIR TRADE PRACTICES ACT CLAIM

The Plaintiffs bring claims for damages alleging the Diocese violated the South Carolina Unfair and Deceptive Trade Practices Act, but fail to allege facts necessary to sustain an action under the UTPA. South Carolina's UTPA prohibits "[u]nfair methods of competition and unfair

2 For the same reasons, the cause of action for fraudulent concealment must fail and is hereby dismissed.

or deceptive acts or practices in the conduct of any trade or commerce...." S.C. Code Ann.§39-5-20 (1985). Trade or commerce is defined as "the advertising, offering for sale, sale or distribution of any services and any property ... and any other ... thing of value...." S.C. Code Ann. § 39-5-10(b) (1985). See also Foggie v. CSX Transp., Inc., 313 S.C. 98, 24, 431 S.E.2d 587, 591 (1993).

In the current case, the acts alleged by the Plaintiffs for recovery are acts of sexual abuse. The Plaintiffs allege the Defendants are subject to a claim under the UTPA because, among other reasons, they "operate schools, for which tuition is charged," and "they provide services to the public and advertise services to the public." Our Supreme Court requires that the specific acts alleged are those of trade or commerce, not the general or unrelated conduct of a defendant that might or might not qualify as trade or commerce. The acts that form the basis of the Plaintiffs' Complaints are allegations of sexual abuse, *not* acts of trade or commerce.

CIVIL CONSPIRACY AND ALL DEFENDANTS

The Plaintiffs allege a multi-faceted civil conspiracy cause of action that the Defendants all conspired to commit fraud upon the court by settling the case filed in Charleston County and re-filing it in Dorchester County in anticipation of getting favorable rulings on class certification, settlement terms, and approval of attorneys' fees. I have reviewed the voluminous allegations set forth in support of this cause of action and find it meets the requirements of pleading a valid cause of action for civil conspiracy, in particular the requirement of alleging special damages insofar as the allegations complain the Defendants proposed class membership to include the Plaintiffs, then specifically requested the Court drop nationwide publication notice. The net result was that the Plaintiffs did not have the opportunity to participate in the class settlement nor exercise their right to opt-out, and as a result they are now unable to participate in the class action settlement, while at the same time are precluded from pursing their negligence and gross negligence claims against the Diocese Defendants because of the running of the applicable

statute of limitations, which was waived by the Diocese in the Dorchester County Class Action with regards to participating class members. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore the Defendants' motion to dismiss this cause of action must be denied.

PROFESSIONAL NEGLIGENCE AND BREACH OF FIDICIARY DUTY

The Plaintiffs allege professional negligence and breach of fiduciary duty causes of action against the Attorney Defendants based upon the aforementioned facts set forth with great particularity in their Complaint. I have reviewed the voluminous allegations set forth in support of these causes of action and find they meet the requirements of pleading a valid cause of action for both. The particular duties owed and alleged to have been breach are supported by an affidavit of an expert as required by law. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore, the Attorney Defendants' motion to dismiss these causes of action must be denied.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the all of the Defendants' Motions to Dismiss on the grounds of *res judicata* are DENIED; and,
2. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross negligence because the actions are barred by the applicable statute of limitations is GRANTED; and
3. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross negligence because the actions are barred by the applicable statute of limitations is GRANTED; and

4. That the Diocese Defendants' Motion to Dismiss the cause of action for fraudulent concealment because the actions are barred by the applicable statute of limitations is GRANTED; and
5. That the Diocese Defendants' Motion to Dismiss the cause of action for Unfair Trade Practices Act is GRANTED; and
6. That all of the Defendants' Motions to Dismiss the cause of action for Civil Conspiracy is DENIED; and
7. That the Attorney Defendants' Motion to Dismiss the cause of action for Professional Negligence is DENIED; and
8. That the Attorney Defendants' Motion to Dismiss the cause of action for Breach of Fiduciary Duty is DENIED.

AND IT IS SO ORDERED.

Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June 17, 2011

R. App. 001107

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 2 AND JANE DOE 4,

Plaintiffs,

vs. CASE NO. 2010-CP-10-5520

THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; and RICHTER & HALLER, LLC,

Defendants.

TELEPHONIC DEPOSITION OF:	JOHN DOE 2
DATE:	September 4, 2014
TIME:	10:01 a.m.
LOCATION:	McNair Law Firm 100 Calhoun Street Charleston, SC
TAKEN BY:	Counsel for the Defendants
REPORTED BY:	Janice N. Shepherd, Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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R. App. 001108

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R. App. 001109

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(INDEX AT REAR OF TRANSCRIPT)

married 21 years?

A. That's correct.

Q. Thank you. From the time that you were born until you graduated from Aquinas High School, where did you live?

A. In Augusta, Georgia.

Q. That entire time?

A. Correct.

Q. Did you live during that time period at home with your family?

A. Yes.

Q. John Doe 2, you have filed a lawsuit, and your pseudonym under the lawsuit is John Doe 2. Do you know either Mr. Richter or Mr. Haller, Larry Richter or David Haller?

A. No.

Q. Have you ever had any contact with either one?

A. No.

Q. We want to give you the opportunity to place on the record what happened to you as a youngster from whatever age -- and we'll let you describe it in your own words -- that forms the basis for your allegations of abuse by persons affiliated with the Diocese of Charleston. So

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 2 AND JANE DOE 4,
Plaintiffs,
vs. CASE NO. 2010-CP-10-5520
THE BISHOP OF CHARLESTON, ET AL,
Defendants.

(Caption Continues on Page 2)

DEPOSITION OF: JANE DOE 4

DATE: June 3, 2014

TIME: 1:05 PM

LOCATION: Law Offices of
MCNAIR LAW FIRM
100 Calhoun Street, Suite 400
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Roxanne M. Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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(CAPTION CONTINUED):

JOHN DOE 10,

Plaintiff,

vs. CASE NO. 2010-CP-10-7233

THE BISHOP OF CHARLESTON, ET AL,

Defendants.

JANE DOE 11,

Plaintiff,

vs. CASE NO. 2012-CP-10-5559

THE BISHOP OF CHARLESTON, ET AL,

Defendants.

JOHN DOE 193,

Plaintiff,

Vs. CASE NO. 2013-CP-10-3733

THE BISHOP OF CHARLESTON, ET AL,

Defendants.

FATHER DOE 194,

Plaintiffs,

vs. CASE NO. 2013-CP-10-4175

THE BISHOP OF CHARLESTON, ET AL,

JOHN DOE 194,

Plaintiffs,

vs. CASE NO. 2013-CP-4176

THE BISHOP OF CHARLESTON, ET AL,

Defendants

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DIOCESAN DEFENDANTS:

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Shahidlo@bellsouth.net

ALSO PRESENT:
Lawrence E. Richter, Jr. and David K. Haller

(INDEX AT REAR OF TRANSCRIPT)

A. No.
Q. You have been employed in the past?
A. Yes, but it's been a while, since 2008 I believe.
Q. Jane Doe 4, you are aware that you are the plaintiff in this lawsuit that we're here about?
A. Yes, sir.
Q. Who is Larry Richter?
A. I don't know.
Q. Do you know who David Haller is?
A. No.
Q. These gentlemen are lawyers in Charleston. Have you ever met them?
A. No.
Q. Have they ever been your lawyers?
A. No.
Q. Are you aware of anything that either of those gentlemen have done to you to cause you financial harm?
A. No.
Q. Let me introduce to you -- that's Mr. Richter sitting at the end of the table, and that's Mr. Haller sitting over here next to him. These are the gentlemen I just mentioned to you. Mr.

Richter and his law firm are my clients, okay?

A. Okay.

Q. Mr. Haller is represented by Mrs. Wall. Mr. Richter and Mr. Haller used to practice together but do not now.

The reason I asked you those questions was because you have sued Mr. Richter and Mr. Haller in your lawsuit. Here is my question. Do you know why you have sued them?

A. I don't -- I'm not sure.

Q. Yes, no, and I don't know are perfectly honest answers to me, and I will accept them. Don't assume because I ask you a question that I expect you to know some answer different than what a truthful answer would be from you. So I accept I don't know, no problem.

This is what I'd like to ask you to do. Can you explain to me how old you were when you first had an encounter with Father McCarthy?

A. I was eight, but I was almost nine.

Q. You were eight almost nine years old?

A. I believe, yes.

Q. Do you recall what year that was?

A. 19 -- let me think. I believe it was 1964. I'm not 100 percent on that.

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 2 and JANE DOE 4,

Plaintiffs,

vs. CASE NO. 2010-CP-10-5520

THE BISHOP OF CHARLESTON, et al,

Defendants.

(Caption continues on Page 2)

DEPOSITION OF: JOHN DOE 10

DATE: June 4, 2014

TIME: 9:20 a.m.

LOCATION: McNair Law Firm
100 Calhoun Street, Suite 400
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Patricia T. Morrison,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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R. App. 001117

JOHN DOE 10, Plaintiff,
vs.
THE BISHOP OF CHARLESTON, et al, Defendants.

CASE NO. 2010-CP-10-7233

JOHN DOE 11,
vs.
THE BISHOP OF CHARLESTON, et al,

CASE NO. 2012-CP-10-5559

JOHN DOE 193
vs.
THE BISHOP OF CHARLESTON, et al.

CASE NO. 2013-CP-10-3733

APPEARANCES OF COUNSEL:

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R. App. 001118

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(INDEX AT REAR OF TRANSCRIPT)

R. App. 001119

happened was I saw an article about the coverup and then I looked for Frederick Hopwood's name, and I found Gregg Meyers' and Jeff Anderson's names.

Q. Who is Larry Richter?

A. I know the name from lawsuits, but I don't know the person.

Q. Do you know what he does?

A. An attorney, as far as I can tell.

Q. Has he ever been your lawyer?

A. I mean, he was in the lawsuit, so -- I mean, I've never spoken with him about it, but I don't know.

Q. For your information, this is Mr. Richter seated at the end of the table.

A. Oh.

Q. Do you know why you sued Mr. Richter in this lawsuit?

A. No.

Q. You've never spoken to him?

A. No.

Q. To your knowledge has Mr. Richter ever done anything to you to cause you financial harm?

A. To me?

Q. Uh-huh.

A. Not to my knowledge, no.

R. App. 001120

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

JANE DOE 11,

Plaintiff,

vs. CASE NO. 2012-CP-10-5559

THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; and RICHTER & HALLER, LLC,

Defendants.

DEPOSITION OF:	JANE DOE 11
DATE:	September 4, 2014
TIME:	11:58 a.m.
LOCATION:	McNair Law Firm 100 Calhoun Street Charleston, SC
TAKEN BY:	Counsel for the Defendants
REPORTED BY:	Janice N. Shepherd, Registered Professional Reporter

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swall@mcnair.net

(INDEX AT REAR OF TRANSCRIPT)

R. App. 001122

A. I'm not -- I mean, years before John Doe 2 and I met. But, no, not after.

Q. In any way --

A. Just this one.

Q. -- related in any way to John Doe 2?

A. No.

Q. And/or your marriage, your relationship, your interaction? I'm talking about with John Doe 2.

A. No, it was just this one counselor during that period of time.

Q. All right. Have you taken any medication or been prescribed any medication in conjunction with this marriage counseling period, '04, '05, perhaps a little bit before and after?

A. No.

MS. WALL: I believe that's all I have. Thank you.

MR. MEYERS: Jim?

EXAMINATION

BY MR. BRUNER:

Q. I have just a few questions for you, ma'am.

A. Okay.

Q. Who is Lawrence Richter?

A. I don't know.
Q. Who is David Haller?
A. I am not sure who that is either.
Q. What is Richter & Haller?
A. I am not sure.
Q. Have either of those gentlemen ever been your lawyer?
MR. SHAHID: Object to the form of the question.
MR. MEYERS: I join. Go ahead.
BY MR. BRUNER:
Q. You can answer.
A. No, not that I'm aware of.
Q. Are either of those gentlemen your lawyer at this time?
MR. SHAHID: Object to the form of the question.
MR. MEYERS: Join. Go ahead.
THE WITNESS: No.
BY MR. BRUNER:
Q. Okay. I can always tell if I'm asking a good question because they object.
Ma'am, are you aware of anything that either of those gentlemen have done in the past that caused you any financial harm?

R. App. 001124

A. No, I'm not.

MR. BRUNER: Okay. Thank you. That's all the questions I've got for you, please.

EXAMINATION

BY MR. SHAHID:

Q. Good afternoon. I'm Peter Shahid. I represent the Diocese of Charleston and the other individuals, Bishop Baker, Bishop Gugliemone, Monsignor Laughlin, who we collectively refer to as the diocesan defendants. And the same ground rules that Ms. Wall had mentioned to you apply. If at any time you don't understand any of my questions, just ask me to repeat it.

A. Okay.

Q. Do you need to take a break? Are you doing okay?

A. I'm fine.

Q. You and your first husband, Paul, divorced in 1992; correct?

A. I can't remember if it was '91 or '92. But, yes.

Q. Either '91 or '92. What was the reason for the divorce?

A. He was unfaithful.

Q. Okay. And is that the reason why you

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

JOHN DOE 193,

Plaintiff,

Case No.
2013-CP-10-3733

vs.

THE BISHOP OF CHARLESTON,
A CORPORATION SOLE; et al.,

Defendants.

AND RELATED CASE NOS. 2010-CP-10-5520,
2010-CP-10-7233, 2012-CP-10-5559,
2013-CP-10-4175, 2013-CP-10-4176

DEPOSITION OF: JOHN DOE 193

DATE: July 16, 2014

TIME: 10:00 a.m.

LOCATION: Family Therapy and Trauma Center
313 Bennett Circle Drive
Greer, SC 29650

TAKEN BY: Counsel for Defendants

REPORTED BY: KENNETH McCLURE,
Registered Merit Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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ALSO PRESENT:

WIFE SANDRA

R. App. 001127

Could I have your full name, please, sir?

A. John Doe 193.

Q. John Doe 193, where do you live?

A. 121 Belle Oaks Drive, Simpsonville, South Carolina.

Q. And how long have you lived in Simpsonville?

A. I don't know offhand. Probably, 14 years.

Q. Okay. That's fine.

A. A good number of years.

Q. That's fine.

John Doe 193, are you employed?

A. No, sir.

Q. All right, sir. And how old are you, John Doe 193?

A. Sixty-one.

Q. Now, I'm going to ask you a few questions about some people in the case that we are here on. Do you know who Lawrence Richter is?

A. No, sir.

Q. Do you know who David Haller is?

A. No, sir.

Q. All right, sir. Do you know what the firm Richter & Haller, LLC, is?

A. No, sir.

Q. That is a law firm in Charleston, South Carolina, and the gentlemen whose names I just asked you about are lawyers in Charleston.

Have either Mr. Richter or Mr. Haller ever been your lawyer?

MR. SHAHID: Objection to the form of the question.

MR. MEYERS: I join.

Q. You can answer.

A. Not that I know of.

Q. And, of course, they are not your lawyers now, are they?

MR. SHAHID: Objection to the form of the question.

MR. MEYERS: Same.

A. No.

Q. John Doe 193, do you know of anything that either Mr. Richter or Mr. Haller have done in the past that has caused you financial harm?

MR. SHAHID: Object to the form of the question.

MR. MEYERS: Join.

Go ahead.

A. Not knowing them, I don't know.

Q. So you don't know of anything. That's

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 194,

Plaintiff,

vs. CASE NO. 2013-CP-10-4176

THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; and RICHTER & HALLER, LLC,

Defendants.

DEPOSITION OF:	JOHN DOE 194
DATE:	July 25, 2014
TIME:	9:57 a.m.
LOCATION:	McNair Law Firm 100 Calhoun Street Charleston, SC
TAKEN BY:	Counsel for the Defendants
REPORTED BY:	Janice N. Shepherd, Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

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(INDEX AT REAR OF TRANSCRIPT)

R. App. 001131

A. Sure.
Q. Who is Lawrence Richter?
A. I've never met the man. He's an attorney, a part of this case.
Q. You've never met him or talked to him?
A. No.
Q. Do you understand he's a lawyer?
A. Yes, sir.
Q. And how do you have that understanding?
A. I learned about it from Mr. Meyers.
Q. Okay. Has he ever been your lawyer?
A. No.
MR. SHAHID: Object to the form of the question.
MR. BRUNER: On occasion, Mr. Shahid will be objecting. But that's okay. He's entitled to. But if he makes that objection, then we just allow him to say it, and then you can still answer the question.
MR. MEYERS: Same is true of me or everybody else at the table.
THE WITNESS: How about me?
MR. MEYERS: Your objections come through me, not from you.
THE WITNESS: Okay.

BY MR. BRUNER:

Q. So has Mr. Richter ever been your lawyer?

A. Not that I know of.

Q. Do you know of anything that Mr. Richter has done that caused you financial harm?

A. My understanding is I've been excluded from a class action suit.

Q. And do you think that's caused you financial harm?

A. Hard to say.

Q. Do you know who David Haller is?

A. I know the name.

Q. How do you know the name?

A. Same as Mr. Richter.

Q. Same as Mr. Richter. Do you understand that Mr. Haller is also an attorney?

A. Yeah.

Q. Has he ever been your lawyer?

MR. SHAHID: Object to the form of the question.

THE WITNESS: Not that I know of.

BY MR. BRUNER:

Q. Okay. Do you know of anything

Mr. Haller has done to cause you financial harm?

A. Not directly.

Q. You are aware, are you not, that you are a plaintiff in a lawsuit that is pending in Charleston County?

A. Yes.

Q. And in that lawsuit, your pseudonym is John Doe 194?

A. Okay.

Q. Do you know that?

A. Yes. I didn't remember the number, but...

Q. Well, I know the numbers can be confusing. I agree with you. In that lawsuit, Mr. Richter and Mr. Haller have been sued. Do you know why you sued them?

A. I read the Complaint.

Q. You have read it?

A. Um-hum.

Q. So do you know why you've sued them?

A. I have a pretty good understanding.

Q. Tell me what that understanding is.

A. In layman's terms or my own words, there was a class action suit, and I was not a party of it. And to the best of my understanding,

R. App. 001134

STATE OF SOUTH CAROLINA		IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF CHARLESTON		NINTH JUDICIAL CIRCUIT
JOHN DOE 2 AND JANE DOE 4, PLAINTIFFS, vs. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; RICHTER & HALLER, LLC, DEFENDANTS.	:	CASE NO. 2010-CP-10-5520
JOHN DOE 10, PLAINTIFF, vs. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; RICHTER & HALLER, LLC, DEFENDANTS.	:	CASE NO. 2010-CP-10-7233

DEPOSITION OF JANE DOE 1

(Caption continued on next page)

R. App. 001135

JANE DOE 11, PLAINTIFF, vs. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO. 2012-CP-10-5559
JOHN DOE 193, PLAINTIFF, vs. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO. 2013-CP-10-3733

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FATHER DOE 194, PLAINTIFF, vs. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO. 2013-CP-10-4175
JOHN DOE 194, PLAINTIFF, vs. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO. 2013-CP-10-4176

(Caption continued on next page)

DEPOSITION OF JANE DOE 1

DATE TAKEN: Thursday, July 24, 2014

TIME BEGAN: 10:39 a.m.

TIME ENDED: 12:18 p.m.

LOCATION: McNair Law Firm, P.A.
301 South Tryon Street, Suite 1615
Charlotte, North Carolina

REPORTED BY: Karen K. Kidwell, RMR, CRR, CCP
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

to be 81. But do you have some trouble with memory?

A. Yes.

Q. Okay. Well, I'm 64, and I do, too, so more power to you. I think you're -- I hope I'm in as good a shape at your age --

A. Well, the doctor said my part of my memory, this part right in here (Indicating), was having problems so . . .

Q. Yes, ma'am. Well, I hit my head so I've got -- that's my excuse.

A. I didn't hear what you said.

Q. I hit my head.

A. Oh.

Q. Jane Doe 1, after you and John Doe 2 talked to the lawyers at Fort Gordon, did either you or he talk to anyone else about these allegations?

A. I guess Father Robert went to Charleston to talk to somebody.

Q. Father Robert is your husband?

A. Yes. And I don't know why I didn't go.

Q. How did you know this? I mean, did he tell you he was going?

A. Well, of course.

Q. I would think so, yeah.

A. We talked -- we were in it together.

Q. Yes.

A. But I just couldn't do everything.John DoeDo you know -- what year did Father Robert die?

A. Let's see. He's been dead about ten years.

Q. So about 2004. And can you recall when he went to Charleston in relationship to the year he died?

A. It seems like a long time.

Q. Long time. Okay. Did he go to Charleston to talk to the bishop?

MR. SHAHID: Object to the form of the question.

BY MR. BRUNER:

Q. Do you know?

A. To talk -- yes, the -- he wanted to see the head person, whatever his name, whoever he is. But I truly can't recall if he even got to talk to anybody.

Q. When he came back, did he tell you what had happened?

A. I'm sure he did.

Q. Do you remember what he told you?

A. Because we talked -- no. Because we talked about everything.

Q. Okay. Well, let me ask you this. As a result of his visit to Charleston, did anything happen about these allegations?

A. Not that I remember.

Q. Did anyone from the -- from the Diocese of Charleston call you and interview you about what you knew?

A. Not that I remember.

Q. Do you know --

A. I don't think so. -- if anyone from the Diocese of Charleston called your husband, Father Robert, and asked --

A. I don't think anybody ever contacted us at all.

Q. Okay. When you went to see -- when you and Father Robert went to see the lawyers at Fort Gordon, did you know how many of your children were claiming that Father McCarthy had abused them?

A. I probably did, but right this second, I can't say yes or no.

Q. Okay. As we sit here --

A. But obviously I did.

Q. At one point in time you knew, but you don't remember as we sit here today?

A. Yeah. I'm sorry.

EXHIBIT I TO MEMORANDUM

happened.

Q. And do you remember specifically anything that he said to you, Father Robert said to you when he went on that trip to Charleston that, such as, I'm not trying to put words in your mouth. I'm just trying to get sort of a flavor as to what may have happened. Did someone say to you, the bishop's not in? Make another appointment? Anything along those lines or --

A. I just know that every door was closed to him. Nothing -- nobody he could talk to or anything. I don't know how it all came about, but we went home just as we had gone, with nothing.

And that's the way it was everywhere you tried to go. There was just a closed door there.

Q. Did you do anything else? I mean, you said, everywhere you went, there was a closed door. Who else did you try to talk to? You talked to the lawyers at Fort Gordon?

A. Yes.

Q. You told us. Then the trip to Charleston. Did you talk to any other lawyers?

A. It seems like we did, but I just can't remember.

Q. Where would those lawyers have been, which

EXHIBIT I TO MEMORANDUM

FROM THE SUPREME AND HOLY CONGREGATION OF THE HOLY OFFICE

TO ALL PATRIARCHS, ARCHBISHOPS, BISHOPS AND OTHER DIOCESAN ORDINARIES "EVEN OF THE ORIENTAL RITE"

INSTRUCTION

~~CONFIDENTIAL~~

ON THE MANNER OF PROCEEDING IN CASES OF SOLICITATION

The Vatican Press, 1962

~~115~~

INSTRUCTION

On the manner of proceeding in cases of the crime of solicitation

[This text is] to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries.

PRELIMINARIES

1. The crime of solicitation takes place when a priest tempts a penitent, whoever that person is, either in the act of sacramental confession, whether before or immediately afterwards, whether on the occasion or the pretext of confession, whether even outside the times for confession in the confessional or [in a place] other than that [usually] designated for the hearing of confessions or [in a place] chosen for the simulated purpose of hearing a confession. [The object of this temptation] is to solicit or provoke [the penitent] toward impure and obscene matters, whether by words or signs or nods of the head, whether by touch or by writing whether then or after [the note has been read] or whether he has had with [that penitent] prohibited and improper speech or activity with reckless daring (Constitution Sacrum Poenitentiae, § 1).

2. [The right or duty of addressing] this unspeakable crime in the first instance pertains to the Ordinaries of the place in whose territory the accused has residence (V. below, numbers 30 and 31), and this not to mention through proper law but also from a special delegation of the Apostolic See; It is enjoined upon these aforementioned persons to the fullest extent possible, [in addition to their being] gravely encumbered by their own consciences, that, after the occurrence of cases of this type, that they, as soon as possible, take care to introduce, discuss and terminate [these cases] with their proper tribunal. However, because of particular and serious reasons, according to the norm of Canon 247, § 2, these cases can be directly deferred to the Holy Congregation of the Holy Office or be so ordered. Yet [the right of] the accused respondents ~~115~~ remains intact in any instance of judgment to have recourse to the Holy Office. However, recourse thus interposed does not suspend, excluding the case of an appeal, the exercise of the jurisdiction of the judge who has already begun to accept the case; and he can therefore be able to pursue the judgment up to the definitive decision, unless it has been established that the Apostolic See has summoned the case to itself (Cfr. Canon 1569).

3. By the name of Ordinaries of the place are understood to be, each for his own territory, the residential bishop, abbot or prelate nullius, the administrator, any vicar or Prefect Apostolic, [and, in the absence of these aforementioned (dignitaries), those who succeed them in power in the ~~meanwhile by the prescription~~ of law or from approved ~~constitutions~~ (Canon 198, § 1); [This norm does not apply], however, to the vicar general, except from his [having been] specially delegated.

4. The Ordinary of the place in these cases is the judge even for regulars [religious], even though exempt. It is indeed strictly prohibited for their superiors to interpose themselves in cases pertaining to the Holy Office (Canon 501, § 2). However, having safeguarded the right of the Ordinary, there is nothing to prevent superiors themselves, if by chance they have discovered [one of their] subjects delinquent in the administration of the sacrament of Penance, from being able and having the obligation of being diligently watchful over those same persons, and, even having administered salutary penances, to admonish and correct, and, if the case demands it, to remove him from some ministry. They will also be able to transfer him to another [assignment], unless the Ordinary of the place has forbidden it because he has already accepted the denunciation and has begun the inquisition.

5. The Ordinary of the place can either supervise these cases himself or commit their acceptance to an ecclesiastic who is serious and of a mature age. But [they may not [commit such cases] on an habitual basis or for the entire group of these cases, but must delegate as often as needed (toties quoties) for cases taken singly and through writing, saving the prescription of Canon 1613, § 1.

6. Although, as a rule, a single judge, by reason of its secrecy, is prescribed for cases of this type, it is not forbidden, however, for the Ordinary in the more difficult cases to approve one or two assessors and counsellors, selected from the synodal judges (Canon 1575); or even to three judges, likewise chosen from the synodal judges, to hand over the case to the judges to be handled with the mandate of proceeding collegially according to the norm of Canon 1577.

7. The promoter of justice, the defender of the accused and the notary, priests who are fittingly serious, of mature age, of integrity, doctors in canon ~~11~~law or otherwise skilled [in canon law] and worthy because of their zeal for justice (Canon 1589); and not found to be at any disadvantage toward the accused, which Canon 1613 treats, are to be nominated in writing by the Ordinary. The promoter of justice, however (who can be different from the promoter of justice of the Curia) [can be appointed] for the entire series of cases. The defender of the accused, however, and the notary are to be appointed each time for each case (toties quoties). Nor is the accused prohibited from proposing a defender seen as favorable to him (Canon 1655), who, however, is to be a priest and approved by the Ordinary.

8. Sometimes (this refers to his own location), the intervention [of the promoter of justice] is required, and, in the case where he has not been cited, unless by chance ~~even if not cited~~ he is still present [at the process], the Acts must be considered [totally] invalid. But, if, however,

he has been legitimately cited and is not present at some [parts of the] Acts, the Acts indeed are valid, but afterwards [those Acts] will be totally subject to his examination so that he is able to comment upon all of them either in words or in writing and to propose what he has judged to be necessary or opportune" (Canon 1587).

9. It is fitting that the notary, on the other hand, be present at all the Acts under pain of nullity and to note down with his own hand or at least to affix his signature [to the aforesaid Acts] (Canon 1585, § 1). Because of the special character of these procedures, however, it is necessary for the Ordinary to dispense from the presence of the notary, though because of a reasonable excuse in the acceptance, as will be noted in its own place, of the denunciations and also in the expenditure of the degrees of attention or care expected of a notary in a given situation, as they say, in pursuing and in examining the witnesses inducted [into the case].

10. Minor helpers are to be used for nothing unless it is absolutely necessary; and these are to be chosen, in so far as possible, from the priestly order; always, however, they are to be of proved faithfulness and mature without exception. But it must be noted that, if, when necessity demands it, they can be nominated to accept certain acts, even if they are non-subjects living in another territory or the Ordinary of that territory [can] be interrogated (Can. 1570, § 2), observing, of course, all of the cautions treated as above and in Canon 1613.

11. Because, however, what is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and given over to execution, they are to be restrained by a perpetual silence (Instruction of the Holy Office, February 20, 1867, n. 14), each and everyone pertaining to the tribunal in any way or admitted to knowledge of the matters because of their office, is to observe the strictest ++7++ secret, which is commonly regarded as a secret of the Holy Office, in all matters and with all persons, under the penalty of excommunication latae sententiae, ipso facto and without any declaration [of such a penalty] having been incurred and reserved to the sole person of the Supreme Pontiff, even to the exclusion of the Sacred Penitentiary, are bound to observe [this secrecy] inviolably. Indeed by this law the Ordinaries are bound ipso jure or by the force of their own proper duty. The other helpers from the power of their oath which they they must always take before they undertake their duties. And these, then, are delegated, are interpolated, and are informed in their absence by means of the precept in the letters of delegation, interpellation, [or of] information, imposing upon them with express mention of the secret of the Holy Office and of the aforementioned censure.

12. The aforesaid oath, the formula for which is to be found in the appendix of this instruction (Form A), must be used (by those, obviously, who will use it habitually, once for all; by those, however, who are deputed only for some determined piece of business or case, as often as required (toties quoties), in the presence of the ordinary or his delegate done upon the Gospels of God (also by priests) and not otherwise and with the added promise of fulfilling faithfully their duty, to which, however, the excommunication mentioned above, is not extended. There must be an

avoidance, moreover, by those who are set over those involved in this cases, lest anyone be admitted to a knowledge of the matters from helpers, unless in some way a party or an office to be performed by that person necessarily requires a knowledge of these matters.

13. The oath of keeping the secret must be given in these cases also by the accusers or those denouncing [the priest] and the witnesses. To none of these, however, is there subjection to a censure, unless by chance toward these same pesons some censure has been expressly threatened upon the person himself, for his accusation, his deposition or of his violation (Excussionis?) [of such] by act. The accused, however, should be most seriously warned that even he, with all [the others], especially when he observes the secret with his defender, is under the penalty of suspension a divinis in case of a transgression to be incurred ipso facto.

14. Finally, as for the publishing, the language, the confirmation, the custody of and the accidental nullity, in every way [these matters] must be observed which are prescribed by Canons 1642-43, 379-80-82 and 1680 respectively.

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TITLE NUMBER ONE

THE FIRST KNOWLEDGE OF THE CRIME

15. Since the crime of solicitation takes place in rather rare decisions, lest it remain occult and unpunished and always with inestimable detriment to souls, it was necessary for the one person, as for many persons, conscious of that [act of solicitation], namely, the solicited penitent, to be compelled to reveal it through a denunciation imposed by positive law. Therefore:

16. "According to the Apostolic Constitutions and especially of the Constitution of Benedict XIV Sacramentum Poenitentiae of June 1, 1741, the penitent must denounce the accused priest of the delict of solicitation in confession within a month to the Ordinary of the place or to the Holy Congregation of the Holy Office;, and the confessor must, burdened seriously in conscience, to warn the penitent of this duty." (Canon 904).

17. Moreover, according to the mind of Canon 1935 anyone of the faithful can always denounce the delict of solicitation, of which he will have had a certain knowledge; also, the obligation of denunciation urges as often as the person is bound to it from the natural law itself because of the danger to faith or religion or other imminent public evil.

18. "The faithful, however, who knowingly have disregarded the obligation to denounce the person by whom he was solicited, against the prescription (related above) of Canon 904, within a month, falls into an excommunication reserved latae sententiae, not to be absolved unless after he has satisfied the obligation or has promised seriously that he would so" (Can. 2368, § 2).

19. The duty of denunciation is a personal one and is to be fulfilled regularly by the person himself who has been solicited. But if he is prevented by the most serious difficulties from doing this, then either by

letter or by another person favorable to him should approach the ordinary or the Holy Congregation of the Holy Office or the Sacred Penitentiary, revealing all the circumstances (Instruction of the Holy Office, February 20, 1967, n. 7).

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20. Anonymous denunciations generally must be rejected. However, they can have supportive force or give the occasion for further investigations, if the particular circumstances of the matters involved render an accusation probable (Cfr. Can. 1942, § 2).

21. The obligation of denunciation on the part of the solicited penitent does not cease because of a spontaneous confession by the soliciting confessor done by chance, nor because of his being transferred, promoted, condemned, or presumably reformed and other reasons of the same kind. It ceases, however, at his death.

22. Sometimes it happens that the confessor or another ecclesiastic man is deputed to receive some denunciation, together with an instruction concerning the acts to be assumed for a judicial reason. Then that person is to be expressly warned that he should tell everything to the Ordinary or to the person whom he deputed, keeping no example or trace of it to himself.

23. In receiving the denunciations, this order is to be regularly observed: First, an oath to tell the truth while touching the Holy Gospels is to be given to the person making the denunciation; he should be interrogated according to the formula (Formula E), circumspectly, so that he narrates each and every circumstance briefly, indeed, and decently, but clearly and distinctly, pertaining to the solicitations he has suffered. In no way, however is it to be extracted from him whether he had consented to the solication. Rather, he should be expressly advised that he is not bound to manifest his consent which he perhaps gave. The responses [in uninterrupted fashion], not only as to what pertains to the substance but even to the words themselves of the testimony (Canon 1778) should be consigned to writing. The entire instrument [of the testimony] should be read in a clear and distinct voice to the one denouncing [the priest], giving [the one denouncing the priest] the option of adding, suppressing, correcting, or varying [his testimony]. His signature is then to be exacted [from him], or, if he does not know how to write, or cannot, the sign of the cross. And with him still being present, there should be added the signature of the person receiving the testimony, and if he is present (Cfr. n. 9), of the notary. And before he is dismissed, there should be presented to him, as above, an oath of observing the secret, threatening him, if there is a need, with an excommunication reserved to the Ordinary or to the Holy See (Cfr. n. 13).

24. Even if, sometimes, for grave obstructing reasons always to be expressed in the acts, this ordinary practice cannot be observed, it is permitted that one or the other form from the prescribed forms, saving however the substance, ++il++be omitted. Thus, if the oath cannot be taken upon the holy Gospels, it can be given with some notion and also with words only. If the instrument of denunciation cannot be put into writing in an uninterrupted fashion, it can be written down at a more opportune time and place by the interpreter (the recipient of the denunciation) and then

confirmed and signed by the person who is denunciating in the presence of the one receiving the denunciation; if the instrument itself cannot be read to the denouncer, it can be given to him to read.

25. In more difficult cases, however, it is also permitted for the denunciation (the previous permission of the denunciator having been given, lest the sacramental seal seemingly be violated: and on a day convenient to each party and in the confessional itself, it is to be read or given to read, and is confirmed with an oath and with one's proper signature or the sign of the cross (unless to do this is in every way impossible). Concerning all of these things, as has been said in the number above, an express mention must always be made in the Acts.

26. Still, if an entirely serious case also that is also clearly extraordinary urges, then the denunciation can also be done through a written account by the one denouncing, as long as, however, it is before the Ordinary of the place or his delegate and notary, if he is present (cfr. n. 9), and afterwards confirmed by an oath and signed. The same must be said concerning an informal denunciation, through a letter, for example, or given orally in an extrajudicial manner.

27. Any denunciation once accepted, the Ordinary is bound most gravely to communicate this as soon as possible to the promoter of justice who must declare in writing, whether the specific crime of solicitation in the first sense is present in the case or not, and whether the ordinary disagrees with this or not. Within ten days he must submit the matter to the Holy Office.

28. If, on the other hand, the Ordinary and the promoter of justice agree together, or in some way the promoter of justice does not make his recourse to the Holy Office, then the Ordinary, if he has decreed that the specific delict of solicitation was not present, should order the Acts to be put into the secret archives, or he should use his right and duty according to the nature and gravity of the things that have been denounced. If, however, he believed that they were present, then he should proceed to the inquisition (Cfr. Can. 1942, § 1).

TITLE NUMBER TWO

THE PROCESS

Chapter I - The Inquisition

29. When the knowledge concerning the crime of solicitation is known first through the denunciations, a special inquisition must be pursued "so that it may become clear whether and on what foundation the imputation rests" (Canon 1939, § 1); and this by the fact or even more so, since a crime of this type, as has already been stated above, is usually done in secret, and direct testimonies concerning [solicitation], especially from the hurt party, can only rarely be obtained.

Once the inquisition is open, and if the denounced priest is a religious, the Ordinary can prevent him from being transferred before the conclusion of the process.

For the most part, there are three areas which such an inquisition must cover, and they are:

a) the past history of the denounced person;
b) the consistency of the denunciation;
c) other persons solicited by the same confessor or, however conscious of the crime, whether any of them, as not rarely happens, have been persuaded [to make the denunciation] by those denouncing.

30. Therefore, as to what pertains to the first letter (a), the Ordinary at the same time as he has accepted some denunciation of the crime of solicitation, if the one denounced, whether from the secular clergy or is a regular (cfr. n. 4), with residence in his territory, should try to find out from the archives whether other accusations against him are on record, even of a different type; and, if by chance he had previously been living in other territories, he should seek, even from the respective Ordinaries, and, if [he is a] religious, also from the regular superiors, whether they have anything which can aggravate the situation in any way. But he will accept these documents, referring to them in the Acts as accumulated together whether for a judgment, by reason of content [continentia] or association of causes [connexio] (cfr. Canon 1567), and thus all the matters will be brought forward together; ++13++or for the establishment and consideration of an aggravating circumstance of recidivism according to the sense of Canon 2208.

31. If the whole matter concerns a denounced person who does not have residence in his territory, the Ordinary should transmit all the acts to the Ordinary of the one who has been denounced, or, if he does not know who this might be, [he will transmit all the acts] to the Supreme Holy Congregation of the Holy Office, reserving the right, in the meanwhile, to deny to the denounced priest the faculty of exercising the ecclesiastical ministries in his own diocese or of revoking them already by chance conceded to him, in the event that he approaches [the Ordinary for these faculties] or returns [to the diocese of the Ordinary].

32. As to what pertains to the second letter (b), the importance of each denunciation, of their qualities and of the circumstances must be weighed seriously and accurately so that it is evident how they themselves merit belief. It is not sufficient that [this be done] in any way whatsoever, but it is necessary that this become known by means of an established and a judicial form; this customarily is signified in the Tribunal of the Holy Office by the phrase "Diligentias peragere" [to undertake all the required formalities].

33. In order to arrive at this purpose [of undertaking all the required formalities], as soon as the Ordinary shall have accepted any denunciation of the crime of solicitation, either personally or through a priest, he will summon, either personally or through a priest specially delegated to do so, two witnesses (he summons them separately and with appropriate circumspection)and with appropriate circumspection) two witnesses, in so far as it is possible, from the ranks of the ecclesiastics. But it is far better, above any exception, to summon persons, who are familiar with both the one denounced and the one denouncing. These persons, with the notary present (cfr. n. 9), who is to put the interrogations and responses in writing, [are put] under the sanctity of an oath to tell the truth and to observe its secret nature, accompanied by the threat, if it seems necessary, of excommunication reserved to the Ordinary of the place or to the Holy See (cfr. n. 13). He will interrogate them (Formula G), concerning the life, morals and public reputation both of the one denounced and of the one denouncing. [They will be asked] whether they think that the one denouncing is worthy of credence; or whether, on the other hand, that person is capable of lying, of calumniating and of perjuring himself; and whether these persons know whether there has ever been any case of hatred, grudge or reason for enmity between the one denouncing and the denounced person.

34. If the denunciations are many in number, there is nothing to prevent the same [character] witnesses to be used for all or [to use different] witnesses, always being careful to have a double testimony as to the denounced and any denouncer.

35. If two witnesses cannot be found where each individual knows both the denounced and the denouncer, or if they cannot be interrogated at the same time without the danger of scandal ++14++ or without detriment to the good name concerning him, then arrangements to be made, so that two persons, by means of a divided [dimidiatae] [testimony], namely, interrogate two witnesses only about the denounced and another two only about the individual denouncers. In this case, however, it will be necessary to inquire elsewhere as to whether hatred, enmity or any other human disaffection against the denunciated [priest] was the case.

36. If not even the divided efforts cannot be pursued, or because capable witnesses cannot be found or because scandal or detriment has to be feared and rightly so, there is the possibility of substituting, cautiously, however, and prudently, [for the witnesses] with extrajudicial information about the denounced and the ones denouncing and their mutual personal relationships, with [all of this] put into writing; or [the same results can come about] also through supportive proofs which corroborate or weaken the accusation.

37. This [article], then, pertains to the third letter (c). If in the denunciations, which happens not rarely, some persons are influenced, perhaps also solicited, or others who can [simply] bring forward testimony concerning for some type of reasons. All of these people must be examined severally (that is, separately) according to the judiciary formula [below.] (Formula. I). First of all, they must be interrogated through general matters, and then, by degrees, as the matter evolves, arriving at the particulars, whether and how they had really been solicited, or did they know or hear that other persons had been solicited (Instruction of the Holy Office, February 20, 1867, n. 9).

38. The greatest circumspection must be used in inviting these persons to this interview; for it will not always be opportune to bring them to a public place such as the chancery, especially if these are girls who are being subjected to the examination, married women, or those who are domestics. If those to be examined live either in monasteries, in hospitals or in pious homes for girls, then, the particular [persons] should be summoned with great diligence and on different days according to circumstances (Instruction of the Holy Office, July 20, 1890).

39. What was said above about the way to receive the denunciations, will also be applied, changing what has to be changed (mutatis mutandis), to the examination of persons who have been brought forward.

++15++

40. [If the examination of these persons, who corroborate each other by positive evidence, and because of which examinations there exists [therefore] either an arraigned priest or another person weighed down [with some accusations], then the denunciations that are true and strictly speaking denunciations and all the rest of the information about these [denunciations] are pursued regarding the qualification of the crime, regarding the resumption of the preceding acts and of the resumption of the efforts to be taken in accordance with what is prescribed above.

41. Once, however, all these matters are taken care of, the Ordinary is to communicate the Acts to the promoter of justice, who will see now whether all the procedures [actions] have been performed corectly or not. And, if he thinks that there is nothing against their acceptance, he should declare the inquisitorial process closed.

Chapter II : Canonical Directives and the Admonition of the Accused.

42. When the inquisitorial process has been closed, the Ordinary, having heard the promoter of justice, should proceed as follows, namely:

a) if it is evident that the denunciation totally lacks a foundation, he should order this to be declared in the Acts, and the documents of the accusation should be destroyed;

b) if the indications of the crime are vague and indeterminate or uncertain, he should order that the Acts be put into the archives, to be taken up again if something else happens in the future;

c) if, however, there are indications of a crime serious enough but not yet sufficient to institute an accusatorial process, as especially in the

case where only one or two denunciations are had, where, indeed, [the regular process was followed] with diligence but were not corroborated by any or insufficient proofs (cfr. n. 36), or even many [proofs] but with uncertain procedures or procedures that are deficient, he should order that the accused be admonished according to the different [types of] cases (Formula M) the first or second [time?], paternally, seriously or most seriously according to the norm of Canon 2307, adding, if necessary, an explicit threat of the trial process, should some other new accusation is laid upon [the accused]; the Acts, as above, should be kept in the archives and in meanwhile a check should be kept on the morals of the accused (Canon 1946, § 2, n. 2):

d) If then certain or at last probable arguments to institute the accusation are present, he should order the accused to be cited and be subjected to the matters [which are prescribed for this trial].

++16++

43. The admonition, concerning which treatment is made in the preceding number with the letter (c), is always to be given secretly; it can be done, however, through a letter or by an intermediary, but in each case, it must be clear from some document to be kept in the secret archives of the Curia (cfr. Canon 2309, § 1 and 5), adding the information about the manner in which the accused accepted it.

44. If, after the first admonition, other accusations against the same accused take place concerning solicitations, preceding the admonition itself, the Ordinary should see, according to his own choice and conscience, whether the first admonition shold be considered sufficient or whether he should proceed to a new admonition or even to further measures (Ibidem, § 6).

45. It is the right of the Promoter of Justice to appeal and to have recrecourse for a accused against the canonical prescriptions of this kind it to the Holy Congregation of the Holy Office within ten ten days from thethair dissemination or intimation. In this case, the Acts of the case wilhave to be transmitted to the same Holy Congregation according to the prepresCription of Canon 1890.

46. These actions, however, even if put into effect, do not extextinguish the penal action. and therefore, when other accusations by chance take place, a method will be followed concerning those matters which also have given cause to the said canonical instructions.

Chapter III - The decrees for the accused persons

47. When once there is a sufficiency to institute an accusation, as was said above in number 42 (d), arguments should be made openly, and the Ordinary, having heard the promoter of justice and having observed everything, in so far as the peculiar nature of these cases allows, which is stated concerning the citation and denunciation of judicial acts in Book IV, Title VI, Chapter II, of the code, shall issue a decree (Formula O) concerning the accused in the presence of the Ordinary, or before a judge delegated by himself (cfr. n. 5), citing [him] for crimes introduced and brought against him, which in the forum of the Holy Office are said in

unclassical parlance "Reum constitutis subiicere" [to subject the accused to an indictment]; and he will take care to bring this information to the accused himself in accordance with canonical principles.

48. The judge should paternally and gently exhort the accused, who has now been cited, when he appears, and before the indictments are formally begun, to confession, and, when he has consented to these exhortations, the judge, having summoned the notary or ~~notaries~~, if he has found it more opportune (cfr. n. 9) without his intervention, can receive the confession.

49. In this case, if the confession is found corroborated by the Acts and substantially complete, a vow first having been taken, the Promoter of Justice puts the case in writing, omitting the other formalities (See below, in Chapter IV), and he will be able to conclude [all of this] with a definitive decision, having given, however, to the accused the option of accepting the decision itself or of petitioning to have the regular and complete process carried out to the end.

50. If, however, on the other hand, the accused has denied the crime, or has made a confession that is not substantially integral, or even has summarily refused the decision in view of his confession, the judge, with the notary present, should read him the decree by which he declares, concerning which paragraph 47 speaks, and the deliberations are then opened.

51. The trial opened, the judge can, having heard the Promoter of Justice according to the mind of Canon 1956, suspend the accused respondent either from exercising any sacred ministry at all or only from hearing the sacramental confessions of the faithful up until the time of the judgment. If, however, by chance he thinks that [the accused] can impose fear upon the witnesses or secretly instigate them [to thwart the trial] or in any way impede the course of justice, he can also, having also heard the promoter of justice, order that he go to a predefined location and remain there under special vigilance (Canon 1957). And, on the other hand, [however], each decree of this type is not given a remedy in law (Canon 1958).

52. These things having been taken care of, there should be a procedure to present the accusation to the person accused, according to formula P, having cautiously and most diligently made sure that the persons of the accused and especially of those denouncing him be not revealed, and, on the part of the accused, that he in no way violate the sacramental seal. Now if something in the surge of speech slips out which seems to savor of either a direct or indirect violation of the seal, the judge should not permit this to be referred to in the Acts by the notary; and if, by chance, it has been inconsiderately [put into the Acts], he should order, as soon as he notices it, to be completely deleted. In every way the judge is to remember that it is never right for him to bind the accused by an oath to tell the truth (Cfr. Canon 1744).

53. The indictment of the accused having been completed in all matters and the Acts having been seen and approved by the Promoter of Justice, the judge is to issue a decree concerning the conclusion of the case (Canon 860), and, if by chance he is a delegated judge, he should transmit all the papers of the proceedings] to the Ordinary.

54. If it happens, however, that the accused remains contumacious, or, for some grave reasons the indictments cannot be pursued in the diocesan Curia, the Ordinary, saving to himself the right of suspending the accused *a divinis*, should defer the entire case to the Holy Office.

Chapter IV - The Discussion of the Case, the Definitive Decision, and the Appeal

55. The Ordinary, having received the Acts, unless he wishes himself to proceed to the definitive decision, should delegate the judge (cfr. n. 5), another one, in so far as it can be done, different from the one who conducted the inquisition or the indictment (cfr. Canon 1941, § 3). The judge, however, whoever he is, whether the Ordinary or his delegate, should designate, according to his prudent decision a space of time for the defender to prepare a defense and to tender this in a double copy, one copy to be given to the judge himself and the other copy to the Promoter of Justice (cfr. Canons 1862-63-64). However, the promoter of justice, within a time period likewise previously established by the judge, should tender in writing his own inquiry (requisitoriam), as they now call it.

56. Still, a congruent time having been interposed (Canon 1870), the judge, according to his conscience informed from the Acts and from the proofs (Canon 1869), will pronounce a definitive decision, either a condemnatory decision, if he is certain of the crime, an acquittal, if he is certain of his innocence; or an abandonment of the charges, if he is invincibly doubtful because of the lack of proofs.

57. The decision is rendered according to the respective formulas connected to this Instruction and will have been to put in writing, with the addition of an executory decree (Canon 1918). First of all, the Promoter of Justice having been notified beforehand, the decision must be solemnly made known to the accused, who has been cited for this by the judge who is presiding at the Tribunal, with the notary present. If, however, the accused, rejecting the citation, has not appeared, the intimation of the decision should be made through letter, having obtained exact testimony of its reception through the public post office.

58. Both the accused, if he thinks that he has been [wrongly treated], and the promoter of justice have the right of appealing from this decision to the Supreme Tribunal of the Holy Office, according to the prescription of Canon 1879 and following within ten days from the solemn notification of the same; and the appeal of this type has the effect of suspending the decision [suspensive], but not so, if it is given (Cfr. n. 51) for a suspension from the hearing ++19++of sacramental confessions or from exercising a sacred ministry.

59. The appeal having been made, the judge must transmit an authentic copy or the original itself of all the Acts of the case to the Holy Office, as quickly as it can be done, adding information as necessary or as he has judged to be opportune (Canon 1890).

60. As for the complaint, then, of nullity, as sometimes might occur, let those details prescribed by Canons 1892-97 be observed to the last detail.

However, what pertains to the execution of the decision, those prescriptions should also be observed, according to the nature of these cases, as is found in Canons 1920-24.

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TITLE NUMBER THREE

PENALTIES

61. "He who has committed the crime of soliciation..., should be suspended from the celebration of Mass and from the hearing of sacramental confessions or even, according to the gravity of the delict, should be declared incapable of accepting them. He should be deprived of all benefices and dignities, of his active and passive voice, and be declared incapable for all these [honors and capacities], and in the more grievous cases also be subjected to reduction [to the lay state]. Thus states the Code in Canon 2368, § 1.

62. For a correct and practical application of this canon, in penalties decreed against priests convicted of the crime of solicitation with an equal regard for the mind of Canon 2218, § 1, these matters, especially for estimating the gravity of the crime, should be kept before one's eyes, namely: the number of persons solicited and their condition, as, for example, if they are minors in age or especially consecrated through religous vows to God; the form of solicitation, if perhaps, especially, it is joined with false teaching or false mysticism; the turpitude of the acts not only formal but also material and especially the connection of solicitation with other delicts; the length of the obscene conversation [between the parties involved]; the repetition of the crime, the recidivism after his admonition, and the obstinate malice of the solicitor.

63. To the greatest penalty of degradation, there can be added for a religious who is accused the reduction to the status of a lay-brother. This is only then imposed when, having weighed everything, it evidently appears that the accused, immersed in the depths of malice in the abuse of his sacred ministry, combined with the grave scandal that is harmful to the faithful and their souls, exists to such a degree of foolhardiness and habit, so that there is no hope, humanly speaking, or almost no hope, of his amendment that is evident any more.

64. On top of the penalties properly imposed, in order to obtain the effect of these penalties more fully and securely, there will be supplementary sanctions in cases of this type, namely:

++21++

a) Upon all accused persons judicially convicted there should be interposed congruous, to the degree of the faults, and salutary penances, not in substitution for the penalties properly speaking in the sense of Canon 2312, § 1, but as a complement [to them], and among these (cfr. Canon 2313) especially spiritual exercises for some days in some religious house to be performed with a suspension, during these times, from the celebration of Mass.

b) Upon the accused convicted who has confessed, moreover, there should be imposed an abjuration, according to the different cases, if there is a light or a strong suspicion of heresy into which because of the nature of the crime soliciting priests fall into, or even of formal heresy if by chance the crime of solicitation has been joined to false dogma.

c) Those who are in danger of falling back [into their former ways], and therefore of becoming greater recidivists should be submitted to particular vigilance (Canon 2311).

d) As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place (Canon 2302).

e) Then, when concerning the absolution of an accomplice, as this is outlined in the Constitution Sacramentum Poenitentiae, there is no indication at all in the external forum, and, therefore, of the sacramental seal, there can be reason to add at the end of the condemnatory sentence an admonition to the accused that, if he has by chance absolved his accomplice, he should quiet his conscience by having recourse to the Sacred Penitentiary.

65. According to the norm of Canon 2236, § 3, all of these penalties, as they have been applied once by the judge ex officio, cannot be remitted except by the Holy See through the Supreme and Sacred Congregation of the Holy Office.

TITLE IV

OFFICIAL COMMUNICATIONS

66. Whenever an Ordinary immediately accepts a denunciation of the crime of solicitation, he should not omit telling this to the HOly Office. And if by chance he treats of a priest whetehr seculer or religious having residence in another territory, he should transmit at the same time (as already has been stated above, n. 31) to the Ordinary of the place, where the denounced actually is staying, or, if the address is not known, he should sand to the Eoly Office an authentic copy of the denunciation itself with the procedures, in the best manner possible, and with opportune information and declarations.

67. Any Ordinary who ahs proceeded correctly against some priest who is soliciting, should not omit informing the Holy Congregation of the Holy Office, and, if it is a matter in which a religious is involved, also the General Superior concerning the outcome of the case.

If any priests condemned of the crime of solicitation, or even only admonished, should transfer his residence to another territory, the Ordinary a quo should immediately warn the Ordinary ad quem of the things that preceded taht person and of his juridical status.

69. If any priest suspended in a case of solicitation from hearing sacramental confessions but not from sacred preaching happens to go to another territory to preach, the Ordinary of this territory should be reminded by the prelate of the accused, whether seculer or religious, that he cannot be utilized for hearing sacramental confessions.

70. All these official communications shall always be made under the secret of the Holy Office; and, since ther concern the common good of the church to the greatest degree, the precept of doing these things obliges under serious sin [sub gravi].

TITLE V

THE WORST CRIME

71. By the name of the worst crime is understood at this point a signification of any obscene external deed, gravely sinful, in any perpetrated by a cleric or attempt with a person of his own sex.

72. Those things that have been stated concerning the crime of solicitation up to this point are also valid, changing only those things necessary to be changed by their very nature, for the worst crime, if someone by chance in the presence of the Ordinary of the place, concerning which (which may God prevent) happens to be accused, having accepted the obligation of the denunciation from the positive liw of the Church, unless

perhaps it has been joined with the crime of solicitation in sacramental confession. In decreeing penalties, however, against delinquents of this type, besides those which are found spoken of above, and theoy should also be kept before one's eyes (Canon 2359, § 2).

73. To have the worst crime, for the penal effects, one must do the equivalent of the following: any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex or with brute animals (bestiality).

74. Against accused clerics for these crimes, if they are exempt religious, and unless there takes place at the same time the crime of solicitation, even the regular superior can proceed, according to the holy canons and their proper constitucions, either in an administrative or a judicial manner. However, they must communicate the judicial decision pronounced as well as the adminsitrative decision in the more serious cases to the Supreme Congregation of the Holy Office.

++24++

FROM THE AUDIENCE OF THE HOLY FATHER, MARCH 16, 1962

Our Most Holy Father John XXIII, in an audience granted to the most eminent Cardinal Secretary of the Holy Office on March 16, 1962, deigned to approve and confirm this instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail.

At Rome, from the Office of the Sacred Congregation, March 16, 1962.

Place of the seal

A. Cardinal Ottaviani

++25++

APPENDIX

FORMULAS TO BE USED ACCORDING TO THE CIRCUMSTANCE
(Omitting other matters which are found in various places among the authors)

++27++

FORMULA A

THE FORMULA FOR TAKING AN OATH TO EXERCISE ONE'S OFFICE FAITHFULLY AND TO OBSERVE THE SECRET OF THE HOLY OFFICE

In the name of the Lord.

I...appearing before...and touching the most holy Gospels of God placed before me, swear and promise to exercise my duty faithfully....Likewise, under the pain of excommunication late sententiae ipso facto and to be incurred without any declaration, from which outside of the moment of death, I can be absolved by no one except by the Holy Father, excluding even the Cardinal of the Penitentiary, and, under other most serious penalities, at the disposition of the Supreme Pontiff to be inflicted upon me in the case of transgression, I promise sacredly, vow and swear, to observe inviolably the secret in all matters and details which will take place in exercising the aforesaid duty, excepting precisely those matters at the end and at the completion of this negotiation [or of these negotiations] which can be legitimately published. Further, I shall observe this secret absolutely and in every way with all who have no legitimate part in the treatment of this same matter [or, who are not constricted by the same sworn bond]; nor [will I ever], directly or indirectly, by means of a nod, or of a word, by writing, or in any other way and under whatever type of pretext, even for the most urgent and most serious cause [even] for the purpose of a greater good, commit anything against this fidelity to the secret, unless a particular faculty or dispensation has been expressly given to me by the Supreme Pontiff.

++28++

FORMULA B

Formula of Renunciation (Abjuration)

I (name, family name, etc. of the one abjuring, which, if he is a religious, he should add his name, etc. which he used in the world) the son of (name of the father), being ...years of age, and personally brought to trial [arraigned], and, having genuflected before you (name, family name, qualities, etc. of the person who is to receive the abjuration), and having before me and touching with my hand the most holy Gospels and knowing that no one can be saved unless he believes what the Holy Catholic and Apostolic Roman Church holds, believes, preaches, professes and teaches, I confess and I am sorry that I have erred seriously against [that church] through the abuse and profanation of the sacrament of penance [and through the profession and doctrine of false dogma].

Now, sorrowful and penitent for the aforesaid [errors and heresies, persuaded about their falsity and of the truth of the Holy Catholic faith], I abjure all the same [errors I made] with a sincere heart and a real faith and I detest [in the same way in general all other errors and heresies contrary to the Holy Catholic and Apostolic Roman Church] and at the same time humbly accept and promise faithfully to implement all the penances given to me by R.P.D. [The reverend dignitary?]...that have already been imposed or will be disposed: and if I have not stood firmly in some matter despite these promises and oaths of mine (May God prevent this) I subject myself to all the penalties and castigations which have been stated and promulgated by the sacred canons and other general constitutions against deliquents [who have acted] in this way. Thus, may God help me and these Holy Gospels of His, which I touch with my hands.

I...the aforesaid have abjured, sworn, promised and obligated myself as above, and in testimony [of my good faith] in this matter I have signed with my hand this written promise of my abjuration ++29++which I have related orally with words (here is noted the place in which the abjuration has been made).

On this ...day of the month of...in the year...

Signature

After the absolution has been imparted, the one who received the abjuration and gave the absolution will put his signature here in the way it is noted in Formula C, which follows.

++30++

FORMULA C

The Formula of Absolution

Once the penitent, kneeling on both knees and having first touched the Holy Gospels of God, has read and signed the formula of abjuration, [the bishop or his delegate] absolves him, wearing at least the purple stole; and, while sitting, will recite the psalm Miserere or De Profundis with the Gloria Patri.

Then, standing, he will say:

Kyrie, eleison, Christe eleison, Kyrie, eleison.
Pater noster, secretly up to
And lead us not into temptation.
But deliver us from evil.
Save your people, Lord.
My God, they are hoping in you.
Lord, hear my prayer.
And let my cry come unto you.
The Lord be with you.
And with your spirit.

Let us pray

God, of whom it is proper always to have mercy and to treat with forbearance, we supplicantly beseech you, that the compassion of your holiness absolve with clemency this servant of yours whom the shackle of excommunication binds. Through Christ our Lord. Amen.

Then, again sitting down, he should absolve the penitent still kneeling before him with these words:

By the Apostolic authority which I exercise in this matter, I absolve you from the bond of excommunication, which you [perhaps] have incurred, and I restore you ++31++to the holy sacraments of the church, to the communion and unity of the faithful, in the Name of the Father + and of the Son, and of the Holy Spirit. Amen.

With these acts, the one who has imparted the absolution should impose the salutary penances (for the most part [a penance] of reciting determined prayers, of performing some pious pilgrimage, of accomplishing other works of piety, of observing a particular fast, or of dispensing alms in pious causes, etc.), and finally, then, the formula of abjuration and he signs below in this way:

[In the execution of the orders of R.P.D. (the reverend superior) (the name, etc. of the one delegating him)] the aforesaid (name, etc., of the penitent) was administered by myself [the delegate] the abjuration concerning (e.g. formal, or grave or light) ... and the salutary penances in the usual form of the church, these on the day and year given above.

So be it. I (the signature of the person absolving the other)

[The delegate will transmit the formula [evidently this means the document itself] directly to him from whom he has received his delegation together with the instruction, and other letters also received, if he has any, keeping nothing at all for himself].

++32++

FORMULA D

The Formula of Delegation to Receive a Denunciation

The ... day of the month of ... in the year ...

We...delegate with these letters...to receive [without the intervention of the notary), under the secret of the Holy Office and according to the attached instruction, the denunciation which the named person intends to make.

L. S. The signature of the Ordinary of the place who is delegating

(Formula E is connected to the letter).

FORMULA E

The Manner of Receiving the Denunciation Pertaining Particularly to Solicitation

[Note 1. Whatever words are included within the brackets are valid in the case in which the denunciation is received by the delegate, or, respectively, without the intervention of a notary.]

If the the delegate, however, having signified a serious reason, cannot observe this manner of receiving the denunciation, he should make recourse for some instruction from whom he has received the delegation.]

The notary, if he is present, or he who is to receive the deunmciation will begin with these words or in words similar to these:

On the...day of the month of...in the year...

On my own accord I personally appeared before the undersigned (there should be written the name, the family name, etc. of that person who is to receive the [denunciation], who, if the notary is not present, should write: before me the undersigned) taking place in (here there are noted the place and the diocese where the person who is to receive the action [that is, the deunciation] lives) [Delegated specially only for this action by R.P.D. [The reverend person delegating?]..., as [will be seen] from his letter directed [to me] and given under the date (Let there be expressed on what day the letter itself was written) applying to the present situation] N.N.(there should be written the name, family name, the name of the father, the country of origin [that is, nationality], age, situation [no doubt the type of work the person does] and the home address of the person denouncing; and if this person is a religious, also the name the person was called by in the world) to whom, having made an oath to speak the truth, which he took having touched the Holy Gospels of God (which he must touch with his hand, even a priest) it was explained as below, that is:

This person denouncing in ordinary language [he must declare that he knows that this faculty was obtained from the ordinary of the place to receive without the intervention of the notary what he is about to relate to exonerate his conscience, and therefore because he cannot present himself to the Most Reverend Bishop concerning the just causes: then] he must continue to narrate, in words, however, discrete and contracted [brief] what pertains to the solicitations made to him or what ++34++were the words, the writings, or the acts, accurately describing the place, time, occasion, times and singular circumstances, and whether in the act of confession either before or after the sacramental absolution these things took place. He must identify the confessional seat and the soliciting confessor himself, and in so far as he either does not know his name and family name or has forgotten it, he shall describe accurately the person of that man, noting distinctly all his characteristics, so that he might be recognized. He should note who receives the denunciation, that he should avoid interrogating the denunciating person whether he gave consent to the obscene deed in any way or refused, since the witness is not bound to manifest his defects; nay, the one denouncing is expressly advised that he is not bound to manifest consent if perchance he gave it. With these words written as they as they are

narrated, and, in so far as possible, in the same words of the one denouncing, what follows here, nor is anything more required.

The interrogation: Whether he knows or heard it said, that said N.N. (naming the person), the confessor, solicited other penitents to obscene things?

He responds: (If the response was affirmative, he will seek the name and family name of the persons and the source (cause?) of the knowledge).

The interrogation: Concerning the good name of the aforesaid confessor N.N. with you yourself as with others?

He responds:..

The interrogation: Whether he made the declarations from hate or from love, and from enmity or other general reasons, etc.

He responds: Correct (if he will say that he had denounced in order to exonerate his own conscience.)

If more than one month had passed since the solicitation, moreover, there should be added:

The Interrogation: Why then did you delay the denouncing of the aforesaid matters to your Ordinary and the exoneration of your conscience?

He responds:

All of these matters having been absolved, there should read to the denouncing person everything which was given in writing, or, having given a just reason in writing, a just cause in writing, the instrument should be given to him so that he may read it in the presence of him who receives the denunciation; all of these matters proved and accepted, together with the corections, additions and erasures, if there are some, ~~+35+~~he is invited to write his signature below, and, having given an account of his taking an oath to observe the secret, he should be dismissed.

All of these matters will be described in these words:

Having these matters and having accepted them, the one denouncing having been dismissed has sworn to observe the secret, again touching the Holy Gospels of God (he swears an oath upon the Gospel again); and in confirmation of what has been testified by word he writes his signature (or, if he cannot write: since he cannot write, as he asserted, (let the cause be noted), he made the sign of the cross).

After the one denouncing here has signed or made the sign of the cross, the notary should sign, if he is present, in this way:

These are the Acts signed by myself, the notary (and if he has been assumed only for this act: assumed only for this act).

Finally, he signs who receives the denunciation.
L. X S.

If, however, the notary was not present, then the one who receives the denunciation signs in this way:

These Acts are signed by myself, N.N. (specially delegated only for this act by R.P.D. (the reverend delegating person) N.N.).

[The delegate then delivers the entire act directly to him from whom he has received the delegation together with the instruction and the letters received, keeping nothing for himself].

++36++

FORMULA F

Formula of Delegation to Undertake the Investigation

A) TO UNDERTAKE THE COMPLETE INVESTIGATION

The...day...of the month of...in the year....

We...ask you that you will take the customary diligence in pursuing [this investigation] according to the affixed instruction about a false denunciation made by (for example, a woman or women)..... against the priest.....by interrogating [them] separately, formally and under oath to tell the truth and observe the secret, two witnessses, in so far as is possible from the ecclesiastical body, but more important than anything else [to interview somebody], who knows well both the denounced person and the one denouncing (or, if the denouncing are many in number, one and all denouncers). If you cannot find only two witnesses who know together the one denounced and each and every one denouncing, you will call many, as many, namely, as it will be fitting so that there will be a double testimony as to the denunciated and each one denouncing. An authentic copy of the Acts, however, you shall transmit to us directly and in a safe way, together with the instruction and these letters, retaining nothing for yourself.

L.X S. The Signature of the Ordinary of the place, the one delegating

(Formula G is joined to the letter)

B) TO UNDERTAKE A PARTIAL INVESTIGATION

On the...day of the month of... in the year....

We...ask you to undertake the investigation according to the affixed instruction.....++37++by interrogating [them] separately, formally and under an oath to speak the truth and of observing the secret, two witnesses, in so far as is possible, from the group of ecclesiastics, as greater than any exception, who (e.g. the women or woman) know [them] more closely.

You will transmit an authentic copy, however, of the acts to us directly and in a safe way, together with the instruction and this letter, keeping nothing for yourself.

L.X S. Signature of the delegating Ordinary of the place

(To the letter is joined Formula H)

FORMULA C

Way of Undertaking the Entire Investigation (Note 1)

[Note: Whatever is included between the brackets is valid in the case in which the work is done by a delegate.]

On the...day of the month of...in the year of....

Having been summoned, this person personally came into the presence of myself, the undersigned, (let there be written the place and diocese where he is located) [for this act only specially delegated by R.P.D.... as [is evident] from the letters of the same person delegating directed and given to me on this date...(there should be expressed on what day the letter was written) binding to the present position].

N...N...(the name, family name and qualities of the Respondent witness) who, having reported his taking his oath to tell the truth, which he gave (even if a priest), having touched the holy Gospels of God, was by myself:

1. The Interrogation: whether he knew the priest N.. N... (name, family name and qualities of the person denunciated).

He responded:....(let there be written the language that the witnesses use and his response).

2. The Interrogation: what is the lifestyle of this priest, what are his morals, what is the opinion of people [about him]?

He responds:....

3. The Interrogation: Whether he knew N....N... (name, family name, and qualities of the one denouncing, or, if there are many, of each one of them).

He responds:...

4. The Interrogation: What is his (each one of them) life-style, morals, and his opinion among the people?

He responds:...

5. The Interrogation: Whether he thought that he or she is worthy of faith or capable, on the other hand, of lying, calumniating in court and even of perjury?

He responds:...

6. The Interrogation: Whether he knows whether perhaps between him and the aforesaid priest there ever existed any reason for hate or enmity?

He responds:...

Then, have duly read the work and brought him to take the oath of observing the secret, which he took as above, he is dismissed and, before he goes away, signs in confirmation of what has been stated (or, if he cannot write, when he asserted that he cannot write (let the reason be noted), he makes the sign of the cross).

After the witness has signed here or made the sign of the cross, he signs that he received the testimony in this way:

These acts are signed by myself, N.N., [specially delegated only for this act].

L.X S.

[The delegate then directly transmits the act to him from whom he has received delegation together with the instruction and the letter he received, keeping nothing at all with himself].

++40++

FORMULA H

The Way of Undertaking Partial Investigations (Note 1)

(Note 1. Anything included in brackets is valid in the case where the investigation is done by a delegate).

On the...day of the month of...in the year...

Having been called personally there appeared before me the undersigned (let there be written the name, family name, etc., of the person who is to do the activity) taking place in (let there be noted the place and diocese where he is to be found) [specially delegated only for this act by R.P.D....., as [can be seen] in the letter of that same person directed and given to me on this date (let there be expressed on what exact day the letter was written) attached to the present document. N...N...(name, family name and qualities of the respondent witness) who, having been brought to take the oath to tell the truth, which he does (even a priest) having touched God's holy Gospels, performed this for me.

1. Interrogation: whether he knew (for example, the woman) N...N...? (name, family name and qualities of the indicated person).
He responded:....(this should be written in the same language the witnesses uses for his response).

2. The Interrogation: what is his lifestyle, what are his morals, what is his reputation among the people?
He responded:...

3. Interrogation: Whether he thinks that he [or she] is worthy of credence or on the other hand thinks that he or she is capable of lying, calumniating in court and even of committing perjury?
He responded:...

4. The Interrogation: Whether he knows whether perhaps between him or her and the priest there exists or has existed a cause for hate or enmity?
He responded:...

Then, the act duly read to the witness, having signified his taking an oath to observe the secret, which he does as above, the witness will be dismissed, ++41++ and before he leaves, signs as a confirmation of what has preceded (or, if he cannot write: when he cannot write, as he asserted (let the cause be noted), he made the sign of the cross).

After the witness signed here or made the sign of the cross he who received the testimony signed himself in this way:

These are acts done through me N...N... (especially delegated only for this act).

L.X.S.

(Then the delegate will transmit the act directly to him from whom he received the delegation together with the instruction and letter keeping nothing for himself).

FORMULA I

Way of Conducting an Examination Through Generalities

Note: Whatever appears within the brackets is valid in the case where the examination is by the delegate, or respectively, without the intervention of a notary.

If the delegate, however, having given a grave reason, cannot observe this way of administering an examination, he should recur to him from whom he received the delegation for [further] instructions.

The notary, if he is present, otherwise, he who is to undertake the examination will begin the procedures in these or in similar words:

On the...day of the month of...in the year,..

By force of the decree of R.P.D. [The Most Reverend Bishop] (Let there be written the name, etc. of the Ordinary of the place) given on the date of ..... having been summoned there appeared before the undersigned (let there be written down the name, the family name, etc. of the person who is to receive the act, and who, if the notary is not present, will write: in the presence of myself the undersigned), taking place in (let there be noted the place and diocese where he is to bound who is to receive the action) [especially delegated only for this action by R.P.D....., as appears from his letter directed to me and given to me on the date (let there be expressed on what precise day the letter was written), this person, N.N. (here there should be written the name, family name, father's name, homeland, age, condition and address of the person summoned; and, if he is a religious, also the name by which this person is known in the world), having been brought to take an oath to tell the truth, which he does touching God's holy Gospels (which he must touch with his hand), was:

Asked: Whether he knows or imagines the reason for his being called for the present examination?

He responded: ...(Let there be written his response in that language which the summoned person uses).

Asked:...For how many years have you been approaching the sacrament of penance?

He responded:...

Asked: Whether he always went to receive the sacrament of penance from the one and same confessor ++43++ or whether from many priests: moreover, whether he always went to receive the sacrament of penance in the one and same church?

He responded: ...

Asked: Whether from each of the priests to whom this person confessed he received holy admonitions and opportune instructions, which gave edification to the person being examined, and kept him from evil.

He responded:...

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If the response was affirmative, that is, if he says that he had always been directed well, then he will be interrogated in the following manner:

Asked: Whether he knows or remembers if at any time it was said or heard that a certain confessor had not acted in such a holy and honest manner toward penitents, so that murmurs or even contemptible words against the confessor had been proferred; for example, had the person being examined heard similar things from one or from many penitents, and over the past year or over four or three months?

He responded:...

If after this interrogation and commentary the person being examined continues to deny, let the action be concluded with the usual formula, which appears at the bottom of this instruction.

But if there had appeared to be something against any confessor, according to those things concerning which he is being asked, then he will be interrogated further as follows:

Asked: That he tell the name, family name, office, and age of the confessor, and the place or seat of his confession; or whether he was a secular or a religious priest, etc.

He responded:...

Asked: That he tell, in order, sincerely and clearly, using, however, discrete and constricted words, all of those things less than honorable which he had heard in the sacramental confession either before or after or on the occasion of confession: whether there had been something performed with him less than honest by nods; touches or action, etc., by the priest.

He responds:...

At this point, the judge solicitously will take care that the description is in the same words which the confessor used, the obscene words, the seductions, the invitations to meet in some place for an immoral purpose, and all the other things which constitute the crime of solicitation, using the vernacular language for the answers which are to be sedulously and truthfully recorded++44++ and, in so far as possible, with the same words in which they were offered; he should add the temperament of the person examined, if he notices that he seems impeded by too much fear or bashfulness from telling the truth, assuring him that everything will be kept under an inviolable secret. Then he should ask him the time from which the solicitations began, how long they perdured, how often they were repeated, in what words or acts smacking of an immoral purpose they had been expressed. He will diligent avoid asking about the consent of the person himself being examined with regard to the solicitation, and, even more, he should advise him expressly that he is not bound to manifest whether by chance he gave consent. Likewise, he will avoid any interrogation which he give evidence of a desire to know the sins of that person.

Asked: Whether he knows or heard it said that the aforesaid confessor had solicited other penitents toward obscenities; and if affirmative, he should name them (and he will help give the name, family name, etc., or at least the better indications by which the other solicited persons can be detected).

He responded: . . .

Asked: Whether the aforesaid person being examined, had given testimony out of a love for justice and truth, or rather from another motive of enmity or of hate, etc.?

He responded: . . .

With all of this taken care of, there should be read to the person being examined everything that has been put down in writing, or, for a just cause expressed in the notes, the instrument [that is, the document upon which the notary has written the answers] should be given to him so that this person may read it to himself in the presence of the one who accepted the examination; then, everything that has been approved and accepted by that person, together with the corrections, additions and erasures, if there are any, he should be invited to sign and led to take an oath to observe the secret, and then he should be dismissed. All of these matters shall be described in this words:

The accused, having received and accepted all these matters, was dismissed, having sworn to observe the secret, once again touching God's holy gospels (He will swear again on the Gospel book) and, in attestation of what he had stated, he signed it (or, if he cannot write: when he asserted that he could not write (let the cause be noted), he made the sign of the cross).

After the person being examined has signed here or has made the sign of the cross [on the document], the notary will sign, if he is present, in this way:

These acts are signed by myself, N.N., Notary (and if he has been authorized only for this action: authorized only for this action).
L.X S.

Finally, he who been administered the examination will sign it. If, however, the notary was not present, then the one who accepted the examination will sign in this way:

These acts are signed by myself, N.N., [specially delegated for this act only by R.P.D., N.N.].

(The delegate will then transmit the action [documentation for the lawsuit] directly to him from whom he received his delegation together with the instruction and the accepted letter, keeping nothing at all for himself).

++46++

FORMULA L

FORMULA OF THE PROPOSAL TO BE MADE BY THE PROMOTER OF JUSTICE; THE COMPLETE INQUISITION

Having made a brief summary and inquiry about the reasons of law and fact, the conclusion comes about through the promoter of justice, for example, as followed, however, according to the circumstances:

Having considered everything, I think it must be decided that the priest ...be warned (simply or correctly) - or - let the case be constituted in the Curia, that is, the diocesan Curia, and let the case be undertaken according to law (meanwhile, however...and here there are added the canonical opportune provisions, if there are some that seem to need to be proposed to the promoter).

On the ... day of the month of ... in the year ....
The signature of the Promoter of Justice

++47++

FORMULA M

FORMULA OF THE DECREE TO CONSTITUTE A PENAL REMEDY

We (name, and so on, qualities, etc., of the Ordinary of the place), having weighed the actions against the priest, N. N. (our diocese, abbacy, prelature, etc.) about whom there is reported the crime of solicitation, we decree that the aforesaid priest, N.N. : be admonished (paternally, gravely, etc. according to the diversity of cases) under the secret of the Holy Office.

If some resolution has to be added, and there is added:

And according to the resolution, the resolution is that...

These are the acts of... (the address of the Ordinary of the place) on the...day of the month...of the year...
L. X. S.

Signature of the Ordinary of the Place
Signature of the Nocary

++48++

FORMULA N

The Method For Warning About the Crime of Solicitation

Concerning those who have been denounced once or twice concerning the horrible crime of solicitation for the most part, having taken the opportune efforts, it is decreed that: They should be warned (simply or correctly) under the secret of the Holy Office. The person to whom belongs or is assigned the duty of imparting an admonition of this type, will summon the denounced priest, with the proper circumspection, and he is to impress upon him with serious words, more or less according to the circumstances and the tenor of the decision, but in a paternal and fatherly way, avoiding lest in any way, whether directly or indirectly, be reveal the ones denouncing him, in these words: "It has come to the ears of the Ecclesiastical authority that he, within the sacred tribunal of penance, not always acted as was befitting prudence and holiness, so that not without merit it must be feared lest he, with a rash effort, attempted to convert the sacrament itself of reconciliation into the ruin of souls. It is therefore greatly to his interest that he carefully avoid these things in the future, lest the ecclesiastical authority be compelled to proceed to more serious matters".

Let there be observed, moreover, the secret of the Holy Office regarding all the matter and with everyone to the greatest extent.

If the admonition is done through letter, the method of admonishing should be done in this way.

[The delegate, however, is to give this admonition, at an opportune time, informs him from whom he receives his delegation of the results, at the same time transmitting to him all documents, if he has any, and not keeping anything for himself.]

++49++

The Form of the Decree for the Arraignment

The formulas proposed here are not, as is evident, definitive: they can and must be varied according to the different circumstances. They are proposed therefore as an example.

A) TO INDICT SIMPLY

The Reverend... to be indicted in the diocesan Curia about all the matters deduced against him and there should be a case according to law.

These are the Acts [signed at] (the address of the Ordinary of the place)

On the ... day of the month of... in the year of....

Signature of the Ordinary of the place

Signature of the notary

B) TO INDICT, HAVING ADDED CANONICAL PROVISOS

The Reverend...is to be indicted in the diocesan Curia about all the matters brought up against him and let there be a trial according to law. Meanwhile, however (for example, let him remain suspended from the celebration of Mass, or of exercising the sacred ministries and spiritual offices; he should leave this place...and go to that place...where he should remain under special vigilance, etc.).

These acts are signed (as above) on the ... day of the month of... in the year...

L.X. S.

Signature of the Ordinary of the Place

Signature of the Notary

++50++

FORMULA P

Way of Indicting

N.B., according to the norm of article 52 he is not to bind the accused to take an oath as help the truth...

The notary will begin the action:

"On the ... day of the month of ... in the year ...
Having been summoned, The Reverend N.N. personally appeared before the undersigned (let there be written the name, family name, etc. of that person who is doing the indicting) [especially delegated for this action], who was:

Interrogated about his name, family name, parents, homeland, age, condition, ecc.
He answered:.. (The Notary will write in the native language, and, in so far as he can, in the same words which the accused uses, his answers.)

Interrogated: Whether he knows or perhaps imagined the reason of his having been summoned?
He answered:...(and it will be continued in this way up until the end, noting down the single questions and his answers to them)."

If the answer according to this interrogation has been affirmative, the judge will invite the accused to explain everything separately and sincerely; otherwise, he will admonish him gravely, in order that, having been stricken by his own conscience, he would say whether perhaps he felt that he was burdened by any crime. And, if he then should respond affirmatively that he, as above, will invite him to confess his own fault with appropriate humility and sincerity, expressing the names of those who were delinquent with him and the words or facts and other circumstances of the matters which constitute the matter and individuality of the impetrated crimes.

And because it is difficult for him to be able to remember everything from the beginning, the judge will be able to put aside the space of two or three days, during which the accused person can diligently examine in prayer and tears his own conscience, giving him the option of giving his confession in writing as well, which in the following indictment ~~51~~the judge will formally receive, or, if it is given in writing, he will accept from his hands the notebook in which it is contained and will give it to the notary who will make a note of the matter, for example, in this way: The accused gave [me] a notebook [containing] his confession, as he asserted, having done it in writing, which he began...(he will note the first words of the document), and finished with...(he will note the last words), and which I, accepting it, sign with the letter A (he marks the page with this or another letter of the alphabet) and I have put it into the Acts." This method must be observed always as often as any document of any type received from the accused has to be inserted into the Acts.

After these, the directing judge will compare the confession that has been made either verbally or in writing with the denunciations existing in the Acts, and, if he shall find in it nothing that is omitted or left out, having omitted the affirmations, he shall proceed to the last questions; if, however, he finds anything in these which the accused either did not confess at all or lacked integrity in his confession, he will only make mention of it, as will be stated below.

If, however, the matter still remains negative against the accused, then the judge will interrogate him further whether he knows against what delicts the supreme tribunal is proceeding; if he does not know, he will enumerate the crimes of this type (heresy, solication to grave matter, the worst crime [of

pediastry], the violation of the seal, etc.) Then he will ask him whether he impetrated any of these crimes: if he responds affirmatively, he will invite him to a spontaneous confession, as before; otherwise, he will read to him the decree by which a mandate has been issued that he be indicted. Then he will order him to relate the story of his own life and career; where he was born, where he had been educated, whether he was promoted to any academic grades or other signs of honor, where he lives, what offices and duties he had been assigned and other matters of a similar nature. Finally, he will ask of him whether he has any enemies, who they are and what is the cause of their enmity.

Having premised these general questions, the judge, before he addresses the single denunciations with the summoned accused, he will ask him about the particulars of the persons, places, and circumstances of the times brought out in the denunciation and what can demonstrate its probable truth or falsity: For example, where the place of the confessional is in the church or the rooms in the home of the priest; whether he receives the penitents before or after confession at home so that ++52++ he may impart counsel; whether he put books at their disposal, etc.; whether this took place that he would speak a long time with a woman at home or in the sacristy after confession and this with closed doors, whether it took place on such and such a day and in such a town or city, etc.

Then the judge will state to the accused -- always keeping secret the name of the one denouncing him — each denunciation. But he will not, indeed, do so in a global or combined manner. He will bring up each and every denunciation distinctly in parts by reading them to the accused so that he first presents the whole denunciation before the accused and then singly in sections such as has been revealed in each denunciation.

The judge will begin from the less serious words and deeds and slowly proceed to the more serious; nor will he omit proving also some saying or deed that is not criminal, if there is something borne out by the denouncers, so that, once the accused has admitted that, if perhaps then the accused is tainted, he can be shown that the criminal words or deeds have been so joined that the public authority of the church cannot consider some of these criminal words or deeds as true and others as false. These words and deeds will be brought forth to confirm each of the denunciations, and, should there be any, those the earnest efforts [diligentiae]," favorable to the one denouncing and not favorable to the one being denounced; "Information" that is not favorable to him should not be thrown up against him. 'information', which is not held to be favorable to him.

By reason of association [connexio] or content [continentia], the judge will also bring up to the accused the crimes not pertaining to the Holy Office, for which the accused has been denounced and for which he has not yet gone into judgment.

Simultaneously, the counter arguments upon which the accused perhaps has relied, whether [based] upon subterfuges, evasions and meaningless responses, must be proved.

The declarations of all the denunciations having been completed, if there are indeed more denunciations and the accused remains negative, the

judge should not omit to declare to the same accused that, not in conformity with his denials there stand more denunciations in number, distinct in time and reported by different persons, who, from reliable testmony, are of good name, in every way worthy of credence; they are incapable of calumniating or of committing perjury; they are indeed unknown to each other, and hence conspiracy is impossible. Nor has enmity or any other human pathological state been adduced as the reason to accuse [this priest]. It is only in order to satisfy the ineluctable obligation that they have taken the counsel of their own conscience.

++53++

These things having been brought up, the judge will interrogate the accused as to what he himself feels about the sixth precept of the decalogue and the sacrament of penance; whether he thinks it is licit for the confessor to act in such a way with penitents, so that, from certain documents (or, if he has confessed, from his own confession) it was proved that he had himself acted [in this way], whether he perhaps thinks that all [his actions were] in no way sinful; whether he was familiar with the Apostolic Constitution of s.m. Benedict XIV, which begins: "The sacrament of penance", and with the penalties which this Constitution and the holy canons threaten against the confessors in the sacred ministry who have abused their sacred ministry to the ruin of souls; and finally whether he can offer anything to exonerate himself.

After this, the judge will ask him whether he should continue this process here and now as being legitimate or on the other hand does the accused have an exception to make against it; whether he would be content to be assisted by a defender ex officio [from the tribunal] or whether he would wish to name his own defender for himself and, if he insists on some exception, whether he wants perhaps to have the examination of the denunciators repeated.

If he gives an affirmative answer to this last question, or, if in some way he has some [fact] to offer in his own defence because of which the witnesses must be heard (as, moreover, if a serious and sometimes unexpected difficulty comes up), the arraignment should be suspended. It should be reconvened after the denouncing persons have been examined once more or the witnesses have been heard. From these persons the judge will elicit new depositions, and, having formally made the [second] inquisition, formerly begins anew the arraignment.

The attestations of the denunciations having been taken care of, the text of the denunciations must be given to the promoter of justice, who will scrutinize it and declare whether he has any notes to make about it or whether there are new statements or new steps that ought to be taken.

The arraignment will not be concluded by the judge, unless there has first been an express consent by the promoter of justice.

At the end of each session there shall be read to the accused everything that has been presented and in written form is read to the accused by the notary, and , once the accused has approved and accepted these statements, together with any corrections, additions and erasures, if there are any, he will be invited to write his signature; and, having been gravely warned

about keeping the secret, the accused will be dismissed. The notary will describe all of this in these words: "After having received and accepted all of this, the accused, before being dismissed, was warned about keeping the secret and before he was to leave, he was to sign in confirmation of what had been stated."

++54++

After the accused respondent has signed, the notary will sign in this way: "these Acts are signed by myself, N.N., notary (and if he has been authorized solely for this act: authorized only for this act)". Then the indicting judge will sign.

Since, however, there is a need for not only one single arraignment session to bring the many matters to their successful completion, but for many sessions, each one of these sessions should be opened and closed in the same way. At each session, at the bottom of every page, there should be the signatures of the accused, the notary and the judge, and, at the end of each session the judge will cite the accused, indicating the date for the following session which the notary will note in this way: "Having been informed of and having accepted all of these matters, the accused has now been cited for the ... day of the month of... to appear again, and he was dismissed after having been admonished, etc." as above. However, in the following session, the first question will be: Whether to those things which were treated in the preceding sessons the accused has anything to add, remove or correct on his own"; and, after his answer has been transcribed, the sessions will then be continued, from that point at which the previous interrogation ended.

N.B. — It would be superfluous to note that the judge, before he comes to the indictment, must accurately subject the whole informative process to his examination, —obviously all the denunciations both informal and formal and also of the material not pertaining to the Holy Office; his examinations about the morals and the veracity of the ones denouncing, and the investigations and information about the life, morals and good name of the one denounced, plus love letters perhaps written by him, etc. — so that the same judge has at hand all the elements with which to weaken the denials of the accused, and with which to rebut his arbitrary affirmations. From the partial concessions of the accused he can force him to admit more matters.

++55++

FORMULA Q

The Formula for a Petition by the Promoter of Justice

A) IN THE CASE OF PROPOSING AN ADJOURNMENT

Once there is premised a brief summary and inquiry about the reasons of law and fact, there is this conclusion; for example

Having taken everything into consideration, I think it should be decided that the Reverend .... be dismissed with a grave admonition, the process remaining in force. And for the same reason and purpose. The purpose is (for example) that he be watched most diligently: that he be kept from any familiarity with women, also using ecclesiastical censures, and, if anything

obscene (or, if anything not in keeping with the sacerdotal state, etc.) is observed in his life-style, then he will be brought to the tribunal immediately.

On the...day of the month of...in the year...

Signature of the Promoter of Justice

B) IN THE CASE OF PROPOSING A CONDEMNATION

What has been premised above, etc.

...I think that it should be decreed that, having imposed congruent (or grave) and salutary penances, among which there would be spiritual exercises for ...days to be done in a religious house, during which he will remain suspended from the celebration of the Mass, the Reverend... should be dismissed with (here there should be expressed according to the prescription of Canon 2368 § 1 and also the supplementary sanctions which seem to need to be inflicted). If he has by chance absolved his accomplice, he should heal his conscience by a recourse to the Sacred Penitentiary.

On the ... day of the month of ... in the year ...

Signature of the Promoter of Justice

C) IN THE CASE OF PROPOSING ABSOLUTION

...I think it should be decreed: that the innocence of the charged person is evident from the Acts; and therefore the Reverend... should be dismissed once he has been absolved.

++56++

FORMULA R

The Manner of Rendering a Condemnatory Sentence in Cases where the Accused Remains Negative

We (There should be noted the name, family name, qualities, etc., of the Judge-Ordinary or the one delegated).

Since...(the name, family name, father's name, age, condition, etc. of the accused, and, if he is a religious, there should also be added the name he used in the world) was not afraid to abuse the sacrament of penance by words and acts concerning which there is treatment in the Pontifical Constitutions and especially in the Constitution of Benedict XIV, which first words are Sacramentum Poenitentiae, by saying and doing these things...(here, summarily, and in prudent and discrete words, there should be told how, how often, etc. the accused committed the fault);

And, since, because of all these matters he has been denounced to our tribunal, he has been duly cited on this day (let there be noted the day and month of citation), with a proper process having been constituted against him, he has now been indicted on these days (state on which days); however, he remains negative. Nevertheless he has been convicted of the matter.

Therefore, although he has affirmed that he feels that he has acted correctly concerning the faith and Catholic doctrine (having supposed, evidently that the matter was truly so), and the defender for the court action was not remiss in his duty of promoting and sustaining the proper defenses for the accused;

Nevertheless, having correctly and seriously weighed everything, we the Judge-Ordinary or his delegate, on this day (let there be noted the day on which the sentence is given), from the acts and proofs, believe and are convinced that the sentence which follows ought to be rendered.

Therefore, having invoked the name of God, and that of the most blesed and ever virgin Mary the Mother of God and of our Lord Jesus Christ, we issue this our definitive sentence which we, seated for the tribunal, issue, with these pages, in the cause which has been brought before us between D.....(name, family name, etc. of the Promoter of Justice) the promoter ++57++ of justice at this tribunal and ...(name, family name, etc. of the accused, as above), we say, decree and declare and hold that....(the name, family name, etc. of the accused is repeated), because of those matters of which he has been convicted, has been judged guilty of the crime of solicitation toward obscene matters (and of false dogma) and therefore has merited the censures and penalties which have been stated, legislated and promulgated against such delinquents.

Lest, therefore, the above mentioned errors and faults remain unpunished, and in order that the accused will hasten to live in the future more cautiously and be an example to others, we will therefore condemn him...(there should be added the dispositve part of the decision.)

Likewise we impose upon him these salutary penances...(and let it be said what penances are imposed).

And thus we say, discern, declare and order and definitively believe and we do intend and wish to order its execution, as we order concerning the fact in this way and with that form which by law we can and must [decree], at the same time mandating for this purpose with the present letter that the accused on this date.... will be cited to hear the reading and conveyance of this our decision.

Thus we pronounce (and the act should be closed with an indication of the place and day in which it is to be published).
L.X S.

Signature of the Judge the Ordinary or of his delegate

Signature of the notary

++58++

FORMULA S

Manner of Delivering a Condemnatory Sentence in Cases Where the Accused has Confessed His Crimes

We (Let there be noted the name, family name, qualities, etc., of the judge-Ordinary or his delegate).

Since...(name, family name, father's name, age, condition, etc. of the accused, and, if he is a religious, let there be added also the name by which he is known in the world) was not afraid to abuse the sacrament of penance by words and actions concerning which treatment was given in Pontifical Constitutions and especially in the Constitution of Benedict XIV, whose opening words are SACRAMENTUM POENITENTIAE, saying and doing these things...(here in a summary fashion and with prudent and discrete words, it should be indicated how, how often, etc. the accused has been at fault).

Since, because he has been denounced for all these matters to our tribunal, and a regular process has been set up at this tribunal against him and he was duly cited on this date (here should be noted the day, and the month of the citation), he was arraigned on these days (let it be said on what days); he confessed this and this (here should be summarized his confession).

Although, therefore, he has affirmed that he felt that he was correct in matters of faith and Catholic doctrine (and with the supposition, evidently, that this is truly the case), and his defending advocate, in keeping with his duty, was not remiss in his promotion and sustaining the due defences.

Nevertheless, having weighed everything correctly and seriously, we the judge-Ordinary or his delegate, on this day (let there be noted the day on which the sentence is given) from the acts and proofs think and retain that the sentence which follows ought to be rendered.

Therefore, having invoked the name of God, and that of the most blessed and ever virgin Mary, the Mother of God and of our Lord Jesus Christ, with this definitive sentence which we publish seated here for the tribunal on this public record in the case which was processed in our presence between D....(name, family name, etc. of the Promoter of Justice) the Promoter of Justice ~~(39)~~ in this tribunal and.... (name, family name, etc. of the accused, as above), we say, decide, declare and believe that ... (name, family name, etc. of the accused is repeated), because of those things which he has confessed, has been judged guilty of the crime of solicitation to obscene matters (and of false dogma), and, moreover, that he has merited the censures and penalties which have been put forth, stated and promulgated against such delinquents by the holy canons.

Lest the aforesaid errors and faults remain without penalty, and in order that the accused should hasten to live more cautiously in the future, and be an example to others, we condemn him in this way ...(here there should be added the dispositve part of the sentence).

Likewise for salutary penances, we impose... (here are indicated the penances which are imposed).

~~Because, however, the accused has spontaneously confessed the aforesaid~~ errors and faults and he humbly asked forgiveness for them, we wish, moreover, to absolve him from any excommunication he perhaps incurred, as long as he first given evidence that, with a sincere heart and faith that

are real he first abjures those errors and detests his faults; thus we ordain by this our sentence that he act in accordance with the manner and form stated by us.

And thus we say, decree, declare, order and definitively believe and intend and wish to command to execution, as concerning the fact, we order in a better way and according to that form which we can and must use by law, at the same time ordaining with the present letter that the accused on this day...will be cited to hear the reading and being informed of this our sentence.

Thus we pronounce (and the act should be closed with an indication of the place and day on which it was made known).
L. X S.

Signature of the Judge-Ordinary or his Delegate
Signature of the Notary

FORMULA T

Manner of Declaring Solemnly about the Promulgation and Intimation of the Sentence in the Cases of Solicitation

The notary should begin the act with these words:

By force of the decree of this date (let the day be noted on which the sentence was given) given by...(name, family name, etc. of the judge), in the presence of the same person at (the location ought to be noted), with the notary present, N.N. appeared personally (name, family name, father's name, age, condition, etc. of the accused, and, be was a religious, there should also be added the name which he used in the world), to whom by the aforesaid judge seated for the tribunal there were read the following matters:

Here the document is read completely word for word by which the sentence has been given.

Then there is added:

On the...day of the month of... in the year... with these writings there has been promulgated the aforesaid sentence through the above mentioned person (name, etc. of the judge) seated for the tribunal (let there be said in what place), and by his reading in a high and intelligible voice, to the present person (the name, etc. of the accused) listening to him and not contradicting; (if he had confessed, there should be added: being willing, genuflecting before the judge, touching the holy Gospels of God placed before him, he abjured the aforesaid errors [and heresies and generally all the other errors and heresies contrary to the Holy, Catholic and Apostolic Roman Church], as in the schedule of his abjuration, by which he undertook his abjuration, still kneeling, was absolved, in the customary form of the Church from the sentence of excommunication and was reconciled to the Holy Mother the Church, having undertaken prayers and usual and customary ceremonies) -- and there having been enjoined upon him salutary penances

contained in said sentence. Having received all these things, he was dismissed, sworn to observe the secrecy at the touch of the ~~+61+~~holy Gospels and previously, in confirmation of what was presented before, of his and my signature.

Signature of the Accused

These Acts have been signed by myself, N.N. the notary (and if he has been authorized only for this act: authorized only for this Act).

Finally, the judge signs.

THE RICHTER FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW
622 JOHNNIE DODDS BOULEVARD
POST OFFICE DRAWER 1089
MT. PLEASANT, SOUTH CAROLINA 29465

LAWRENCE E. RICHTER, JR.
ALICE ANNE RICHTER
WILLIAM H. WARING, III
HARPER L. TODD*

TELEPHONE (843) 849-6000
FACSIMILE (843) 881-1400

* (Admitted only in GA)

March 10, 2008

VIA U.S. MAIL

The Honorable Diane S. Goodstein
Post Office Box 234
St. George, SC 29477

Re: *Doe, et al. v. The Bishop of Charleston, et al.*
2006-CP-18-1310
2006-CP-18-1311
2006-CP-18-1636

Dear Judge Goodstein:

Pursuant to paragraph 6(A) of the Settlement and Arbitration Agreement executed January 12, 2007, and approved by your Order dated July 30, 2007, I have attached a copy of the final accounting of disbursements submitted by W. Ellison Thomas, CPA. Pursuant to the same, Mr. Thomas has submitted these documents to class counsel, counsel for the Diocese, and to the arbitrator, Marvin D. Infinger.

Thank you very much for your consideration. As always, I remain

Very truly yours,

William H. Waring, III

Enclosure
cc: Albert P. Shahid, Jr., Esquire [via facsimile - 722-1119]
Marvin D. Infinger, Esquire [via facsimile - 722-2266]
David K. Haller, Esquire [via facsimile - 577-7288]
W. Ellison Thomas, CPA [via facsimile – 881-9008]

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Category	Date	Check #		Amount	Description
Class Counsel - Fees					
Richter & Haller, LLC	9/4/2007	Wire	$	2,500,000.00	Court Order
Class Counsel - Expenses					
Richter & Haller, LLC	9/4/2007	Wire	$	100,991.36	Court Order
The Richter Firm, LLC	1/8/2008	1002	$	8,245.15	Partial - Control No. 6
The Richter Firm, LLC	2/10/2008	1009	$	835.70	Control No. 5
The Richter Firm, LLC	2/10/2008	1010	$	2,052.71	Partial - Control No. 6
The Richter Firm, LLC	2/27/2008	1144	$	596.20	Control No. 47
Arbitrator					
Marvin Infinger, Esq.	2/27/2008	1139	$	29,541.69	Control No. 40
Marvin Infinger, Esq.	3/7/2008	1153	$	2,450.00	Control No. 51
Counseling					
Dr. L. Randolph Waid	1/24/2008	1005	$	10,425.00	8 - 12, 14 - 19, 21 - 23
Dr. L. Randolph Waid	2/10/2008	1012	$	5,250.00	Contol No.s 24 - 30
Dr. L. Randolph Waid	2/20/2008	1135	$	1,875.00	Control No.s 32,33,34
Dr. L. Randolph Waid	2/27/2008	1137	$	1,875.00	Control Nos. 35 -38
Escrow Agent					
W. Ellison Thomas, CPA	1/8/2008	1003	$	2,635.00	Partial - Control No. 7
W. Ellison Thomas, CPA	1/8/2008	1004	$	5,657.50	Control No. 20
W. Ellison Thomas, CPA	2/10/2008	1011	$	2,555.22	Partial - Control No. 7
W. Ellison Thomas, CPA	2/10/2008	1013	$	2,247.50	Control No. 31
W. Ellison Thomas, CPA	3/7/2008	1154	$	8,544.44	Control No. 52
Other					
Desa Ballard, Esq.	11/27/2007	1001	$	2,966.93	Control No. 1
Bank Fees	1/31/2008		$	10.00	Wire Fee
Process Service, Inc.	2/10/2008	1006	$	75.00	Control No. 2
Conferencecall.com	2/10/2008	1007	$	35.66	Control No. 3
Palmetto Investigative, Inc.	2/10/2008	1008	$	1,549.00	Control No. 4
Conferencecall.com	2/27/2008	1138	$	14.42	Control No. 39
Clark & Associates, Inc.	2/27/2008	1140	$	3,228.50	Control No. 43
Process Service, Inc.	2/27/2008	1141	$	170.00	Control No. 44
Dr. John Roberts, MD	2/27/2007	1142	$	85.00	Control No. 45
Dr. Sally M. duffy Ph.D.	2/27/2008	1143	$	400.00	Control No. 46
Dr. Cathy Mintzer	2/27/2008	1145	$	500.00	Control No. 48
David K. Haller, Esq.	2/27/2008	1146	$	225.58	Control No. 49
Judy Kramer	3/6/2008	1147	$	63.20	Control No. 50
Total Non Claimant			$	2,695,100.76	

R. App. 001183

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Claimant	Date	Check #		Amount	Description
John Doe 53	*	*	$	160,000.00	Settlement Agreement
John Doe 66	*	*	$	100,000.00	Settlement Agreement
John Doe 66A	*	*	$	100,000.00	Settlement Agreement
John Doe 67	*	*	$	100,000.00	Settlement Agreement
Jane Doe A	10/23/2007	1	$	30,000.00	Settlement Agreement
Jane Doe B	10/23/2007	2	$	30,000.00	Settlement Agreement
Rachel Roe	10/23/2007	3	$	30,000.00	Settlement Agreement
The Richter Firm, LLC for DOE 501	2/15/2008	1014	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 546	2/15/2008	1015	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 502	2/15/2008	1016	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 540	2/15/2008	1017	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 541	2/15/2008	1018	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 503	2/15/2008	1019	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 504	2/15/2008	1020	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 505	2/15/2008	1021	$	10,000.00	Arbitration Order
The Richter Firm, LLC for DOE 506	2/15/2008	1022	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 507	2/15/2008	1023	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 551	2/15/2008	1024	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 556	2/15/2008	1025	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 508	2/15/2008	1026	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 554	2/15/2008	1027	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 555	2/15/2008	1028	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 509	2/15/2008	1029	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 510	2/15/2008	1030	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 511	2/15/2008	1031	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 512	2/15/2008	1032	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 513	2/15/2008	1033	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 550	2/15/2008	1034	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 549	2/15/2008	1035	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 537	2/15/2008	1036	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 533	2/15/2008	1037	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 532	2/15/2008	1038	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 538	2/15/2008	1039	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 552	2/15/2008	1040	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 531	2/15/2008	1041	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 543	2/15/2008	1042	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 544	2/15/2008	1043	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 545	2/15/2008	1044	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 514	2/15/2008	1045	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 515	2/15/2008	1046	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 534	2/15/2008	1047	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 539	2/15/2008	1048	$	20,000.00	Arbitration Order

*** Escrow Agent did not pay these amounts. Paid by Diocese prior to Escrow Agent receiving funds.**

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Claimant	Date	Check #	Amount	Description
The Richter Firm, LLC for DOE 516	2/15/2008	1049	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 517	2/15/2008	1050	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 518	2/15/2008	1051	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 519	2/15/2008	1052	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 547	2/15/2008	1053	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 520	2/15/2008	1054	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 521	2/15/2008	1055	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 522	2/15/2008	1056	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 523	2/15/2008	1057	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 524	2/15/2008	1058	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 525	2/15/2008	1059	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 548	2/15/2008	1060	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 535	2/15/2008	1061	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 536	2/15/2008	1062	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 526	2/15/2008	1063	$ 10,000.00	Arbitration Order
The Richter Firm, LLC for DOE 527	2/15/2008	1064	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 553	2/15/2008	1065	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 528	2/15/2008	1066	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 529	2/15/2008	1067	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 542	2/15/2008	1068	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 530	2/15/2008	1069	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 602	2/15/2008	1070	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 605	2/15/2008	1071	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 606	2/15/2008	1072	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 608	2/15/2008	1073	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 609	2/15/2008	1074	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 610	2/15/2008	1075	$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 621	2/15/2008	1076	$ 20,000.00	Arbitration Order
Walter S. Ameika for DOE 614	2/15/2008	1077	$ 20,000.00	Arbitration Order
Barr, Unger & McIntosh, LLC for DOE 623	2/15/2008	1078	$ 20,000.00	Arbitration Order
Arthur E. White, Jr. for DOE 618	2/15/2008	1079	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 540	2/15/2008	1080	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 541	2/15/2008	1081	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 509	2/15/2008	1082	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 101	2/15/2008	1083	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 102	2/15/2008	1084	$ 55,000.00	Arbitration Order
The Richter Firm, LLC for DOE 202	2/15/2008	1085	$ 40,000.00	Arbitration Order
The Richter Firm, LLC for DOE 203	2/15/2008	1086	$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 301	2/15/2008	1087	$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE 302	2/15/2008	1088	$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 303	2/15/2008	1089	$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 308	2/15/2008	1090	$ 40,000.00	Arbitration Order
The Richter Firm, LLC for DOE 304	2/15/2008	1091	$ 60,000.00	Arbitration Order

R. App. 001185

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Claimant	Date	Check #	Amount	Description
The Richter Firm, LLC for DOE 305	2/15/2008	1092	$ 200,000.00	Arbitration Order
The Richter Firm, LLC for DOE 307	2/15/2008	1093	$ 60,000.00	Arbitration Order
The Richter Firm, LLC for DOE 306	2/15/2008	1094	$ 55,000.00	Arbitration Order
The Richter Firm, LLC for DOE 401	2/15/2008	1095	$ 150,000.00	Arbitration Order
The Richter Firm, LLC for DOE 402	2/15/2008	1096	$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 403	2/15/2008	1097	$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 404	2/15/2008	1098	$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE 405	2/15/2008	1099	$ 150,000.00	Arbitration Order
The Richter Firm, LLC for DOE 406	2/15/2008	1100	$ 200,000.00	Arbitration Order
The Richter Firm, LLC for DOE 407	2/15/2008	1101	$ 75,000.00	Arbitration Order
The Richter Firm, LLC for DOE 408	2/15/2008	1102	$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 409	2/15/2008	1103	$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 410	2/15/2008	1104	$ 200,000.00	Arbitration Order
The Richter Firm, LLC for DOE 406	2/15/2008	1105	$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 411	2/15/2008	1106	$ 75,000.00	Arbitration Order
The Richter Firm, LLC for DOE 420	2/15/2008	1107	$ 70,000.00	Arbitration Order
The Richter Firm, LLC for DOE 412	2/15/2008	1108	$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 414	2/15/2008	1109	$ 150,000.00	Arbitration Order
The Richter Firm, LLC for DOE 415	2/15/2008	1110	$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 416	2/15/2008	1111	$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE 616	2/15/2008	1112	$ 125,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 603	2/15/2008	1113	$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 604	2/15/2008	1114	$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 607	2/15/2008	1115	$ 200,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 611	2/15/2008	1116	$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 612	2/15/2008	1117	$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 613	2/15/2008	1118	$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 620	2/15/2008	1119	$ 70,000.00	Arbitration Order
Barr, Unger & McIntosh, LLC for DOE 615	2/15/2008	1120	$ 200,000.00	Arbitration Order
Pro Se - Doe 601	2/15/2008	1121	$ 200,000.00	Arbitration Order
Pro Se - Doe 619	2/15/2008	1128	$ 315.00	Control No. 43
Pro Se - Doe 619	2/15/2008	1129	$ 59,685.00	Arbitration Order
Pro Se - Doe 622	2/15/2008	1123	$ 20,000.00	Arbitration Order
Pro Se - Doe 624	2/15/2008	1124	$ 20,000.00	Arbitration Order
Pro Se - Doe 625	2/15/2008	1125	$ 20,000.00	Arbitration Order
Pro Se - Doe 627	2/15/2008	1130	$ 195.00	Control No. 42
Pro Se - Doe 627	2/15/2008	1131	$ 149,805.00	Arbitration Order
The Richter Firm, LLC for DOE 628	2/20/2008	1134	$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 413	2/27/2008	1136	$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 418	3/6/2008	1151	$ 40,193.87	Arbitration Order
David K. Haller, Esq. Escrow for DOE 418	3/6/2008	1152	$ 159,806.13	Arbitration Order

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Claimant	Date	Check #		Amount	Description
The Richter Firm, LLC for DOE 419	3/6/2008	1149	$	40,143.24	Arbitration Order
David K. Haller, Esq. Escrow for DOE 419	3/6/2008	1150	$	159,856.76	Arbitration Order
Pro Se - Doe 650	3/6/2006	1148	$	20,000.00	Arbitration Order
Total Claimant			$	7,615,000.00	

R. App. 001187

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Total Non Claimant	$ 2,695,100.76	
Total Settlement	$ 12,000,000.00	($ 5 M & $ 7 M)
Avaliable for Claimants	$ 9,304,899.24	
Total Claimant	$ 7,615,000.00	
Amount Over (does not include interest income)	$ 1,689,899.24	

Cash Proof

Initial Pool of Funds	$ 5,000,000.00	
Second Pool of Funds	$ 7,000,000.00	
Spent to Date	$ 10,310,100.76	
Net	$ 1,689,899.24	
Add: Interest Income		
9/30/2007	$ 398.43	
10/31/2007	$ 4,365.10	
11/30/2007	$ 3,428.21	
12/31/2007	$ 3,289.91	
1/31/2008	$ 3,114.12	
2/29/2008	$ 11,828.89	
3/31/2008	$ -	
Cash in Bank	$ 1,716,323.90	

Arbitrator Awards Paid to date $ 7,065,000.00

3/7/08 - I approve this accounting of class settlement funds. Mark D. Ellis

R. App. 001188

3/7/2008 **John Doe Class Action Settlement Account** Company: JOH
09:00 General Ledger - Period Ending 3/07/08 Page: 1

Date	Mt	Reference	Account	Description	Current	Year-to-Date
Beginning Balance			1000	Cash in Bank - BKSC		2,147,381.54*
3/6/08	3	1147	1000	Judy Kramer	-63.20	
3/6/08	3	1148	1000	Pro Se 650	-20,000.00	
3/6/08	3	1149	1000	The Richter Firm, LLC	-40,143.24	
3/6/08	3	1150	1000	David K. Haller, Esq.	-159,856.76	
3/6/08	3	1151	1000	The Richter Firm, LLC	-40,193.87	
3/6/08	3	1152	1000	David K. Haller, Esq.	-159,806.13	
3/7/08	3	1153	1000	Haynsworth Sinkler Boyd	-2,450.00	
3/7/08	3	1154	1000	W. Ellison Thomas, CPA	-8,544.44	
				Ending Balance =	-431,057.64*	1,716,323.90**

8 Transactions

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO. 2015-CP-10-3287
Jane Doe 240,)	
)	
Plaintiff,)	
)	
v.)	Negligence; Recklessness
)	Intentional Tort;
The Bishop of Charleston, a)	Fraudulent Concealment
Corporation Sole, and)	Unfair and Deceptive Trade Practices
The Bishop Of The Diocese of)	Loss of Consortium
Charleston, in his official Capacity,)	
)	Jury Trial Requested
Defendants.)	
)	

FILED
2015 JUN 10 AM 9:28
JULIE J. ARMSTRONG
CLERK OF COURT

COMPLAINT

For her complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Plaintiff Jane Doe 240 is a citizen and resident of South Carolina. Her husband was sexually molested as a child by a priest of the Diocese of Charleston, Frederick Hopwood, when Frederick Hopwood was assigned to Saint Mary's Catholic in Greenville, S.C. during the approximate time period of 1985 to 1987.

2. A pseudonym is used for the Plaintiff due to the sexual abuse injury to her husband, which relates to this Complaint. The Defendants will be informed of the identity of the Plaintiff upon their written agreement to maintain her identity as confidential as to the public record or their written refusal, after which a motion will be filed to seek an order for leave to proceed using the pseudonym.

3. Frederick Hopwood was assigned by the Defendants to Saint Mary's Catholic in Greenville, S.C. during the approximate time period of 1984 to his reassignment in the early

1990s. He resigned in 1993, when he was prosecuted for sexual abuse. During his time at St. Mary's, Defendants knew, or should have known, that Frederick Hopwood had a sexual interest in children and was sexually abusing children.

4. Defendants unarguably knew of Hopwood's history of sexual abuse when he was criminally charged with sexual abuse in 1993.

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

6. The Bishop of The Diocese of Charleston, is the formal head of the Diocese. As to matters involving the operation of the Diocese, the Bishop holds all executive, judicial, and legislative power.

7. Presently the Bishop is the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued in his official capacity, is a party necessary for complete relief, and is sued as successor in interest of prior Bishops. He and his predecessors are referred to in this Complaint as the Bishop. All persons working for the Diocese are subordinate to the Bishop. In this Complaint, the Diocese and the Bishop Defendants are collectively referred to as the "Diocese Defendants," unless they are otherwise specifically referred to.

8. The Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County.

Nature of Wrongdoing

9. Prior to 1985, the Diocese Defendants were either reckless or acted intentionally in actively disregarding the risks to children and families for sexual assault of children by their priests and other employees, and then actively, and fraudulently, concealing the abuse that happened, and the dangers to children the Diocese and its priests solicited into danger.

10. The Diocese Defendants were reckless in exposing children to the danger of sexual abuse, or did so intentionally in that the interest of the children at risk were regarded as expendable, in order to promote the interests of priests and the Diocese in appearing to be a more pastoral organization then it was in fact.

11. Charitable immunity does not apply to intentional or reckless conduct such as is alleged in this complaint, and in any event, in 2007 the Diocese explicitly waived all charitable immunity, and explicitly all statute of limitations defenses, for persons sexually abused by its priests prior to 2001, their parents and spouses.

12. Plaintiff was born prior to 1980, as was her husband.

13. Plaintiff received no notice of the class action case the Diocese agreed to accept for abuse victims, and under the explicit terms of the order which approved the class action, and by agreement of the Diocese in that action, Plaintiff is not barred by the *res judicata* effect of that class action that would otherwise apply. In addition, the Diocese has waived the defenses of charitable immunity and state of limitations as to class of persons which was defined so as to include the Plaintiff, among others.

For a First Cause of Action:
Negligence, Recklessness, and Intentional Misconduct

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

15. The Diocese Defendants employed Frederick Hopwood as a priest.

16. In his capacity as priest, Frederick Hopwood was placed by the Defendants in a position of trust and confidence, and had access to the Plaintiff's husband. In that capacity, Frederick Hopwood sexually molested multiple children, including the Plaintiff's husband.

17. Prior to Plaintiff's husband being molested, the Diocese Defendants became aware that Frederick Hopwood was dangerous to children. The Defendants ignored that danger, and placed Frederick Hopwood so as to facilitate his access to children whom he could molest. Those decisions by Diocese personnel working on behalf of the Bishop were made or approved in Charleston County.

18. After he was moved by the Defendants to Greenville, South Carolina, Frederick Hopwood molested the Plaintiff's husband.

19. The Diocese, Bishop, and its other officials negligently supervised Frederick Hopwood. The Bishop was grossly negligent in supervising Frederick Hopwood in not limiting his access to children or providing protective supervision over him.

20. As a proximate result of the negligence and gross negligence by the Diocese defendants, the Plaintiff's husband was sexually abused by Frederick Hopwood.

21. The Diocese Defendants were negligent in failing to warn the plaintiff about Frederick Hopwood. The Bishop performed that duty in a grossly negligent manner.

22. Although knowing that Frederick Hopwood was a pedophile, or having reason to know, the Diocese and Bishop, including the Bishops prior to the current Bishop, made no effort, or no competent effort, to ascertain how many children Frederick Hopwood had molested, and no

effort, or no competent effort, to locate victims of Frederick Hopwood. If the Diocese did make such an effort, as it has claimed that it did, it assumed the duty but performed it in a negligent manner, relying only on prior reports by abuse victims instead of undertaking an affirmative effort to ascertain victims of Frederick Hopwood. The duty undertaken by the defendants was performed in a grossly negligent manner, if it was not intentionally performed in a manner designed to be ineffective but done only to enable the Diocese to claim it had made an effort.

23. The Defendants' failure to do so was negligent, and grossly negligent if not intentional on behalf of the presiding Bishop from the time the Plaintiff's husband was abused to the present.

24. As a result of the Defendants' negligence, gross negligence, or intentional deception in failing to either prevent Plaintiff's spouse from being abused or identifying the Plaintiff's husband as a victim of abuse by Frederick Hopwood, a Diocese agent or employee, the Plaintiff has been herself injured by impairments to her husband which were then exacerbated over time. The conduct of the Defendants delayed treatment to the Plaintiff's husband after his injuries by Frederick Hopwood, exacerbating all problems stemming from the Plaintiff's husband having been sexually abused.

25. As set forth more fully below in the second cause of action, the Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese Defendants, among other things, accounts for the delay in this action being brought against the Diocese Defendants.

26. The Plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese Defendants, and gross negligence of the various presiding Bishops, in failing to

perform a proper review for Frederick Hopwood's victims, or in performing that duty in a grossly inadequate, or intentionally inadequate, manner, after it was known that Hopwood had a sexual interest in children and acted on his sexual interest.

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

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

28. The Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse a child. That practice, independent of its intentional and knowing waiver, estopps the Diocese from asserting any statute of limitations defenses as to the Plaintiff, and forms an independent basis of relief for the Plaintiff.

29. The Diocese Defendants had a duty to discover, and to disclose, to Plaintiff and her husband, their knowledge that Frederick Hopwood had a sexual interest in children, acted on his sexual interest in children, and that his sexual abuse could have been avoided. That duty to the Plaintiff arises from:

(a) the superior knowledge of the Diocese Defendants about the danger Hopwood represented to children,

(b) the awareness of the Diocese Defendants that Hopwood had molested many children,

(c) from an operating administrative practice of secrecy, perhaps stemming from the secrecy provisions in the Code of Canon Law, both 1917 and 1983 versions of that Code, and the 1962 document titled "Instruction," which charges the Diocese to discover, but maintain secrecy about, "other persons solicited" by any person such as Frederick Hopwood who committed the "unspeakable crime" of sexually abusing a child, and

(d) by the undertaking which the Diocese Defendants assumed, negligently (and in the case of the individuals included in the Diocese Defendants designation, grossly negligently, or intentionally poorly), in 2005 - 2007 to locate victims such as the Plaintiff.

30. Plaintiff's husband was sexually abused by Hopwood after 1962, in that Hopwood was not assigned to Greenville, S.C. until 1984.

31. Concerning each of (a) the dangers Hopwood represented to Plaintiff's husband, and (b) the Diocese Defendants proposing to repair the damage done to children by Hopwood, the Diocese Defendants were obligated to Plaintiff and her husband to engage with each of them in perfect good faith and with full disclosure, without regard to any particular intention of the parties. The relationship the Diocese solicited and assumed as to the plaintiff was inherently fiduciary in that the Diocese purports to be concerned with the best interests of those it solicits as parishioners, and with those its priests and employees have sexually abused.

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

33. Specifically, the Diocese Defendants created, as embodied in the Code of Canon law which required it, an archive (Canon 486 in 1983 Code; Canon 375 in 1917 Code), accessible only by the Bishop and chancellor (Canon 487 in 1983 Code; Canon 375 in 1917 Code). Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia (Canon 488 in 1983 Code; Canons 378-379 in

1917 Code). Canon 489 (1983 Code) requires that a Secret Archive also be created (Canon 379 in the 1917 Code). In it "documents are to be kept secret" and "protected most securely." Canon 489 (1983 Code), Section 2 states: "Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, ***are to be destroyed.*** A brief summary of what occurred along with the text of the definitive sentence is to be retained." Emphasis added. Similar provisions are in Canon 379 of the 1917 Code (E.g., the Canon states, "promptly once a year, documents in criminal cases ***are to be burned*** in morals cases . . . ."). Emphasis added. Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490, 1983 Code; Canon 379, 1917 Code). The bishop is authorized to include in the secret archive any matter which can be regarded as "scandalous."

34. Matters related to agents and employees of the Diocese sexually abusing children, including Hopwood's sexual abuse of children, including the husband of the Plaintiff, were regarded as "scandalous," and were maintained in the secret archive. As such, those documents have been intentionally destroyed as called for in either version of the Code. In this respect, the Code of Canon Law forms the basic internal operating administrative practices of the Diocese Defendants.

35. Another technique used by the Diocese to maintain secrecy about sexual abuse matters, or any other matter the Diocese wished to keep secret, was to move the document (or person) to other locations, including moving a document to Rome, where diplomatic immunity could be claimed and production resisted.

36. In 1962 the Diocese defendants expanded on the secrecy required concerning sexual abuse, publishing an "Instruction" which was to be stored in the secret archive. Instruction, page

1. In the instruction, matters involving priests who "solicit or provoke" (p. 1 ¶ 1) a penitent "toward impure and obscene matters" (p. 1 ¶ 1), "which is also silence" (¶ 11) and deemed "a secret of the Holy Office" (p. 3 ¶ 11), "under the penalty of excommunication" (p. 3 ¶ 11). The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." (p. 4 ¶ 12. See also, p. 5 ¶ 23 and p. 6 ¶ 28).

37. The Plaintiff's husband fit within the "penitent" referred to in the Instruction.

38. The Instruction states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." P. 15, ¶ 71. Plaintiff's abused husband is male, as is Hopwood.

39. The Instruction also defined as "any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex." P. 16, ¶ 73.

40. The conduct by Frederick Hopwood towards the Plaintiff's husband when he was a child qualifies under the Instruction as "the worst crime."

41. Among other things, the "Instruction" directs that the Diocese Defendants were to assume the duty of locating "other persons solicited by the same confessor" (p. 7 ¶ 29), in this instance, other persons sexually abused by Hopwood. See also, Instruction, p. 9 ¶ 37.

42. When that duty was assumed by the Diocese Defendants, it was performed in a grossly negligent manner. By their negligence, the Diocese Defendants failed to locate the Plaintiff and the Plaintiff's husband.

43. The "Instruction" states it was approved by the "Most Holy Father John XXIII" in 1962. P. 16.

44. In its Appendix, the "Instruction" sets out the terms of the secrecy to be observed for matters such as the sexual abuse of Plaintiff's husband. In essence, the secrecy oath provides for

absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff." P. 17.

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

46. Unless the Pope himself approves otherwise, the "Instruction" directs that secrecy is to be maintained not only by the Catholic plaintiffs such as the Plaintiff, but by every member of the Diocese Defendants, and by even witnesses to sexual abuse such as the Plaintiff's husband. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the "Instruction," the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has instructed otherwise, the Diocese Defendants can all be expected to be obedient to the Pope and the "Instruction," and to overtly conceal or misrepresent any facts related to sexual abuse. The Diocese Defendants have, to date, done so.

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

48. As courts began to require the Diocese, despite its commitment to secrecy and deception, to be accountable for sexual abuse, the Diocese had to reach a new level of deception and

manipulation to limit the damage to the Diocese from its having to take responsibility for its history of sexual abuse, and to as much as possible conceal the extent of abuse, and to limit as much as possible its responsibility for that abuse.

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

50. In addition, and as an independent alternative, as a result of its practice of secrecy, as well as from its explicit waivers, the Diocese is precluded from asserting the statute of limitations, or charitable immunity, as to the Plaintiff, and the Plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the Plaintiff and her husband.

51. In addition, as an a second independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980, who were themselves or whose spouse was sexually abused by priests or others associated with the Diocese, a class which includes the plaintiff, and by that explicit waiver the Diocese is properly precluded from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the Plaintiff's husband.

52. In addition, as an a third independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980 who were themselves or whose spouse was sexually abused by priests or others associated with the Diocese, a class which includes the Plaintiff, and by that explicit waiver the Diocese is

properly precluded by the finder of fact from asserting the statute of limitations, or charitable immunity, as to the Plaintiff, and the Plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the Plaintiff's husband.

53. The Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese, because the order in that litigation provides for those who received no notice of that litigation "for whatever reason," to be not bound by that litigation. Plaintiff received no notice of that litigation.

54. Alternatively, the Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese because that litigation was collusive. The Diocese calculated it could use the class action to pay relatively modest compensation to a limited number of victims, then try to exclude all others by *res judicata.* The Diocese colluded to:

(a) cooperate with class counsel who had life-long ties to the Diocese and who held positions within the Diocese,

(b) twice continue hearings in Charleston County for three pending cases, one of which was a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRCP 23(c),

(c) agreed to a fixed fee for class counsel as he simultaneously negotiated a variable recovery for the class, which is unethical conduct by class counsel,

(d) agreed to class counsel's fee taking priority over the recovery for the class, which is what made the fee unethical for class counsel,

(e) agreed to class counsel being paid prior to the class being known or the first class claimant had even an opportunity to file a claim,

(f) agreed to limits on class member recovery for a small fraction of what lass counsel would agree to accept when litigating against a Diocese other than his own, the Diocese having reason to know that class counsel was placing his own interests above those of his abuse victim clients,

(g) agreed not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached in the class action pending in Charleston County during a June, 2006 mediation.

(h) agreed to not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court even though the class action settled by that agreement was pending in that court, and no other case was then pending.

(i) agreed to a plan to move class certification and class settlement oversight from the Charleston County Circuit Court in which the pending class action had been settled, to Dorchester County, where no case was then pending, so as to judge-shop for a Circuit Court judge with long social and professional ties to class counsel,

(j) agreed to accept service of three collusively-filed class actions in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making that class action case pending in two counties simultaneously, and pending in one county after it was already settled in the other county. As such, that filing was a sham lawsuit, falsely maintained as a case or controversy.

(k1) agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only

limited information, and certain false information, about the pending Charleston County class action and the collusion among counsel, so as to gain her (initial and presumably unwitting) assistance in depriving the Charleston County court of jurisdiction to review under SCRCP 23(c) the class status of, or the June, 2006 class settlement for, Charleston County case 05-CP-10-4913,

(k2) Alternatively, the Diocese agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, fully disclosing that a Charleston County class action, 05-CP-10-4913, was pending and that a proposed class settlement had been reached in June, 2006, and seeking the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCP 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913.

(l) agreed to circumvent SCRCP 23 being applied by any Charleston County judge to the class settlement reached in the class action pending in Charleston County, by agreeing to not inform that Court that a class settlement had been reached when asking for the Charleston cases to be dismissed,

(m) agreed to take no position on class certification, even though the Diocese would be obligated to a settlement of $460,000 without class certification but for far more (up to $12 million) with class certification,

(n) agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records in class counsel's application for costs and fees,

(o) agreed to class counsel being paid in fact prior to the class claims period even beginning,

(p) agreed to oppose all objections raised by third parties to the class settlement,

(q) agreed to class counsel's desire to abandon his request to the court for nationwide notice of the class action and to change his request for only geographically limited notice,

(r) agreed to arbitration of class members' claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept,

(s) agreed to inform the arbiter about the financial limits the Diocese was willing to accept so the arbiter would not exceed those sums in its awards to class members,

(t) convinced class counsel to acquiesce in letting the Diocese examine its own files for sexual abuse victims, even though the Diocese was alleged to have a history of deliberately secreted information about abuse, and the search by the Diocese was only for persons who had already identified themselves as abuse victims, not for all victims.

(u) agreed to request no post-award fairness hearing in the class action,

(v) agreed to request no review of class counsel's actual fee, even though it appears class counsel might have recovered as much as 51% of all sums paid by the Diocese, and received sums in excess of the sum authorized by the court,

(w) agreed to request of the Dorchester County court no final accounting or final order prior to the September 19, 2009 deadline imposed by the SC Supreme Court for the Dorchester County court to conclude the class action,

(x) agreed to request no final accounting, and

(y) agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement.

55. Plaintiff presumes that in 2006 and 2007 the Dorchester County Circuit Court was not given complete information about the status of Charleston County case 05-CP-10-4913 (which alleged a class) and the proposed class settlement in that case. By the time persons other than the Diocese or class counsel provided the Dorchester County Circuit Court judge with accurate information, in 2008, it was so far into the class process that even though the Court had authority to modify orders in the class action "at any time" under SCRCP23, the Court elected to take no further action in the class action case. Five years later, the Circuit Judge issued a recusal order, giving no basis for the recusal.

56. As a result of the concealments by the Diocese, and its collusion in the class action, the Diocese is unable to properly assert any statute of limitations defense as to the plaintiff. Also as a result, the Plaintiff was injured, and is entitled to actual and punitive damages in an amount to be determined by the finder of fact.

For a Third Cause of Action:
Judicial Estoppel and Unfair and Deceptive Trade Practices

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

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

59. The Diocese defendants stated publicly, and to the Circuit Court, that for sexually abused persons born before August 30, 1980, the Diocese waived its defenses of charitable immunity and statute of limitations, even if those persons did not receive notice of the class action.

60. That representation by the Diocese was made for purposes of gaining court approval of a class settlement. Despite that assurance, the Diocese refused to perform on its assurance when sexually abused persons born prior to August 30, 1980, including the plaintiff, received no notice of the class and appeared and requested relief.

61. The Diocese has taken inconsistent positions as to different persons included in the same class definition.

62. The proceedings in which those inconsistent positions were taken related in that each involved one or more members of the class as defined by agreement of the Diocese, and the Diocese volunteered to include persons who did not receive notice of the class action.

63. The Diocese was successful in maintaining that position, and as a result of taking that position the Diocese received the benefit of class approval from the Circuit Court.

64. The inconsistency by the Diocese is part of an intentional effort to mislead the court.

65. The two positions by the Diocese are in fact inconsistent, and as a result the Diocese is estopped from taking a different position as to the Plaintiff.

66. Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese.

67. The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese made a calculated decision to invest some funds and engage in a public relations exercise, in an effort to procure positive publicity for itself in 2007 and 2008 without having to compensate all of its sexual abuse victims, and to attempt to seal off its liability for the full extent of its sexual abuse victims.

68. The Diocese invested funds to design a compensation program for victims which specifically excluded many victims, and was known to exclude many victims. The Diocese engaged in collusion to do so, and overt misrepresentation, to the court and the public, in order to achieve its objective to deceive the public, the court, and those persons sexually abused who

were born prior to August 30, 1980, and the parents and spouses of those persons, including the Plaintiff.

69. Specifically, the Diocese represented, in a knowingly false manner, on July 13, 2007, that for those persons "who should have gotten notice who didn't get notice," "if that person shows up then we would have to deal with it." As summarized by the court in that hearing, "what they [meaning the Diocese] say is if you come forward in the future we will treat you just the same as we have treated these individuals and the relief is available for you. I know of nothing more that could be done. So I certainly would approve that." In response, the Diocese representative accepted the summary, and responded, "Well, good." That colloquy is on page 25 – 26 of the transcript of an *ex parte* hearing (*ex parte* as to persons who had appeared to state concerns and objections about the proposed class settlement) held on July 13, 2007. According to that transcript, the proceeding was one of a number of such *ex parte* hearings held in the class action litigation.

70. In addition, the court's July 30, 2007 order, at page 4, embodies a comparable sentiment: "The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement."

71. The Diocese took no appeal from that order.

72. The Diocese has asserted against victims who did not get notice, exactly as they promised they would not, the *res judicata* effect of the class settlement, as well as the independent defenses it waived, and has done so even as to victims for whom the Diocese did not even attempt to provide notice.

73. The representation made by the Diocese to the Circuit Court was false when made by the Diocese, and was knowingly false when made by the Diocese. The Diocese had no intention of including other victims who received no notice "for whatever reason," as the rationale for the collusive class action was to use the class action to terminate liability of the Diocese, and do so at a fraction of the recovery a truly adversarial class counsel might demand. The misrepresentation was made with the intention of convincing the Circuit Court to approve a collusive class settlement, even though the Diocese had no intention of honoring its assurances to the Circuit Court. The intention by the Diocese to mislead the Circuit Court succeeded, and the settlement was approved.

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

75. The false and deceptive practices of the Diocese will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The

corrupt practices of the Diocese have been actually repeated, as well as having had the potential for repetition. The Diocese has engaged in misrepresentations of material fact.

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

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

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

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

For a Fourth Cause of Action: Loss of Consortium

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

81. Defendants' tortiously violated the right of companionship, aid, society, and services of the plaintiff's spouse by Hopwood's sexual abuse of the Plaintiff's husband.

82. This action has been filed within three years of the Plaintiff becoming aware that the Defendants were aware that Hopwood was a known threat to children before her husband was sexually assaulted by Hopwood.

83. This action has been filed within three years of the Plaintiff becoming aware that the Defendants performed negligently their assumed duty of locating victims of Hopwood's childhood molestations, and within three years of her knowledge that the Bishop performed his actions of that duty in a grossly negligent manner.

84. The actions of the Defendants have affected the Plaintiff's consortium with her husband.

85. The Plaintiff has sustained personal injury as a result of the conduct of the Defendants, and is entitled to actual and punitive damages for her pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship.

Demand for Jury Trial

86. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

87. Actual damages to be awarded to the Plaintiff by the finder of fact against the various Defendants, trebled as authorized by law for the appropriate cause of action,

88. Injunctive relief as authorized by law for the appropriate cause of action,

89. Costs and disbursements of this action,

90. Attorneys fees as authorized by law,

91. Punitive damages as authorized by law, and for

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

Respectfully submitted,



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Attorney for Plaintiff

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO. 2015-CP-10-3288
John Doe 240,)	
)	
Plaintiff,)	
)	
v.)	Negligence; Recklessness
)	Intentional Tort
The Bishop of Charleston, a)	Fraudulent Concealment
Corporation Sole, and)	Unfair and Deceptive Trade Practices
The Bishop Of The Diocese of)	Loss of Consortium
Charleston, in his official Capacity,)	
)	Jury Trial Requested
Defendants.)	
)	

FILED
2015 JUN 10 AM 9:28
JULIE J. ARMSTRONG
CLERK OF COURT

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Plaintiff John Doe 240 is a citizen and resident of South Carolina. He was sexually molested as a child by a priest of the Diocese of Charleston, Frederick Hopwood, when Frederick Hopwood was assigned to Saint Mary's Catholic in Greenville, S.C. during the approximate time period of 1985 to 1987.

2. A pseudonym is used for the Plaintiff due to his sexual abuse injury, which relates to this complaint. The Defendants will be informed of the identity of the Plaintiff upon their written agreement to maintain his identity as confidential as to the public record or their written refusal to do so, after which a motion will be filed to seek an order for leave to proceed using the pseudonym.

3. Frederick Hopwood was assigned by the Defendants to Saint Mary's Catholic in Greenville, S.C. during the approximate time period of 1984 to his reassignment in the early

1990s. He resigned in 1993, when he was prosecuted for sexual abuse. During his time at St. Mary's, Defendants knew, or should have known, that Hopwood had a sexual interest in children and was sexually abusing children.

4. Defendants unarguably knew of Hopwood's history of sexual abuse when he was criminally charged with sexual abuse in 1993.

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

6. The Bishop of The Diocese of Charleston is the formal head of the Diocese. As to matters involving the operation of the Diocese, the Bishop holds all executive, judicial, and legislative power.

7. Presently the Bishop is the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued in his official capacity, is a party necessary for complete relief, and is sued as successor in interest of prior Bishops. He and his predecessors are referred to in this Complaint as the Bishop. All persons working for the Diocese are subordinate to the Bishop. In this Complaint, the Diocese and the Bishop defendants are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

8. The Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County.

Nature of Wrongdoing

9. Prior to 1985, the Diocese defendants were either reckless or acted intentionally in actively disregarding the risks to children and families for sexual assault of children by their priests and other employees, and then actively, and fraudulently, concealing the abuse that happened, and the dangers to children the Diocese and its priests solicited into danger.

10. The Diocese Defendants were reckless in exposing children to the danger of sexual abuse, or did so intentionally in that the interest of the children at risk were regarded as expendable, in order to promote the interests of priests and the Diocese in appearing to be a more pastoral organization then it was in fact.

11. Charitable immunity does not apply to intentional or reckless conduct such as is alleged in this Complaint, and in any event, in 2007 the Diocese explicitly waived all charitable immunity, and explicitly all statute of limitations defenses, for persons sexually abused by its priests prior to 2001.

12. Plaintiff was born prior to 1980.

13. Plaintiff received no notice of the class action case the Diocese agreed to accept for abuse victims, and under the explicit terms of the order which approved the class action, and by agreement of the Diocese in that action, Plaintiff is not barred by the *res judicata* effect of that class action that would otherwise apply. In addition, the Diocese has waived the defenses of charitable immunity and state of limitations as to class of persons which was defined so as to include the Plaintiff, among others.

For a First Cause of Action:
Negligence, Recklessness, and Intentional Misconduct

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

15. The Defendant Diocese employed Hopwood as a priest.

16. In his capacity as priest, Hopwood was placed by the Defendants in a position of trust and confidence, and had access to the Plaintiff. In that capacity, Hopwood sexually molested multiple children, including the plaintiff.

17. Prior to Plaintiff's sexual abuse by Hopwood, the defendants became aware that Hopwood was dangerous to children. The Defendants ignored that danger, and placed Hopwood so as to facilitate his access to children whom he could molest. Those decisions by Diocese personnel working on behalf of the Bishop were made or approved in Charleston County.

18. After he was moved by the Defendants to Greenville, South Carolina, Hopwood molested the plaintiff.

19. The Diocese, Bishop, and its other officials negligently supervised Hopwood. The Bishop was grossly negligent in supervising Hopwood in not limiting his access to children or providing protective supervision over him.

20. As a proximate result of the negligence and gross negligence by the Diocese Defendants, the Plaintiff was sexually abused by Hopwood.

21. The Diocese Defendants were negligent in failing to warn the Plaintiff about Hopwood. The Bishop performed that duty in a grossly negligent manner.

22. Although knowing that Frederick Hopwood was a pedophile, or having reason to know, the Diocese and Bishop (and as noted above specifically including the Bishops prior to the current Bishop), made no effort, or no competent effort, to ascertain how many children Hopwood had molested, and no effort, or no competent effort, to locate victims of Hopwood. If

the Diocese did make such an effort, as it has claimed that it did, it assumed the duty but performed it in a negligent manner, and in a grossly negligent manner as to the Bishop and his predecessors, relying only on prior reports by abuse victims instead of undertaking an affirmative effort to ascertain Hopwood's victims. The duty undertaken by the defendants was performed in a grossly negligent manner, if it was not intentionally performed in a manner designed to be ineffective but done only to enable the Diocese to claim it had made an effort.

23. The Defendants' failure to do so was negligent, and grossly negligent if not intentional on behalf of the presiding Bishop from the time the Plaintiff was abused to the present.

24. As a result of the Defendants' negligence, gross negligence (or intentional deception) in failing to either prevent Plaintiff from being abused or identifying the Plaintiff as a victim of Hopwood's abuse, the Plaintiff has been injured by both initial injury and by delayed treatment for Hopwood's abuse. In turn, this has impaired his relationship with his wife. His injuries were then exacerbated over time.

25. As set forth more fully below in the second cause of action, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese Defendants, among other things, accounts for the delay in this action being brought against the Diocese Defendants.

26. The Plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese Defendants, and gross negligence or intentional conduct of the various presiding Bishops, in failing to perform a proper review for Hopwood's victims, or in performing that duty in a grossly inadequate (or intentionally inadequate) manner, after it was known that Hopwood had a sexual interest in children and acted on his sexual interest to assault various children.

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

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

28. The Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse a child. That practice, independent of its intentional and knowing waiver, estopps the Diocese from asserting any statute of limitations defenses as to the Plaintiff, and forms an independent basis of relief for the Plaintiff.

29. The Diocese Defendants had a duty to discover, and to disclose, to Plaintiff and (when he was a child) his family, their knowledge that Hopwood had a sexual interest in children, acted on his sexual interest in children, and that (a) Hopwood's sexual abuse of children could have been avoided, and (b) after the fact, children could be treated for their sexual abuse by Hopwood. That duty to the Plaintiff arises from:

(a) the superior knowledge of the Diocese Defendants about the danger Hopwood represented to children,

(b) the awareness of the Diocese Defendants that Hopwood had molested many children,

(c) an operating administrative practice of secrecy, perhaps stemming from the secrecy provisions in the Code of Canon Law, both the 1917 and 1983 versions of that Code, and the 1962 document titled "Instruction," which charges the Diocese to discover, but maintain secrecy about, "other persons solicited" by any person such as Frederick Hopwood who committed the "unspeakable crime" of sexually abusing a child, and

(d) by the undertaking which the Diocese Defendants assumed, negligently (and in the case of the individuals included in the Diocese defendants designation, grossly

negligently, or intentionally poorly), in 2005 - 2007 to locate victims such as the Plaintiff.

30. Plaintiff was sexually abused by Hopwood after 1962, in that Hopwood was not assigned to Greenville, S.C. until 1984.

31. Concerning each of (a) the dangers Hopwood represented to the Plaintiff, and (b) the Diocese Defendants proposing to repair the damage done to children by Hopwood, the Diocese defendants were obligated to the Plaintiff engage with him in perfect good faith and with full disclosure, without regard to any particular intention of the parties. The relationship the Diocese solicited and assumed as to the Plaintiff was inherently fiduciary in that the Diocese purports to be concerned with the best interests of those it solicits as parishioners, and with those its priests and employees have sexually abused.

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

33. Specifically, the Diocese Defendants created, as embodied in the Code of Canon law which required it, an archive (Canon 486 in 1983 Code; Canon 375 in 1917 Code), accessible only by the Bishop and chancellor (Canon 487 in 1983 Code; Canon 375 in 1917 Code). Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia (Canon 488 in 1983 Code; Canons 378-379 in 1917 Code). Canon 489 (1983 Code) requires that a "Secret Archive" also be created (Canon 379 in the 1917 Code). In it "documents are to be kept secret" and "protected most securely."

Canon 489 (1983 Code), Section 2 states: "Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, ***are to be destroyed***. A brief summary of what occurred along with the text of the definitive sentence is to be retained." Emphasis added. Similar provisions are in Canon 379 of the 1917 Code (E.g., the Canon states, "promptly once a year, documents in criminal cases ***are to be burned*** in morals cases . . . ."). Emphasis added. Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490, 1983 Code; Canon 379, 1917 Code). The bishop is authorized to include in the secret archive any matter which can be regarded as "scandalous."

34. Matters related to agents and employees of the Diocese sexually abusing children, including Hopwood's sexual abuse of children, including the Plaintiff, were regarded as "scandalous," and were maintained in the secret archive. As such, those documents have been intentionally destroyed as called for in either version of the Code. In this respect, the Code of Canon Law forms the basic internal operating administrative practices of the Diocese Defendants.

35. Another technique used by the Diocese to maintain secrecy about sexual abuse matters, or any other matter the Diocese wished to keep secret, was to move the document (or person) to other locations, including moving a document to Rome, where diplomatic immunity could be claimed and production resisted.

36. In 1962 the Diocese Defendants expanded on the secrecy required concerning sexual abuse, publishing an "Instruction" which was to be stored in the secret archive. Instruction, page 1. In the instruction, matters involving priests who "solicit or provoke" (p. 1 ¶ 1) a penitent "toward impure and obscene matters" (p. 1 ¶ 1), "which is also silence" (¶ 11) and deemed "a

secret of the Holy Office" (p. 3 ¶ 11), "under the penalty of excommunication" (p. 3 ¶ 11). The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." (p. 4 ¶ 12. See also, p. 5 ¶ 23 and p. 6 ¶ 28).

37. The Plaintiff fit within the "penitent" referred to in the Instruction.

38. The Instruction states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." P. 15, ¶ 71. Plaintiff is male, as is Hopwood.

39. The Instruction also defined as "any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex." P. 16, ¶ 73.

40. The conduct by Hopwood towards the Plaintiff when he was a child qualifies under the Instruction as "the worst crime."

41. Among other things, the "Instruction" directs that the Diocese Defendants were to assume the duty of locating "other persons solicited by the same confessor" (p. 7 ¶ 29), in this instance, other persons sexually abused by Hopwood. See also, Instruction, p. 9 ¶ 37.

42. When that duty was assumed by the Diocese Defendants, it was performed in a grossly negligent manner. By their negligence, the Diocese Defendants failed to locate the Plaintiff as a Hopwood victim.

43. The "Instruction" states it was approved by the "Most Holy Father John XXIII" in 1962. P. 16.

44. In its Appendix, the "Instruction" sets out the terms of the secrecy to be observed for matters such as the sexual abuse of the Plaintiff. In essence, the secrecy oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the

most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff." P. 17.

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

46. Unless the Pope himself approves otherwise, the "Instruction" directs that secrecy is to be maintained not only by the Catholic plaintiffs such as the Plaintiff, but by every member of the Diocese defendants, and by even witnesses to sexual abuse such as the Plaintiff. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the "Instruction," the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has instructed otherwise, the Diocese defendants can all be expected to be obedient to the Pope and the "Instruction," and to overtly conceal or misrepresent any facts related to sexual abuse. The Diocese Defendants have, to date, done so.

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

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

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

50. In addition, and as an independent alternative, as a result of its practice of secrecy, as well as from its explicit waivers, the Diocese is precluded from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the Plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the Plaintiff.

51. In addition, as an a second independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980, who were themselves sexually abused by priests or other agents or employees of the Diocese, a class which includes the Plaintiff, and by that explicit waiver the Diocese is properly precluded from asserting the statute of limitations, or charitable immunity, as to the Plaintiff, and the Plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the plaintiff.

52. In addition, as an a third independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980 who were themselves sexually abused by priests or others associated with the Diocese, a class which includes the Plaintiff, and by that explicit waiver the Diocese is properly precluded by the finder of fact from asserting the statute of limitations, or charitable immunity, as to the Plaintiff, and the Plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the Plaintiff.

53. The Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese, because the order in that litigation provides for those who received no notice of that litigation "for whatever reason," to be not bound by that litigation. Plaintiff received no notice of that litigation.

54. Alternatively, the Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese because that litigation was collusive. The Diocese calculated it could use the class action to pay relatively modest compensation to a limited number of victims, then try to exclude all others by *res judicata.* The Diocese colluded to:

(a) cooperate with class counsel who had life-long ties to the Diocese and who held positions within the Diocese,

(b) twice continue hearings in Charleston County for three pending cases, one of which was a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRCP 23(c),

(c) agreed to a fixed fee for class counsel as he simultaneously negotiated a variable recovery for the class, which is unethical conduct by class counsel,

(d) agreed to class counsel's fee taking priority over the recovery for the class, which is what made the fee unethical for class counsel,

(e) agreed to class counsel being paid prior to the class being known or the first class claimant had even an opportunity to file a claim,

(f) agreed to limits on class member recovery for a small fraction of what class counsel would agree to accept when litigating against a Diocese other than his own, the

Diocese having reason to know that class counsel was placing his own interests above those of his abuse victim clients,

(g) agreed not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached in the class action pending in Charleston County during a June, 2006 mediation,

(h) agreed to not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court even though the class action settled by that agreement was pending in that court, and no other case was then pending,

(i) agreed to a plan to move class certification and class settlement oversight from the Charleston County Circuit Court in which the pending class action had been settled, to Dorchester County, where no case was then pending, so as to judge-shop for a Circuit Court judge with long social and professional ties to class counsel,

(j) agreed to accept service of three collusively-filed class actions in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making that class action case pending in two counties simultaneously, and pending in one county after it was already settled in the other county. As such, that filing was a sham lawsuit, falsely maintained as a case or controversy,

(k1) agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only limited information, and certain false information, about the pending Charleston County class action and the collusion among counsel, so as to gain her (initial and

presumably unwitting) assistance in depriving the Charleston County court of jurisdiction to review under SCRCP 23(c) the class status of, or the June, 2006 class settlement for, Charleston County case 05-CP-10-4913,

(k2) Alternatively, the Diocese agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, fully disclosing that a Charleston County class action, 05-CP-10-4913, was pending and that a proposed class settlement had been reached in June, 2006, and seeking the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCP 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913,

(l) agreed to circumvent SCRCP 23 being applied by any Charleston County judge to the class settlement reached in the class action pending in Charleston County, by agreeing to not inform that Court that a class settlement had been reached when asking for the Charleston cases to be dismissed,

(m) agreed to take no position on class certification, even though the Diocese would be obligated to a settlement of $460,000 without class certification but for far more (up to $12 million) with class certification,

(n) agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records in class counsel's application for costs and fees,

(o) agreed to class counsel being paid in fact prior to the class claims period even beginning,

(p) agreed to oppose all objections raised by third parties to the class settlement,

(q) agreed to class counsel's desire to abandon his request to the court for

nationwide notice of the class action and to change his request for only geographically limited notice,

(r) agreed to arbitration of class members claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept,

(s) agreed to inform the arbiter about the financial limits the Diocese was willing to accept so the arbiter would not exceed those sums in its awards to class members,

(t) convinced class counsel to acquiesce in letting the Diocese examine its own files for sexual abuse victims, even though the Diocese was alleged to have a history of deliberately secreted information about abuse, and the search by the Diocese was only for persons who had already identified themselves as abuse victims, not for all victims,

(u) agreed to request no post-award fairness hearing in the class action,

(v) agreed to request no review of class counsel's actual fee, even though it appears class counsel might have recovered as much as 51% of all sums paid by the Diocese, and received sums in excess of the sum authorized by the court,

(w) agreed to request of the Dorchester County court no final accounting or final order prior to the September 19, 2009 deadline imposed by the SC Supreme Court for the Dorchester County court to conclude the class action,

(x) agreed to request no final accounting, and

(y) agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement.

55. Plaintiff presumes that in 2006 and 2007 the Dorchester County Circuit Court was not given complete information about the status of Charleston County case 05-CP-10-4913 (which

alleged a class) and the proposed class settlement in that case. By the time persons other than the Diocese or class counsel provided the Dorchester County Circuit Court judge with accurate information, in 2008, it was so far into the class process that even though the Court had authority to modify orders in the class action "at any time" under SCRCP23, the Court elected to take no further action in the class action case. Five years later, the Circuit Judge issued a recusal order, giving no basis for the recusal.

56. As a result of the concealments by the Diocese, and its collusion in the class action, the Diocese is unable to properly assert any statute of limitations defense as to the Plaintiff. Also as a result, the Plaintiff was injured, and is entitled to actual and punitive damages in an amount to be determined by the finder of fact.

For a Third Cause of Action:
Judicial Estoppel and Unfair and Deceptive Trade Practices

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

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

59. The Diocese Defendants stated publicly, and to the Circuit Court, that for sexually abused persons born before August 30, 1980, the Diocese waived its defenses of charitable immunity and statute of limitations, even if those persons did not receive notice of the class action.

60. That representation by the Diocese was made for purposes of gaining court approval of a class settlement. Despite that assurance, the Diocese refused to perform on its assurance when sexually abused persons born prior to August 30, 1980, including the Plaintiff, received no notice of the class and appeared and requested relief.

61. The Diocese has taken inconsistent positions as to different persons included in the same class definition.

62. The proceedings in which those inconsistent positions were taken related in that each involved one or more members of the class as defined by agreement of the Diocese, and the Diocese volunteered to include persons who did not receive notice of the class action.

63. The Diocese was successful in maintaining that position, and as a result of taking that position the Diocese received the benefit of class approval from the Circuit Court.

64. The inconsistency by the Diocese is part of an intentional effort to mislead the court.

65. The two positions by the Diocese are in fact inconsistent, and as a result the Diocese is estopped from taking a different position as to the Plaintiff.

66. Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese.

67. The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese made a calculated decision to invest some funds and engage in a public relations exercise, in an effort to procure positive publicity for itself in 2007 and 2008 without having to compensate all of its sexual abuse victims, and to attempt to seal off its liability for the full extent of its sexual abuse victims.

68. The Diocese invested funds to design a compensation program for victims which specifically excluded many victims, and was known to exclude many victims. The Diocese engaged in collusion to do so, and overt misrepresentation, to the court and the public, in order to achieve its objective to deceive the public, the court, and those persons sexually abused who

were born prior to August 30, 1980, and the parents and spouses of those persons, including the Plaintiff.

69. Specifically, the Diocese represented, in a knowingly false manner, on July 13, 2007, that for those persons "who should have gotten notice who didn't get notice," "if that person shows up then we would have to deal with it." As summarized by the court in that hearing, "what they [meaning the Diocese] say is if you come forward in the future we will treat you just the same as we have treated these individuals and the relief is available for you. I know of nothing more that could be done. So I certainly would approve that." In response, the Diocese representative accepted the summary, and responded, "Well, good." That colloquy is on page 25 – 26 of the transcript of an *ex parte* hearing (*ex parte* as to persons who had appeared to state concerns and objections about the proposed class settlement) held on July 13, 2007. According to that transcript, the proceeding was one of a number of such *ex parte* hearings held in the class action litigation.

70. In addition, the court's July 30, 2007 order, at page 4, embodies a comparable sentiment: "The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement."

71. The Diocese took no appeal from that order.

72. The Diocese has asserted against victims who did not get notice, exactly as they promised they would not, the *res judicata* effect of the class settlement, as well as the independent defenses it waived, and has done so even as to victims for whom the Diocese did not even attempt to provide notice.

73. The representation made by the Diocese to the Circuit Court was false when made by the Diocese, and was knowingly false when made by the Diocese. The Diocese had no intention of including other victims who received no notice "for whatever reason," as the rationale for the collusive class action was to use the class action to terminate liability of the Diocese, and do so at a fraction of the recovery a truly adversarial class counsel might demand. The misrepresentation was made with the intention of convincing the Circuit Court to approve a collusive class settlement, even though the Diocese had no intention of honoring its assurances to the Circuit Court. The intention by the Diocese to mislead the Circuit Court succeeded, and the settlement was approved.

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

75. The false and deceptive practices of the Diocese will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The

corrupt practices of the Diocese have been actually repeated, as well as having had the potential for repetition. The Diocese has engaged in misrepresentations of material fact.

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

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

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

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

For a Fourth Cause of Action: Loss of Consortium

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

81. Defendants' tortiously violated the right of companionship, aid, society, and services of the plaintiff and his spouse by Hopwood's sexual abuse of the Plaintiff.

82. This action has been filed within three years of the plaintiff becoming aware that the defendants were aware that Hopwood was a known threat to children before he was sexually assaulted by Hopwood.

83. This action has been filed within three years of the Plaintiff becoming aware that the defendants performed negligently their assumed duty of locating victims of Hopwood's childhood molestations, and within three years of his knowledge that the Bishop performed his actions of that duty in a grossly negligent manner.

84. The actions of the Defendants have affected the Plaintiff's consortium with his wife.

85. The Plaintiff has sustained personal injury as a result of the conduct of the Defendants, and is entitled to actual and punitive damages for his pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship.

Demand for Jury Trial

86. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

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

88. Injunctive relief as authorized by law for the appropriate cause of action,

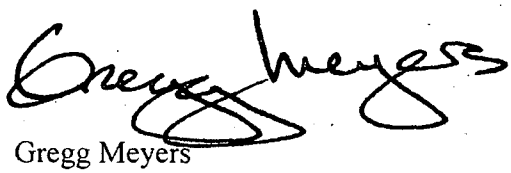
89. Costs and disbursements of this action,

90. Attorneys fees as authorized by law,

91. Punitive damages as authorized by law, and for

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

Respectfully submitted,



Gregg Meyers
Jeff Anderson and Associates, P.A.
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Saint Paul MN 55101
651-227-9990
gregg@andersonadvocates.com

Attorney for Plaintiff



JEFF ANDERSON & ASSOCIATES PA

REACHING ACROSS TIME FOR JUSTICE

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Chicago, Illinois
Milwaukee, Wisconsin
Kailua, Hawaii
Charleston, South Carolina
Malvern, Pennsylvania
New York, New York
London, England

June 9, 2015

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: Jane Doe 240 vs. The Bishop of Charleston, et al.
John Doe 240 vs. The Bishop of Charleston, et al.

Dear Ms. Armstrong:

Enclosed for filing in the above-referenced matters are the originals and one copy of the following documents:

1. Civil Action Cover Sheet;
2. Summons;
3. Complaint; and
4. Two checks in the amount of $150.00 each for the filing fees.

Please file the original documents and return to me, in the self-addressed envelope, the file-stamped copies, and I will undertake service of the pleadings.

Please contact me with any questions regarding this filing.

Sincerely,

Gregg Meyers
gregg@andersonadvocates.com

GM/tld

Enclosures

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2015-CP-10-5486
John Doe 245 and Father Doe 245,	)	
Plaintiffs,	)	
v.	)	Negligence; Gross Negligence
	)	Fraudulent Concealment
The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop Of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC.	)	Civil Conspiracy
	)	Professional Negligence
	)	Breach of Fiduciary Duty
	)	Injunctive Relief
	)	UTPA
	)	
	)	Jury Trial Requested
Defendants.	)	

FILED
2015 OCT 12 AM 9:33
JULIE J. ARMSTRONG
CLERK OF COURT

Complaint

For their complaint, the Plaintiffs allege:

Parties and Jurisdiction

1. John Doe 245 is an adult citizen and resident of a state other than South Carolina who was born in 1977. As a child he was sexually abused by Justin Goodwin, a priest employed by the Diocese of Charleston, at Divine Redeemer in Hanahan, South Carolina. For that reason this action is filed using a pseudonym.

2. Father Doe 245 is the natural parent of John Doe 245.

3. The defendants are aware of the identity of these individuals.

4. These Plaintiffs are the same as those who on April 13, 2009 filed an action in the federal court for the District of South Carolina. After considerable deliberation, by order of September 30, 2015, the United States District Court dismissed that action without prejudice, claiming the federal court lacked jurisdiction. No discovery was permitted in the six year interim. In reaching that decision, the federal court gave no consideration to the decision of the South Carolina Supreme Court in *Doe v. Bishop*, 754 S.E.2d 494 (S.C. 2014).

5. The Bishop of Charleston, a Corporation Sole, is the formal title of the various entities comprising the Catholic Church throughout South Carolina known generally as the Diocese of Charleston. It is referred to in this complaint as the Diocese.

6. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. Decisions made about the assignments for Justin Goodwin were made in Charleston County.

7. The acts associated with the abuse of the Plaintiffs and the negligent supervision of Goodwin took place in part in Berkeley County, and in part in Charleston County. Charleston County is where decisions were made about Goodwin's assignments and the degree of supervision he required, which as applied by the Diocese defendants was grossly negligent.

8. This action would be appropriately consolidated with existing cases assigned to Judge Nicholson, and a motion to consolidate accompanies this complaint.

9. Goodwin was arrested in 1994 and charged with sexual abuse of four boys, for which he was sentenced under an *Alford* plea. He died in 1995. After Goodwin's conviction, no effort was made by the Diocese to locate other victims of Goodwin until the events alleged in this complaint, when completely inadequate efforts were taken by design to give no notice to these Plaintiffs.

10. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued individually in his official capacity. He is a party necessary for complete relief.

11. All persons working for the Diocese, anywhere in South Carolina, are subordinate to the Bishop of Charleston, who under the procedures of the Diocese holds all executive, legislative, and judicial power within the Diocese.

12. Prior to the tenure of Bishop Guglielmone, from October 2007, to March 2009, no person held the title of Bishop of Charleston. Under the rules and procedures by which the Diocese of Charleston governs itself, the Diocese of Charleston was administered by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina who, during his tenure as administrator, did business in Charleston County. Msgr. Laughlin is sued in his official capacity.

13. Prior to the tenure of Administrator Laughlin, from July 1999 to August 2007, the Bishop of Charleston was Robert J. Baker, presently a resident of, and citizen of, Alabama. During his tenure, he did business in Charleston County. He is sued in his official capacity.

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

15. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney. In that capacity he engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what

was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

16. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney. In that capacity he engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

17. Richter & Haller, LLC, at all times pertinent to this complaint, had its principal place of business in Charleston county, did business in South Carolina, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, Richter & Haller, LLC did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

18. In each instance, the print media advertising was chosen with the specific and collusive intention to provide no chance of giving notice to these Plaintiffs.

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

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

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

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

Nature of Wrongdoing

23. The Plaintiffs each fit a definition used in a collusive 2006 class settlement.

24. John Doe 245 was born on or before August 30, 1980, and as a minor, was sexually abused by an agent or employee of the Diocese of Charleston. Father Doe 245 is the parent of John Doe 245. Neither Plaintiff has previously made a claim that was adjudicated, resolved, or released.

25. The Plaintiffs were situated similarly to other individuals ostensibly within the class definitions chosen by the Richter defendants when the Richter defendants (a) pled a class action in 2005, (b) settled that class action in 2006, and (c) sought, and obtained, class certification in 2007 by a South Carolina court as part of that class action. The classes defined in that action involved individuals who were sexually abused by persons employed by the Bishop of Charleston and parents of such person.

26. In pleading that class the Richter defendants assumed fiduciary duties to the Plaintiffs.

27. That class action settlement was collusive, and the Plaintiffs were harmed by that collusion.

28. The Richter defendants have represented to the circuit court that their motivation to collude with the Diocese defendants was to accommodate the Bishop of Charleston, their supposed adversary, who (they claim) requested that the Richter defendants change the class notice from nationwide notice to only South Carolina notice, while retaining a class definition with no geographic restriction on class membership.

29. According to the Richter defendants, they elected to accommodate the request of their supposed adversary, even though doing so was simultaneously collusive with the Diocese defendants and breached their professional obligations to their clients and these Plaintiffs.

30. In 2006 class counsel reached a class settlement for two defined classes of victims, which included the Plaintiffs.

31. A class was later re-alleged in post-settlement pleadings filed in 2006, which allegations also included the Plaintiffs in the way the class was defined.

32. The Richter defendants were class counsel in that class action.

33. The Richter defendants acknowledged that they represented absent members of the class, such as the Plaintiffs, in the March 9, 2007 initial fairness hearing. In the transcript of that hearing at page 53, Defendant Richter stated:

> we represent the interests of persons who might be here today, may not be here today, may not have made a claim yet, a class, punitive [sic, probably intended to be putative] class or actual class, punitive [sic] initially, now an actual class.

34. The Richter defendants overtly acknowledged their fiduciary obligations to the Plaintiffs as absent members of the class the Richter defendants chose to define, a duty they had also assumed by operation of law when they (a) pleaded a class defined so as to include the Plaintiffs, and then (b) when the Richter defendants chose to reach a settlement with a class defined so as to include the Plaintiffs.

35. As stated in *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (internal citations omitted):

> a Plaintiffs who sues on behalf of a class ***and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them*** of proposed compromises of the group action. * * * If the class representative ***or class counsel breaches the fiduciary duties*** he assumes and receives and retains benefits flowing from the breach, ***he holds what he receives upon a constructive trust*** for the class. * * * This is true although the benefit received by the class representative is not at the expense of the class. Under no circumstances will the fiduciary be permitted to profit from a breach of his duty as fiduciary.

36. By operation of law, any benefits from the class action are held by class counsel, the Richter defendants, in trust for the class.

37. The Richter defendants chose to define the class so as to include these Plaintiffs in that the class definition, which definition included no geographic limit.

38. Each of the Plaintiffs presently resides outside of South Carolina, and did so during the time the class action was pending.

39. Each of the Plaintiffs is within the definition of the pertinent class used in the underlying class action.

40. During the class action at issue, the Richter defendants claimed no prior class action experience.

41. As a matter of law under *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003), the class definitions chosen by the Richter defendants which included the Plaintiffs was "a strategy choice."

42. By operation of SCRCP 23(d)(1), the Richter defendants are bound by that strategy choice and "have to live with [it] since a decision on the merits was made" by the circuit court when it approved the class. *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003).

43. After the class settlement, in October, 2006, the Richter defendants proposed a nationwide program of notice for class members. That notice program, had it been proposed or used by the class action, would have provided a chance for the Plaintiffs to have received notice of the class action.

44. Before that motion could be heard, on January 17, 2007, the Richter defendants modified the proposed notice program through an amended motion for class certification, proposing a notice program that eliminated notice in the nationwide publication *USAToday* and

restricting notice to only the area immediately around South Carolina, and omitting to publish notice in the Charlotte Observer for the portions of South Carolina around Charlotte.

45. The change of notice is what the Richter defendants claim was a collusive accommodation to their "adversary," the Bishop.

46. The Richter defendants failed to disclose to the class their lifelong ties to the Bishop.

47. Two days after the amended motion for class certification was filed by the Richter defendants, the court issued an order giving preliminary approval to the class action and its settlement, and entered these terms for notice for newspaper publication of the class settlement:

> Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: The Charleston *Post & Courier*, The Myrtle Beach *Sun*, *The State*; The Augusta *Chronicle*; the Rock Hill *Herald*; Beaufort *Gazette*; Greenville *News*[;] Spartanburg *Herald*; Orangeburg *Times-Democrat*; Florence *Morning News* and the Aiken *Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period.

48. The class notice program for the class settlement was to be funded, and was funded, by the pool of funds set aside by the Diocese for the class settlement.

49. The proposed class settlement agreement of January 17, 2007 states, "All costs associated with the management of the class shall be paid from the settlement fund."

50. The Order of July 30, 2007, which approved the class settlement, states, at page 12:

> Class counsel proposes a notice of the [claims period] in a form comparable to that attached hereto as Exhibit A, and I approve this notice. Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: The Charleston *Post & Courier*, The Myrtle Beach *Sun*, *The State*; The Augusta *Chronicle*; the Rock Hill *Herald*; Beaufort *Gazette*; Greenville *News*[;] Spartanburg *Herald*; Orangeburg *Times-Democrat*; Florence *Morning News* and the Aiken *Standard*. Publication of the notice shall be at least once a week for three (3) consecutive weeks during the notice period.

That Order also states, at page 15:

> Class Counsel has been directed to publish notice of the claims period and opt-out right. Since these expenses have been ordered by the Court, the bills for publication of the notices may be presented by Class Counsel directly to the escrow agent and paid by him per the Settlement Agreement.

51. Page 4 of the July 30, 2007 Order certifying the class states, "Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members."

52. At a hearing held on April 10, 2014 in related actions, counsel for Defendants Richter and the firm of Richter and Haller represented to the Court (on page 9 of the hearing transcript) that the notice program for the class action "was not intended to reach beyond the borders of South Carolina."

53. Under the modified notice program chosen for the class settlement, the Plaintiffs, each of whom resides out of state, were intended by the Richter Defendants, as an accommodation to the Diocese defendants, to receive no notice of the class action.

54. The object of the collusive agreement between the Richter defendants and Diocese defendants was to exclude the Plaintiffs from the class action resolution.

55. The reason the Richter defendants modified the class settlement notice program so as to intentionally omit these Plaintiffs has been publicly explained by class counsel as something they chose to do to accommodate their supposed adversary, the Bishop of Charleston. At page 42 of the April, 2014 hearing transcript, it was represented to the Court that the Richter defendants modified the original nationwide program of notice for the class because, "the Bishop said, no, that's too expensive." The entire representation to the court on behalf of class counsel was, "[O]ur testimony will be that we proposed that [nationwide notice] to the Bishop

and that the Bishop said, no, that's too expensive. So from our point of view, the Bishop bought the degree of *res judicata* he was willing to pay for."

56. No provision was made by the Richter defendants to see that the orders in the class action excluded these Plaintiffs from the *res judicata* effect of the class action, or to see that these Plaintiffs preserved either the benefits of the class or the benefits of the defenses that were waived in the class action by the Bishop of Charleston for the benefit of other members of the class.

57. The Richter defendants requested of the state court no such provisions despite their obligations to these Plaintiffs as members of the class they chose to define.

58. In April, 2013, class counsel agreed in another hearing, held before Judge Dickson, that persons such as these Plaintiffs who lived out of state "never had their due process rights to come in and be heard. And they never got their due process rights of notice and an opportunity to be heard." That representation to the court appears at p. 32 of the Transcript of a hearing held April 12, 2013.

59. As the Richter defendants intended, neither of these Plaintiffs had an opportunity to be heard or participate in the litigation, either in person or through counsel, or an opportunity to opt out of the class action and thereby preserve his own claim.

60. In the 2006 class action settlement the Richter defendants colluded with the Diocese defendants so as to abandon the interests of those persons, such as the Plaintiffs, who were within the class definition and to protect the Diocese defendants by the collusive class action.

61. In 2005 a class action was first alleged by the Richter defendants on behalf of persons sexually abused by persons affiliated with the Diocese of Charleston.

62. By their own account, the Richter defendants were extensively affiliated with the

Diocese of Charleston. Those extensive affiliations were never disclosed to the class.

63. The class action settlement with the Bishop of Charleston was arrived at during a mediation held in June, 2006, in which the Richter defendants participated on behalf of class members. In this complaint, the class action settlement achieved in 2006 from the 2005 class action is referred to as "the 2005 class action."

64. The 2006 mediated settlement agreement was approved by the Dorchester County judge who presided over the class action proceedings. By 2009 the class members had been identified and an arbitration had determined awards to various class members. By 2009 those awards had been paid.

65. By order of the South Carolina Supreme Court issued March 19, 2009, the 2005 class action was ordered to be concluded in six months, or by September 19, 2009.

66. The trial court overseeing the class action ignored the March 19, 2009 order of the South Carolina Supreme Court, and took no action by September 19, 2009 to review the distributions to class members or to make any post-award review of class counsel's fee.

67. In 2012, Defendant Haller, acting on behalf of no client from the 2005 class action, as all client claims had been resolved, but acting instead on behalf of himself and the Richter defendants, filed a pleading in the Dorchester County class action case.

68. On January 24, 2013, the Dorchester County trial judge who had presided over the class action signed an order which stated, in its entirety, "I hereby recuse myself from hearing any further matter on the above-captioned case." The caption on that order was the first of the cases which comprised the class action.

69. Judge Goodstein had been asked to recuse herself by a motion in 2008. She recused herself in 2013. The 2013 order makes no reference to the 2008 motion. No other motion to

recuse had been made.

70. All defendants colluded in the 2005 class action so as to permit the Diocese defendants, starting in 2009 and continuing into 2013, to maintain that the class action precluded any and all claims for abuse.

71. At no point did the Richter defendants seek, for class members who reside out of state, either orders clarifying their relief or orders clarifying their protections from the *res judicata* effect of the class action. The Richter defendants were aware that class members who resided out of state had received no notice, and no Due Process, in the class action. The Richter defendants sought no such relief because it was part of their collusive plan with the Diocese defendants to no do so, so as to restrict the number of persons who could make a claim against the Diocese defendants.

72. The Richter defendants conducted the class action intending to prevent the Plaintiffs from either participating in the class action or being able to remove themselves from the class action by opting out. Being within the putative definition of the 2005 class action as the Defendants agreed to define the class of sexual abuse victims, the Plaintiffs ostensibly were formerly represented by, until they were abandoned by, the Richter defendants, who served as class counsel.

73. Alternatively, and at minimum, the Richter defendants assumed fiduciary duties as to the Plaintiffs by defining the classes, with the knowing cooperation of the Diocese defendants, so as to ostensibly include each Plaintiffs.

74. The Richter colluded with the Diocese defendants to cause each of the Plaintiffs special harm in the form of precluding each of them from making any claim against the Diocese. The professional representation of the Plaintiffs by the Richter defendants in the class

action was inadequate, and failed to meet the standard of care applicable to a South Carolina attorney handling a class action case.

75. This action is not alleged as a class action. It involves as Plaintiffs persons who were, until abandoned by class counsel, the Richter defendants, putative members of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court.

76. But for the Richter defendants having breached the duties each of them owed to the Plaintiffs in the class action by abandoning them in the class action, an abandonment done in agreement with, and in full complicity with, the other Defendants, the Plaintiffs would each have been protected from any preclusive effect of the 2005 class action and the 2006 class action settlement.

77. The Diocese defendants knew, or should have known, that Justin Goodwin was dangerous to children.

78. The Diocese defendants operated so as to actively disregard and conceal the risks to children and families for sexual assault of children by their priests and other employees, including Goodwin, and then actively, and fraudulently, concealed the abuses that had happened and concealed the dangers to children the Diocese defendants solicited into danger.

79. The Richter defendants made themselves part of that duplicitous method of operation by the Diocese. The Richter defendants had life long ties to the Diocese defendants that were not disclosed to the class. The Richter defendants were and are corrupt, and colluded so as to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy, in exchange for a legal fee for themselves, relief not for their clients the Plaintiffs but for their adversary the Diocese defendants in the form of a layer of what was hoped, by those corrupt

lawyers, would be protection for the Diocese from civil lawsuits almost certain to keep coming over their history of sexual abuse and the fraudulent concealment of abuse by the Diocese defendants.

80. The Richter defendants assumed a duty to act for sexual abuse victims, including the Plaintiffs, but then the Richter defendants acted in a professionally negligent way, willfully and wantonly abandoning their clients so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese defendants in exchange for their cooperation in trying to both limit relief to victims and protect the Diocese defendants from future cases, and specifically from claims by these Plaintiffs and other sexual abuse victims. The danger to the Diocese defendants of future cases was that future cases might be brought by lawyers actually adverse to the Diocese defendants, as opposed to the lawyers willing to collude with the Diocese.

81. The Defendants made overt misrepresentations of fact to the court which approved the 2006 class action settlement, and fraudulent concealment of those misrepresentations continue to the present.

82. The Richter defendants were so confident of their ability to manipulate the state court judge they and counsel for the Diocese had selected and maneuvered the class cases before, and so confident of eliciting no objection from the supposedly adverse Diocese defendants, that the Richter defendants (a) submitted blatantly false and inflated time records to justify their large fee, and (b) collected more fee than was authorized by the court's orders, all without objection from the Diocese defendants.

83. In exchange for the Richter defendants' cooperation to disadvantage members of the class from making claims against the Diocese, the Diocese defendants (a) agreed to take no

position on whether the class should be certified, (b) agreed not to mention that any of the time records submitted by the Richter defendants were false, (c) agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee, (d) agreed to make no objection to an unethical fixed fee for class counsel while class counsel simultaneously obtained only variable compensation for class members that was subordinate to that fee, (e) agreed to make no objection to the fee being awarded before any member of the class member was even identified, and before any class member claimant had submitted a claim or was paid, (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law, (g) agreed to make no objection when the Richter defendants took more fee than was authorized by court order, and (h) agreed to seek no post-award fairness hearing under SCRCP 23.

84. In turn, the Richter Defendants agreed to assist the Diocese defendants in overtly misrepresenting to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement. Once the court relied on that representation the Richter defendants enabled the Diocese defendants to ignore the representations that had been made. Alternatively, if class counsel claims he was did not participate in the overt misrepresentations to the court by the Diocese defendants, class counsel's representation of the class feel below the applicable standard of care in that class counsel failed to secure by order those concessions supposedly made by the Diocese defendants. Class counsel failed to secure those concessions by written order even though class counsel was fully aware the Diocese defendants are untrustworthy and would comply only with orders it could be compelled to honor.

85. Class counsel either was complicit in the misconduct of the Diocese defendants or was

negligent in being outmaneuvered and hoodwinked by the Diocese defendants.

86. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the Plaintiffs are regarded as being bound by the *res judicata* effect of the collusive class action to which the Diocese was party. As alleged more fully below, Plaintiffs ostensibly fall within a class defined in that action. Defendants colluded so as to attempt to make any recovery by the Plaintiffs impossible, by giving them no notice.

87. All Defendants cooperated together to better protect the Diocese by the way the class was defined, as well as the manner in which notice was given, and the Defendants cooperated so as to actively mislead the court in seeking approval for the limited notice that was proposed with the false promise by the Diocese, known to have been false by the Richter defendants or acquiesced in by the Richter defendants, that the Diocese would protect the interests of persons such as the Plaintiffs who received no notice and who later made claims.

88. Until 2009 the Plaintiffs had no information that the Defendants had cooperated to make false promises to the class action court or that the Plaintiffs' interest had been compromised by a collusive class action.

89. The Richter defendants were charged with correcting the known deficiencies in the class definition and the class action notice. The Richter defendants took no steps to correct either deficiency. Had they done so it would have interfered with their collusion with the Diocese that was intended to protect the Diocese and to obtain for the Richter defendants the fixed fee they had arranged to obtain, at the expense of their client class members and the putative members of the class.

90. Similarly, the Diocese defendants were aware that various persons within the class had received no notice, but did nothing to clarify overt misrepresentations by the Diocese

defendants to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

91. Until 2009, the Plaintiffs were unaware of (a) any class settlement by the Diocese defendants, (b) that the Diocese defendants claimed to have waived charitable immunity for any person in the class definition, (c) that the Diocese defendants claimed to have waived the statute of limitations for any person in the class definition. Plaintiffs were unaware of any of those things because, by agreement of all Defendants, Plaintiffs got no notice of any of those things, and had no opportunity to preserve their claims by opting out of the 2005 class action.

92. In its order approving the class action, the state court might have provided for absent members of the class, such as the Plaintiffs, and the Richter defendants were obligated to see that the court do so. The Richter defendants failed to do so.

93. Plaintiffs are each an absent member of a class who, by design among Defendants, received no notice of the class action and had no opportunity to join or to opt out of the collusive class action. As such, Plaintiffs should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of his interests, and because their representation by the Richter defendants was inadequate, and fell below the applicable standard of care. Either of those grounds is a sufficient basis to relieve the Plaintiffs of the *res judicata* effect of the class action.

94. If the Diocese agrees, or the court finds, that the Plaintiffs are not precluded by the class action from bringing claims against the Diocese defendants, then the damage caused by the admitted inadequacies of the Richter defendants who, for a fee, abandoned their clients, and conspired against the Plaintiffs through the class action, may be mitigated through their claims against the Diocese defendants. However, if the court finds that the Plaintiffs are precluded for

any reason from pursuing claims against the Diocese defendants, including the *res judicata* effect of the class action, charitable immunity (which the Diocese defendants waived for those within the class definition), or by the statute of limitations (which the Diocese defendants waived for those within the class definition), or because an insufficient recovery fails to fully mitigate the admitted misconduct by the Richter defendants, then the claims against the Richter defendants should be liquidated, and claims for punitive damages are properly made against those who conspired against the Plaintiffs, as well as against the Richter defendants who failed to properly represent the Plaintiffs in the representation of the Plaintiffs that the Richter defendants undertook.

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

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

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

97. The defendant Bishop of Charleston employed Justin Goodwin as a priest.

98. In his capacity as priest, Justin Goodwin was placed by the Diocese defendants in a position of trust and confidence, and had access to John Doe 245 and other children. In that capacity, Justin Goodwin sexually molested the Plaintiffs and many other children.

99. Prior to the Plaintiffs being molested, the Diocese defendants became aware that Justin Goodwin was dangerous to children. After knowing he was dangerous, the Diocese defendants moved Justin Goodwin from place to place within South Carolina, and thereby facilitated his

access to young people whom he could sexually molest. John Doe 245 was molested after Goodwin was known to be dangerous to children.

100. Father Doe 245 has an injury from the molestation of his child.

101. Alternatively, the Diocese defendants operated various schools, activities, and churches that were intended to, and did, attract children and families. The Diocese defendants encouraged people, including John Doe 245 and Father Doe 245, to use their facilities, and to attend the various activities and functions offered on its premises. In making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers, and from known dangers such as Justin Goodwin, by representing to the public, and to the Plaintiffs, nothing to the contrary. The Diocese defendants particularly owed a duty to John Doe 245, who was a minor, and owed a duty to his Parents, including Father Doe 245, who were charged with looking after the interests of John Doe 245.

102. As a child John Doe 245 relied on the Diocese defendants for his safety within the Diocese, was unable to fully appreciate risks and danger and protect himself from Justin Goodwin. The Diocese defendants falsely represented to its invitees, and their parents or guardians, including the Plaintiffs Father Doe 245, that its facilities and its priests were safe, and that persons would be would be protected from harm when using its facilities and when interacting with its personnel.

103. After he was moved to Divine Redeemer, S.C., Justin Goodwin molested the Plaintiffs.

104. The Diocese defendants negligently supervised Justin Goodwin. The Bishop of Charleston was grossly negligent in supervising Justin Goodwin. Moving Goodwin without proper warning to children and parents was grossly negligent. As a proximate result of the

negligence and gross negligence by the Diocese defendants, Plaintiffs was sexually abused by Justin Goodwin.

105. The Diocese defendants were negligent in failing to warn the Plaintiffs about Justin Goodwin. The Bishop of Charleston performed that duty in a grossly negligent manner.

106. The Diocese defendants knew, or should have known, that Justin Goodwin was a pedophile. Despite that knowledge, the Diocese defendants made no effort, or no competent effort, to ascertain how many children Justin Goodwin had molested, and no effort, or no competent effort, to locate victims of Justin Goodwin. If the Diocese defendants made such an effort, those defendants assumed the duty but performed it negligently. The predecessors of Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

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

108. As a result of the negligence and gross negligence by the Diocese defendants in failing to either prevent abuse or identify abuse victims by its agent or employee Justin Goodwin, the problems for John Doe 245 were first caused, and then exacerbated, by the delay of the Diocese defendants in rectifying the abuse by Goodwin.

109. As set forth more fully below, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants,

among other things, accounts for the delay in this action being brought against the Diocese defendants.

110. This action was first filed in 2009 in federal court, and at that time was brought within three years of that most recent act of fraudulent concealment, and fraudulent conduct, by the Diocese defendants, and within three years of its discovery by the Plaintiffs.

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

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

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

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

114. The Diocese defendants each had a duty to discover and to disclose to John Doe 245 or his parents their knowledge that Justin Goodwin was known to have a sexual interest in children. That duty arises from (a) the preexisting fiduciary relationship between the Plaintiffs and the Diocese defendants, which relationship the Diocese defendants solicited; (b) from Father Doe 245 having expressly reposed his trust and confidence in the Diocese defendants so as to place John Doe 245 into the presence of Justin Goodwin, which placed both Plaintiffs in a vulnerable position with Justin Goodwin. That position of trust and confidence was implicit from those circumstances of John Doe 245 being entrusted to the presence of Justin Goodwin, as well as from the nature of the dealings between the John Doe 245, his

parents, and the Diocese defendants, who promoted to Father Doe 245 that he should leave John Doe 245 in the presence of Justin Goodwin, (c) from the essential nature of the Diocese defendants and their inducement to Father Doe 245 to have John Doe 245 participate in activities with Justin Goodwin as being beneficial to John Doe 245, or at least not harmful to him, (d) from the secrecy provisions in the Code of Canon Law and other operating documents of the Diocese, which charge the Diocese defendants to discover, but then to maintain secrecy about, "other persons solicited" by any person such as Justin Goodwin, who commits the "unspeakable crime" of sexually abusing a child, and (e) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the designation of the "Diocese defendants," grossly negligently), during 2005 - 2010, to locate victims such as the Plaintiffs.

115. John Doe 245 was born in 1977, so necessarily was sexually abused by Justin Goodwin after 1962.

116. Concerning each of (a) the undisclosed dangers Justin Goodwin represented to the Plaintiffs, and (b) repairing the damage done to the Plaintiffs by Justin Goodwin, the Diocese defendants were obligated to the Plaintiffs to engage with each of them in perfect good faith and with full disclosure.

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

118. Specifically, the Diocese defendants created a culture of secrecy about all matters of sexual abuse.

119. Administrative practices adopted by the Diocese defendants under their published internal procedures, the Code of Canon Law, established a practice of secrecy as to sexual abuse. All references to the administrative provisions of the Code of Canon law refer to the Code of Canon law approved in 1983.

120. The Diocese defendants established an archive (required by Canon 486), accessible (per Canon 487) only by the Bishop of Charleston and chancellor of the Diocese of Charleston. Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop of Charleston or the moderator of the curia (Canon 488). Canon 489 requires that the Diocese of Charleston also create for administrative purposes a Secret Archive. In that Secret Archive Canon 489 requires that "documents are to be kept secret" and "protected most securely." Canon 489, Section 2 states: "Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained."

121. The administrative practices for secrecy required by the Code of Canon law and the "Instruction," alleged below, are arbitrarily adopted administrative practices and are separate and apart from the religious practices protected by the First Amendment of the United States Constitution. No Bishop is at liberty to alter the administrative practices required by the Code of Canon Law.

122. Only the Bishop of Charleston is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490). The Bishop of Charleston

was authorized to include in the secret archive any matter which can be regarded as scandalous.

123. The administrative practices of the Diocese of Charleston is to consider topics of sexual abuse to be scandalous, hence secretive.

124. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Justin Goodwin's sexual abuse of the Plaintiffs and other children, were regarded as scandalous, and were maintained in the Secret Archive.

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

126. In 1962 the Diocese defendants expanded on the administrative secrecy required concerning sexual abuse, publishing an "Instruction" which was to be stored in the Secret Archive. (Required by the "Instruction," at page 1). In the "Instruction," matters involving priests who "solicit or provoke" ("Instruction," p. 1 ¶ 1) a penitent "toward impure and obscene matters" ("Instruction," p. 1 ¶ 1), "which is also silence" ("Instruction," ¶ 11) and deemed "a secret of the Holy Office" ("Instruction," p. 3 ¶ 11), "under the penalty of excommunication" ("Instruction," p. 3 ¶ 11). These are administrative practices related to secrecy, not to practices protected by the First Amendment. The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." ("Instruction," p. 4 ¶ 12. See also, "Instruction," p. 5 ¶ 23 and "Instruction," p. 6 ¶ 28).

127. Plaintiffs John Doe 245 fits within the meaning of "penitent" referred to in the "Instruction."

128. The 1962 "Instruction" states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." "Instruction," p. 15, ¶ 71. "The worst crime" is also defined as "any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex." "Instruction," p. 16, ¶ 73. These provisions are analogous to civil and criminal law statutes which regulate conduct, not to practices included within the First Amendment protections for religious observance.

129. Nothing about the Catholic faith requires that children be sexually abused or that the sexual abuse of children be concealed.

130. Justin Goodwin was, and the John Doe 245 is, male. The conduct by Justin Goodwin towards John Doe 245 qualified under the 1962 "Instruction" as "the worst crime."

131. Among other things, the 1962 Instruction directs the Diocese defendants to assume the duty of locating "other persons solicited by the same confessor" ("Instruction," p. 7 ¶ 29). In this instance, the "Instruction" calls for the Diocese defendants to locate other persons solicited by Justin Goodwin for sexual contact. The "Instruction" at p. 9 ¶ 37 also refers to an "Instruction of the Holy Office, February 20, 1867," in directing the manner of interrogation for persons with information about solicitations or those solicited for sexual contact.

132. The Diocese defendants assumed the administrative duty to locate victims as defined in the 1962 "Instruction," but the Diocese defendants performed that duty in a grossly negligent manner. The Diocese defendants failed to locate the Plaintiffs, failed to locate many other abuse victims of Goodwin and other priests, and made no competent inquiry to locate

them. The Diocese defendants purposefully avoided making the type of inquiry that would have elicited discovery of the Plaintiffs.

133. The 1962 "Instruction" was approved as an administrative practice by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 "Instruction."

134. In the Appendix to the 1962 "Instruction" are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the Plaintiffs. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff," according to page 17 of the 1962 "Instruction." By this means the administrative practice of secrecy is encouraged, but even when backed by excommunication, the secrecy provisions of the administrative practices are arbitrarily adopted administrative practices with no doctrinal significance to protected First Amendment activities.

135. "Whatever type of pretext" overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the 1962 "Instruction" for complying with civil authority, and any interpretation otherwise is void as contrary to the law of South Carolina.

136. Unless the Pope himself has specifically approved otherwise, administrative secrecy was and is to be maintained not only by the Plaintiffs, but also by every member of the Diocese defendants, and even by witnesses to sexual abuse. That administrative secrecy is to be made despite any law, court order, or oath which would otherwise require disclosure of sexual abuse. Under the 1962 "Instruction," the highest obligation, higher than any law, oath,

or court order, is to maintain the administrative practice of secrecy for the benefit of the Diocese defendants, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese defendants can all be expected to be obedient to the administrative secrecy called for in the 1962 "Instruction," to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese defendants have, to date, done so.

137. Matters of sexual abuse of children by clergy and members of religious orders are protected by what is called "the pontifical secret."

138. That secrecy is imposed by Article 25 of a 2001 publication by Pope John Paul II, and by Article 30 of its 2010 revision by Pope Benedict XVI, which impose the pontifical secret on all allegations and proceedings relating to child sexual abuse by clerics. The pontifical secret is the church's highest form of secrecy. Like the secret of the confessional, it is permanent silence.

139. When the Diocese defendants maintained secrecy about sexual abuse of children they were fully complying with the secrecy imposed on each Bishop by the administrative practices of the church.

140. In 2002 the Holy See granted a dispensation to allow reporting to the police where the civil law in the United States required it. That dispensation was applied to the rest of the world in 2010. Where not compelled by civil law, the pontifical secret still applies as, for example, in Italy, where the Pope is Bishop of Rome. The Italian Bishops Conference, of which the Pope is the primate, announced in 2014 that Italian bishops would not report to police sexual crimes against children because Italian civil law under the 1929 Lateran Treaty did not require them to do so.

141. In January, 2014, the United Nations Committee on the Rights of the Child requested the Holy See abolish the pontifical secret over allegations of child sexual abuse by clergy and impose mandatory reporting. In May, 2014, the United Nations Committee against Torture requested the same thing. In September, 2014, the Vatican rejected those requests, claiming that mandatory reporting would interfere with the sovereignty of independent nations, as if reporting was prohibited by civil law. No country prohibits reporting child sexual abuse by priests. It is prohibited only by arbitrary administrative practice of the Diocese defendants, in keeping with administrative rules imposed by the Holy See.

142. The call for secrecy in the administrative practices derived from these internal and arbitrary administrative practices constitutes, under South Carolina law, spoliation of evidence, as well as fraudulent concealment. Among the spoliation was evidence related to Justin Goodwin's known sexual interest in children, and the sexual abuse of the Plaintiffs.

143. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the Diocese defendants as to Justin Goodwin's sexual abuse of John Doe 245. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of John Doe 245, or to ascertain that John Doe 245 was a victim of abuse by Justin Goodwin.

144. In 2006 the Diocese defendants sought a new level of deception and manipulation to limit the damage to the Diocese defendants from its taking responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its history of abuse and concealment. The Diocese defendants engaged with other Defendants to conspire to evade accountability, as set forth below, and to try to prevent the Plaintiffs from making any claim.

The acts of civil conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse. The conspiracy cause of action concerns the Plaintiffs being deliberately excluded from the class, and the Plaintiffs being able to protect their claims, so hinges on interpreting the *res judicata* effect of the orders in the class action.

145. The Richter defendants have admitted their professional negligence in deliberately excluding from the class action, by design, and by request of their supposed adversary, the Plaintiffs and many others who were within the class definition. Actual damages from that professional negligence may be mitigated to some extent if a claim can be made for actual damages against the Diocese. Punitive damages against the Richter defendants for that misconduct cannot be mitigated by any of the claims against the Diocese defendants.

146. This cause of action presumes that the Plaintiffs is not precluded in making this claim by the 2005 collusive class action involving the Diocese defendants, and can make his claim for (a) lack of Due Process in those proceedings, (b) lack of competent representation sufficient to bind this Plaintiffs, (c) the collusive nature of the class settlement, or (d) because by their terms the class action orders do not apply to the Plaintiffs.

147. The Plaintiffs is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and thus failing to perform a proper review for Goodwin's victims, including the Plaintiffs, or in performing that duty in a negligent manner. To the extent the Plaintiffs' actual damages from the Richter defendants are mitigated by any recovery against the Diocese defendants, that

credit is properly applied. No punitive damages against the Richter defendants are properly mitigated as a result of any punitive damages assessed against the Diocese defendants.

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

148. Allegations above, other than claims for relief above, are incorporated into this cause of action as if fully stated.

149. This cause of action presumes the class action order is interpreted to bind the Plaintiffs to its *res judicata* effect, despite insufficient Due Process from the collusive class action which was designed by all Defendants to limit each Plaintiffs' ability to state his claim, so this cause of action presumes the Plaintiffs are properly precluded from bringing claims against the Diocese defendants related to sexual abuse.

150. Defendants have conspired to injure the Plaintiffs, and by those actions have caused special damage to the Plaintiffs.

151. As set forth below in detail, the Defendants have acted in concert in numerous ways, which reflect the joint assent with minds to injure the Plaintiffs, and Defendants have taken overt acts to pursue the common design to injure the Plaintiffs.

152. Some actions that have been taken have been legal; other actions were legal but violated professional standards set forth in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the Plaintiffs by making sure they (and other putative class members who lived out of state) could neither participate in the state court class action nor opt out of it, and by those means could be prevented from bringing their own action.

153. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the lawyers who purported to and did represent the Plaintiffs, the Richter defendants, agreed to act against the Plaintiffs' interests, and collaborated against the Plaintiffs' interest and in the interest of their supposed adversary, the Diocese defendants, to whom class counsel had connection and allegiances not disclosed to the class. This cause of action presumes that class counsel was not merely professionally negligent, and outmaneuvered by the Diocese defendants, but actively collaborated with the Diocese defendants.

154. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, the lawyers who purported to represent the Plaintiffs, the Richer defendants, agreed to abandon the Plaintiffs, and to define the class so as to include the Plaintiffs, but then provide them no notice. Additionally, the Richter defendants purported to secure benefits for the Plaintiffs but then failed to secure those benefits by written order. This cause of action presumes that those acts were not professionally negligent actions but conscious undertakings by the Richter defendants to disadvantage the Plaintiffs from making a claim against the Diocese, so as to not jeopardize the fee the Richter defendants made as the highest priority of the 2006 class action settlement.

155. By purporting to undertake their representation in how the classes were defined, but then make no provision for the Plaintiffs, the Richter defendants breached a duty to the Plaintiffs that the Richter defendants assumed, either through the attorney-client relationship or through the fiduciary duty assumed by class counsel when he elects to bring a class action and defines one or more classes so as to include the Plaintiffs.

156. The Richter defendants have publicly denied undertaking any duty to absent members of the classes they defined, reflecting either their degree of professional ignorance of the obligations of class counsel or their intention to align with the interests of the Diocese, or both. This cause of action assumes not the professional negligence of the Richter defendants but the intention of the Richter defendants to align themselves with the interest of the Diocese defendants as the *quid pro quo* for the Diocese defendants collaborating by silence on their fee as class counsel.

157. The Richter defendants elected to abandon their putative class member clients so as to prevent the Plaintiffs, and others similarly situated, from being able to make claims against the Diocese defendants. As the class allegations acknowledged, the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, filed in Charleston County, and in the identical John Doe #53 Complaint redundantly filed in Dorchester County as case 06-CP-18-1636.

158. If "too many" of those hundreds of victims participated in the class action, including the Plaintiffs, the Richter defendants would jeopardize the large fee the Diocese defendants had agreed to enable them to get, and if the 2006 class settlement was jeopardized the Diocese defendants might not get the ostensible protection from future suits it was colluding with the Richter defendants to obtain at the lowest possible cost. All Defendants had an economic interest in colluding against the Plaintiffs.

159. Consequently, defining the class so as to ostensibly include the Plaintiffs without securing any benefit for the Plaintiffs was either professional negligence or intentional conduct by the Richter defendants to defeat the Plaintiffs' ability to make a claim against the Diocese. As noted, this cause of action presumes that the Richter defendants were not merely

professionally negligent but intentionally acted with the Diocese defendants to limit the Plaintiffs' ability to claim against the Diocese defendants, with whom the Richter defendants shared an illicit economic interest in defeating the Plaintiffs' potential claims.

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

161. In exchange for the Richter defendants abandoning the Plaintiffs and all of their other out of state putative class member clients, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request, (e) agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known, (g) agreed to make no objection when the Richter defendants took more fee than was authorized by court order, and (h) agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from those Charleston County judges that might exert independent scrutiny of the class action, to a state court judge in Dorchester County known to have extensive social and professional ties to the

Richter defendants, in the aspiration and expectation that from that judge they would receive a more pliable oversight for the class settlement.

162. In the 2006 class settlement the Diocese defendants undertook a duty to the classes as identified, including the Plaintiffs, to identify abuse victims. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County. In circumventing the requirement in SCRCP 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester County judge, the Defendants violated judicial norms and rules as well as professional standards.

163. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case, for the same client, pending simultaneously in circuit court in both Charleston County and Dorchester County.

164. As the Dorchester County version of the class action had already been settled before filing through the 2006 class settlement, the Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge.

165. The Diocese defendants also agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

Details of the Civil Conspiracy Among Defendants

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

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

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

169. That complaint for John Doe 66 made no class action allegations.

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

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

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

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

complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

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

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

176. From December 2005 until June 2006, neither the Richter defendants, as class counsel, nor the Diocese defendants, as a defendant in a case alleging a class, made any effort to seek class certification for the class alleged in the December class action complaint in Charleston County. In that time the public records show there were no motion hearings held in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, and sent out hearing notices, the Defendants collaborated to ask that the motions be continued rather than heard.

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

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

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

180. The agreement reached in that mediation is attachment A to this complaint, redacted as to client identities. The version used is the version filed April 13, 2009 accompanying the complaint filed in the federal court. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the 2006 class settlement agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the Plaintiffs through the class definitions. The Defendants intended to include the Plaintiffs in the class definition.

181. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 class settlement reached during a mediation of the Charleston cases.

182. The typewritten version of the 2006 class settlement agreement was approved by The Holy See in January 2007.

183. The 2006 class settlement agreement was funded by approval of The Holy See.

184. As reflected in the attached handwritten version of the 2006 class settlement agreement, the Defendants agreed that the individual Plaintiffs in the pending actions filed in

Charleston County, and the purported class representative from the Charleston case which alleged a class, would split $460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese defendants would pay only $460,000 to resolve the pending Charleston cases, which were the only cases then pending.

185. Claims of absent class members were proposed to be resolved on terms materially different than the terms which the purported class representative or representatives received. Instead of a cash payment the same, or similar to, what the purported class representative or representatives were to receive, absent class members were to be required to first relinquish their right to bring suit and then, and only then, could they submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive from the defined maximum amount available for all such claims, minus an illicit fee charged by class counsel. Class members had to relinquish all rights for review to qualify for the arbitration, which was binding arbitration. Class representatives did not.

186. As alleged below, not fewer than seven devices were chosen by overt agreement among the Defendants to further the conspiracy against this Plaintiffs, along with other absent putative members of the classes, from being included in any recovery for the class, to limit the class recovery from being "too much," and to prevent these Plaintiffs from later being able to make a claim for the childhood sexual abuse of John Doe 245.

187. If the 2006 class settlement included "too many" claimants, under the 2006 class settlement agreement the Diocese defendants would be entitled to withdraw from the agreement. Class counsel would jeopardize his class counsel fee if there were "too many" claimants and the Diocese defendants withdrew. The Diocese defendants wanted the 2006 class settlement agreement to be approved so they could later argue, as they in fact have

argued, that no other sexual abuse claims for sexual abuse prior to 2006 could be made against the Diocese defendants if brought after the 2006 class settlement approval.

188. The Diocese defendants knew that the 2006 class settlement agreement had been negotiated and reached with an "adverse" attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese. The Richter defendants wanted to assure themselves of a large fee in the class action without jeopardizing that fee by getting too many class claimants against class counsel Richter's own Diocese.

189. All Defendants conspired to create methods to be able to limit the number of class members who would make claims under the 2006 class settlement agreement, to limit the amount those class member claimants could recover, and to protect the Diocese defendants from any future claims. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge-Shopping to Pick the Judge

190. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver the 2006 class settlement agreement from the Charleston class action to be presided over not by any judge in Charleston County, where the putative class case was filed and where the class case settlement was reached, but to "shop" for a judge they selected to make class settlement determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to overlook court rules and accept fraudulent filings was desired.

191. Instead of complying with SCRCP 23, and submitting the attached 2006 class action settlement to a judge in Charleston County for approval under SCRCP 23, the

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

192. This procedural maneuver agreed to among the Defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose when it was used in 2006.

193. Filing duplicative class actions to have the same case pending simultaneously in two different venues, particularly after the first venue's filing is settled, is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court and to the Plaintiffs, ostensibly included in each of the duplicative complaints through the

class definition used in each of those complaints. The Plaintiffs were deprived of Due Process through the conduct of the Defendants.

194. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending, and all were included within the 2006 class settlement agreement.

195. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement among the Defendants, simultaneously pending in two separate counties, for the same client, same class representative, and same class.

196. Dorchester County was chosen by agreement of the Defendants so as to "judge shop" for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, any pre-award fairness hearing, and any post-award fairness hearing. The shopped-for judge was expected to tolerate factual misrepresentations and fraudulent filings by the Defendants, an expectation that was rewarded when fraudulent filings were made, by agreement among the Defendants, and the pliable, shopped-for judge took no action concerning those fraudulent filings, either before the fraudulent nature of those filings was explicitly disclosed or after the fraudulent nature of those filings was explicitly disclosed.

197. The defendants had found a judge willing to look the other way when presented with misconduct by class counsel.

198. The Defendants all agreed with this strategy of seeking a pliable state court judge, and consented to the "judge shopping" so as to avoid having to submit the class

allegations, and proposed class action settlement, for approval by any judge in Charleston County. The Defendants feared completely objective judicial oversight by any of the judges in Charleston County.

199. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the shopped-for judge designate the cases as complex, and assign the cases to the shopped-for judge. That designation was improper under the rules applicable at the time, as set forth in more detail below, as Defendants joined together to misrepresent facts to the shopped-for judge in order to obtain complex case designation. Alternatively, the shopped-for judge was informed of the false representations of fact when the request for complex case status was made, and the shopped-for judge agreed to look the other way to permit the false representations of fact.

200. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the 2006 class settlement. If the request had been legitimate, and the same request had been made and granted in Charleston, only a single judge would have presided over all aspects of the settlement. But the Defendants feared that any Charleston judge would exert independent oversight of the 2006 class settlement, and Defendants sought to avoid independent oversight.

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

202. As soon as the shopped-for judge assigned the Dorchester actions to herself, the Defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

203. No motion was filed in Charleston to approve the 2006 class settlement reached in the Charleston cases. All Defendants consented to not filing such a motion.

204. SCRCP 23 was not complied with as to the 2006 class settlement reached in the Charleston class action. All Defendants consented to not complying with SCRCP 23 in Charleston County, and all Defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge in Dorchester County.

205. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases. Nor was any notice given to the Charleston County judge that the parties sought a voluntary dismissal without prejudice of any case that alleged a class.

Conspiracy Technique Two: Using Complex Case designation Improperly.

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

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

208. The July 26, 2006 order of the South Carolina Supreme Court, which at that time enabled complex case designation, approved a particular form for use with motions to seek complex case designation. Among other things, that motion required the Defendants in this case to cooperate to represent to the shopped-for judge that certain facts applied to the action for which complex case status was sought. The form states, with emphasis added:

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

209. At that time, the Charleston cases were still pending, and a class settlement had been reached in those cases which, if approved, would resolve all cases. The emphasis added to the portion quoted above is the false portion represented to the shopped-for judge.

210. By agreement among the Defendants, and despite the provisions of SCRCP 23, no notice was given to class members of the dismissal of the Charleston class cases.

211. By agreement among the Defendants, no notice was given to the Administrative judge for Charleston County, judge Jefferson, that when the Defendants sought a voluntary dismissal without prejudice of the pending Charleston County cases that one of those cases alleged a class.

212. Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached at the time the Defendants sought complex case designation. Alternatively, the Defendants disclosed to the shopped-for judge that they fraudulently sought complex case designation, under a false representation of facts, and the shopped-for judge agreed to overlook the false application. As a second alternative, Defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

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

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

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

215. As set forth in the affidavit of Michael Virzi, attachment B to this complaint from the federal court filing on April 13, 2009, and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese defendants to agree to it. Plaintiffs at no time consented to the Richter defendants negotiating such a settlement, and it was not disclosed to them.

216. At page 13, paragraph 6B, in the typed version of the 2006 class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure set forth in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

217. Representation of the Plaintiffs by the Richter defendants in proposing an unethical fee was inadequate, and did not comply with applicable professional standards. Alternatively, that representation breached a fiduciary duty to the Plaintiffs.

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

219. The Richter defendants sacrificed the interests of absent putative class members, such as the Plaintiffs, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to that class counsel fee as the price of obtaining the illicit cooperation of the Richter defendants in structuring the 2006 class settlement resolution that provided only a

fraction of the relief the Richter defendants would agree to accept in a case against a Diocese other than Richter's own Diocese, the Diocese defendants.

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

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

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

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

223. In addition, the terms for the opt-out abuse victims exceeded the low bar of recovery the Richter defendants agreed to set for class member recoveries, to further protect Richter's own Diocese. The opt-out victims received more than was received by any comparable abuse victim who stayed in to participate in the 2006 class settlement.

224. In addition to the fee approved by the Court, the Richter defendants charged class members who participated in the 2006 class settlement an additional fee to go through the arbitration mechanism of the 2006 class settlement. That additional fee was not authorized by any court order, and it exceeded the fee approved by the shopped-for judge. The court

approved fixed fee was not disclosed to participating class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing because no post-award fairness hearing has been held. The shopped-for judge agreed to not have any post-award fairness hearing so as to not jeopardize class counsel's fee recovery in the 2006 class settlement.

225. No notice was given to any class member, including the Plaintiffs, about the terms of the opt-out settlements. Had the been given notice of the terms available for the class, and the terms negotiated by the opt-out abuse victims, and the terms applicable to the class representatives, he could have exercised a choice to receive one or the other recoveries or to opt out and preserve his claim against the Diocese defendants. The Plaintiffs were abandoned by their attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed by class counsel to the Plaintiffs, by the Richter defendants agreeing to define the class so as to ostensibly include the Plaintiffs, were breached when they provided no notice to the Plaintiffs of the better terms obtained by others.

226. As alleged below, the abandonment by the Plaintiffs was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the Plaintiffs, or was a breach of the fiduciary duty assumed by the Richter defendants towards the Plaintiffs. In this cause of action those duties are alleged to have been were consciously abandoned, as the Richter Defendants have represented, in cooperation with the Diocese defendants so as to not interfere (from class counsel's perspective) with the fee class counsel obtained, and so as to not interfere (from the perspective of the Diocese defendants) with the protection the 2006 class settlement enabled them to assert.

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

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

228. The first general term in the 2006 class settlement was that there would be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

229. The second general term in the 2006 class settlement was to provide a $12 million settlement fund without risk that the fund would under any circumstances be exceeded. The effect of that provision was to compromise the interests of sexual abuse victims, to prevent the Diocese from being unable to withdraw from the settlement, and to protect the Diocese defendants by depressing or eliminating any other recovery for any other potential claimant, such as the Plaintiffs.

230. The third general term in the 2006 class settlement was "Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims."

231. The fourth term in the 2006 class settlement was that the court would be asked to approve a fixed fee for class counsel "between $950,000 & $2.5 million."

232. The fifth general term in the 2006 class settlement was to establish that four individuals would allocate among themselves $460,000.

233. The sixth general term in the 2006 class settlement was that the four individuals would be paid whether or not the court approved a class settlement.

234. The seventh general term in the 2006 class settlement was that the seven terms are an offer from the Diocese and "shall be acted upon with reasonable promptness" by the four individuals who would allocate $460,000 among them.

235. The four individuals referred to in the 2006 class settlement agreement accepted the offer from the Diocese, and allocated among themselves $460,000. None of those individuals received more than $160,000. It is not yet known what portion was allocated to legal fee for class counsel.

236. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class. Their claims were resolved upon acceptance, in 2006.

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

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

239. The Diocese defendants paid the $460,000 portion of the settlement on November 20, 2006.

240. The individuals who purportedly represented the classes in the 2006 class settlement, whose claims had been "resolved" in 2006, did not in 2007 qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nor could they qualify as class representatives when the class was approved in 2007. Nevertheless, by cooperation and agreement among the Defendants they were falsely designated as class representatives in subsequent Dorchester County cases, falsely put forth as class

representatives, and approved as class representatives even though they did not meet the definition of the class.

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

242. In the handwritten version of the 2006 class settlement, when the parties reserved details for later specificity ("Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims"), those details were reserved so the Defendants could work backwards from the settlement fund, minus class counsel's fixed fee, to enable adjustments to be made to the notice to the class and the recovery to the class members, so the recovery to class members would not be "too much." Neither the fee for the Richter defendants nor the finality desired by the Diocese defendants would be jeopardized by having "too many" sexual abuse victims served by the 2006 class settlement agreement.

243. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the Plaintiffs, was to preserve class counsel's fixed fee and to get payment of class counsel's fixed fee. The second priority of the Richter defendants was to charge more than the court approved fee. That is why the fee is fixed, and why the fixed fee takes priority over the recoveries of the class members who participate in making claims under the 2006

class settlement agreement, and why the Richter defendants charged class members an additional, and unauthorized, fee.

244. The highest priority of the Diocese defendants, after their willingness to pay class counsel's fixed fee, and make no objection to class counsel charging a greater fee than was approved by the Court, was to either exclude persons such as Plaintiffs, or to try to limit as best they could the possibility of any future recovery to persons such as Plaintiffs, so that within the relatively modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims by the same counsel against another Diocese, the Diocese could argue a *res judicata* benefit from the 2006 class settlement without having to pay meaningful relief to class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all Defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, for notice to be designed to not inform all persons within the class definitions of the settlement itself.

245. The Diocese defendants knew, or should have known, that the systematic administrative practices of deceit and deception about sexual abuse practiced by the Diocese defendants exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

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

247. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to the 2006 class settlement, hoping that settlement would define a class so as to enable the Diocese defendants to argue to exclude the Plaintiffs by means of *res judicata.* In that manner

the Diocese defendants could achieve a possible protection for the Diocese at a fraction of the cost of a proper settlement with all sexual abuse victims. The Diocese defendants realized they could capitalize on the close ties to the Diocese defendants of the Richter defendants, and the willingness of the Richter defendants to sacrifice, for a fee, the interests of these and other Plaintiffs, and enabled the Diocese defendants to try to minimize recoveries to all sexual abuse victims, yet still get a class approved.

248. All Defendants needed to avoid meaningful court oversight of the 2006 class settlement to achieve their collective goals of limiting the interests of absent members of the class, so all Defendants agreed to "judge shop" to avoid oversight by any Charleston judge, and to obtain a lax oversight by the shopped-for judge they desired.

249. When the Defendants realized that "too many" victims, such as the Plaintiffs, might come forward, either within in the class action or later in time outside of the class action, they changed, by agreement, the notice to the class proposed to the shopped-for judge, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint. Each of those additional terms was developed by consent of the Defendants.

250. The Defendants also agreed to misrepresent to the shopped-for judge, but to not submit in written form, a proposal to address persons, such as the Plaintiffs, who were absent members of the class because they got no notice. The Defendants represented to the shopped-for judge that relief would be offered to the Plaintiffs and others, when in fact the Defendants had no intention of providing relief to the Plaintiffs or others.

251. Nor did the Richter defendants undertake to secure in written orders those assurance from the Diocese.

252. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiffs. All Defendants took deliberate action to permit victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members. Doing so was also negligence by the Defendants, but this cause of action presumes that the conduct was intentional, so as to exclude the possibility of these Plaintiffs being able to make a claim for the childhood sexual abuse of John Doe 245.

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

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

255. Nor were class members advised, when they were charged an additional fee not authorized by any court order, that the Richter defendants had already been paid the fee approved by the court. All such funds should be restored, but all Defendants collaborated to avoid there being a post-award fairness hearing.

256. No Defendants disclosed that the Richter defendants were submitting fraudulent information to the shopped-for judge, or that the Diocese defendants had agreed to overlook the fraudulent information submitted by the Richter defendants to the shopped-for judge to support the fee class counsel claimed. No Defendant disclosed that the Diocese defendants had agreed to make no mention of those various fraudulent time entries by the Richter defendants.

Nor had any of the Defendants disclosed that they had agreed they would request no post-award fairness hearing.

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

258. The Defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as the Plaintiffs. Defendants set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, as means calculated to enable the Richter defendants to charge an unauthorized fee in the arbitration.

259. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter defendants would be paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese defendants to abandon clients such as the Plaintiffs, impair the Plaintiffs' ability to make future possible claims, to generally depress the recoveries to sexual abuse victims, to serve the interests of the Diocese defendants, and to enable the Richer defendants to charge class members additional and unauthorized fees.

260. The Richter defendants abandoned absent class members such as the Plaintiffs, by making no provision for the Plaintiffs and by failing to obtain in a written order the relief the Richter defendants claimed to have achieved for absent class members such as the Plaintiffs. All other Defendants cooperated with that abandonment by class counsel.

Conspiracy Technique Six: Providing False Information to the Court

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

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

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

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

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

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

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

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

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

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

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

272. If the Plaintiffs are barred from claims against the Diocese defendants by the *res judicata* effect of the class action, or the charitable immunity defense waived as to persons in the class definition, or the statute of limitations waived as to persons in the class definition, or for any other reason, then duties to them in the class action were breached by the Defendants, and special harm has been caused to the Plaintiffs by the conspiracy of the Defendants.

Conspiracy Technique Seven: Obtaining no written order for absent class members who got no notice.

273. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiffs was to obtain no written order to secure representations made on the record to the shopped-for judge about relief supposedly available to absent members of the class who got no notice.

274. All Defendants in 2006 were conscious that choosing to define the classes so as to include these Plaintiffs served the interests of the Diocese at the expense of persons such as the Plaintiffs.

275. The Richter defendants abandoned the Plaintiffs as putative members of the class in agreeing to provide them no notice.

276. The Diocese defendants conspired with the Richter defendants to submit for court approval by the shopped-for judge the 2006 class settlement agreement that was calculated to omit absent members of the class such as the Plaintiffs, and all persons situated similarly to them. The Diocese has contended that the 2006 class settlement agreement bars the Plaintiffs from being able to make any claim due to the *res judicata* effect of the class action, without having to compensate for Justin Goodwin's sexual abuse.

277. The Diocese defendants conspired with the Richter defendants in failing to submit for court approval by the shopped-for judge any order which provided that the absent members of the class could obtain relief consistent with the 2006 class settlement agreement. That failure was calculated to prevent the Plaintiffs, and all persons situated similarly to him, from having any recovery against the Diocese defendants.

278. No effort was made to protect absent members of the class, such as the Plaintiffs, by how the class was defined or any order which comprehensively embodied how persons who got no notice would be treated. Notice was known to be insufficient for the persons within the class definition, and the Defendants all claimed on the record to the shopped-for judge that relief would be provided for the Plaintiffs and others. Those representations were false, and were not embodied in any written order.

279. If the Plaintiffs is are barred from claims against the Diocese by the *res judicata* effect of the class action, or by charitable immunity (which was waived as to those within the class definition), or by the statute of limitations (which was waived as to those within the class definition), or for any other reasons, then duties to the Plaintiffs in the class action were breached by the civil conspiracy among the Defendants, and special harm has been caused to the Plaintiffs by the acts of conspiracy among the Defendants.

280. The parties failed to embody in any order in the class action any protections for the Plaintiffs as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the Plaintiffs from being able to make a claim, while retaining the argument that all absent class members were barred by *res judicata*. The conduct by all Defendants demonstrate that the representation of the class by class counsel was inadequate, but this cause of action presumes not just that class counsel was professionally

negligent but consciously abandoned the Plaintiffs so as to not jeopardize class counsel's fixed fee, and so as to protect his own Diocese from the greater relief that even class counsel himself insisted on from a Diocese other than his own. The defendants conspired specifically to defeat the interests of persons such as the Plaintiffs, to cause him special harm by giving him not even a chance at notice of the class action, or the ability to opt out, or the ability to protect his claims from the prohibitions of the class action.

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

282. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiffs were damaged, and are entitled to actual and punitive damages from the Defendants as a result.

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

283. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated.

284. This cause of action presumes both that the Plaintiffs are precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making claims against the Diocese, or if they could make claims they were unable to fully mitigate the actual damages caused by the professional negligence of the Richter defendants.

285. The punitive damages Plaintiffs should be entitled to from the Richter defendants are not mitigated by any claims or recovery against the Diocese defendants.

286. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a copy of an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants. The version of this affidavit is a copy of that filed with the 2009 federal complaint.

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

288. Plaintiff John Doe 245 was a putative member of that class as it was defined in the proposed settlement.

289. When the 2006 class settlement agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese defendants, the illicit agreement by

Defendants on "judge shopping" had been accomplished, and the 2006 class settlement agreement reached in the mediation of Charleston cases was now claimed to be a proposed settlement of all prior cases, both the Charleston cases listed in the 2006 class settlement and the post-settlement Dorchester County class actions.

290. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the Plaintiffs.

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

292. On the record to the shopped-for judge the Defendants agreed that relief would be provided for absent members of the class who got no notice of the class settlement. Those representations were false. The Richter Defendants were professionally negligent in failing to provide a written order to secure the representations made on the record.

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

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

295. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiffs. Among other things, when they abandoned the Plaintiffs and

acted so as to harm their interests, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the Plaintiffs reasonably informed, failed to provide them with information with respect to obtaining their informed consent, failed to consult with them about the means for accomplishing their objectives, represented them without their consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal, as set forth in the affidavit of Michael Virzi.

296. No provision of any type, at any point, was made in the orders of the shopped-for judge overseeing the class action to protect absent putative class members who in 2006 had received no notice of the class action.

297. Any court approval of the 2006 class settlement was deficient in terms of protecting the Plaintiffs because the court overseeing the class action had been shopped-for by the Defendants, and had been given, by agreement of the Defendants, fraudulent information on which to base decisions.

298. The Richter Defendants abandoned their absent putative class member clients such as the Plaintiffs by failing to secure in a written order the provisions which supposedly gave them mild protection in the form of the modest recovery of the class action.

299. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court, and failing to protect the Plaintiffs' interest in the written orders.

300. The Plaintiffs were abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action, or after the class action, and jeopardize the fixed fee the Richter defendants had negotiated for themselves at the expense of the class

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

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

302. As a result of his attorneys, the Richter defendants, abandoning the Plaintiffs, he had no opportunity to participate in the class action, or to opt-out of the class and pursue either the more favorable terms available to those other persons who opted out, or pursue his claim independently. The acts and omissions of the Richter defendants have caused damage to the Plaintiffs, assuming the Plaintiffs are prevented for any reason from fully mitigating the actual damage caused by the Richter defendants through their claims against the Diocese.

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

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

304. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiffs are precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese and fully mitigating through those claims the actual damages caused by the Richter defendants.

305. The Richter defendants chose to agree to define the classes in the class actions so as to have no geographical limit on the classes.

306. All Defendants agreed on how the classes were defined.

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

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

309. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiffs by failing to secure for them even the modest relief of the class action, or to preserve his ability to make his claim independent of the modest relief obtained by the Richter defendants for sexual abuse victims.

310. The state court judge overseeing the class action was shopped-for by all Defendants.

311. The state court judge was not asked to preserve in any written order any rights for absent members of the class who received no notice, or to protect the rights of those persons.

312. The Richter defendants claimed to protect the Plaintiffs but then failed to do so. The Richter defendants were negligent in failing to do so, and were out-maneuvered by the Diocese defendants, who had made representations on the record but then succeeded in keeping those representations from being embodied in any court order.

313. Once the Richter defendants were paid their court-approved fee, they were ineffectual in securing the rights of the Plaintiffs to preserve their ability to make a claim.

314. The Richter defendants in each of its 2005 Charleston class action filing, and in the 2006 class settlement agreement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the Plaintiffs.

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

316. The Richter defendants contend that they had no obligations to absent class members, indicating conclusively their lack of understanding of the obligations undertaken by class counsel as a matter of law when class allegations are made.

317. The Richter defendants each breached their fiduciary duties to the Plaintiffs, and as a result, the Plaintiffs have been refused any compensation by the Diocese defendants, who have used the 2006 class settlement as a shield. The Richter defendants were negligent in failing to protect the Plaintiffs' interests.

318. Having "too many" claimants also was believed by the Richter defendants to not be in the interest of the Diocese defendants, and to protect their own interest in their fixed fee the Richter defendants had to also act to protect the interests of the Diocese more than the interests of the Plaintiffs. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class, or to the Plaintiffs. To promote the interests of the Diocese defendants in trying to later enable the Diocese defendants to argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the Plaintiffs their own interest in their fixed fee, the Richter defendants failed to secure in any written orders any protections for absent members of the class such as the Plaintiffs, even though the class compensation was among the lowest-known victim compensation.

319. As a result of the Richter defendants abandoning the interests of the Plaintiffs, and breaching the fiduciary duties the Richter defendants owed to each of them, the Plaintiffs have been damaged by having his claims against the Diocese defendants interfered with, and a barrier created to those claims that would not have existed but for the negligent conduct of the Richter defendants.

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

For a Sixth Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty by Diocese defendants

321. Allegations above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiffs are unable, for any reason, to either make claims for childhood sexual abuse against the Diocese, or to fully mitigate the actual damages each has from the Richter defendants through claims against the Diocese defendants.

322. The Diocese defendants aided and abetted the breach of fiduciary duty by the Richter defendants.

323. In pleading a class action the Richter defendants assumed a fiduciary duty to the Plaintiffs.

324. In the conduct to "shop for' the Dorchester County judge, to define the class, and to limit notice, as alleged above, the Diocese defendants participated with the Richter defendants in limiting the ability of the Plaintiffs to make their own claim against the Diocese for childhood sexual abuse.

325. The Diocese defendants joined with the Richter defendants in making representations on the record to the shopped-for judge that supposedly protected the interest of the Plaintiffs into either each being able to bring his claim at a later time or being able to

331. In making that invitation, the Richter defendants assumed the duty to ensure that its offer of services did not disadvantage the Plaintiffs, and assumed the duty that its services would be free of unfair and deceptive trade practices.

332. In 2006 the Richter defendants entered into a class settlement agreement with the Diocese for victims of sexual abuse by agents and employees of the Diocese defendants. The class settlement was ostensibly to address the known history of priests and other employees who sexually abused minors, but as effectuated by the Richter defendants, the primary purpose of that class action was to enrich the Richter defendants at the expense of sexual abuse victims and, through unfair and deceptive trade practices, to protect not his clients but the Diocese defendants from (a) future claims for sexual abuse, and (b) to depress the value of sexual abuse claims against the Diocese defendants.

333. Unfair and deceptive trade practices were pursued in furtherance of the class action, as alleged above, including false representations to the court, violations of professional standards, judge-shopping, collusive conduct, abuse of court rules and procedures, and actions which violate professional standards, as pleaded with specificity above.

334. The public interest was affected by the 2006 class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved by the Court predicated on either false representations made to the Court about how the person such as the Plaintiffs would be accommodated, or through a shopped-for judge who was aware that the representations being made were false.

335. Among the false statements made at the time by the Defendants was Bishop Baker's public statement that the proposed class resolution was "for those individuals who were abused

within the Diocese of Charleston by clergy or laity over a number of decades." At the time that claim was made, all Defendants were aware that the 2006 class settlement proposed relief about which only persons in and around South Carolina were to be informed, and that no provision had been made for persons, such as the Plaintiffs, who got no notice of the class. In its public statements, acquiesced in by the Richter defendants, the Diocese defendants overtly misrepresented the reach of the proposed 2006 class settlement. No party disclosed that in fact the 2006 class settlement agreement was designed, as its first priority, to obtain a fee for class counsel, with all other relief to clients secondary to that fee, and that the 2006 class settlement agreement was designed so as to omit relief to many persons who had been sexually abused, and was designed to provide among the worst recovery for sexual abuse victims in any case nationwide, was designed to depress the value of sexual abuse claims against class counsel's own Diocese, and was designed by class counsel to protect the Diocese defendants from future claims, and to inhibit the Plaintiffs from being able to make any claim.

336. A circuit court judge to approve the class settlement was "shopped for" and selected by the Richter defendants, with collaboration of the Diocese defendants. The Richter defendants did not want any Charleston County judge to preside over the 2006 class settlement agreement, out of concern that the judge might be fully independent.

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

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

339. The Richter defendants had extensive and life-long ties to the Diocese defendants, and was known to the Diocese defendants to be willing to compromise the interests of the absent class members, including the Plaintiffs, in exchange for a fixed fee payment.

340. With the cooperation of the Diocese defendants, the Richter defendants conceived of a plan to commit a fraud on the Court and the public by representing to the court and the public, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, and with no protections for persons who in 2006 had repressed memories of abuse, while giving only geographically limited notice to the class and in affirmatively misrepresenting to the court the relief which would be available to the Plaintiffs. As long as their fee was paid, and paid first, before any class member had received notice and before any class member had made a claim, and as long as the Richter defendants were able to take from the class without objection from the Diocese defendants unauthorized additional fees, the Richter defendants were expected by the Diocese defendants to be willing, and were in fact willing, to abandon the interests of the absent class members the Richter defendants represented. Instead, the Richter defendants accommodated the interest of the Diocese defendants at the expense of the absent members of the class they represented.

341. All Defendants collaborated to submit false information to the Court, and no Defendant objected when any of the false information was submitted by any of them or by their experts. Part of the collaborative agreement among the Defendants was to remain silent while false information was submitted.

342. To gain court approval of the class settlement from the shopped-for judge without disclosing his actual intention to compromise the interest of the absent class members such as the Plaintiffs, the Richter defendants made overtly false representations of fact to the court. Among those false representations was that there was an "understanding" among all Defendants in this action "as to what would happen" to any person within the class definition who "shows up" (as put by the Diocese defendants) outside of the class notice procedure. That "understanding" communicated to the Court was never placed in any written order by the shopped-for judge and, of course, there is no such "understanding" that the Diocese defendants agree to, nor is there any way to enforce the "understanding." It was falsely represented to the shopped-for judge overseeing the 2006 class settlement that if "someone pops back up who should have gotten notice who didn't get notice," the Diocese represented, with the Richter defendants:

> I think we [the Diocese and class counsel] have an understanding as to what would happen to those particular folks, which would really be our problem, and I think that what we've discussed allows us to proceed with the agreement we've signed on January 12th [2007]. And then if that person shows up then we [the Diocese] would have to deal with that.

343. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. The representation is false, and is contained in no written orders of the court, so is unenforceable, as the Richter defendants, who were acting in the interests of the Diocese defendants, intended it would be. The representation was made in a hearing in the class action proceedings for which no other interested parties were given notice. Only in 2009 was the transcript disclosed in the course of other litigation over the collusive class action proceedings.

344. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. It was acquiesced in by the Richter defendants.

345. In fact, the Richter defendants were aware, and had alleged, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves. The Richter defendants were also aware that some abuse victims repressed memories of their childhood sexual abuse and in 2006 could reasonably be expected not to recall childhood abuse.

346. To get approval that protected the Diocese from, among other things, the Plaintiffs' sexual abuse claim, the Richter defendants falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Richter defendants and the Diocese defendants assured the court, on page 14 of the same transcript, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

347. The Richter defendants, on pages 16 - 17 of that same transcript, summarized to the shopped-for judge, falsely, that the supposed position of the Diocese as "what the Diocese has come to is that if anybody is missed . . . the diocese waives all the same defenses that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards." Those terms were supposedly submitted by letter by the Diocese, but were entirely false.

348. When the Plaintiffs communicated with the Diocese, the Plaintiffs' request for compensation was rejected, as the Richter defendants intended in 2007 would occur after the class action was concluded. Which is why the Richter defendants submitted to the shopped-for

judge who oversaw the 2006 class settlement no written orders to embody the supposed "understanding."

349. Nor did the Richter defendants disclose that the representations were false when the shopped-for judge observed, as to the Diocese, on page 25 of that same transcript, "what they [the Diocese] say is if you come forward in the future we will treat you just the same as we have treated these individuals and the relief is available for you."

350. The Richter defendants intended on July 13, 2007, to create the false impression with the Court that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend relief to that victim. In making the false representation that they made no effort to embody in any court order, the Richter defendants were operating in the interest of the Diocese defendants, not in the interest of absent members of the class. The Richter defendants intended that the shopped-for judge would rely on the statement, and the Court did rely on the statement. However, the Court did not embody the understanding in its order, the Richter defendants made no request that the court do so, and the Diocese defendants refuse to comply with the "understanding." That representation by the Richter defendants was false when made, and was known to have been false when made.

351. As to these Plaintiffs, the Diocese concealed the falsity of class counsel's representations to the shopped-for judge. The true position of the Diocese has been, starting in 2009, to deprive other sexual abuse victims of any relief, using the class action suit as the rationale for doing so. That fraudulent concealment by the Diocese became known to the Plaintiffs only in 2009.

352. The shopped-for judge who oversaw the 2006 class action settlement relied on the statements by the Richter defendants, and silence by the Diocese, to extend in the court's order of July 30, 2007 approving the class settlement, at page four, this statement:

> The Diocese has further stated that it understands that **any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement**. Further the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Emphasis added. While one might expect that the order's language would reflect the conduct of the Diocese defendants or what a court would enforce, in fact the shopped-for judge reflecting only what the Diocese has "stated" has proven to be an unenforceable order, as the Richter defendants intended in 2007.

353. Along with the Richter defendants, the Diocese defendants intended that the shopped-for judge overseeing the 2006 class settlement would rely on their collective statements, silences and conduct, to form the impression recorded in the court's 2007 order, even though the impression was false and neither the Richter defendants nor the Diocese had any intention, in 2007 or since, of honoring the assurances given to the shopped-for judge overseeing the 2006 class settlement.

354. When these Plaintiffs in 2009 informed the Diocese of John Doe 245's abuse, the Diocese (as the Richter defendants intended in 2007), refused to honor the assurances given to the trial court by the Richter defendants, and which the Court noted in its July 30, 2007 order at page 4 without actually ordering. Instead, the Diocese asserted the defenses it had waived for class members, claimed as to these Plaintiffs the *res judicata* effect of the class action which the Diocese defendants had disclaimed, and acted exactly contrary to the assurances to the

Court by the Richter defendants, and the public statement by then Bishop Robert Baker in January, 2007, that the Diocese intended a just resolution for every person who had been abused within the Diocese of Charleston.

355. The false statements by the Richter defendants, and the irregular conduct in the course of the class action by the Richter defendants, and the Richter defendants acting in the interest of the Diocese defendants rather than in the interests of the absent members of the class, constitute unfair and deceptive trade practices which have damaged the Plaintiffs.

356. The Richter defendants made their false representations to the shopped-for judge overseeing the 2006 class settlement for the purpose of gaining that court's approval of a class settlement with only limited notice to the class and with no protections for absent members of the class. When the 2007 order mentioned the "understanding" but appeared not to have ordered it, the Richter defendants did nothing to seek modification of the order.

357. The Richter defendants committed fraud on the Court, on the public, on these Plaintiffs, and on all sexual abuse victims born before August 30, 1980, the definition used in the 2006 class settlement. In doing so the Richter defendants also engaged in unfair and deceptive acts and practices in violation of South Carolina law, which have disadvantaged the Plaintiffs. In doing so the Richter defendants were acting in the interests of the Diocese defendants, not in the interests of the Plaintiffs they purported to represent.

358. All of the conduct by the Richter defendants, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the 2007 representations made to the Court by the Richter defendants and acquiesced in by the Diocese defendants. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action,

many of whom had not recalled their abuse by the 2009 conclusion of the class action or the earlier deadline of the class claims procedure, have since been refused relief by the Diocese when they made a claim for relief.

359. The disregard by the Richter defendants for absent members of the class, the misconduct throughout the class action, and the disingenuous representations by the Richter defendants to the shopped-for judge who had been hand-picked to oversee the 2006 class settlement agreement are unfair and deceptive acts or practices that affected the relief awarded in the class action, and affected the Plaintiffs by disabling their claim against the Diocese for the childhood sexual abuse of John Doe 245.

360. The conduct by the Richter defendants is part of an intentional effort to mislead the Court, and to act against the interests of the absent members of the class and instead to act in the interest of the Diocese defendants, with whom the Richter defendants are entwined.

361. The Plaintiffs have suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Richter defendants. Specifically, the Plaintiffs were unable to obtain the relief promised by the Richter defendants, were unable to preserve their claim after each was abandoned by the Richter defendants, and due to the misconduct of the Richter defendants, to date has been unable to maintain his claim against the Diocese. As a result the Plaintiffs is entitled to recover actual damages, trebled as provided by law, for the unfair and deceptive trade practices of the Richter defendants, with costs and disbursements and attorneys fees as provided by statute.

362. The secretive and disingenuous conduct by the Richter defendants, and the misconduct displayed during the class action, is offensive to public policy, and is immoral, unethical, and oppressive. The Richter defendants made a calculated business decision to

advance ahead of their class member clients' interests, and the interests of the absent members of the class, first the Richter defendants' own financial interests, then the interests of the Diocese defendants.

363. The Richter defendants collaborated with the Diocese defendants to design a compensation program for sexual abuse victims which specifically, and intentionally, excluded many victims, reduced the financial recovery for victims, depressed the financial recovery for other victims, and cut off the ability of absent members of the class to make claims. Each of those goals by the Richter defendants was illicit, and was an unfair and deceptive trade practice for an action which purported to bring a benefit to a class. For those reasons the Richter defendants collaborated with the Diocese defendants to "shop" for a hand-picked judge to oversee the 2006 class settlement so as to avoid independent scrutiny of the 2006 class settlement. The Richter defendants engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the Plaintiffs.

364. The Richter defendants took no appeal from the July 30, 2007 order, and sought no modification of that order, or for any subsequent order of the shopped-for judge who oversaw the 2006 class settlement.

365. The Richter defendants are bound by the July 30, 2007 order in the class action, and by the representations made to the court to obtain that order. Those terms abandon the absent class members such as the Plaintiffs.

366. As intended by the Richter defendants in 2007 as the *quid pro quo* for their fee, when the Diocese was contacted by the Plaintiffs, who had received no notice of the class action, the

Diocese refused them relief and asserted defenses against victims who did not get notice, exactly as the Richter defendants had assured the shopped-for judge they would not. The Diocese asserted the *res judicata* effect of the class settlement, as well as the defenses it had waived on the record for persons within the class definition. As was known by the Richter defendants at the time, the Diocese had no intention of including other victims who "for whatever reason" received no notice, and would undertake no relief for victims the Diocese defendants were not compelled to undertake.

367. The Richter defendants intended the collusive class action to terminate liability of the Diocese, to limit overall compensation paid to abuse victims, and to do so at a fraction of the recovery that a truly adversarial counsel might have demanded. The Richter defendants acted in the interest of themselves and the Diocese, ahead of its ostensible clients, such as the Plaintiffs.

368. The unfair and deceptive acts and practices of the Richter defendants have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese defendants have repeatedly refused (as intended by the Richter defendants) relief for multiple persons who have came forward having not gotten notice of the collusive 2006 class settlement. The practices engaged in by the Richter defendants violated professional standards and court rules, violated legal ethics, made misrepresentations to the Court, and (in collaboration with the Diocese defendants) making misrepresentations to the public, were all done to advance the Richter defendants' own interests.

369. The Richter defendants calculated that their personal and professional connections to the shopped-for judge would permit false and fraudulent practices before the shopped-for judge

without eliciting inquiry. In that regard, the Richter defendants were correct, as even after evidence of the false practices were laid before the shopped-for judge no inquiry was made.

370. The Richter defendants further calculated that their political status as persons who formerly held political office and with political connections to the South Carolina Supreme Court and the court's mechanisms for enforcing professional standards of conduct would cause even the South Carolina Supreme Court to look away from the false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, it is not yet known if the Richter defendants will prove correct.

371. The Plaintiffs are neither politically connected nor a personal friend of any powerful person, and has no choice but to rely on the theoretical interest that a judge is supposed to have as to misrepresentations to the court, and on the prohibitions of the Unfair Trade Practices Act.

372. The false and deceptive practices of the Richter defendants will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Richter defendants in compromising the interests of absent members of the class they purported to represent has been actually repeated, as well as has the potential for repetition, in the form of the sexual abuse victims who got no notice of the 2006 class settlement and who have requested, and been denied, relief, as the Richter defendants intended.

373. The Richter defendants should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to the conduct of the Charleston or

Demand for Jury Trial

378. Plaintiffs demand a trial by jury.

Relief Sought

Wherefore, Plaintiffs seeks relief in the form of:

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

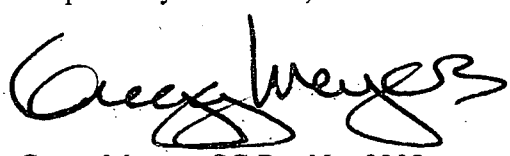
380. Costs and disbursements of this action,

381. Attorneys fees as authorized by law,

382. Punitive damages as authorized by law, and for

383. Injunctive relief to enjoin the Diocese defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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St. Paul MN 55101
651-227-9990
Gregg@andersonadvocates.com

Attorneys for the Plaintiffs

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

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

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

John Doe #53
v.
The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity
CASE NO.: 2005-CP-10-4913

Settlement Agreement

See Terms attached on Ext. #1

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

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

_____
By: _____
(Print Name)
Its: _____
Dated: _____

_____
By: _____
(Print Name)
Its: _____
Dated: _____

EXHIBIT "4"

EXH. #1

General Terms of Settlement:

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

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

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

Attachment A

(D)

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

5. Mr. T REDACTED* shall be paid _____

Mr. S REDACTED shall be paid _____

Mr. N REDACTED* shall be paid _____

Mr. M REDACTED* shall be paid _____

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

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

~~7. Class representatives & counsel~~

Attachment A

(3)

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

James Deahy, Attorney

June 14, 2006

ON BEHALF OF DEFENDANTS

Attorney in and with authority of the Diocese of Charleston

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii. Affidavit of Angela Pittard, with attached timesheets;

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

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

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

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

A. failure to provide competent representation;

B. failure to act with reasonable diligence and promptness;

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

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

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

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

G. attempting to charge and charging an unreasonable fee;

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

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

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

K. lack of candor toward a tribunal; and

L. conduct prejudicial to the administration of justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R. one of the above-referenced 130-hour single entries by "DKH" for the eight-day time period of October 4-11, 2006, during which period "DKH"

had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

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

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

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

FURTHER AFFIANT SAYETH NOT.

Michael J. Virzi, Esq.

State of South Carolina
County of Richland

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10- 1632
John Doe 297,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Negligence; Gross Negligence
	)	Fraudulent Concealment
The Bishop of Charleston, a	)	Civil Conspiracy
Corporation Sole; Robert	)	Professional Negligence
Gugliemone, The Bishop Of	)	Breach of Fiduciary Duty
Charleston, in his official capacity;	)	Injunctive Relief
Rev. Monsignor Martin Laughlin,	)	UTPA
former Administrator of the	)	
Diocese of Charleston, in his	)	Jury Trial Requested
official capacity; Robert J. Baker,	)	
former Bishop of Charleston, in his	)	
official capacity;	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller, and	)	
Richter and Haller, LLC.	)	
	)	
Defendants.	)	

FILED
2016 MAR 31 AM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. John Doe 297 is an adult citizen and resident presently residing in South Carolina but who resided in North Carolina from 1998 to 2014. He was born in 1964. As a child in the first grade he was sexually abused by two priests, each employed by the Diocese of Charleston. One priest the Plaintiff recalls only as "Jimmy," the other was Martin Bangert. Martin Bangert is referred to in this Complaint as the offending priest, or offending priest 1. The priest identified only by first name is referred to as offending priest 2. Collectively they are referred to as the

offending priests.

2. Martin Bangert, offending priest 1, was assigned to St. Anthony in Greenville, South Carolina from 1970 or 1971 to 1976. The assignment of offending priest 2 is not known for lack of a full name, although each was associated with St. Anthony in Greenville, S.C.

3. Because this action concerns childhood sexual abuse, this action is filed using a pseudonym.

4. The identity of the plaintiff will be provided to the defendants upon their agreement in writing to maintain his identity as confidential as to the public record. If the defendants refuse in writing to maintain the plaintiff's identity as confidential as to the public record, his identity will be disclosed to the defendants upon court order after motion for leave to proceed by pseudonym.

5. The Bishop of Charleston, a Corporation Sole, is the formal title of the various entities comprising the Catholic Church throughout South Carolina known generally as the Diocese of Charleston. It is referred to in this complaint as the Diocese or the Diocese of Charleston.

6. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. Decisions made about the assignments for each of its priests, and these offending priests, were made in Charleston County.

7. The acts associated with the abuse of the Plaintiff and the negligent supervision of the offending priests took place in Charleston County. Charleston County is where decisions were made about the offending priests' assignments and the degree of supervision the offending priests required, which as applied by the Diocese defendants was grossly negligent.

8. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued individually in his official capacity. He is a party necessary for complete relief.

9. All persons working for the Diocese, anywhere in South Carolina, are subordinate to the Bishop of Charleston, who under the internal procedures of the Diocese holds all executive, legislative, and judicial power within the Diocese.

10. Prior to the tenure of Bishop Guglielmone, from October 2007, to March 2009, no person held the title of Bishop of Charleston. Under the internal rules and procedures by which the Diocese of Charleston governs itself, the Diocese of Charleston was administered by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina who, during his tenure as administrator, did business in Charleston County. Msgr. Laughlin is sued in his official capacity.

11. Prior to the tenure of Administrator Laughlin, from July 1999 to August 2007, the Bishop of Charleston was Robert J. Baker, presently a resident of, and citizen of, Alabama. During his tenure, he did business in Charleston County. He is sued in his official capacity.

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

13. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney. In that capacity he engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

14. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney. In that capacity he engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

15. Richter & Haller, LLC, at all times pertinent to this complaint, had its principal place of business in Charleston county, did business in South Carolina, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, Richter & Haller, LLC did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

16. In each instance, the print media advertising was chosen with the specific and collusive intention to provide no chance of giving notice to this Plaintiff, who resided outside of South Carolina during the period of time in which the class action was pending.

17. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the "Richter defendants" unless otherwise particularly specified.

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

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

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

Nature of Wrongdoing

21. The Plaintiff fits a class definition used in a collusive 2006 class settlement in that he was born on or before August 30, 1980, and as a minor was sexually abused by an agent or employee of the Diocese of Charleston. The Plaintiff has not previously made a claim that was adjudicated, resolved, or released.

22. The Plaintiff was situated similarly to other individuals ostensibly within the class definitions chosen by the Richter defendants when the Richter defendants (a) pled a class action in 2005, (b) settled that class action in 2006, and (c) sought, and obtained, class certification in 2007 by a South Carolina court as part of that class action. The classes defined in that action included a class of individuals who were sexually abused by persons employed by the Bishop of Charleston.

23. The Plaintiff has brought this action against the Diocese defendants under authority of S.C. Code § 15-3-555, in that the action has been brought within three years of his discovery of the causal relationship between the injury and the sexual abuse. Against the Richter Defendants, the action has been brought within three years of learning that the Richter Defendants had undertaken to represent the Plaintiff in a class action case without giving him proper notice, and without disclosing to him a conflict of interest by which they acted so as to compromise his interests.

24. In pleading that class action, as a matter of law the Richter defendants assumed fiduciary duties to the Plaintiff, of which the Richter defendants were apparently unaware as they have denied such duties were assumed.

25. The Richter defendants then settled that class suit with a class settlement. That class action settlement was collusive, and the Plaintiff was harmed by that collusion.

26. The Richter defendants have represented to the circuit court that their motivation to collude with the Diocese defendants as to the scope of notice was to accommodate the Bishop of Charleston, their supposed adversary, who (they claim) requested that the Richter defendants change the class notice from nationwide notice to only South Carolina notice, while retaining a class definition with included the Plaintiff in that it had no geographic restriction on class membership.

27. According to the Richter defendants, they elected to accommodate the request of their supposed adversary, even though doing so was collusive with the Diocese defendants and breached their professional and fiduciary obligations to their clients and this Plaintiff.

28. In 2006 class counsel reached a class settlement for two defined classes of victims, one of which included the Plaintiff.

29. A class was later re-alleged in post-settlement pleadings filed in 2006, which allegations also included the Plaintiff in the way the class was defined.

30. The Richter defendants were class counsel in that class action.

31. The Richter defendants acknowledged that they represented absent members of the class, such as the Plaintiff, in the March 9, 2007 initial fairness hearing. In the transcript of that hearing at page 53, Defendant Richter stated:

> we represent the interests of persons who might be here today, may not be here today, may not have made a claim yet, a class, punitive [sic, probably intended to be putative] class or actual class, punitive [sic] initially, now an actual class.

32. The Richter defendants overtly acknowledged their fiduciary obligations to the absent members (such as the Plaintiff) of the class the Richter defendants chose to define, a duty the Richter Defendants had (apparently unwittingly) also assumed by operation of law when they (a) pleaded a class defined so as to include the Plaintiff, and then (b) when the Richter

defendants chose to reach a class settlement with a class defined so as to include the Plaintiff.

33. As stated in *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (internal citations omitted):

> a Plaintiff who sues on behalf of a class ***and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them*** of proposed compromises of the group action. * * * If the class representative ***or class counsel breaches the fiduciary duties*** he assumes and receives and retains benefits flowing from the breach, ***he holds what he receives upon a constructive trust*** for the class. * * * This is true although the benefit received by the class representative is not at the expense of the class. Under no circumstances will the fiduciary be permitted to profit from a breach of his duty as fiduciary.

34. By operation of law, any benefits from the class action are held by class counsel, the Richter defendants, in trust for the class. Those benefits held in trust should be used to benefit the Plaintiff.

35. The Richter defendants chose to define the class so as to include the Plaintiff in that the class definition, which definition included no geographic limit.

36. The Plaintiff presently resides in South Carolina, but during the time the class action was pending the Plaintiff resided out of South Carolina.

37. During the class action at issue, the Richter defendants claimed no prior class counsel experience.

38. As a matter of law under *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003), the class definitions chosen by the Richter defendants which included the Plaintiff was "a strategy choice" they elected, the implications of which presented duties they voluntarily assumed.

39. By operation of SCRCP 23(d)(1), the Richter defendants are bound by that strategy choice and "have to live with [it] since a decision on the merits was made" by the circuit court when it approved the class. *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003).

40. After the class settlement, in October, 2006, the Richter defendants proposed a nationwide program of notice for class members. That notice program, had it been used by the class action, would have provided a chance for the Plaintiff to have received notice of the class action.

41. Before that motion could be heard, on January 17, 2007, the Richter defendants modified the proposed notice program through an amended motion for class certification. The Richter defendants admit the modification was done at the request of, or to accommodate, their supposed adversary, the Bishop of Charleston. By proposing a notice program that eliminated notice in the nationwide publication *USAToday,* and by restricting notice to only the area immediately around South Carolina, and omitting to publish notice in the Charlotte Observer for the portions of South Carolina around Charlotte and other North Carolina publications, the Richter Defendants by their own admission disadvantaged the absent members of their class so as to accommodate their adversary.

42. The accommodation by the Richter Defendants is both professional negligence to the absent members of the class and reflects the collusion with the Diocese defendants.

43. The change of notice is what the Richter defendants themselves claim was a collusive accommodation to their "adversary," the Bishop.

44. The Richter defendants failed to disclose to the class their own lifelong ties to the Bishop.

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45. Two days after the amended motion for class certification was filed by the Richter defendants, the court issued an order giving preliminary approval to the class action and its settlement, and entered these terms for notice for newspaper publication of the class settlement:

> Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: The Charleston *Post & Courier*, The Myrtle Beach *Sun*, *The State*; The Augusta *Chronicle*; the Rock Hill *Herald*; Beaufort *Gazette*; Greenville *News*[;] Spartanburg *Herald*; Orangeburg *Times-Democrat*; Florence *Morning News* and the Aiken *Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period.

46. The class notice program for the class settlement was to be funded, and was funded, by the pool of funds set aside by the Diocese for the class settlement.

47. The proposed class settlement agreement of January 17, 2007 states, "All costs associated with the management of the class shall be paid from the settlement fund."

48. The Order of July 30, 2007, which approved the class settlement, states, at page 12:

> Class counsel proposes a notice of the [claims period] in a form comparable to that attached hereto as Exhibit A, and I approve this notice. Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: The Charleston *Post & Courier*, The Myrtle Beach *Sun*, *The State*; The Augusta *Chronicle*; the Rock Hill *Herald*; Beaufort *Gazette*; Greenville *News*[;] Spartanburg *Herald*; Orangeburg *Times-Democrat*; Florence *Morning News* and the Aiken *Standard*. Publication of the notice shall be at least once a week for three (3) consecutive weeks during the notice period.

That Order also states, at page 15:

> Class Counsel has been directed to publish notice of the claims period and opt-out right. Since these expenses have been ordered by the Court, the bills for publication of the notices may be presented by Class Counsel directly to the escrow agent and paid by him per the Settlement Agreement.

49. Page 4 of the July 30, 2007 Order certifying the class states, "Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members."

50. At a hearing held on April 10, 2014 in related actions, counsel for Defendants Richter and the firm of Richter and Haller represented to the Court (on page 9 of the hearing transcript) that the notice program for the class action "was not intended to reach beyond the borders of South Carolina."

51. Under the modified notice program chosen for the class settlement, the Plaintiff, who then resided out of state, was intended by the Richter Defendants, as an accommodation to the Diocese defendants, to receive no notice of the class action.

52. The object of the collusive agreement between the Richter defendants and Diocese defendants was to exclude the Plaintiff from the class action resolution and, simultaneously, to protect the interest of the Diocese defendants by barring future claims by sexual abuse victims.

53. The reason the Richter defendants modified the class settlement notice program so as to intentionally omit this Plaintiff and other Plaintiff has been publicly explained by class counsel as something they chose to do to accommodate their supposed adversary, the Bishop of Charleston. At page 42 of the April, 2014 hearing transcript, it was represented to the Court that the Richter defendants modified the original nationwide program of notice for the class because, "the Bishop said, no, that's too expensive." The Richter Defendants claim to have accommodated that objection by their supposed adversary. The entire representation made to the court on behalf of class counsel on April 24, 2014, was, "[O]ur testimony will be that we proposed that [nationwide notice] to the Bishop and that the Bishop said, no, that's too

expensive. So from our point of view, the Bishop bought the degree of *res judicata* he was willing to pay for."

54. No provision was made by the Richter defendants to see that the orders in the class action excluded the Plaintiff from the *res judicata* effect of the class action, or to see that the Plaintiff preserved either the benefits of the class or the benefits of the defenses that were waived in the class action by the Bishop of Charleston for the benefit of other members of the class.

55. The Richter defendants requested of the state court no such provisions despite their obligations to the Plaintiff as a member of the class they chose to define.

56. In April, 2013, class counsel agreed in another hearing, held before Judge Dickson, that persons such as the Plaintiff who lived out of state "never had their due process rights to come in and be heard. And they never got their due process rights of notice and an opportunity to be heard." That representation to the court appears at p. 32 of the Transcript of a hearing held April 12, 2013.

57. As the Richter defendants intended, and have admitted, the Plaintiff had no opportunity to be heard or participate in the litigation, either in person or through counsel, or an opportunity to opt out of the class action and thereby preserve his own claim.

58. In the 2006 class action settlement the Richter defendants colluded with the Diocese defendants so as to abandon the interests of those persons, such as the Plaintiff, who were within the class definition, and to protect the Diocese defendants by the collusive class action.

59. In 2005 a class action was first alleged by the Richter defendants on behalf of persons sexually abused by persons affiliated with the Diocese of Charleston.

60. By their own account, the Richter defendants were extensively affiliated with the

Diocese of Charleston. Those extensive affiliations were never disclosed to the class.

61. The class action settlement with the Bishop of Charleston was arrived at during a mediation held in June, 2006, in which the Richter defendants participated on behalf of class members. In this complaint, the class action settlement achieved in 2006 from the 2005 class action is referred to as "the 2005 class action."

62. The 2006 mediated settlement agreement was approved by the Dorchester County judge who presided over the class action proceedings. By 2009 the class members had been identified and an arbitration had determined awards to various class members. By 2009 those awards had been paid.

63. By order of the South Carolina Supreme Court issued March 19, 2009, the 2005 class action was ordered to be concluded in six months, or by September 19, 2009.

64. The trial court overseeing the class action ignored the March 19, 2009 order of the South Carolina Supreme Court, and took no action by September 19, 2009 to review the distributions to class members or to make any post-award review of class counsel's fee.

65. In 2012, Defendant Haller, acting on behalf of no client from the 2005 class action, as all client claims had been resolved, but acting instead on behalf of himself and the Richter defendants, filed a pleading in the Dorchester County class action case.

66. On January 24, 2013, the Dorchester County trial judge who had presided over the class action, Judge Goodstein, signed an order which stated, in its entirety, "I hereby recuse myself from hearing any further matter on the above-captioned case." The caption on that order was the first of the cases which comprised the 2005 class action.

67. Judge Goodstein had been asked to recuse herself by a motion in 2008. She recused herself in 2013. The 2013 order makes no reference to the 2008 motion. No other motion to

recuse had been made.

68. All defendants colluded in the 2005 class action so as to permit the Diocese defendants, starting in 2009 and continuing into 2013, to maintain that the class action precluded any and all claims for abuse.

69. At no point did the Richter defendants seek, for class members who reside out of state, either orders clarifying the relief available to absent class members or orders clarifying that out of state persons had protections from the *res judicata* effect of the class action. The Richter defendants were aware that class members who resided out of state had received no notice, and no Due Process, in the class action. The Richter defendants had modified the notice program to assure that out of state class members would receive no notice. The Richter defendants sought to give no notice to absent class members because it was part of their collusive plan with the Diocese defendants to not do so, so as to restrict the number of persons who could make a claim against the Diocese defendants and to protect the Richter defendants' own interest in the fee they had arranged for themselves.

70. The Richter defendants conducted the class action intending to prevent the Plaintiff and other persons similarly situated from either participating in the class action or being able to remove themselves from the class action by opting out. Being within the putative definition of the 2005 class action as the Richter defendants proposed for the class definition, and the definition the Diocese defendants agreed to use to define the class of sexual abuse victims, the Plaintiff ostensibly was formerly represented by, until he and his interests were abandoned by, the Richter defendants, who served as class counsel.

71. Alternatively, and at minimum, the Richter defendants assumed fiduciary duties as to the Plaintiff by defining the classes to include the Plaintiff, did so with the knowing

cooperation of the Diocese defendants, all defendants intending to ostensibly include the Plaintiff then deprive him of relief and bar him from making his own claim.

72. The Richter defendants colluded with the Diocese defendants to cause the Plaintiff special harm in the form of precluding him from making any claim against the Diocese. The professional representation of the Plaintiff by the Richter defendants in the class action was inadequate, and failed to meet the standard of care applicable to a South Carolina attorney handling a class action.

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

74. But for the Richter defendants having breached the duties each of them owed to the Plaintiff in the class action by abandoning him in the class action, an abandonment done in agreement with, and in full complicity with, the other Defendants, the Plaintiff would have been protected from any preclusive effect of the 2005 class action and the 2006 class action settlement.

75. The Diocese defendants knew, or should have known, that the offending priests who abused the Plaintiff were dangerous to children, and were not being sufficiently supervised so as to prevent them from using the premises of the Diocese to abuse the Plaintiff.

76. The Diocese defendants operated so as to actively disregard and conceal the risks to children and families for sexual assault of children by their priests and other employees, including these offending priests, and then actively, and fraudulently, concealed the abuses that had happened and concealed the dangers to children the Diocese defendants solicited into

danger.

77. The Richter defendants made themselves part of that duplicitous method of operation by the Diocese. The Richter defendants had life long ties to the Diocese defendants that were not disclosed to the class. The Richter defendants were and are corrupt, and colluded so as to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy, in exchange for a legal fee for themselves, relief not for their clients such as the Plaintiff but for their adversary the Diocese defendants in the form of a layer of legal protection that was hoped, by those corrupt lawyers, would protect the Diocese from civil lawsuits almost certain to keep coming over their history of sexual abuse and the fraudulent concealment of abuse by the Diocese defendants.

78. The Richter defendants assumed a duty to act for sexual abuse victims, including the Plaintiff, but then the Richter defendants acted in a professionally negligent way, willfully and wantonly abandoning their clients so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese defendants in exchange for their cooperation in trying to both limit relief to victims and protect the Diocese defendants from future cases, and specifically from claims by absent class members such as the Plaintiff. The danger to the Diocese defendants of future cases was that future cases might be brought by lawyers actually adverse to the Diocese defendants, as opposed to claims brought by lawyers with life-long ties to the Diocese who were willing to collude with the Diocese.

79. The Defendants made overt misrepresentations of fact to the court which approved the 2006 class action settlement, and fraudulent concealment of those misrepresentations continue to the present.

80. The Richter defendants were so confident of their ability to manipulate the state court

judge they and counsel for the Diocese had selected and maneuvered the class cases before, and so confident of eliciting no objection from the supposedly adverse Diocese defendants, that the Richter defendants (a) submitted blatantly false and inflated time records to justify their large fee, and (b) collected more fee than was authorized by the court's orders, all without objection from the Diocese defendants. The Richter Defendants at no time disclosed to the class or to the class representatives that they were taking more fee than even the court had authorized.

81. In exchange for the Richter defendants' cooperation to disadvantage absent members of the class from making claims against the Diocese, the Diocese defendants (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention that any of the time records submitted by the Richter defendants were false, (c) agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee, (d) agreed to make no objection to an unethical fixed fee for class counsel while class counsel simultaneously obtained only variable compensation for class members, and that the compensation for class members was subordinated to that fee, (e) agreed to make no objection to the fee being awarded before any member of the class member was even identified, and before any class member claimant had submitted a claim or was paid, (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law, (g) agreed to make no objection when the Richter defendants took more fee than was authorized by court order, and (h) agreed to seek no post-award fairness hearing under SCRCP 23.

82. A post-award fairness hearing has never been held in the 2005 class action. The unauthorized fee taken by the Richter Defendants has never been examined by a court.

83. In turn, the Richter Defendants agreed to assist the Diocese defendants in overtly misrepresenting to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement. Once the court relied on that misrepresentation, the Richter defendants enabled the Diocese defendants to ignore the representations that had been made by obtaining no court orders which reflected any protections for persons who got no notice. Alternatively, if class counsel claims he did not participate in the overt misrepresentations to the court by the Diocese defendants, class counsel's representation of the class fell below the applicable standard of care in that class counsel failed to secure by order those concessions supposedly made by the Diocese defendants.

84. Class counsel failed to secure those concessions by written order even though class counsel was fully aware the Diocese defendants are untrustworthy and would comply only with orders it could be compelled to honor.

85. Class counsel either was complicit in the misconduct of the Diocese defendants or was negligent in being outmaneuvered and hoodwinked by the Diocese defendants, which performance fell below the standard of care applicable to the Richter defendants.

86. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the Plaintiff is regarded as being bound by the *res judicata* effect of the collusive class action to which the Diocese was party and can recover not less than the relief provided for class members in the class action. As alleged more fully below, Plaintiff ostensibly falls within a class defined in that action. Defendants colluded so as to attempt to make any recovery by the Plaintiff impossible, by giving him no notice.

87. All Defendants cooperated together to better protect the Diocese by the way the class was defined, as well as the manner in which notice was given, and the Defendants cooperated

so as to actively mislead the court in seeking approval for the limited notice that was proposed with the false promise by the Diocese, known to have been false by the Richter defendants or acquiesced in by the Richter defendants, that the Diocese would protect the interests of persons such as the Plaintiff who received no notice and who later made claims.

88. Until 2016 the Plaintiff had no information that the Defendants had cooperated to make false promises to the class action court or that the Plaintiff's interest had been compromised by a collusive class action.

89. The Richter defendants were charged with correcting the known deficiencies in the class definition and the class action notice. The Richter defendants took no steps to correct either deficiency. Had they done so it would have interfered with their collusion with the Diocese that was intended to protect the Diocese and to obtain for the Richter defendants the fixed fee they had arranged to obtain, at the expense of their client class members and the putative members of the class.

90. Similarly, the Diocese defendants were aware that various absent members of the class had received no notice, but the Diocese defendants did nothing to clarify overt misrepresentations by the Diocese defendants to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

91. Until 2016, the Plaintiff was unaware of (a) any class settlement by the Diocese defendants, (b) that the Diocese defendants claimed to have waived charitable immunity for any person in the class definition, (c) that the Diocese defendants claimed to have waived the statute of limitations for any person in the class definition. The Plaintiff was unaware of any of those things because, by agreement of all Defendants, the Plaintiff got no notice of any of those things, and had no opportunity to preserve his claims by opting out of the 2005 class action.

92. In its order approving the class action, the state court might have provided for absent members of the class, such as the Plaintiff, had the Richter defendants ask that the court do so.

93. The Richter defendants were obligated to see that the court did so.

94. The Richter defendants failed to do so.

95. Plaintiff is an absent member of a class who, by design among Defendants, received no notice of the class action and had no opportunity to join or to opt out of the collusive class action. The Plaintiff's representation by the Richter defendants was inadequate. As such, the Plaintiff should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of his interests, and because their representation by the Richter defendants was inadequate, and fell below the applicable standard of care. Either of those grounds is a sufficient basis to relieve the Plaintiff of the *res judicata* effect of the class action.

96. If the Diocese agrees, or the court finds, that the Plaintiff are not precluded by the class action from bringing claims against the Diocese defendants, and the Plaintiff recovers not less than the recovery possible in the class action, then the damage caused by the admitted inadequacies of the Richter defendants who, for a fee, abandoned their clients, and conspired against the Plaintiff through the class action, may be mitigated in part through their claims against the Diocese defendants. However, if that mitigation is incomplete, or the court finds that the Plaintiff is precluded for any reason from pursuing claims against the Diocese defendants, including the *res judicata* effect of the class action, charitable immunity (which the Diocese defendants waived for those within the class definition), or by the statute of limitations (which the Diocese defendants waived for those within the class definition), or because an insufficient recovery fails to fully mitigate the admitted misconduct by the Richter defendants,

then the claims against the Richter defendants should be liquidated, and claims for punitive damages are properly made against those who conspired against the Plaintiff, as well as against the Richter defendants who failed to properly represent the Plaintiff in the representation of the Plaintiff that the Richter defendants undertook.

97. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No change is sought as to the class action, although the judge now assigned to the ten year old class action should conduct a post-award fairness hearing as to the fee taken by the Richter defendants.

98. This action seeks only an interpretation as to the preclusive effect of the class action as applied to the Plaintiff.

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

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

100. The defendant Bishop of Charleston employed the offending priests and assigned them to a position of power and authority within the Diocese, at St. Anthony in Greenville. Because of that power and authority, the offending priests had access to and authority over the Plaintiff.

101. In their capacity as priests, the offending priests were placed by the Diocese defendants in a position of trust and confidence, and had access to and authority over John Doe 297 and other children. In that capacity, the offending priests sexually molested the Plaintiff and many other children.

102. When molested the Plaintiff was in the first grade.

103. Only within three years of this filing has the Plaintiff understood (a) the causal relationship between his injury and the sexual abuse, (b) that the Defendants colluded so as to

deprive him of any recovery, and (c) that the Richter defendants injured him by legal malpractice and unfair and deceptive trade practices.

104. Prior to the Plaintiff being molested, the Diocese defendants became aware that the offending priests were dangerous to children or that their supervision of the premises at St. Anthony was insufficient to protect children from priests with a sexual interest in children.

105. Alternatively, the Diocese defendants operated various schools, activities, and churches that were intended to, and did, attract children and families. The Diocese defendants encouraged people, including the Plaintiff and his family, to use its facilities, and to attend the various activities and functions offered on its premises. In making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers, and from known dangers such as the offending priests. The Diocese defendants represented to the public, and to the Plaintiff, nothing to the contrary. The Diocese defendants particularly owed a duty to the Plaintiff, who was a minor, and owed a duty to his parents, who were charged with looking after the Plaintiff's interests.

106. As a child the Plaintiff and his family relied on the Diocese defendants for his safety within the Diocese. The Plaintiff was unable to fully appreciate risks and danger and protect himself from the offending priests. The Diocese defendants falsely represented to its invitees, and their parents or guardians, including the Plaintiff, that its facilities and its priests were safe, and that persons would be would be protected from harm when using its facilities and when interacting with its personnel.

107. The Diocese defendants assigned the offending priests to St. Anthony from (in the case of Bangert) 1971 to 1976, and placed each of them in a position of authority in that

assignment. Offending priest 2 was at St. Anthony to molest the Plaintiff in the Plaintiff's first grade year, which included portions of 1971.

108. The Diocese defendants negligently supervised the offending priests. The Bishop of Charleston was grossly negligent in doing so. Moving the offending priests, and placing them in a position of authority, without proper warning to children and parents was grossly negligent. Supervising them and the premises insufficiently to keep priests from molesting children was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, the Plaintiff was sexually abused by the offending priests.

109. The Diocese defendants were negligent in failing to warn the Plaintiff about the offending priests or the dangers of the location at St. Anthony. The Bishop of Charleston performed that duty in a grossly negligent manner.

110. The Diocese defendants knew, or should have known, that the offending priests had a sexual interest in children or that priests needed supervision sufficient to prevent them from molesting children if the priest had such an attraction. Some priests were known to have such an attraction. Despite that knowledge, the Diocese defendants made no effort, or no competent effort, to ascertain how many children the offending priests had molested, and no effort, or no competent effort, to locate victims of the offending priests. If the Diocese defendants made such an effort, those defendants assumed the duty but performed it negligently.

111. The Diocese defendants' failure to do so was negligent, and grossly negligent on behalf of the presiding Bishop from the time of the Plaintiff' abuse to the present, including

the gross negligence by Bishop Guglielmone, Bishop Baker, Rev. Monsignor Laughlin, and the Bishops who preceded them.

112. As a result of the negligence and gross negligence by the Diocese defendants in failing to either prevent abuse or identify abuse victims by its agent or employee the offending priests, the problems for the Plaintiff were first caused, and then exacerbated, by the delay of the Diocese defendants in rectifying the abuse by the offending priests.

113. As set forth more fully below, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants.

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

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

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

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

117. The Diocese defendants each had a duty to discover and to disclose to the Plaintiff or his parents their knowledge that the offending priests were known to have a sexual

interest in children, and that some priests had such an interest and needed supervision to prevent them from abusing children. That duty arises from (a) the preexisting fiduciary relationship between the Plaintiff and the Diocese defendants, which relationship the Diocese defendants solicited; (b) from the Plaintiff's parents having reposed their trust and confidence in the Diocese defendants so as to place the Plaintiff into the presence of the offending priests, which placed the Plaintiff in a vulnerable position with the offending priests, and (c) from the Diocese defendants empowering the offending priests with authority over the Plaintiff and the premises at St. Anthony in which the offending priests had authority over the Plaintiff. That position of trust and confidence by the parents was implicit from those circumstances of the Plaintiff being entrusted to the presence of the offending priests, as well as from the nature of the dealings between the Plaintiff, his parents, and the Diocese defendants, who promoted that the Plaintiff should be left with the offending priests. In addition, from (d) the essential nature of the Diocese defendants and their inducement to the parents to have the Plaintiff participate in activities with the offending priests as being beneficial to the Plaintiff, or at least not harmful to him, (e) from the secrecy provisions in the internal operating procedures of the Diocese, which establish a practice of the Diocese defendants to discover, but then to maintain secrecy about, "other persons solicited" by any person such as the offending priests, who committed the "unspeakable crime" of sexually abusing a child, and (f) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the designation of the "Diocese defendants," grossly negligently), during 2005 - 2009, to locate victims such as the Plaintiff.

118. Concerning each of (a) the undisclosed dangers the offending priests represented to the Plaintiff, and (b) repairing the damage done to the Plaintiff by the sexual

abuse, the Diocese defendants were obligated to the Plaintiff to engage with each of them in perfect good faith and with full disclosure.

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

120. Specifically, the Diocese defendants created a culture of secrecy about all matters of sexual abuse and administrative practices to maintain that secrecy as to sexual abuse.

121. The administrative practices of the Diocese of Charleston consider topics of sexual abuse to be scandalous, hence secretive. These administrative practices relate to secrecy of information, not to matters of religious practice protected by the First Amendment.

122. Nothing about the Catholic faith requires that children be sexually abused or that the sexual abuse of children by agents or employees of Diocese of Charleston be concealed.

123. The Diocese defendants assumed the administrative duty to locate victims as defined in procedures created in 1962 (known as the "Instruction,"), and applicable in each year since 1962. The Diocese defendants performed that duty in a grossly negligent manner. The Diocese defendants failed to locate the Plaintiff, failed to locate many other abuse victims of priests, and made no competent inquiry to locate them. The Diocese defendants

purposefully avoided making the type of inquiry that would have elicited discovery of the Plaintiff.

124. The administrative practices of secrecy are arbitrarily adopted administrative practices with no doctrinal significance to protected First Amendment religious activities. Those practices were further extended in other publications in 2001 and 2010.

125. When the Diocese defendants maintained secrecy about sexual abuse of children they were fully complying with the secrecy imposed by the internal administrative operating practices of the church.

126. When independent bodies requested the Holy See alter its internal administrative rules requiring secrecy and require mandatory reporting of child sexual abuse (e.g., the United Nations Committee on the Rights of the Child in January 2014; and the United Nations Committee against Torture in May, 2014), those requests were rejected on the theory that mandatory reporting interfered with the Holy See's sovereignty. The Holy See regards secrecy about childhood sexual abuse by priests as essential.

127. The administrative practice of secrecy about childhood sexual abuse by priests constitutes spoliation of evidence, as well as fraudulent concealment. Among the spoliation was evidence related to the offending priests' sexual interest in children, and the sexual abuse of the Plaintiff.

128. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent the Plaintiff's sexual abuse, or to ascertain that he had been a victim of abuse by the offending priests.

129. In 2006 the Diocese defendants sought a new level of deception and manipulation to limit the damage to the Diocese defendants from its history of sexual abuse, to

limit its financial accountability for its history of sexual abuse and concealment. The Diocese defendants engaged with other Defendants to conspire to evade accountability, as set forth below, and to try to prevent the Plaintiff from making any claim. The acts of civil conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the Plaintiff's sexual abuse. The conspiracy cause of action concerns the Plaintiff being deliberately excluded from the class, and the Plaintiff being prevented from protecting his claim, so the conspiracy cause of action hinges on interpreting the *res judicata* effect of the orders in the class action.

130. The Richter defendants have admitted that they deliberately excluded from the class action, by design, and by request of their supposed adversary, the Plaintiff and many others who were within the class definition but who resided out of South Carolina. Actual damages from that professional negligence may be mitigated to some extent if a claim can be made for actual damages against the Diocese. Punitive damages against the Richter defendants for that misconduct cannot be mitigated by any of the claims against the Diocese defendants.

131. This cause of action presumes that the Plaintiff is not precluded in making this claim by the 2005 collusive class action involving the Diocese defendants, and can make his claim for (a) lack of Due Process in those proceedings, (b) lack of competent representation sufficient to enable this Plaintiff to avoid the *res judicata* effect of a class action, (c) the collusive nature of the class settlement, or (d) because by their terms the class action orders do not apply to the Plaintiff.

132. The Plaintiff is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and thus failing to perform a proper review for the victims of the offending priests, including the Plaintiff, or in performing that duty in a negligent manner. To the extent the Plaintiff's actual damages from the Richter defendants are mitigated by any recovery against the Diocese defendants, that credit is properly applied. No punitive damages against the Richter defendants are properly mitigated as a result of any punitive damages assessed against the Diocese defendants.

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

133. Allegations above, other than claims for relief above, are incorporated into this cause of action as if fully stated.

134. This cause of action presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect, despite insufficient Due Process from the collusive class action which was designed by all Defendants to limit the Plaintiff's ability to state his claim. This cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese defendants related to sexual abuse.

135. Defendants have conspired to injure the Plaintiff, and by those actions have caused special damage to the Plaintiff in the form of precluding him from (a) the opportunity to elect whether to influence the class action terms by stating objections, (b) the opportunity to opt out of the class action and negotiate separate settlement terms, (c) opt out and state his own claim, and (d) participate in the class settlement. The special damage is the lost opportunity to influence the class action terms or participate in the class action.

136. As set forth below in detail, the Defendants have acted in concert in numerous ways, which reflect the joint assent with minds to injure the Plaintiff, and Defendants have taken overt acts to pursue the common design to injure the Plaintiff.

137. Some actions that have been taken have been legal; other actions were legal but violated professional standards set forth in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the Plaintiff by making sure they (and other putative class members who lived out of state) could neither participate in the state court class action (including objecting to its terms so as to influence those terms) nor opt out of it, and by that deprived opportunity could be argued as being unable to bring his own action.

138. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the lawyers who purported to and did represent the class which included the Plaintiff, the Richter defendants, agreed to act against the Plaintiff's interests, and collaborated against the Plaintiff's interest, and act instead in the interest of their supposed adversary the Diocese defendants, to whom class counsel had connection and allegiances not disclosed to the class. This cause of action presumes that class counsel was not merely professionally negligent, and outmaneuvered by the Diocese defendants, but actively collaborated with the Diocese defendants.

139. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, the lawyers who purported to represent the Plaintiff, the Richer defendants, agreed to abandon the Plaintiff, and to define the class so as to include the Plaintiff, but then provide the Plaintiff with no notice by which the Plaintiff would get the opportunity to influence the class action by

objections and have the option of participating in the class action. Additionally, the Richter defendants purported to secure benefits for the Plaintiff but then failed to secure those benefits by written order.

140. This cause of action presumes that those acts were not professionally negligent actions but conscious undertakings by the Richter defendants to disadvantage the Plaintiff from making a claim against the Diocese, so as to not jeopardize the fee the Richter defendants made as the highest priority of the 2006 class action settlement once the terms of that class settlement were agreed upon with the Diocese defendants.

141. By purporting to undertake their representation in how the classes were defined, but then make no provision for the Plaintiff, the Richter defendants breached a duty to the Plaintiff that the Richter defendants assumed, either through the attorney-client relationship or through the fiduciary duty assumed by class counsel when he elected to bring a class action and then chose to define one or more classes so as to include the Plaintiff.

142. The Richter defendants have publicly denied undertaking any duty to absent members of the classes they defined, reflecting either their ignorance of the obligations assumed as a matter of law when a class action is alleged, or reflecting their intention to align with the interests of the Diocese, or both. This cause of action assumes not the professional negligence of the Richter defendants but the intention of the Richter defendants to align themselves with the interest of the Diocese defendants as the *quid pro quo* for the Diocese defendants collaborating by silence on their fee as class counsel.

143. The class allegations stated by the Richter defendants in alleging the class acknowledged that the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, filed in Charleston

County, and in the identical John Doe #53 Complaint redundantly filed in Dorchester County as case 06-CP-18-1636.

144. If "too many" of those hundreds of victims participated in the class action, including the Plaintiff, the Richter defendants would jeopardize court approval for the large fee the Diocese defendants had agreed to enable them to get. Correspondingly, if the 2006 class settlement was jeopardized the Diocese defendants might not get the ostensible protection from future suits it was colluding with the Richter defendants to obtain at the lowest possible cost.

145. All Defendants had an economic interest in colluding against the Plaintiff.

146. Consequently, defining the class so as to ostensibly include the Plaintiff without either giving him notice or securing any benefit for the Plaintiff was either professional negligence or intentional conduct by the Richter defendants to defeat the Plaintiff' ability to make a claim against the Diocese. As noted, this cause of action presumes that the Richter defendants were not merely professionally negligent but intentionally acted with the Diocese defendants to limit the Plaintiff' ability to claim against the Diocese defendants, with whom the Richter defendants shared an illicit economic interest in defeating the Plaintiff' potential claims.

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

148. In exchange for the Richter defendants abandoning the Plaintiff and all of their other out of state putative class member clients, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might independently scrutinize the

proposed class action settlement under SCRCP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request, (e) agreed to an unethical (for class counsel) settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known (so the fee could not be effectively evaluated before it was paid), (g) agreed to make no objection when the Richter defendants took more fee than was authorized by court order, and (h) agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from those Charleston County judges that might exert independent scrutiny of the class action to a state court judge in Dorchester County known to have extensive social and professional ties to the Richter defendants, in the aspiration and expectation that from that judge they would receive a less independent and more pliable oversight for the class settlement.

149. In the 2006 class settlement the Diocese defendants undertook a duty to the classes as identified, including the Plaintiff, to identify abuse victims. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval of the class settlement, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County. In circumventing the requirement in SCRCP 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester

County judge, all of the Defendants violated judicial norms and rules as well as professional standards.

150. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case, for the same client and purported class representative, then pending in the circuit court in both Charleston County and Dorchester County.

151. Before it was filed, the Dorchester County version of the already pending Charleston class action had already been settled through the 2006 class settlement. The Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge.

152. The Diocese defendants agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

Details of the Civil Conspiracy Among Defendants

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

154. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the events alleged in this Complaint.

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

Charleston, et al., 2005-CP-10-2053. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

156. That complaint for John Doe 66 made no class action allegations.

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

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

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

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

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

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

163. From the December, 2005 Complaint until June, 2006, neither the Richter defendants, as putative class counsel, nor the Diocese defendants, as a defendant in a case alleging a class, made any effort to seek class certification for the class alleged in the December class action complaint in Charleston County. In that time the public records show there were no motion hearings held in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, and sent out hearing notices, the Defendants collaborated each time to ask that the motions be continued rather than heard.

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

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

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

167. The agreement reached in that mediation is attachment A to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to

SCRCP 10(c). By its terms the 2006 class settlement agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 2005-CP-10-2053, 2005-CP-10-3293, and the case alleging a class action, 2005-CP-10-4913. The settlement purports to include the Plaintiff through the class definitions. The Defendants intended to include the Plaintiff in the class definition.

168. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 class settlement reached during a mediation of the Charleston cases.

169. The typewritten version of the 2006 class settlement agreement was approved by The Holy See in January 2007. That approval was required because the Diocese Defendants proposed to "alienate the patrimony" of the Diocese in an amount potentially greater than $10 million, $10 million being the limit of the Bishop's authority under the internal administrative practices of the Diocese.

170. The 2006 class settlement agreement was funded after approval of The Holy See.

171. As reflected in the attached handwritten version of the 2006 class settlement agreement, Attachment A, the Defendants agreed that the individual Plaintiffs in the pending actions filed in Charleston County, including the purported class representative from the Charleston case which alleged a class, would split $460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese defendants would pay only $460,000 to resolve the pending Charleston cases, which were the only cases then pending.

172. Claims of absent class members were proposed to be resolved on terms materially different than the terms which the purported class representative or representatives

received. Instead of a cash payment the same, or similar to, what the purported class representative or representatives were to receive, absent class members were to be required to first relinquish their right to bring suit and then, and only then, could they submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive from the defined maximum amount available for all such claims, minus an illicit extra fee charged by class counsel. Class members had to relinquish all rights for review to qualify for the arbitration, which was binding arbitration. Class representatives did not.

173. As alleged below, not fewer than seven devices were chosen by overt agreement among the Defendants to further the conspiracy against this Plaintiff, and other absent putative members of the classes, from being included in any recovery for the class, to limit the class recovery from being "too much," and to impede this Plaintiff from later being able to make a claim for the childhood sexual abuse of John Doe 245.

174. If the 2006 class settlement included "too many" claimants, under the 2006 class settlement agreement the Diocese defendants would be entitled to withdraw from the agreement. Class counsel would jeopardize his class counsel fee if there were "too many" claimants and the Diocese defendants withdrew, or if there were "too many" claimants and his fee agreement was not approved. The Diocese defendants wanted the 2006 class settlement agreement to be approved so they could later argue, as they in fact have argued, that no other sexual abuse claims for sexual abuse prior to 2006 could be made against the Diocese defendants if brought after the 2006 class settlement approval.

175. The Diocese defendants knew that the 2006 class settlement agreement had been negotiated and reached with an "adverse" attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar

claim against a different Diocese. The Richter defendants wanted to assure themselves of a large fee in the class action without jeopardizing that fee by getting too many class claimants against class counsel Richter's own Diocese, or risking that fee might be reviewed by an independent judge.

176. All Defendants conspired to create methods to be able to limit the number of class members who would make claims under the 2006 class settlement agreement, to limit the amount those class member claimants could recover, and to protect the Diocese defendants from any future claims. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge-Shopping to Pick the Judge

177. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver the 2006 class settlement agreement reached in the Charleston class action to be presided over not by any judge in Charleston County, where the putative class case was filed and where the class case settlement was reached, but to "shop" for a judge they selected to make class settlement determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to overlook court rules and accept fraudulent filings was desired.

178. Instead of complying with SCRCP 23, and submitting the attached 2006 class action settlement to a judge in Charleston County for approval under SCRCP 23, the Defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese defendants accept service of, newly filed class action cases in Dorchester County. The Richter defendants filed on August 15, 2006 in Dorchester County cases 2006-CP-18-1310 and 06-CP-18-1311. After those two cases were filed the Charleston class action case, *John Doe #53*

individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 2005-CP-10-4193, was redundantly re-filed in Dorchester County on October 6, 2006, with the same caption (other than the changed county name from "Charleston" to "Dorchester" and the case being assigned the different case number for Dorchester County of 2006-CP-18-1636), and with the identical allegations. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending, and already filed, and already settled, Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to avoid independent judges in Charleston County and to shop for the desired judge in Dorchester County.

179. This procedural maneuver agreed to among the Defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose when it was used in 2006.

180. Filing duplicative class actions to have the same case pending simultaneously in two different venues, particularly after the first venue's filing is settled, is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court and to the Plaintiff, ostensibly included in each of the duplicative complaints through the class definition used in each of those complaints. The Plaintiff was deprived of Due Process through the conduct of the Defendants.

181. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending, and all were included within the 2006 class settlement agreement.

182. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement among the Defendants, simultaneously pending in two separate counties, for the same client, same class representative, and same class.

183. Dorchester County was chosen by agreement of the Defendants so as to "judge shop" for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, any pre-award fairness hearing, and any post-award fairness hearing. The shopped-for judge was expected to tolerate factual misrepresentations and fraudulent filings by the Defendants, an expectation that was rewarded when fraudulent filings were made, by agreement among the Defendants, and the pliable, shopped-for judge took no action concerning those fraudulent filings, either before the fraudulent nature of those filings was explicitly disclosed or after the fraudulent nature of those filings was explicitly disclosed.

184. The defendants had found a judge willing to look the other way when presented with misconduct by class counsel.

185. The Defendants all agreed with this strategy of seeking a pliable state court judge, and consented to the "judge shopping" so as to avoid having to submit the class allegations, and proposed class action settlement, for approval by any judge in Charleston

County. The Defendants feared completely objective judicial oversight by any of the judges in Charleston County.

186. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the shopped-for judge designate the cases as complex, and assign the cases to the shopped-for judge. That designation was improper under the rules applicable at the time, as set forth in more detail below, as Defendants joined together to misrepresent facts to the shopped-for judge in order to obtain complex case designation. Alternatively, the shopped-for judge was informed of the false representations of fact when the request for complex case status was made, and the shopped-for judge agreed to look the other way to permit the false representations of fact.

187. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the 2006 class settlement. If the request had been legitimate, and the same request had been made and granted in Charleston, only a single judge would have presided over all aspects of the settlement. But the Defendants feared that any Charleston judge would exert independent oversight of the 2006 class settlement, and Defendants sought to avoid independent oversight.

188. Other than to shop for a particular judge, there was no legitimate reason to redundantly file case 2005-CP-10-4913 from Charleston County as case 2006-CP-18-1636 in Dorchester County.

189. As soon as the shopped-for judge assigned the Dorchester actions to herself, the Defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

190. No motion was filed in Charleston to approve the 2006 class settlement reached in the Charleston cases. All Defendants consented to not filing such a motion.

191. SCRCP 23 was not complied with as to the 2006 class settlement reached in the Charleston class action. All Defendants consented to not complying with SCRCP 23 in Charleston County, and all Defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge in Dorchester County.

192. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases. Nor was any notice given to the Charleston County judge that the parties were seeking a voluntary dismissal without prejudice of a case that alleged a class, or that the parties did so because a class settlement had been reached.

Conspiracy Technique Two: Using Complex Case Designation Improperly.

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

194. At that time, the Charleston cases were still pending, including the duplicative class action filings.

195. The July 26, 2006 order of the South Carolina Supreme Court, which at that time enabled complex case designation, approved a particular form for use with motions to seek complex case designation. Among other things, that motion required the Defendants in this case to cooperate to represent to the shopped-for judge that certain facts applied to the action for which complex case status was sought. The form states, with emphasis added:

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

196. At that time, the Charleston cases were still pending, and a class settlement had been reached in those cases which, if approved, would resolve all cases. The emphasis added to the portion quoted above is the false portion represented to the shopped-for judge.

197. By agreement among the Defendants, and despite the provisions of SCRCP 23, no notice was given to class members of the dismissal of the Charleston class cases.

198. By agreement among the Defendants, no notice was given to the Administrative judge for Charleston County, at that time Judge Jefferson, that when the Defendants sought a voluntary dismissal without prejudice of the pending Charleston County cases that one of those cases alleged a class.

199. Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached at the time the Defendants sought complex case designation. Alternatively, the Defendants disclosed to the shopped-for judge that they fraudulently sought complex case designation, under a false representation of facts, and the shopped-for judge agreed to overlook the false application. As a second alternative, Defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

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

Conspiracy Technique Three: Agreeing to an Unethical Attorney Fee for Class Counsel.

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

202. As set forth in the affidavit of Michael Virzi, attachment B to this complaint, and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese defendants to agree to it. Plaintiff at no time consented to the Richter defendants negotiating such a settlement, and it was not disclosed to him until 2016.

203. At page 13, paragraph 6B, in the typed version of the 2006 class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure set forth in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

204. Representation of the Plaintiff by the Richter defendants in proposing an unethical fee was inadequate, and did not comply with applicable professional standards. Alternatively, that representation breached a fiduciary duty to the Plaintiff.

205. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits the Diocese defendants was willing to pay, and were approved by the Holy See to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid before any class member could make a claim, and paid before any class member could be or would be paid, each of which made it more difficult to evaluate the fee before it was paid, and then all parties agreed to seek no post-award fairness hearing.

206. The Richter defendants sacrificed the interests of absent putative class members, such as the Plaintiff, and (after class approval) of absent class members, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to that class counsel fee as

the price of obtaining the illicit cooperation of the Richter defendants in structuring the 2006 class settlement resolution that provided only a fraction of the relief the Richter defendants would agree to accept in a case against a Diocese other than Richter's own Diocese, the Diocese defendants.

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

207. The fourth technique to conspire against the Plaintiff was to make no disclosure to him, or other class members (known or absent), of either the superior settlement terms agreed to by the Diocese defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who in 2007 opted out of the class settlement.

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

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

210. In addition, the terms for the opt-out abuse victims exceeded the low bar of recovery the Richter defendants agreed to set for class member recoveries, to further protect Richter's own Diocese. The opt-out victims received more than was received by any comparable abuse victim who stayed in to participate in the 2006 class settlement.

211. In addition to the fee approved by the Court, the Richter defendants charged class members who participated in the 2006 class settlement an additional fee, not approved by the court, to go through the arbitration mechanism of the 2006 class settlement. That additional fee was not authorized by any court order, and it exceeded the fee approved by the shopped-for judge.

212. When class members were informed that they were to pay a fee for going through the class settlement arbitration process, they were not told that the court had already approved a fixed fee for class counsel. Nor was the additional fee approved by the shopped-for judge as part of the pre-award fairness hearing, and of course by agreement of all parties in the class action there has been, to date, no post-award fairness hearing. The shopped-for judge agreed to not have any post-award fairness hearing so as to not jeopardize class counsel's fee recovery in light of the actual payments to class members made from the class settlement. Class counsel then used that there would be no post-award fairness hearing to charge an unauthorized fee.

213. No notice was given to any class member, including the Plaintiff, about the terms of the opt-out settlements. Had the been given notice of the terms available for the class, and the terms negotiated by the opt-out abuse victims, and the terms applicable to the class representatives, the Plaintiff could have exercised a choice to state objections to the terms for the class, could have elected to receive one or the other recoveries for the class or the persons who opted-out in 2007, or could have elected to preserve his claim against the Diocese defendants. The Plaintiff was abandoned by his attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed by class counsel to the Plaintiff, by the Richter defendants agreeing to define the class so as to

ostensibly include the Plaintiff, were breached when they provided no notice to the Plaintiff of the better terms obtained by others who opted out.

214. As alleged below, the abandonment by the Plaintiff was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the Plaintiff, or was a breach of the fiduciary duty assumed by the Richter defendants towards the Plaintiff. In this cause of action those duties are alleged to have been consciously abandoned, not negligently ignored, as the Richter Defendants have represented, in cooperation with the Diocese defendants so as to not interfere (from class counsel's perspective) with the fee class counsel obtained, and so as to not interfere (from the perspective of the Diocese defendants) with the *res judicata* protection the 2006 class settlement enabled them to assert. The damages for the conspiracy claim are that lost opportunity for this Plaintiff.

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

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

216. The first general term in the 2006 class settlement was that there would be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

217. The second general term in the 2006 class settlement was to provide a $12 million settlement fund without risk that the fund would under any circumstances be exceeded. The effect of that provision was to compromise the interests of sexual abuse victims, to prevent the Diocese from being unable to withdraw from the settlement by keeping the recovery from exceeding $12 million (the point above which the Diocese could withdraw), and to protect the

Diocese defendants by depressing or eliminating any other recovery for any other potential claimant, such as the Plaintiff.

218. The third general term in the 2006 class settlement was "Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims." This provision enabled a modest cap placed on all abuse claims.

219. The fourth term in the 2006 class settlement was that the court would be asked to approve a fixed fee for class counsel "between $950,000 & $2.5 million."

220. The fifth general term in the 2006 class settlement was to establish that four individuals would allocate among themselves $460,000.

221. The sixth general term in the 2006 class settlement was that the four individuals would be paid whether or not the court approved a class settlement.

222. The seventh general term in the 2006 class settlement was that the seven terms took the form of an offer from the Diocese and "shall be acted upon with reasonable promptness" by the four individuals who would allocate $460,000 among them.

223. The four individuals referred to in the 2006 class settlement agreement accepted the offer from the Diocese, and allocated among themselves $460,000 to settle their claims whether or not a class was approved. None of those individuals received more than $160,000. It is not yet known what portion, if any, was allocated to legal fee for class counsel.

224. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class. Their claims were resolved upon acceptance, in 2006.

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

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

227. The Diocese defendants paid the $460,000 portion of the settlement on November 20, 2006.

228. The individuals who purportedly represented the classes in the 2006 class settlement, whose claims had been "resolved" in 2006, did not in 2007 qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nor could they qualify as class representatives when the class was approved in 2007. Nevertheless, by cooperation and agreement among the Defendants they were falsely designated as class representatives in subsequent Dorchester County cases, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition to be included in the class.

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

230. In the handwritten version of the 2006 class settlement, when the parties reserved details for later specificity ("Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims"), those details were reserved so the Defendants could work backwards from the settlement fund, minus class

counsel's fixed fee, to enable adjustments to be made to the notice to the class and the recovery to the class members, so the recovery to class members would not be "too much." Neither the fee for the Richter defendants nor the finality desired by the Diocese defendants would be jeopardized by having "too many" sexual abuse victims served by the 2006 class settlement agreement.

231. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the Plaintiff, was to preserve class counsel's fixed fee and to get payment of class counsel's fixed fee. The second priority of the Richter defendants, after getting approval and immediate payment of their court approved fee, was to charge more than the court approved fee. (Each of those priorities being more important than the interests of the class members or absent class members). That is why the attorney fee is fixed, and why the fixed fee takes priority over the recoveries of the class members who resolved their claims under the 2006 class settlement agreement, and why the Richter defendants charged class members an additional, and unauthorized, fee.

232. The highest priority of the Diocese defendants, after their willingness to pay class counsel's unethical fixed fee, and make no objection to class counsel charging a fee greater than was approved by the court, was to either exclude persons such as Plaintiff, or to try to limit as best they could the possibility of any future recovery to persons such as Plaintiff, so that within the relatively modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims by the same counsel against another Diocese, the Diocese could argue a *res judicata* benefit from the 2006 class settlement without having to

pay meaningful relief to class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all Defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, and for notice to be designed to not inform all persons within the class definitions of the settlement itself.

233. The Diocese defendants knew, or should have known, that the systematic administrative practices of deceit and deception about sexual abuse practiced by the Diocese defendants exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

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

235. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to the 2006 class settlement, hoping that settlement would define a class so as to enable the Diocese defendants to give no notice to the Plaintiff then to argue to exclude by *res* judicata any later claim made by the Plaintiff. In that manner the Diocese defendants could achieve a possible protection for the Diocese at a fraction of the cost of a proper settlement with all sexual abuse victims. The Diocese defendants realized they could capitalize on the close ties to the Diocese defendants of the Richter defendants, and the willingness of the Richter defendants to sacrifice, for a fee, the interests of these and other Plaintiff, and enabled the Diocese defendants to try to minimize recoveries to all sexual abuse victims, yet still get a class approved.

236. All Defendants needed to avoid meaningful court oversight of the 2006 class settlement to achieve their collective goals of limiting the interests of absent members of the

class, so all Defendants agreed to "judge shop" to avoid oversight by any Charleston judge, and to obtain a lax oversight by the shopped-for judge they desired.

237. When the Defendants realized that "too many" victims, such as the Plaintiff, might come forward, either within in the class action or later in time outside of the class action, they changed, by agreement, the notice to the class proposed to the shopped-for judge, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement at Attachment A to this complaint. Each of those additional terms was developed by consent of the Defendants.

238. The Defendants also agreed to misrepresent to the shopped-for judge, but to not submit in written form, a proposal to address persons, such as the Plaintiff, who were absent members of the class. The Defendants represented on the record to the shopped-for judge that relief would be offered to the Plaintiff and other absent members who got no notice, when in fact the Defendants had no intention of providing relief to the Plaintiff or other absent class members.

239. Nor did the Richter defendants undertake to secure in written orders those assurance from the Diocese.

240. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiff. All Defendants took deliberate action to permit victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members. Doing so was also negligence by the Defendants, but this cause of action presumes that the conduct was intentional, so as to exclude the possibility of the Plaintiff being able to make a claim for his childhood sexual abuse.

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

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

243. Nor were class members advised, when they were charged an additional fee not authorized by any court order, that the Richter defendants had already been paid the fee approved by the court. All Defendants collaborated to avoid there being a post-award fairness hearing, and continue to so collaborate.

244. No Defendants disclosed that the Richter defendants were submitting fraudulent information to the shopped-for judge, or that the Diocese defendants had agreed to overlook the fraudulent information submitted by the Richter defendants to the shopped-for judge, to support the fee class counsel claimed. No Defendant disclosed that the Diocese defendants had agreed to make no mention of those various fraudulent time entries by the Richter defendants. Nor had any of the Defendants disclosed that they had agreed they would request no post-award fairness hearing.

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

246. The Defendants agreed to propose giving no notice nationwide, or even notice outside the immediate area of South Carolina, and did so in order to eliminate abuse victims such as the Plaintiff. Defendants set the categories and recovery limits on the class members in the

arbitration, and set the binding nature of the arbitration, as means calculated to enable the Richter defendants to charge an unauthorized fee in the arbitration.

247. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter defendants would be paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese defendants to abandon clients such as the Plaintiff, impair the Plaintiff's ability to make any claim, to generally depress the recoveries to sexual abuse victims, to serve the interests of the Diocese defendants, and to enable the Richer defendants to charge class members additional and unauthorized fees.

248. The Richter defendants abandoned absent class members such as the Plaintiff, by making no provision for the Plaintiff and by failing to obtain in a written order the relief the Richter defendants claimed to have achieved for absent class members such as the Plaintiff. All other Defendants cooperated with that abandonment by class counsel.

Conspiracy Technique Six: Providing False Information to the Court

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

250. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as case 2005-CP-10-4913 through the 2006 class settlement. The identical case as re-filed in Dorchester County was collusive, and was filed in Dorchester County only to avoid oversight

by any Charleston judge and pursuant to the defendants' agreed upon plan to shop for a particular Dorchester County judge.

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

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

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

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

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

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

257. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese defendants made no mention of the false information

filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese defendants getting the benefit they have claimed entitles the Diocese defendants to *res judicata* protection of the class settlement, and was the means by which the Defendants conspired to try to eliminating claims by persons such as the Plaintiff from being able to make any claim against the Diocese.

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

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

260. Whether or not the Plaintiff is barred from claims against the Diocese defendants by the *res judicata* effect of the class action, or the charitable immunity defense waived as to persons in the class definition, or the statute of limitations waived as to persons in the class definition, or for any other reason, duties to him in the class action were breached by the Defendants, and special harm has been caused to the Plaintiff by the conspiracy of the Defendants because he lost the opportunities to either influence the terms of the class action, opt out of it, or participate in it.

Conspiracy Technique Seven: Obtaining no Written Order for Absent Class Members Who Got No Notice.

261. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was to obtain no written order to secure representations made on the record to the shopped-for judge about relief supposedly available to absent members of the class who got no notice.

262. All Defendants in 2006 were conscious that choosing to define the classes so as to include these Plaintiff served the interests of the Diocese at the expense of persons such as the Plaintiff.

263. The Richter defendants abandoned the Plaintiff as a putative member of the class in agreeing to provide him no notice and then by providing him no notice.

264. The Diocese defendants conspired with the Richter defendants to submit for court approval by the shopped-for judge the 2006 class settlement agreement that was calculated to omit absent members of the class such as the Plaintiff, and all persons situated similarly. The Diocese has contended that the 2006 class settlement agreement bars the Plaintiff from being able to make any claim due to the *res judicata* effect of the class action, without having to compensate for his sexual abuse.

265. The Diocese defendants conspired with the Richter defendants in failing to submit for court approval by the shopped-for judge any order which provided that the absent members of the class could obtain relief consistent with the 2006 class settlement agreement. That failure was calculated to prevent the Plaintiff, and all persons situated similarly to him, from having any recovery against the Diocese defendants.

266. No effort was made to protect absent members of the class, such as the Plaintiff, by how the class was defined or any order which comprehensively embodied how persons who

got no notice would be treated. Notice was known to be insufficient for the persons within the class definition, and the Defendants all claimed on the record to the shopped-for judge that relief would be provided for the Plaintiff and other absent members. Those representations were false, and were not embodied in any written order.

267. Duties to the Plaintiff in the class action were breached by the civil conspiracy among the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy among the Defendants.

268. The parties failed to embody in any order in the class action any protections for the Plaintiff as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the Plaintiff from being able to make a claim, while retaining the argument that all absent class members were barred by *res judicata*. The conduct by all Defendants demonstrate that the representation of the class by class counsel was inadequate, but this cause of action presumes not just that class counsel was professionally negligent but that the Richter defendants consciously abandoned the Plaintiff so as to not jeopardize class counsel's fixed fee, and so as to protect his own Diocese from the greater relief that even class counsel himself insisted on from a Diocese other than his own. The defendants conspired specifically to defeat the interests of persons such as the Plaintiff, to cause him special harm by giving him not even a chance at notice of the class action, or the ability to opt out, or the ability to protect his claim from the prohibitions of the class action.

269. The injury to the Plaintiff from the conspiracy engaged in by the defendants harmed the Plaintiff in a manner different from other causes of action. The Plaintiff was improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the Plaintiff being unable to influence the corrupt course of the class action, and its

corrupt features, because he was unable to participate in the class action or opt out of the class action. Plaintiff was deprived of the opportunity to influence the class suit, and to try to assist himself and other abuse victims from not being limited to the corrupted procedures and manipulations of the class suit. Among other things, the Plaintiff was unable to participate to influence the miniscule recovery allocated for parent and spousal claims because in the class action those claims were not brought using the common law "loss of services" cause of action.

270. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiff was damaged, and is entitled to actual and punitive damages from the Defendants as a result.

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

271. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated.

272. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making claims against the Diocese, or if he could make a claim he was unable to fully mitigate the actual damages caused by the professional negligence of the Richter defendants.

273. The punitive damages Plaintiff should be entitled to from the Richter defendants are not mitigated by any claims or recovery against the Diocese defendants.

274. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a copy of an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants.

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

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

277. When the 2006 class settlement agreement was formally typed and formally approved by the Richter defendants, the Holy See, and the Diocese defendants, the illicit agreement by Defendants on "judge shopping" had been accomplished, and the 2006 class settlement agreement reached in the mediation of Charleston cases was now claimed to be a proposed settlement of all prior cases, both the Charleston cases listed in the 2006 class settlement and the post-settlement Dorchester County class actions.

278. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the Plaintiff.

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

280. On the record to the shopped-for judge the Defendants agreed that relief would be provided for absent members of the class who got no notice of the class settlement. Those representations were false. The Richter Defendants were professionally negligent in failing to provide a written order to secure the representations made on the record.

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

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

283. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they abandoned the Plaintiff and acted so as to harm his interests, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the Plaintiff reasonably informed, failed to provide him with information with respect to obtaining his informed consent, failed to consult with him about the means for accomplishing his objectives, represented him without his consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal, as set forth in the affidavit of Michael Virzi at Attachment B.

284. No provision of any type, at any point, was made in the orders of the shopped-for judge overseeing the class action to protect absent putative class members who received no notice of the class action.

285. Any court approval of the 2006 class settlement was deficient in terms of protecting the Plaintiff because the court overseeing the class action had been shopped-for by the Defendants, and had been given, by agreement of the Defendants, fraudulent information on which to base decisions.

286. The Richter Defendants abandoned their absent putative class member clients such as the Plaintiff by failing to secure in a written order the provisions which supposedly gave him mild protection in the form of the modest recovery of the class action.

287. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court, and failing to protect the Plaintiff's interest in the written orders.

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

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

290. As a result of his attorneys, the Richter defendants, abandoning the Plaintiff, he had no opportunity to participate in the class action, to influence the class action, or to opt-out of the class and pursue either the more favorable terms available to those other persons who opted out, or pursue his claim independently. The acts and omissions of the Richter defendants have caused damage to the Plaintiff.

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

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

292. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated.

293. The Richter defendants chose to allege a class action and undertook to define the classes in the class actions so as to have no geographical limit on the classes.

294. All Defendants agreed on how the classes were defined.

295. In choosing to define the classes so as to include the Plaintiff, the Richter defendants each assumed fiduciary obligations to the Plaintiff, who was a putative member of one of the classes the Defendants elected to define.

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

297. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiff by failing to secure for him even the modest relief of the class action, or to preserve his ability to make his claim independent of the modest relief obtained by the Richter defendants for sexual abuse victims.

298. The state court judge overseeing the class action was shopped-for by all Defendants.

299. The state court judge was not asked to preserve in any written order any rights for absent members of the class who received no notice, or to protect the rights of those persons.

300. The Richter defendants claimed to protect the Plaintiff but then failed to do so. The Richter defendants were negligent in failing to do so, and were out-maneuvered by the Diocese

defendants, who had made representations on the record but then succeeded in keeping those representations from being embodied in any court order.

301. Once the Richter defendants were paid their court-approved fee, they were ineffectual in securing the rights of the Plaintiff to preserve his claim.

302. The Richter defendants in each of its 2005 Charleston class action filing, the 2006 class settlement agreement, and in the October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the Plaintiff.

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

304. The Richter defendants contend that they had no obligations to absent class members, indicating conclusively their lack of understanding of the obligations undertaken as a matter of law when class allegations are made.

305. The Richter defendants each breached their fiduciary duties to the Plaintiff, and as a result, the Plaintiff has been refused any compensation by the Diocese defendants, who have used the 2006 class settlement as a shield. The Richter defendants were negligent in failing to protect the Plaintiff's interests.

306. Having "too many" claimants also was not in the interest of the Richter defendants or the Diocese defendants, so the Richter defendants protected their own interest in their fee and the interests of the Diocese above the interests of the Plaintiff. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class, or to the Plaintiff. To promote the interests of the Diocese defendants in trying to later enable the Diocese defendants to argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote

ahead of the interests of the Plaintiff their own interest in their fixed fee, the Richter defendants failed to secure in any written orders any protections for absent members of the class such as the Plaintiff, even though the class compensation was among the lowest-known victim compensation proposals.

307. As a result of the Richter defendants abandoning the interests of the Plaintiff, and breaching the fiduciary duties the Richter defendants owed to him, the Plaintiff has been damaged by having his claims against the Diocese defendants interfered with, and a barrier created to those claims that would not have existed but for the negligent conduct of the Richter defendants.

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

For a Sixth Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty by Diocese Defendants

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

310. The Diocese defendants aided and abetted the breach of fiduciary duty by the Richter defendants.

311. In pleading a class action the Richter defendants assumed a fiduciary duty to the Plaintiff.

312. In the conduct to "shop for' the Dorchester County judge, to define the class, and to give the Plaintiff no notice, as alleged above, the Diocese defendants participated with the Richter defendants in limiting the ability of the Plaintiff to make his own claim against the Diocese for childhood sexual abuse.

313. The Diocese defendants joined with the Richter defendants in making representations on the record to the shopped-for judge that supposedly protected the interest of

the Plaintiff as to either each being able to bring his claim at a later time or being able to participate, at minimum, in the intentionally depressed recovery available to class members in the 2006 class settlement. The Defendants then failed to secure those representations in any written order, enabling the Diocese defendants to deny the representations, and act as if those representations had never been made.

314. The Diocese defendants knowingly participated in the breach of the fiduciary duty owed to the Plaintiff by the Richter defendants.

315. The Plaintiff has been damaged by the aiding and abetting by the Diocese defendants and is entitled to actual and punitive damages as a result.

For a Seventh Cause of Action
Unfair and Deceptive Trade Practices by the Richter Defendants

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

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

318. In practicing law in Charleston County the Richter defendants each engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Richter defendants advertised and offered for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. In electing to bring a class action complaint for sexual abuse victims of the agents and employees of the Diocese defendants, the Richter defendants specifically offered a service to the people of South Carolina, and purported to alter the legal rights of the public as to that sexual abuse, including the Plaintiff's rights.

319. In making that invitation, the Richter defendants assumed the duty to ensure that its offer of services did not disadvantage the Plaintiff, and assumed the duty that its services would be free of unfair and deceptive trade practices.

320. In 2006 the Richter defendants entered into a class settlement agreement with the Diocese for victims of sexual abuse by agents and employees of the Diocese defendants. The class settlement was ostensibly to address the known history of priests and other employees who sexually abused minors, but as effectuated by the Richter defendants, the primary purpose of that class action was to enrich the Richter defendants at the expense of sexual abuse victims and, through unfair and deceptive trade practices, to protect not his clients but the Diocese defendants from (a) future claims for sexual abuse, and (b) to depress the value of sexual abuse claims against the Diocese defendants.

321. Unfair and deceptive trade practices were pursued in furtherance of the class action, as alleged above, including false representations to the court, violations of professional standards, judge-shopping, collusive conduct, abuse of court rules and procedures, and actions which violate professional standards, as pleaded with specificity above.

322. The public interest was affected by the 2006 class settlement because the offering was made to the public, the advertising was made to the public, members of the public (other than those who lived out of state) were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved by the Court predicated on either false representations made to the Court about how the person such as the Plaintiff would be accommodated, or through a shopped-for judge who was aware that the representations being made were false.

323. Among the false statements made at the time by the Defendants was Bishop Baker's public statement that the proposed class resolution was "for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades." At the time that claim was made, all Defendants were aware that the 2006 class settlement proposed relief about which only persons in and around South Carolina were to be informed, and that no provision had been made for persons, such as the Plaintiff, who lived out of state and by design got no notice of the class.

324. In its public statements, acquiesced in by the Richter defendants, the Diocese defendants overtly misrepresented the reach of the proposed 2006 class settlement. No party disclosed that in fact the 2006 class settlement agreement was designed, as its first priority, to obtain a fee for class counsel, with all other relief to clients secondary to that fee, and that the 2006 class settlement agreement was designed so as to omit relief to many persons who had been sexually abused, and was designed to provide among the worst recovery for sexual abuse victims in any case nationwide, was designed to depress the value of sexual abuse claims against class counsel's own Diocese, and was designed by class counsel to protect the Diocese defendants from future claims, and to inhibit the Plaintiff from being able to make any claim.

325. A circuit court judge to approve the class settlement was "shopped for" and selected by the Richter defendants, with collaboration of the Diocese defendants. The Richter defendants did not want any Charleston County judge to preside over the 2006 class settlement agreement, out of concern that the judge might be fully independent.

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

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

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

328. The Richter defendants had extensive and life-long ties to the Diocese defendants, and was known to the Diocese defendants to be willing to compromise the interests of the absent class members, including the Plaintiff, in exchange for a fixed fee payment.

329. With the cooperation of the Diocese defendants, the Richter defendants conceived of a plan to commit a fraud on the Court and the public by representing to the court and the public, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, and with no protections for persons who in 2006 had repressed memories of abuse, while giving only geographically limited notice to the class and in affirmatively misrepresenting to the court the relief which would be available to the Plaintiff. As long as their fee was paid, and paid first, before any class member had received notice and before any class member had made a claim, and as long as the Richter defendants were able to take from the class without objection from the Diocese defendants unauthorized additional fees, the Richter defendants were expected by the Diocese defendants to be willing, and were in fact willing, to abandon the interests of the absent class members the Richter defendants represented. Instead, the Richter defendants accommodated the interest of the Diocese defendants at the expense of the absent members of the class they represented.

330. All Defendants collaborated to submit false information to the Court, and no Defendant objected when any of the false information was submitted by any of them or by

their experts. Part of the collaborative agreement among the Defendants was to remain silent while false information was submitted.

331. To gain court approval of the class settlement from the shopped-for judge without disclosing his actual intention to compromise the interest of the absent class members such as the Plaintiff, the Richter defendants made overtly false representations of fact to the court. Among those false representations was that there was an "understanding" among all Defendants in this action "as to what would happen" to any person within the class definition who "shows up" (as put by the Diocese defendants) outside of the class notice procedure. That "understanding" communicated to the Court was never placed in any written order by the shopped-for judge and, of course, there is no such "understanding" that the Diocese defendants agree to, nor is there any way to enforce the "understanding." It was falsely represented to the shopped-for judge overseeing the 2006 class settlement that if "someone pops back up who should have gotten notice who didn't get notice," the Diocese represented, with the Richter defendants:

> I think we [the Diocese and class counsel] have an understanding as to what would happen to those particular folks, which would really be our problem, and I think that what we've discussed allows us to proceed with the agreement we've signed on January 12th [2007]. And then if that person shows up then we [the Diocese] would have to deal with that.

332. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. The representation is false, and is contained in no written orders of the court, so is unenforceable, as the Richter defendants, who were acting in the interests of the Diocese defendants and themselves, intended it would be. The representation was made in a hearing in the class action proceedings for which no other interested parties were given notice, even those who had already made an appearance and stated objections to the class action settlement. Only

in 2009 was the transcript disclosed in the course of other litigation over the collusive class action proceedings.

333. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. It was acquiesced in by the Richter defendants.

334. In fact, the Richter defendants were aware, and had alleged, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves. The Richter defendants were also aware that some abuse victims repressed memories of their childhood sexual abuse and in 2006 could reasonably be expected not to recall childhood abuse within the timetable of the class action claims period.

335. To get approval that protected the Diocese from absent class member claims, including the Plaintiff's sexual abuse claim, the Richter defendants falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Richter defendants and the Diocese defendants assured the court, on page 14 of the same transcript, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

336. The Richter defendants, on pages 16 - 17 of that same transcript, summarized to the shopped-for judge, falsely, that the supposed position of the Diocese as "what the Diocese has come to is that if anybody is missed . . . the diocese waives all the same defenses that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards." Those terms were supposedly submitted by letter by the Diocese, but were entirely false.

337. The Richter defendants submitted to the shopped-for judge who oversaw the 2006 class settlement no written orders to embody the supposed "understanding."

338. Nor did the Richter defendants disclose that the representations were false when the shopped-for judge observed, as to the Diocese, on page 25 of that same transcript, "what they [the Diocese] say is if you come forward in the future we will treat you just the same as we have treated these individuals and the relief is available for you." Nor did the Richter defendants submit any proposed orders to embody that representation.

339. The Richter defendants intended on July 13, 2007, to create the false impression with the Court that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend relief to that victim. In making the false representation that they made no effort to embody in any court order, the Richter defendants were operating in the interest of themselves and the Diocese defendants, not in the interest of absent members of the class. The Richter defendants intended that the shopped-for judge would rely on the statement, and the Court did rely on the statement. However, the Court did not embody the understanding in its order, the Richter defendants made no request that the court do so, and the Diocese defendants refuse to comply with the "understanding." That representation by the Richter defendants was false when made, and was known to have been false when made.

340. The Diocese concealed the falsity of class counsel's representations to the shopped-for judge. The true position of the Diocese has been, starting in 2009, to deprive other sexual abuse victims of any relief, using the class action suit as the rationale for doing so. That fraudulent concealment by the Diocese became known to the Plaintiff only in 2016.

341. The shopped-for judge who oversaw the 2006 class action settlement relied on the statements by the Richter defendants, and silence by the Diocese, to extend in the court's order of July 30, 2007 approving the class settlement, at page four, this statement:

> The Diocese has further stated that it understands that **any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement**. Further the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Emphasis added. While one might expect that the order's language would reflect the conduct of the Diocese defendants or what a court would enforce, in fact the shopped-for judge reflecting only what the Diocese has "stated" has proven to be an unenforceable order, as the Richter defendants intended in 2007 when they made no effort to seek an order to that effect.

342. Along with the Richter defendants, the Diocese defendants intended that the shopped-for judge overseeing the 2006 class settlement would rely on their collective statements, silences and conduct, to form the impression recorded in the court's 2007 order, even though the impression was false and neither the Richter defendants nor the Diocese had any intention, in 2007 or since, of honoring the assurances given to the shopped-for judge overseeing the 2006 class settlement.

343. The Diocese defendants, as intended by the Richter defendants in 2007, refused to honor the assurances given to the trial court by the Richter defendants, and which the Court noted in its July 30, 2007 order at page 4 without actually ordering. Instead, the Diocese continues to assert the defenses it had waived for class members, and has claimed the *res judicata* effect of the class action which the Diocese defendants had disclaimed, and have acted exactly contrary to the assurances to the Court by the Richter defendants, and the public

statement by then Bishop Robert Baker in January, 2007, that the Diocese intended a just resolution for every person who had been abused within the Diocese of Charleston.

344. The false statements by the Richter defendants, and the irregular conduct in the course of the class action by the Richter defendants, and the Richter defendants acting in the interest of themselves and the Diocese defendants rather than in the interests of the absent members of the class, constitute unfair and deceptive trade practices which have damaged the Plaintiff.

345. The Richter defendants made their false representations to the shopped-for judge overseeing the 2006 class settlement for the purpose of gaining that court's approval of a class settlement with only limited notice to the class and with no protections for absent members of the class. When the 2007 order mentioned the "understanding" but did not order it, the Richter defendants did nothing to seek modification of the order or to appeal the order.

346. The Richter defendants committed fraud on the Court, on the public, on this Plaintiff, and on all sexual abuse victims born before August 30, 1980, the definition used in the 2006 class settlement. The Richter defendants also engaged in unfair and deceptive acts and practices in violation of South Carolina law, which have disadvantaged the Plaintiff. In doing so the Richter defendants were acting in the interests of themselves and the Diocese defendants, not in the interests of the Plaintiff they purported to represent.

347. All of the conduct by the Richter defendants, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the 2007 representations made to the Court by the Richter defendants and acquiesced in by the Diocese defendants. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action, as

class counsel intended, many of whom had not recalled their abuse by the 2009 conclusion of the class action or the earlier deadline of the class claims procedure, have since been refused relief by the Diocese when they made a claim for relief.

348. The disregard by the Richter defendants for absent members of the class, the misconduct throughout the class action, and the disingenuous representations by the Richter defendants to the shopped-for judge who had been hand-picked to oversee the 2006 class settlement agreement are unfair and deceptive acts or practices that affected the relief awarded in the class action, and affected the Plaintiff by disabling their claim against the Diocese for the childhood sexual abuse of the Plaintiff.

349. The conduct by the Richter defendants is part of an intentional effort to mislead the Court, and to act against the interests of the absent members of the class and instead to act in the interest of themselves and the Diocese defendants, with whom the Richter defendants are entwined.

350. The Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Richter defendants. Specifically, the Plaintiff was unable to obtain the relief promised by the Richter defendants, was unable to preserve his claim after he was abandoned by the Richter defendants, and due to the misconduct of the Richter defendants, to date has been unable to maintain his claim against the Diocese. As a result the Plaintiff is entitled to recover actual damages, trebled as provided by law, for the unfair and deceptive trade practices of the Richter defendants, with costs and disbursements and attorneys fees as provided by statute.

351. The secretive and disingenuous conduct by the Richter defendants, and the misconduct displayed during the class action, is offensive to public policy, and is immoral,

unethical, and oppressive. The Richter defendants made a calculated business decision to advance ahead of their class member clients' interests, and the interests of the absent members of the class, first the Richter defendants' own financial interests, then the interests of the Diocese defendants.

352. The Richter defendants collaborated with the Diocese defendants to design a compensation program for sexual abuse victims which specifically, and intentionally, excluded many victims, reduced the financial recovery for victims, depressed the financial recovery for other victims, and cut off the ability of absent members of the class to make claims. Each of those goals by the Richter defendants was illicit, and was an unfair and deceptive trade practice for an action which purported to bring a benefit to a class. For those reasons the Richter defendants collaborated with the Diocese defendants to "shop" for a hand-picked judge to oversee the 2006 class settlement so as to avoid independent scrutiny of the 2006 class settlement. The Richter defendants engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the Plaintiff.

353. The Richter defendants also deceived their own class member clients in not disclosing the court-awarded fee or that they charged class member clients additional fees not awarded by the court.

354. The Richter defendants took no appeal from the July 30, 2007 order, and sought no modification of that order, or for any subsequent order of the shopped-for judge who oversaw the 2006 class settlement.

355. The Richter defendants are bound by the July 30, 2007 order in the class action, and by the misrepresentations made to the court to obtain that order. Those terms abandon the absent class members such as the Plaintiff.

356. The Richter defendants intended the collusive class action to terminate liability of the Diocese, to limit overall compensation paid to abuse victims, and to do so at a fraction of the recovery that a truly adversarial counsel might have demanded, including the Richter defendants when litigating against a Diocese other than Richter's own. The Richter defendants acted in the interest of themselves and the Diocese, ahead of their ostensible clients and absent class members, such as the Plaintiff.

357. The unfair and deceptive acts and practices of the Richter defendants have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese defendants have repeatedly refused (as intended by the Richter defendants) relief for multiple persons who have come forward having not gotten notice of the collusive 2006 class settlement. The practices engaged in by the Richter defendants violated professional standards and court rules, violated legal ethics, made misrepresentations to the Court, and (in collaboration with the Diocese defendants) making misrepresentations to the public, were all done to advance the Richter defendants' own interests.

358. The Richter defendants calculated that their personal and professional connections to the shopped-for judge would permit false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, the Richter defendants were correct, as even after evidence of the false practices were laid before the shopped-for judge, no inquiry was made.

359. The Richter defendants further calculated that their political status as persons who formerly held political office and with political connections to the South Carolina Supreme Court and the court's mechanisms for enforcing professional standards of conduct would cause even the South Carolina Supreme Court to look away from the false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, it is not yet known if the Richter defendants will prove correct.

360. The Plaintiff is neither politically connected nor a personal friend of any powerful person, and has no choice but to rely on the theoretical interest that a judge is supposed to have as to misrepresentations to the court, and on the prohibitions of the Unfair Trade Practices Act.

361. The false and deceptive practices of the Richter defendants will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Richter defendants in compromising the interests of absent members of the class they purported to represent has been actually repeated, as well as has the potential for repetition, in the form of the sexual abuse victims who got no notice of the 2006 class settlement and who have requested, and been denied, relief, as the Richter defendants intended.

362. The Richter defendants should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to the conduct of the Charleston or Dorchester County cases in which any of the Diocese defendants were supposedly adverse parties.

363. The 2006 collusive class settlement was achieved without a single motion having been argued, and without a single court ruling on any aspect of any of the Charleston cases then pending at the time of the 2006 class settlement. The parties had successfully sought to have the court continue each hearing the court proposed to engage on the supposed issues of the case. That settlement was collusive, and placed the interests of the Richter defendants ahead of the interests of those who became class members and ahead of absent members of the class.

364. The Richter defendants violated the UTPA willfully, in that each of them knew or should have known that their conduct was a violation of S.C. Code § 39-5-20, and they purported to obtain relief for the Plaintiff that in fact they did not obtain in any written order.

365. The Plaintiff has suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Richter defendants. The Plaintiff ought to have been entitled to either (a) the relief the Richter defendants maintained, falsely, to the court in 2007 would be available to the Plaintiff, or (b) should be able to maintain his own action against the Diocese defendants, or (c) his own actions against the Richter defendants. Conduct by the Richter defendants was willful, and each of the Richter defendants knew, or should have known, that his conduct was unfair and deceptive.

366. The Plaintiff is entitled to treble damages as a result of the conduct of the Richter defendants in the conduct of the 2006 class settlement which affected the Plaintiff' interests, as well as to actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

Demand for Jury Trial

367. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

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

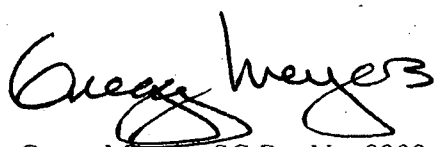
369. Costs and disbursements of this action,

370. Attorneys fees as authorized by law,

371. Punitive damages as authorized by law, and for

372. Injunctive relief to enjoin the Diocese defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Attorneys for the Plaintiff

13-CP-10-3733

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
John Doe 2 and Jane Doe 4,)	
)	CASE No. 2010-CP-10-5520
Plaintiffs,)	
)	
v.)	
)	
The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence R. Richter, Jr.; David K. Haller, and Richter & Haller, LLC,)	
)	
Defendants.)	
)	
John Doe 10,)	
)	CASE No. 2010-CP-10-7233
Plaintiffs,)	
)	
v.)	
)	
The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence R. Richter, Jr.; David K. Haller, and Richter & Haller, LLC,)	
)	
Defendants.)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Jane Doe 11, Plaintiffs, v. The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence R. Richter, Jr.; David K. Haller, and Richter & Haller, LLC, Defendants.	)	CASE No. 2012-CP-10-5559
John Doe 193, Plaintiffs, v. The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence R. Richter, Jr.; David K. Haller, and Richter & Haller, LLC, Defendants.	)	CASE No 2013-CP-10-3733

Father Doe 194, Plaintiff, v. The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence R. Richter, Jr.; David K. Haller, and Richter & Haller, LLC, Defendants.	)	Case No. 2013-CP-10-4175
John Doe 194, Plaintiffs, v. The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence R. Richter, Jr.; David K. Haller, and Richter & Haller, LLC, Defendants.	)	Case No. 2013-CP-10-4176

DIOCESAN DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO ALTER OR AMEND ORDER ON LIMITED COLLATERAL REVIEW

DoC\JD2&JaD4\MemoSupMtnALterAmendOrderOnLCR

Introduction

Both the Diocesan Defendants and the Richter Defendants asked this Court, by summary judgment motions filed in 2015, to conduct a limited collateral review to determine whether Plaintiffs' claims based on alleged childhood sexual abuse are precluded by a 2007 Class Action Settlement Agreement (CASA). The Court initially denied the Richter Defendants' motion by order filed December 8, 2015, but subsequently indicated its intent to rule on the request for limited collateral review (see Order filed Jan. 29, 2016). By order filed October 26, 2016, this Court granted the Richter Defendants' Motion to Alter or Amend the order denying summary judgment, and held—without reaching a conclusion about the application of res judicata in these cases—that the class action notice procedures did not satisfy due process as to plaintiffs who resided outside of South Carolina and surrounding areas where notice was published.

The Diocesan Defendants previously filed timely motions for the Court to alter or amend its order of October 26, 2016 to:

(a) Rule on Diocesan Defendants' Motion for Partial Summary Judgment;

(b) Clarify that the Court has denied the application of res judicata to the "out-of-state" plaintiffs in this consolidated action; and

(c) Rule on whether res judicata applies to plaintiffs, including John Doe 193, who resided in South Carolina or within the geographical ambit of published notice when notice of the class action was published.

A. Diocesan Defs.' Motion for Partial Summary Judgment Should be Granted

Diocesan Defendants moved for partial summary judgment, asking this Court to enter summary judgment based on res judicata. *See* Diocesan Defs.' Motion for Partial Summary Judgment (Apr. 15, 2015). Without repeating all of the arguments from that motion, Diocesan

Defendants respectfully suggest that the Court's collateral review order of October 26, 2016 reflects a review of the *merits* of the class action notice procedures, rather than a *limited collateral review*, which requires "deference" to the class action court's "findings that notice met due process." *Hosp. Mgmt. Associates, Inc. v. Shell Oil Co.*, 356 S.C. 644, 663 (2004). "[T]he merits of the certifying court's determinations are subject to direct appellate review," and "due process does not afford any 'second-guessing of those determinations'" on limited collateral review. *Id.* at 660 (quoting *Epstein v. MCA, Inc.*, 179 F.3d 641, 648 (9th Cir. 1999)). The class action court's approval of the notice procedures was consistent with other courts' determinations regarding adequate notice. *See, e.g.*, *Tylka v. Gerber Products Co.*, 182 F.R.D. 573, 578 (N.D. Ill. 1998) (holding that because case was "geographic in nature, i.e. arising from conduct in Illinois, . . . notice should be largely limited to the geographical areas where class members are likely to be found").

The safeguards applied by the class action court are reflected in its directives aimed at locating identifiable class members, as well as its approval of the class counsel's (the same attorneys who now denigrate the very plan they put forth) plan for publication in nearly one dozen publications in the geographic area of the Diocese of Charleston. Neither counsel for Plaintiffs in this action—who represented other parties in the class action—nor anyone else, lodged any objection to the notice provisions approved in the class action fairness hearing, a hearing to determine if the Court should give final approval to the CASA. Although this Court may not agree with the class action court's determination that these provisions were adequate, such disagreement is insufficient, on limited collateral review, to deny the class action's res judicata effect. Diocesan Defendants' Motion for Partial Summary Judgment should accordingly be granted.

B. The Court Should Rule on the Issue of Res Judicata for Out-of-State Plaintiffs

The purpose of the limited collateral review requested by all defendants is to determine whether Plaintiffs' "claims are subject to the [class action]'s res judicata effect." *Doe v. Bishop of Charleston*, 407 S.C. 128, 137 (2014). This Court's order on Lawyer Defendants' Motion to Alter or Amend, however, fails to resolve this question. Instead, the order states: "the Court has not reviewed—or been asked to review—whether any specific plaintiff in any of the pending cases received sufficient notice of the class action."

There is no need for the court to defer its decision about the application of res judicata to these particular plaintiffs.. Actual notice of the class action is not required for preclusion. *See* Diocesan Defs.' Motion for Partial Summary Judgment at 11-12 (citing multiple authorities). As this Court's order indicates, however, actual notice of the class action *would* be sufficient to apply res judicata against a particular plaintiff. *See* Court Order at 5 (concluding, "the notice plan directed by the class action Court did not satisfy due process as to putative class members who (1) did not receive actual notice . . . ."). Defendants have been afforded the opportunity to take discovery from the plaintiffs in connection with the issue of res judicata, and there is no evidence calling into question Plaintiffs' assertions that they never received actual notice of the class action. *See* Pls.' Motion for Partial Summary Judgment at 11 (June 23, 2015) ("The claims period for the class action was concluded in 2008, before these Plaintiffs were even aware that a class action existed . . . ."). No defendant has contested Plaintiffs' assertions in this regard, which means there is no basis to leave this factual determination unresolved.

While Diocesan Defendants do not agree with the Court's ruling about the sufficiency of the class action notice, the Court's order should be amended to clarify whether res judicata bars

these Plaintiffs' claims. If—on limited collateral review—the class notice satisfies due process, res judicata applies regardless of whether any individual plaintiff received actual notice. If—on limited collateral review—this Court's ruling is that the class action court did not satisfy the demands of due process, then these "nonresident" plaintiffs' claims are not barred by res judicata, because the undisputed evidence is that they did not receive actual notice.

C. Res Judicata applies to John Doe 193 because he was a South Carolina resident who received Constructive Notice of the Class Action, and because He Did Not Repress His Memory

All parties have asked for a ruling as to whether John Doe 193's claim is precluded by the class action. The Court's order addresses class members who "lived outside of the areas in which notice was published," but not John Doe 193, who lived in South Carolina throughout the class action proceedings. *See* Diocesan Defs.' Supplemental Memo of Law at 3 (Feb. 4, 2016).

John Doe 193's claim of repressed memory is a red herring, because he is precluded by the class action whether or not he received actual notice. Due Process requires notice "reasonably calculated" to reach members of the class, not actual notice to each individual member. *See* Diocesan Defs.' Motion for Partial Summary Judgment at 10-12. The Lawyer Defendants and Doe 193 do not contend—nor could they—that class notice was insufficient as to residents of South Carolina like Doe 193.

In any event, the testimony of Doe 193's counselor establishes that he was not suffering from a repressed memory. *See* Diocesan Defs.' Supplemental Memo of Law (Feb. 4, 2016) at 3. Moreover, because of the inherent challenges of proof entailed by a claim of repressed memory, the South Carolina Supreme Court has required a plaintiff to provide "objectively verifiable" corroborating evidence, as well as expert testimony, to avoid summary judgment. *See id.* at 5 (quoting *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320 (2000)). John Doe 193 has

provided none of the requirements of *Moriarty*, which means his claim of repressed memory should be disregarded.[1]

For these reasons, the Court's order should be amended to reflect the granting of Diocesan Defendants' Motion for Partial Summary Judgment as to John Doe 193 in Case No. 2013-CP-10-3733.

WHEREFORE, Diocesan Defendants respectfully request that this Court alter and amend its order of October 26, 2016 as set forth more fully above.

Charleston, S.C.

March 17, 2017

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[1] The Diocesan Defendants reserve the right to further litigate and contest John Doe 193's repressed memory allegation on the merits if his claims survive limited collateral review.

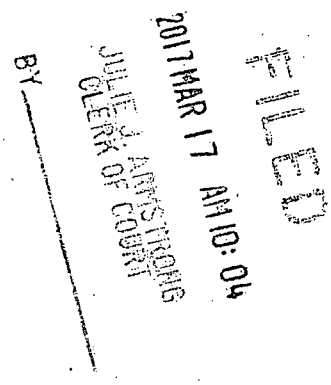
CERTIFICATE OF SERVICE 13-CP-10-3733

I hereby certify that on March 17, 2017, I served a copy of the foregoing Memorandum of Law in Support of Diocesan Defendants' Motion to Alter or Amend Order on Limited Collateral Review by e-mail and U.S. Mail, postage prepaid, to:

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Columbia, SC 29260



Katherine Gallagher

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2010-CP-10-7233

John Doe 10,

v.

Plaintiff,

The Bishop of Charleston, a Corporation Sole, Robert Guglielmone, The Bishop of Charleston, in his official Capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his Official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC

Defendants.

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

JOINT STIPULATION OF DISMISSAL AGAINST DIOCESE DEFENDANTS ONLY (THIS DOES NOT END THE ENTIRE CASE)

Pursuant to Rule 41 of the SCRCP, it is hereby stipulated between the Plaintiff and Defendants, The Bishop of Charleston, a Corporation Sole, Robert Guglielmone, The Bishop of Charleston, in his official Capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his Official capacity; and Robert J. Baker, former Bishop of Charleston, in his official capacity (the "Diocese Defendants") that this case be and hereby is **DISMISSED** against the Diocese Defendants only and is discontinued, and forever ended **WITH PREJUDICE**, on the terms agreed to by the plaintiff and the Diocese defendants under S.C. Code Section 15-38-50. Plaintiff and the Diocese Defendants to bear their own attorney's fees and costs.

This case is NOT ended as to Plaintiff's remaining claims against Lawrence E. Richter, Jr., David K. Haller and Richter & Haller, LLC.

(Signatures on next page)

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ATTORNEYS FOR THE BISHOP OF CHARLESTON, A CORPORATION SOLE, ROBERT GUGLIELMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY, REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY