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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 TWO

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LLC.,

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Record On Appeal Volume Two

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Volume Two

Pleadings (continued)

97. 11/13/09 Memorandum in support of summary judgment in Jasper County case 06-CP-27-143, *Ranta v. Diocese of Savannah et al.* p. 0464
98. 7/9/10 Complaint in Charleston County case 10-CP-10-5520 for John Doe 2 and Jane Doe 4 p. 0514
99. 9/3/10 Complaint in Charleston County case 10-CP-10-7233 for John Doe 10 p. 0588
100. 8/23/12 Complaint in Charleston County case 12-CP-10-5559 for Jane Doe 11 p. 0667
101. 4/2/13 Complaint in Charleston County case 13-CP-10-3733 for John Doe 193 p. 0742
102. 7/17/13 Complaint in Charleston County case 13-CP-10-4175 for Father Doe 194 p. 0836

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

ALLAN CARL RANTA,

Plaintiff,

vs.

THE ROMAN CATHOLIC DIOCESE
OF SAVANNAH, A CORPORATION
SOLE; MOST REV. RAYMOND W.
LESSARD; J. KEVIN BOLAND, IN
HIS CAPACITY AS THE BISHOP OF
THE ROMAN CATHOLIC DIOCESE
OF SAVANNAH, A CORPORATION
SOLE; AND WAYLAND YODER
BROWN;

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2006-CP-27-143

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

TO: DEFENDANT WAYLAND YODER BROWN

The Plaintiff, by and through his undersigned attorneys, hereby submits the following memorandum in support of his Motion for Summary Judgment against Defendant Wayland Yoder Brown:

FACTUAL BACKGROUND/ABUSE SUFFERED BY THE PLAINTIFF

Wayland Brown met Allan Ranta when he was a priest at the St. James Catholic Church and School in approximately 1979. Aff. Allan Carl Ranta at 1, attached hereto as Exhibit 1. Ranta was in the 5th grade. Id. Using his position as a priest, Brown immediately positioned himself, masquerading as a man of God, to gain the trust and confidence of the child and Ranta's family by offering counseling and spiritual guidance.

Id.

Once Brown had the family's trust, he began spending time with young Allan Ranta as a priest, counselor, confessor, spiritual leader, and mentor in the Catholic faith. Id. Brown would take Ranta to hobby shops, the movies, and out to eat. Aff. Carl Allan Ranta at 2. During each occasion, Brown would discuss family and faith with Ranta. Id.

During the course of the relationship, Brown took Ranta to South Carolina numerous times: to a nature preserve across the Savannah River in South Carolina; to a train yard in Yemassee, South Carolina; to ride around on the roads in between the nature preserve in Bluffton and Hilton Head, South Carolina; to St. Anthony's Catholic Church in Hardeeville, South Carolina where they would kneel and pray for forgiveness. Id. at 2-3. On each trip, Brown would wear a cross around his neck, would perform one or more acts of counseling, praying, hearing Ranta's confessions, "absolving" Ranta of his sins, teaching, and preaching about forgiveness, God, salvation and the Church. Id. On many occasions, Brown would even be clothed in his priestly attire and Roman collar. Id. He would tell Ranta that he loved him and that God would forgive him for his sins.

During these trips, Brown repeatedly and violently raped and otherwise sexually abused Ranta while in the State of South Carolina and while acting as a holy priest working on behalf of the Roman Catholic Church and the Diocese of Savannah. Before and after each act of abuse, Brown would say that God loved Ranta, that he (Brown) loved Ranta, and that Ranta would be forgiven. Id. On many occasions Brown would further exercise his priestly duties by praying and performing the sacrament of confession with Ranta. Id. Brown told Ranta that the Church teaches forgiveness and in order to be forgiven Ranta must spend time with Brown and talk with him, otherwise Ranta would not be able to go to heaven. Id.

On a trip to the nature preserve in South Carolina, Brown sexually abused Ranta then told him that they both were forgiven for their sins. He then made the sign of the cross, saying 'in the name of the Father, the Son, and the Holy Spirit.' Id. On a trip to the train yard to see the locomotives, Brown told Ranta, before raping him, that God loved him and that he (Brown) loved him. Id. After abusing him, Brown told Ranta the same thing and then told him he was forgiven. Id.

The sexual abuse suffered by the Plaintiff included rape, sodomy, oral sex, fondling, digital and penile penetration, exposure, masturbation, among other physical and sexual abuse. *See* Deposition of Allan Ranta attached hereto as Exhibit 2. They occurred within the State of South Carolina and in the State of Georgia, within properties owned by the Diocese of Savannah, in homes of employees of the Diocese of Savannah, in rectories of the Diocese of Savannah, and in churches of the Diocese of Savannah as well as the Diocese of Charleston. Id.

He was taught to respect his priest, Defendant Brown, and to respect the church. Id. He was taught, and believed, that Brown and the church was his path to salvation, his access to God. Id. As a child, he was too fragile, mentally and physically, to prevent the abuse. Id.

He was raped inside churches; he was raped in a train car; he was raped repeatedly. Id. He was made to watch pornographic films and to view pornographic magazines. Id. He was talked to about homosexuality. Id. He was encouraged to engage in homosexual activities. Id. He was encouraged to identify himself as being homosexual. Id.

The aforementioned trips and other trips and accompanying abuse continued over

a period of at least 4 plus years, were extremely violent in nature, and caused tremendous emotional and physical injury to the Plaintiff. Id. The Plaintiff was physically assaulted and threatened with his life if he did not acquiesce to Defendant Brown's demands. Id. As a result, the Plaintiff repressed, or dissociated, the memories of this abuse. Id. Because of the severity and aggravated nature of the abuse, these memories were repressed until approximately early 2005. Id.

In order to live, to function, to even perform everyday tasks, the memories of his abuse were repressed; he dissociated. He was unable to remember. But he could suffer. He suffered pain. He suffered confusion. He suffered instability. He sought care, and has spent a lifetime receiving treatment from healthcare providers for all of the manifestations that could possibly be encompassed in a general heading of "post traumatic stress disorder", "depression", "anxiety", "fear", "physical pain", "nervousness", etc., etc., etc., never knowing why he was the way he was, or what caused him to be that way, until he was flooded with the memories of the abuse perpetrated by Defendant Brown. Id.; *See also* deposition transcripts attached hereto as Exhibit 8 of Dr. James Montgomery, Dr. Linda Hudson, Dr. Claudia Crenshaw, Dr. Paul Kimmel, Dr. Steve Shindell, Dr. Sam Hill, and Dr. Gregory Haley.

Allan has become a man now and has found the strength and the ability to call Defendant Brown to account, to do that in an open and public forum, to demand, at long last, justice at the hands of this Defendant, and the cessation of child abuse in our churches.

I. OBJECTIVE VERIFICATION OF THE PLAINTIFF'S ABUSE

Plaintiff is proceeding under a repressed memory theory of recovery, which

requires "objective verifiability" for the application of the discovery rule. The element of objective verifiability may be satisfied by corroborating evidence such as an admission by the abuser, a criminal conviction, documented medical history of childhood sexual abuse, evidence the abuser had sexually abused others, or proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred. Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 171 (S.C. Ct. App. 1999). Expert testimony on the phenomenon of memory repression is also required. Id at 173 (S.C. Ct. App. 1999).

Plaintiff meets the required burden of objective verifiability of his abuse, and, as more fully discussed in section II, numerous experts in this case have confirmed the validity of memory repression, also known as "dissociation."

a. CRIMINAL CONVICTION AND ADMISSIONS BY WAYLAND BROWN

In 2002 Brown was charged with and, in 2003, pled guilty to child sexual abuse and battery in Montgomery County, Maryland, and was sentenced to prison for a term of 10 years. *See* Wayland Brown arrest information and sentencing memorandum attached hereto as Exhibit 3. He was recently released from prison on parole and lives in the Baltimore area. The abuse which resulted in Brown's incarceration occurred during the mid 1970's, prior to the abuse suffered by the Plaintiff in this case, and after numerous warnings and notifications to the Defendants, while Brown was a seminarian of the Diocese of Savannah.

Responding to the allegations made by the Plaintiff in this case, Defendant Brown answered by pleading his 5th Amendment right against self-incrimination. *See* Exhibit 4. In civil proceedings, the Plaintiff is entitled to a negative, adverse inference against

Defendant Brown that had Defendant Brown responded to the allegations, the response would operate against Defendant Brown's interests. Baxter v. Palmigiano, 425 U.S. 308, 47 L. Ed. 2d 810, 96 S. Ct. 1551 (1976); *see also* Griffith v. Griffith, 332 S.C. 630, 641 (S.C. Ct. App. 1998). The negative, adverse interest to be drawn in this case against Defendant Brown is that, had Defendant Brown responded to the Plaintiff's allegations of violent sexual abuse and a conspiracy to cover up allegations of Defendant Brown's sexual abuse of minors, the Plaintiff included, his responses would indicate that he did in fact sexually abuse the Plaintiff and cover up allegations as alleged by the Plaintiff. Defendant Brown has failed and/or refused to participate in any further proceedings in this case that would indicate otherwise.

Moreover, in 1986, police authorities were actively investigating allegations of child molestation by Wayland Brown in Richmond County (Augusta) and Moultrie, Georgia. Three times an investigating detective called then Bishop Lessard, who never called him back. Rather than cooperating with law enforcement, Diocesan officials informed the investigating detective that Wayland Brown was in Germany and would not return for years,¹ if at all, and Bishop Lessard called with Wayland Brown and other high ranking Diocesan officials to discuss the investigation. The meeting was of such importance that it was transcribed. The transcript is dated August 8, 1986, the same day as one of the investigating detective's phone calls and reveals, among other things, the following admissions by Defendant Brown (Exhibit 6):

Lessard: "There is nothing in your file regarding the issue about to be raised...are there grounds for the charges made against you? The word we have heard used is molestation? Are you guilty of any indiscretion?"

¹ See deposition transcript of Sergeant Darrell Wright attached hereto as Exhibit 5.

Brown: "Yes."

Lessard: "Do you think your behavior was indiscrete? Or questionable?"

Brown: "It was not any worse than any of my other indiscretions."

Lessard: "Do you think this behavior is normal?"

Brown: "I am affectionate...since I have been in Moultrie I have avoided that kind of thing...while in Augusta, I did not avoid it."

Lessard: "if it is a question of your reputation we will deal with it. If the matter is beyond this, we will also have to deal with that." (emphasis added).

See also deposition transcripts of Bishop Raymond W. Lessard, Bishop J. Kevin Boland, Monsignor Robert Mattingly, and Monsignor Jeremiah McCarthy, confirming Defendant Brown's admissions to these and other transgressions, attached hereto as Exhibit 7.

b. DOCUMENTED MEDICAL HISTORY OF THE ABUSE

The Plaintiff repressed the memories of Wayland Brown's abuse until approximately early 2005. At that time, Plaintiff experienced a flood of memories of the abuse by Defendant Brown. This flood of memories has required the Plaintiff to undergo extensive therapy, counseling, and other medical care in order to help him cope with the physical and mental damage caused by his recollection of the violent sexual abuse perpetrated by Defendant Brown. Plaintiff has sought and received various forms of treatment from more than 25 medical providers since his recollection of the abuse by Defendant Brown in an attempt to deal with the severe physical and emotional damage he has suffered as a result of the recollection of Defendant Brown's abuse.

The Diocese of Savannah, Defendant Brown's employer at the time of the abuse, has paid and/or reimbursed the Plaintiff for the costs associated with this medical care, including several in-patient treatment facilities, prescription costs, therapy costs, and other expenses related to the treatment and medical care which is necessary for the Plaintiff to function in as normal of a manner as possible. These medical care costs, which in many instances are merely co-pays, total approximately \$200,000 since 2005 alone. *See e.g.* deposition of Bishop J. Kevin Boland attached hereto as Exhibit 7. The Plaintiff is expected to require even more intense and extensive medical care and therapy in the future as well.

Additionally, as more fully describe below, the medical providers who have been deposed, all identified as experts, have testified that their treatment of the Plaintiff was caused by the severe mental and physical pain and trauma suffered by the Plaintiff as a result of the abuse by Defendant Brown, and all have testified that the memories of the violent sexual assaults suffered by the Plaintiff are typically dissociated and repressed as an automatic defense mechanism for the Plaintiff to survive. *See* deposition transcripts attached hereto as Exhibit 8 of Dr. James Montgomery (4 month stay at in-patient facility caused by recollection of abuse by Wayland Brown) (dissociation is a normal and necessary defense mechanism for children); Dr. Linda Hudson (treatment dealt with abuse suffered by Wayland Brown) (reasonable and not unusual that Mr. Ranta could not have recalled being abused by Wayland Brown); Dr. Claudia Crenshaw (treatment centered and continues to center around the abuse suffered by Wayland Brown) (absolutely typical for someone involved in a violent act to dissociate that memory - a child rape victim needs to dissociate or not remember to survive and continue

functioning); Dr. Paul Kimmel (treatment resulted and continues from abuse by Wayland Brown) (compartmentalizing these memories is not a willful act, but an automatic, subconscious response to severe abuse which the Plaintiff could not handle – it is the only way for a child to handle severe abuse and function); Dr. Steve Shindell (somebody with significant physical or sexual abuse dissociates in order to maintain or survive through their life); Dr. Sam Hill (dissociation is brain's way of compartmentalizing something that is so traumatic the child cannot deal with it); Dr. Gregory Haley (child who is violently sexually abused needs to dissociate to survive).

c. EVIDENCE DEFENDANT BROWN HAS ABUSED OTHERS

In addition to the abuse suffered by the Plaintiff, many other victims have come forward and testified that Defendant Brown sexually abused them as well. Brown pled guilty to abusing 2 young brothers in the State of Maryland in the mid 1970's. During that criminal prosecution, at least 2 other child victims testified that Brown abused them in addition to the brothers who initiated the criminal proceedings. Moreover, throughout the course of this litigation, the Plaintiff has revealed at least 10 additional Wayland Brown victims, bringing the total known victims of Defendant Brown to at least 15, including the Plaintiff. All of the victims were abused as children, and Defendant Brown's patten of actions and molestation was virtually identical in each instance.

All victims have testified to the same *modus operandi* of Defendant Brown – a grooming period which included befriending the victims family, playing sexual “games”, sexual discussions, taking the victims on trips, and buying them gifts, among other things. Once “groomed” the victims were ultimately sexually and physically abused, including fondling, exposure, oral sex, digital and penile penetration, and sodomy in

addition to physical restraint of the victims, striking them, physical violence and threats with weapons including firearms. See e.g. deposition transcripts of Allan Ranta, Russell Kill, John Doe #10, John Doe # 20, and Dennis Courtney attached hereto as Exhibit 9.

**d. PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES
HAVING SUFFICIENT PROBATIVE FORCE TO PRODUCE A
REASONABLE CONCLUSION THAT SEXUAL ABUSE
OCCURRED.**

In addition to the foregoing evidence, the documentation found in Defendant Brown's personnel file corroborates and objectively verifies the Plaintiff's abuse. By way of example, the following documents prove a chain of facts and circumstances which have sufficient probative force to produce a reasonable conclusion that Defendant Brown sexually abused many children, the Plaintiff included (Exhibit 10).

November 25, 1969, a letter is written to Rev. Moschini regarding Brown at Blessed Sacrament and his place as a youth advisor:

"He gives me the impression of being 'an immature intellectual.' Since he is developing a coterie of young boys around him, I would be grateful for some confidential background information on him concerning his place as an unofficial advisor to youth." (emphasis added).

May 26, 1972, a letter is written to then Bishop Frey from Pastor McDonald at Blessed Sacrament in Savannah regarding Wayland Brown's interest in becoming a student for the priesthood. McDonald states:

"from my association with him over the last several years, I have come to the conclusion that he is an immature intellectual...I have shared the grief that he has caused one family in this parish by isolating one of the children from other playmates of his own age. This child is now under the care of a psychiatrist. When the Mother learned from other sources that Wayland was thinking of the priesthood, this balanced lady remarked 'I

do not see how anyone so destructive could be a priest....if these traits of character and personality are correctly assessed, **I don't see how a few years in the seminary will change him.**" (emphasis added).

Brown's association with boys has already been identified since 1969, and has now had an adverse effect on at least one family by 1972. This writing reflects notice to the Diocese of Brown's misconduct. The reporter, Father McDonald, was later elevated to the position of Bishop and served in Arkansas.

June 13, 1972, McDonald, at Blessed Sacrament in Savannah, writes another letter to Bishop Frey notifying Frey of the reasons behind Wayland Brown's termination from Armstrong College:

"The president of the college **noted his (Brown's) desire to carry out 'the Father figure' with younger people**, but could not adjust to a rapport with his equals. This he termed perhaps **incurable immaturity.**" (emphasis added).

Brown's "immaturity" is now mentioned for a third time.

June 14, 1972, Father Mattingly, Diocesan Vocations Director, writes a letter to Bishop Frey notifying the Bishop of his conversations with Pastor McDonald about Wayland Brown:

"The conversation with Monsignor does point out **the real need for a better screening process.**" (emphasis added).

In the face of those warnings and red flags regarding Brown's "immaturity" and affinity for young boys, on July 14, 1972, then Bishop Frey notified the Theological College of Brown's provisional acceptance as a seminarian, Brown agreeing to pay his own education costs:

"You will note that it is somewhat provisional. I

would like to evaluate his progress with the Seminary faculty after one year if he is accepted. **I have had some indications of emotional immaturity in his makeup.**" (emphasis added).

By this time, before Brown spends even one day in the seminary, a future Bishop (McDonald), the Vocations Director for the Diocese (Mattingly), and the then Bishop (Frey) have all noted Brown's "immaturity" and affinity for young boys.

August 18, 1972, the Chancellor of the Diocese of Savannah, at the direction of Bishop Frey, writes to Father Frazer, head of the Theological College in Washington, D.C., identifying the reason behind the provisional acceptance of Wayland Brown as a candidate for priesthood:

"As you aware the general reason given is that **Wayland is emotionally immature...**the following characteristics of Wayland's life-style could certainly be documented...**he likes to carry out 'the father figure' with younger people** but finds it difficult at times to have a good rapport with his equals...**hopefully some of this immaturity can be cured.**" (emphasis added).

Again, evidence that the Diocese had knowledge and concern about Brown's emotional "immaturity." Apparently, the Diocese thought that Brown could be "cured" even of his affinity for young boys.

June 11, 1973, Father Mattingly, Diocesan Vocations Director, writes again to Bishop Lessard identifying and notifying the Bishop of the danger of employing Brown in a position of trust and authority by giving him Orders in the Diocese of Savannah:

"In my files I have copies of letters from the now Bishop McDonald who vehemently opposed Mr. Brown's acceptance. Now that I know Mr. Brown better, I now believe Bishop McDonald's statement that **Mr. Brown is an 'immature intellectual.'**...**I personally could not in conscience recommend that Mr. Brown receive any Orders , and I even question whether we should keep**

him...I really feel he will do more harm than good for the Church.” (emphasis added).

This was written after Brown's first year in the seminary and before he received any Orders. Vocations Director Mattingly was bringing prior concerns directed to Bishop Frey to the attention of newly appointed Bishop Lessard in an effort to notify Lessard of the potential danger of employing Brown as a priest.

In 1972-1973 Wayland Brown writes his self-evaluation for the faculty of the seminary. Among the topics of his evaluation: celibacy. On page 3, Brown states:

“the greatest difficulty in my celibate life is not sex; indeed, several years have passed since I became aware of my sexuality and learned to deal with it in a constructive way. The prime difficulty is not yielding to the need to satisfy myself or to make myself more comfortable when I am called on or asked to be with someone else.... (emphasis added).

It has already been noted that Brown has a proclivity for young boys. Here, Brown is talking about his homosexuality, and this is further documentation notifying the Diocese of the potential for sexual misconduct, particularly with young boys.

July 1, 1974, Rev. Costigan responds to Bishop Lessard's letter of April 11, 1974 regarding Wayland Brown's candidacy for priesthood:

“I also had question, without proof, of his association with ‘pueri.’ I just wanted to make you aware of this.” (emphasis added).

‘Pueri’ is a Latin reference to children – boys; another document notifying the Bishop and the Diocese of Brown's proclivities and propensity to improperly associate himself with young boys. Despite these and other red flags, Brown is accepted as a candidate for the Diaconate in the Diocese of Savannah. Again, no safeguards, warnings, supervision, or other mechanism to control Brown's inappropriate activity with young boys is put in

place.

August 27, 1975, Lessard has a meeting with Wayland Brown, making notations to the file:

“Principal subject of discussion today was: reports of his behavior before he went into seminary, both with local Boy Scouts group and Armstrong College: insinuations of homosexual orientation, poor leadership, instigatory activity, etc. Also, he was seen at the local beach this summer in indiscreet behavior with a woman...W. spoke frank (sic) on all subjects, explaining the last mentioned matter: it was actually a young boy with long hair!!! I accept his explanation. His confessions in the other matters were frank, though perhaps disturbing. Of maybe greater importance is the subject of his inability and difficulty to relate with people.” (emphasis added).

Brown admits to Lessard he was at a beach in indiscreet behavior with a boy with long hair. Lessard puts three exclamation marks next to this line, yet Lessard believes Brown’s inability and difficulty relating to people is of greater importance than Brown’s indiscreet and inappropriate behavior with young boys.

Immediately thereafter, Bishop Lessard’s identifies further concerns about Wayland Brown:

“2 ladies confided their deepest suspicions re: W.B., based on reports/reactions of their boys to W’s ‘queer’ behavior...Timmie Parker² traumatized... (drinking in the presence of boy scouts... countenancing the stealing of street signs.)” (emphasis added).

September 18, 1975, Bishop Lessard writes to Brown’s file to detail the information

² When questioned about this boy, both Bishop Boland and former Bishop Lessard denied any knowledge of any person named “Timmie Parker.” However, after the filing, on June 19, 2009, of the Plaintiff’s motion for sanctions arising out of, among other things, the fraudulent listing of victims previously produced to the court and Plaintiff’s counsel, the Defendants finally produced documentation in their possession which confirms that Parker was in fact a known victim of Wayland Brown from as early as 1975.

provided to the Bishop regarding Wayland Brown's internship:

"Msgr.'s report was somewhat critical of Wayland's attitude and approach. He was characterized as arrogant and 'center stage' in his comportment, **imprudent in his relations with others, especially younger boys (!!!)**, critical of anyone who did not cater to his needs, preferences, etc." (emphasis added).

For the second time Lessard puts three exclamation marks next to the remark about Brown's relationship with boys. Lessard knew this was a problem, as he and the Diocese had been put on notice repeatedly for, at this point, six years, but still allowed Brown to assume an unfettered close and intimate role with young boys.

January 21, 1976, Father Mattingly, Vocations Director for the Diocese of Savannah at the time, writes to Bishop Lessard notifying him about Wayland Brown about his "problem" and past situations in Savannah:

"I discussed Wayland's future with Father Frazer. In our conversation, **Father Frazer (Director of the seminary where Defendant Brown was enrolled) leaned toward postponement of his ordination.** Two questions come to mind. **First, is Wayland's 'problem' a thing of the past or is it still a problem? Second, is the past situation in Savannah serious enough from preventing him being stationed there...I am concerned about him personally and the people he serves.**" (emphasis added).

Again, Mattingly notes Brown's "problem," and the writing expresses great concern over that "problem" and the people affected by that "problem," Plaintiff included. Brown's ordination was in fact delayed, yet Lessard pointedly does not make a record of the reasons. During this postponement, Brown was assigned to St. James parish in Savannah as a deacon, not an ordained priest, but was still allowed to assume an unfettered close and intimate role with young boys. St. James is, of course, where Brown met Allan Ranta, as a 5th grade student.

June 29, 1977, Robert Mattingly, Diocesan Vocations Director, again writes to Bishop Lessard warning the Bishop of the danger of employing Wayland Brown as a priest:

“Wayland is not a fit candidate for the priesthood...Wayland lacks the main requisite for the priesthood; namely, holiness...I think we would be better off to have no priest rather than an unholy priest.” (emphasis added).

This document speaks for itself, but despite this, the foregoing concerns, and other red flags, Lessard, individually and for the Diocese, ordains Brown on July 9, 1977, just ten days after this latest, and dire, warning, with the result being that Brown now has unfettered access to young boys who he will rape and torment under the guise of being their friendly and trustworthy priest.

All of the aforementioned occurs **before** Brown's ordination, and prior to Brown and Allan Ranta ever coming into contact. The warnings spanned a period of eight years from 1969 to June 29, 1977. But it didn't stop with Brown's ordination. After Brown was ordained, despite actual and constructive knowledge, the Defendants, Brown included, continued to conceal their knowledge relating to Brown and his activities from the Plaintiff, the general public, law enforcement authorities, and others. Some illustrative examples include the following:

March 22, 1979, Bishop Lessard writes to Wayland Brown in response to his request for a teaching assignment in one of the Diocesan schools:

“Although I am conscious of your keen interest in teaching in general and in the Aquinas position in particular, it is my considered judgment that you should not give further thought into a full-time position in one of our diocesan schools.” (emphasis added).

Lessard acknowledges the danger of placing Brown in close contact with young boys at a diocesan school, but he intentionally fails and/or refuses to disclose or in any way warn parents, students, schools, parishes, parishioners, or the public of his well founded concern while inexplicably and inexcusably assigning Brown to positions in close proximity to schools full of young boys.

October 11, 1986, after sending Brown to St. Luke's for psychological treatment/evaluation relating to the molestation allegations in Richmond County, GA and Moultrie, GA areas, an announcement was made to the parishioners of Immaculate Conception Church regarding Wayland Brown's leave of absence:

"I have granted him (Brown) **for medical reasons** a temporary leave of absence from his pastoral assignments in the Diocese." (emphasis added).

The Diocese and Defendant Brown, rather than being truthful, intentionally and knowingly conceal the truth about Brown from the parishioners, the public, and law enforcement authorities. The then Bishop, Defendant Lessard, took part in writing the dishonest statement with Defendant Brown.³ Brown stayed "hospitalized" at St. Luke Institute for some 7 months.

In spite of the statement conjured together by Brown and Lessard, on September 20, 1986, when St. Luke Institute writes to Bishop Lessard detailing their initial evaluation of Brown, the truth is revealed:

"As per our request, we suggested that he call frequently...to let us know...if any change has occurred in the legal issues...the purpose of the evaluation was to establish whether or not there was any psychiatric evidence to explain allegations concerning possible child abuse in two counties: Richmond County and Moultrie

³ See Lessard deposition transcript attached hereto as Exhibit 7.

County...we asked him to write an extensive sexual history which will be destroyed and will not be part of the medical record at all...there is no question that Father Brown has some sexual issues that he has been struggling with for all of his life and continues to do so" (emphasis added).

After Brown's "hospitalization," the Defendants, Brown included, rather than notifying police authorities that a suspected child molester had returned to the jurisdiction, schemed to quietly reassign Brown. May 19, 1987, a memo is written to Bishop Lessard regarding possible appointments for Wayland Brown upon his return from St. Luke's. Positive and negative points were given for each potential assignment. Repeatedly a negative indicator is proximity to schools. Specifically addressing St. James in Savannah, the negative points listed were:

"Wayland's past record in regard to St. James, proximity to the school, living conditions, and the problems encountered at St. James as encountered over the past few years may indicate that this is not the best time to make this type of assignment to St. James Parish....we would definitely rule out an assignment in the Augusta area or the Moultrie area⁴" (emphasis added).

Of course, despite these warnings, Brown was promptly assigned as an associate pastor at St. James on June 8, 1987, a mere 20 days after this latest significant warning. Again, the Defendants' refused to warn, protect, or otherwise notify anybody of Brown's history of misconduct and danger to minor boys, despite decades of "problems" encountered by Brown.

February 14, 1988, Wayland Brown writes to Ms. Joan Broderick, aftercare therapist at St. Luke's, regarding an evaluation sent to Bishop Lessard:

⁴ Recall that Augusta and Moultrie Georgia police authorities were investigating allegations of Brown's sexual molestation of young boys. The Defendants made certain that they avoided giving any cooperation, information, or even a return phone call to law enforcement agents.

"I have not made any contact with 'the' gay community – I honestly believe that to be because of the lack of any stable group or community spirit such as that in D.C. **The office staff and brother priests are a great support to my sexuality – the staff gave me red, heart earrings for Valentine's, which, save for the cook, I very nearly accidentally wore uptown.** The death, during the aftercare workshop, of my closest gay friend has been a real loss to me." (emphasis added).

The Diocese is aware Brown is a homosexual, a child molester, and struggling to reacclimate himself in the gay community; yet he was still permitted to assume an unsupervised and unfettered role with young boys at a diocesan facility – St. James Catholic Church and School. Once again, the Defendants, Brown included, refuse to warn, protect, or otherwise notify anybody of Brown's history of misconduct and danger to minor boys, or to control him in any way.

May 16, 1988, a memo is written by Sister Kathleen Gorman, the principal at St. James School in Savannah, regarding her concerns over Wayland Brown:

"Parents request me not to permit him to be around the boys, don't want children serving his masses....eighth grade boys were told what a beautiful nude body he has...also told boys Irishmen's organs don't develop as well as other men's do...took student off the school grounds and no one in the office knew it...gave altar boy \$50 for serving a baptism...major concern is around the school children...he pays no attention to the girls, but falls all over the boys...one mother said her feeling was that something is amiss when Father Brown called her son to go out with him." (emphasis added).

Again, Brown's behavior remains the same and parents and Diocesan officials continue notifying the Bishop, as they have since at least 1969, yet the Defendants, Defendant Brown included, continue to remain silent and take no action to protect the children upon whom Brown preyed, Plaintiff included.

May 17, 1988, a memo is written to Bishop Lessard from Father McCarthy:

“As you ponder the options of Fr. Wayland Brown, I thought that you might be interested in reading the enclosed case...”

The enclosed case detailed the handling by another Diocese of a sex offending priest who had been given several opportunities to receive treatment and been reassigned numerous times following allegations of sexual abuse and the priest admitting to the abuse. Rather than reporting Brown to law enforcement authorities, higher church authorities, or child protection agencies, Lessard paid Brown full salary and benefits to *not* be a priest for another 15 or so years until 2002 when Brown pled guilty to child sexual assault occurring while he was a seminarian of the Diocese of Savannah in the mid 1970's.⁵

June 3, 1988 Brown, still in active ministry, writes Lessard regarding another possible assignment. Brown expresses his preference:

“a small parish with a young priest either as an associate or resident...**I have a lot to offer to a young man from my experiences and I would enjoy the potential of that relationship...**Next that I do not think that the brothers take my drinking history as the truth and my alcoholism as real. Last I will suggest that they think I am a pedophile...some (most?) priests think I am a pedophile...Pat Shinnick is said to have told people in the community, who have told me, that **he does not believe I am an alcoholic but that I was treated for pedophilia and the alcoholism is just a smoke screen.... remarks implying that I am a pedophile.**” (emphasis added).

It is clear that most, if not all, of the priests within the Diocese are aware of Wayland Brown's molestation of boys, yet the Diocese still permits him to have unfettered access to children, and does not warn the parishioners or in any way protect the children and

⁵ Sadly, we may never know how many other children's lives were ruined, how many children were raped and victimized by Wayland Brown and whose abuse could have been prevented during these years when Brown should have been behind bars.

knowingly and intentionally conceals the truth.

August 15, 1988, after receiving reports of Wayland Brown's continued misconduct, a memo is written notifying Bishop Lessard:

"Wayland has rented a house in St. James Parish...Some people have told John K. (Father John Kenneally) that **he has a boy living with him...John K. thinks a young boy (13 or 14) is spending a lot of time with Wayland** (this has no reference to the boy mentioned above)...some teen age boys were working on the site-I just did not think we should take the risk that their presence presented... excuse the handwriting but **I did not want others to be exposed to this information.**" (emphasis added).

The conspiracy of silence regarding Defendant Brown continues as Simmons writes that he has hand written this communication to Bishop Lessard because he does not "want others to be exposed to these matters."

These and other documents contained in Defendant Brown's personnel file show a chain of facts and circumstances which have sufficient probative force to produce a reasonable conclusion that Defendant Brown sexually abused the Plaintiff as well as many other children, and that Defendant Brown, in concert with the Diocese of Savannah, actively concealed allegations of his sexual abuse from the public, parishioners, parents, child victims, Plaintiff included, child protection and law enforcement authorities, from as early as 1969.

II. DAMAGES AND EXPERT WITNESS TESTIMONY ON REPRESSED MEMORY SYNDROME.

Plaintiff is proceeding under a repressed memory theory of recovery, which requires expert testimony on the phenomenon of memory repression for the application of the discovery rule. Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 173

(S.C. Ct. App. 1999). Plaintiff meets the required burden of expert witness testimony on this phenomenon, as numerous experts in this case have confirmed the validity of memory repression, also known as “dissociation.”

The Plaintiff has also suffered tremendous physical, emotional, mental, and other damage as a result of the abuse suffered by Defendant Brown. By way of example, the following deposition testimony reflects a portion of the damages incurred by the Plaintiff and validates the phenomenon of memory repression, also known as “dissociation”:

a. Allan Ranta

The Plaintiff testified extensively about the massive personal injury, pain, suffering, trauma, terror, and other damage caused to him by the abuse perpetrated by Defendant Brown:

A. [Regarding 2nd sexual interaction with Wayland Brown] . . . He would always approach me from the left side. He put his hand on my right shoulder and then that's when he, as he always would, move his hand down my back then I began to move away . . . and he put his hand down the back of my pants and I moved away and froze and then that's when he didn't like that and so then that's when I fought back and once I fought back, that's when he fought back and that's when he knocked me down on to the ground in the train and I could still feel the cold floor of the train and grabbing on to the railing and I swung and I had kicked and I swung and I kicked as hard as I could. And then he flipped me over and I was able to get back over and then he put his hand around my neck and then I couldn't breathe and then it felt like I was going to pass out with his hand over my neck, with him spreading my legs and forcing me down on the ground and not letting me get up and I was trying to fight back. He overpowered me. He overpowered me. He flipped me over, he pulled my pants down and then what I remember from there was focusing on the light up on top of the train and then I could see myself from above. I couldn't feel anything. I could see me. I could see him raping me. I could see him on top of me. Once he was done I guess I came back into my – I became back into consciousness where I could fight back and as soon as I got the opportunity, I kicked him and then I ran and I ran off pulling my pants up and I was out in the middle of nowhere and I ran towards the woods, it was dark out and he came after me and once I got to the woods he was yelling at me the whole time running after me. . . . And

he was telling me the whole time there were people in the woods and things in the woods that would get me so I stopped because I was afraid to go into the woods and that's when he caught me and grabbed me on the right shoulder and yanked me back and dragged me to his car and he put me in his car. . . . All I wanted to do was go home. I got home. My mom is still there with her friends playing cards and my dad was in his room and I just went to the bathroom and showered and scrubbed and showered and scrubbed. It was on the way home after he had mentioned about the gun this was the first time when he told me that I could be killed or taken away from my parents and my family or my family could be killed or they could be taken away from me. That was the next time that I had an encounter with Father Wayland Brown.

Allan Ranta Deposition at 58:23-59:1; 59:4-60:12; 60:15-21; 61:7-17.

Q. and the time in the locomotive, that was the first time that he actually exposed your body and touched you?

A. That was the first time that he - - that was the first time that he exposed my body and touched me. That was the first time that he violently raped me and that was the first time that he choked me to the point to where I thought I was going to die. That was the first time to where he would not let me go when I wanted and screamed out to let me go. That is the first time that I fought back with every bit of life in me to get him off of me, as a child to get this priest off of me and I could not get him off of me. I did everything I could. That was the first time. That was the first time the he had mentioned to me about my family being killed and me being killed.

Allan Ranta Deposition at 62:17-63:8.

A. And throwing me on the ground. As far as any other type of marks, if that's what you're referring to or bruises or physical type of injury at the Frews house, I mean, he stuck his finger in my rectum for the first time. There was blood and I can still see blood and semen mixed together. He would use Vaseline after that for himself but not for me and then he would use a talcum powder of some sort, some kind of powder with me to put on me. There was bleeding in my rectum from him. I remember my underwear with blood and I would throw them away and hide them and throw them away. There was - to this day my perineum is numb. There is hardly any sensation there. I have burning in my rectum all of the time. Right now as I talk to him, talk about him it flares up like it's on fire. My perineum, it moves through there. My testicles burning in my penis up into my naval tightens up like it's doing right now and above my naval. Every time I see a train, every time I go over train tracks, every time I hear a train, my rectum clenches up tightly and burns like it's on

fire. My penis burns as the tip like it's on fire.

Q. How long have you had this numbness in your perineum and the sensations in your rectum and penis?

A. In eighth grade is when I started to have physical manifestations. I started fainting. I started having seizures. I started having burning in my penis. I started having the burning in my rectum.

Q. And have you had those continually to today?

A. Correct.

Allan Ranta Deposition at 89:15-90:24.

Q. How long did you have these fainting and seizure spells?

A. Started in eighth grade and went into around, if I remember correctly, around sophomore year of high school and I haven't had them since.

Allan Ranta Deposition at 92:25-93:4.

A. I've been to different physicians over a period of time since then and I have mentioned to them the seizures, the fainting and the burning and everything else. I've had pretty much every scan that you can imagine: MRI's CT scans, everything. Everything comes back from that perspective of the brain as nothing showing of why I would be seizing or why I would have been fainting but that was so long ago that if it were to show up, they said it wouldn't show up now since I've stopped.

Allan Ranta Deposition at 93:9-18.

A. To me, it was terrorizing. To me, it was traumatizing. To him, it was sexual in nature.

Allan Ranta Deposition at 118:10-18.

A. "... why do people who are abducted and held in prison cells in basements protect their abusers and when they have the opportunity to come forward in public with other people around, why don't they yell out for help? I had no ability. I was in prison by this man through the mind, through the ritualistic conditioning as a child that he put me through. I realize that now. Back then I didn't realize that. All I knew was whatever this man is telling me to do, I

can't seem to escape it but once he made the death threats, that was it."

Allan Ranta Deposition at 121:2-13.

A. When I saw him in college, I still had the burning – and I'll answer your question. I still had the burning in my penis. And as far as the numbness in my perineum, I still had the burning in my rectum. At that time I didn't realize what I would have is this burning sensation that would, and I still do, that would move from my rectum forward under my perineum into my penis and up to above my naval and it burns and hurts so bad at times so badly that I'll keel over sometimes, you know, and so I did still have that going on.

Q. And you still do?

A. And I still do.

...

Q. Today you attribute that numbness and burning sensation to Wayland Brown?

A. Absolutely. I attribute every single bit of it to him.

Allan Ranta Deposition at 121:17-122-5; 122:17-20.

Q. Okay. Did you ever advise anyone that you pulled your hair and your eyebrows as a child?

A. I did.

Q. And when did those events occur?

A. After I met Father Brown and he started abusing me.

Q. That would have been in the fifth? Sixth? Seventh? What grade?

A. In the fifth grade is when I started to chew my fingernails down to below the quick and my mother was trying to figure out what's going there to stop it and then it escalated from there from sixth and seventh and eighth grade to pulling out my eyebrows, shaving my eyebrows, cutting myself on my arms and hands so.

...

Q. What did she [his mother] do about them?

A. She asked me what was going on and I had no idea what.

was going on. All I knew was that I hated myself. I hated looking at myself in the mirror and I was, what I believed at the time based on what Brown had done to me and what he told me, is that I was this horrible person and so therefore, when I looked in the mirror, I saw someone completely different than who was there. So all through grade school and then all through high school and into moving to Savannah and Atlanta, never once did I look directly into the mirror. Never once would I look at myself naked. I hated my body. I saw something different every time I looked at my body. So if you ever wonder what it's like for a young woman or man who things that – who is anorexic or bulimic and they are thin and they think they are fat, I know where they are coming from because of what happened to me by Brown.

Q. You realized during all that period that you had been harmed by somebody?

A. As I had mentioned to you before, no. I had absolutely no recollection of what Brown had done to me. All I knew was that I absolutely did not like, I hated my body. I could not shower and scrub myself enough. I could not take enough baths; that my mother had a cross in my room with Jesus on it and I would yell and scream in anger at that cross for him to come down off the cross so I could kick his F-ing ass because I hated him for what he allowed to happen to me. But I had no idea what was going on at this time.

Q. All right. My question to you to be specific was not about Wayland Brown. I just asked you – that you were telling us about how you wouldn't look in the mirror and those other things you had problems with. I said was that because you had a realization that you had somehow been harmed. I didn't say by whom but you had somehow been harmed?

A. Correct. And I answered your question and that question is directly related to Brown and so I answered it with that.

Q. So you did realize that you had been harmed. You just didn't realize Wayland Brown had a part in it back then?

A. As I mentioned to you two to three times before, at that time I had no recollection of being harmed at all. All I knew was that I was extremely angry and resentful towards anything and everyone and I hated my life at that time.

Allan Ranta Deposition at 154:21-155:11; 155:22-156:157:21

Q. ...Have you been treated for drug abuse?

A. I have been treated for prescription abuse and so once I started having the memories in order to try and numb all of this out, what I was prescribed were different painkillers and different pills such as different pills in the family of Clonazepam, and so with that comes the body's physiological addiction to it, and so in order to maintain some sense of trying to continue on with my life on a daily basis and fighting for my life every single day with this, I'm still on Clonazepam and that is an addictive substance. And because of him I am on numerous drugs running through my body that are all prescription based and at this time the only drugs that I take are those drugs that are prescribed by my doctor and that these are the only drugs I've ever taken and it's on a monthly basis and any doctor that I go to, if they mention to me that it's the dentist and he wants to provide me with a drug like that, I will let him know, you know, I don't need that drug.

Allan Ranta Deposition at 169:6-170:2.

Q. Okay. How would you diagnose your current mental condition?

A. I'm not a therapist. I'm not a doctor, so I don't think it's my place to diagnose my condition.

Q. Well, I'm not asking you from that standpoint. I mean, how do you feel mentally?

A. Let me say that - let's start with this: Every single night when I go to bed no matter how tired I am, it doesn't matter what I've done during the day and how tired I am, it doesn't matter how many drugs that these doctors pump me in, pump into my body, my body goes into overdrive because I am terrorized to go to sleep because I'm so fearful of the dreams that I'm going to have. And then when I do finally fall asleep, then I wake up all throughout the night almost every single night startled and then I'll fall right back asleep or I may get up and look around just to make sure, reassure myself and reassure myself as an adult that I'm safe. I'm okay. But now, I don't know that I'm safe because Brown's out and he's already threatened to kill me. So my mental state, to finish here, is not good at all. Every single day for me in my life is a struggle to survive. I work very, very hard in order to maintain what I'm doing here, very hard, and I am drugged up. As many drugs as I know to be on and they keep adding up because they stop working, and once they stop working, they add more and change them up.

Allan Ranta Deposition at 178:5-179:10.

"As I mentioned to you before, I've had burning in my rectum, burning in my penis, burning in my perineum. I have had up to my naval, above my naval and with that there will be no one who will come anywhere near my rectum and if anyone ever tries to rape me again, it's not going to happen.

Q. All right. With this sensitivity that you've described relative to your rectum and perineum and etc., did that result in your thinking that you had been abused in the rectum before?

A. The memories of abuse for me flooded me back in January of 2005 and at that time that is when I recall the memories, and with that I very clearly remembered the abuse of Wayland Brown and that included rape and him penetrating my rectum with penis as well as his finger.

Q. Okay.

A. And that included at the – that included at the nature preserve with what he did to me there. That included when we were at St. Anthony's in Hardeeville where he stuck his finger right up my rectum on numerous occasions as well as many other places.

Q. Okay. I just wanted to get clarification, though, that prior to '05 you didn't have this thought in the back of your head relative to your rectum that you had been abused there before?

A. Absolutely not.

Q. Okay.

A. All I knew is my –

Q. It was painful?

A. Yeah. It was painful, it burns. I don't know why.

Allan Ranta Deposition at 192:4-193:13

This and other testimony reflects the severe physical and emotional trauma and damage suffered by the Plaintiff. This damage continues through the present and will

endure for the remainder of his life.

b. Dr. Claudia Crenshaw

Dr. Claudia Crenshaw has a Ph.D in nursing and a master's in psychiatric nursing. She has a license in Georgia as an advanced practice R.N. and a professional counselor. She can also write medications. She provides psychiatric-type therapy and is Ranta's current treating therapist. She's had significant training in trauma as well as a treatment modality known as EMDR. Her specialty is trauma. She is a designated expert of the Plaintiff and testified as follows:

Q. When Allan first came to you, what recollection did he have of being abused by Wayland Brown?

A. I saw him - - I just looked at my notes. I think I only saw him once before he went to Santé. And I did one EMDR session. And he was referred to me by his therapist, Linda Hudson, to kind of help him stay in his skin, which is languaging in my field, which is basically when someone is so frightened and so scared that they can barely just sit still. And she asked me to help him just kind of regroup enough till she could get him into treatment. And at that point he told me that he was beginning to have memories of being sexually abused by a priest. And he said his name was Wayland.

Claudia Crenshaw Deposition 34:18 - 35:6.

A. (Crenshaw reading a note from her records dated February 14, 05): "2/14/05. Session Number 1. Paid \$50. S" - - which means subjective - - "Can we do EMDR today? O" - - which is objective - - "31-year-old white male panic-stricken appearance. Referred by M.D., Dr. Haley, and therapist, Linda Hudson, to contain symptoms, re sexual abuse with priest, in order to make arrangements to go to inpatient treatment: "Meds, Zoloft, 200 milligrams each morning; Risperdal, 1 milligram at bedtime; Xanax, .25 milligrams PRN. Gives history of anxiety, depression. Stopped ETOH" - - which is alcohol - - "12/04." That's in parentheses. So it gives a history of anxiety and depression for years. "Went to an SA meeting around sexually acting out. Referred to Linda Hudson there around sexual abuse and started decompensating....Mental status exam: 'No audio/visual hallucinations. No suicidal/homicidal ideation. Panicked and triggered. Insight and judgment intact. Assessment: Multiple PTSD

secondary to sexual abuse. Plan: Phone call from Dr. Haley. Phone call to Linda Hudson. EMDR today concerning symptom relief." My signature.

Claudia Crenshaw Deposition 75:3 – 76:7.

Q. Could you tell us what each of those says, please? And what it means is really what I want to know.

A. Okay. Axis I, 296.33, it's major depression, severe, recurrent. So I spelled that out. You can actually look up that in the DSM-III in 309.81, posttraumatic stress syndrome secondary to sexual abuse by a priest. Do you need to know more than that or - -

Q. No, no.

A. Okay. And on Axis II he does have no diagnosis. He doesn't have a personality disorder. He doesn't have mental retardation or autism or Asperger's or Down's Syndrome. Then Axis III, lattice dystrophy of the eyes. He got that diagnosis a year or two ago. And his father had it. And his father died blind. And so it's a possibility he may end up blind. And up - - UGI is upper-GI difficulties, which he developed this summer as he was having memories about oral penetration and oral rape. And - -

Q. At the hands of Wayland Brown?

A. Right. And then body memories of abuse. He still has memories in his perineum, abdomen, and rectum but not as severe as when I first met him. And then Axis IV, the stressors right now are the release of the perpetrator.

Q. And by that, the word "perpetrator," you mean Wayland Brown?

A. Wayland Brown from Maryland.

Q. When you say "released," do you mean released from prison?

A. He was released from prison. And apparently, from what Allan tells me, is in a halfway house in Maryland. And then criminal investigation which started this summer, just having to tell the story again, visit sites.

...

Q. Thank you. Could you go ahead and finish the Axis, please.

A. Yeah, sure. At current - - And this is where diagnoses are fluid. Like, what I would add to Axis IV right now is seeing this Maryland license plate care and someone who fit the description of Wayland Brown at his

house has been a huge stressor.

Q. I understand.

A. And then Axis V, level of functioning, 65, that's a level of functioning where you've got some moderate symptoms but you're still able to go to work; You don't need to be in a hospital.

Claudia Crenshaw Deposition 85:8 – 87:21; 88:7 - 18.

Q. Okay. Thank you. Now, you continue currently to treat Allan Ranta, do you not?

A. Correct.

Q. You would not continue to treat him if he didn't need further care, would you?

A. Correct.

Claudia Crenshaw Deposition 93:15 – 20

A. ...“And you can certainly compartmentalize memories. I use the word “compartmentalize memories,” so you're not conscious of memories for a very long time.”

Claudia Crenshaw Deposition 21:21 – 24.

A. ...Allan doesn't have that. He's got dissociation somewhere in the middle like that.

Q. He's got dissociative memory?

A. I don't - - He's got dissociation.

Q. Dissociation?

A. Mm-hmm.

Q. How do you define that?

A. Dissociation. Dissociation is a defense mechanism that allows you to -
- It's a high-level defense mechanism that allows you to put things places if you don't want to remember them or think about them. And it's an unconscious defense mechanism. But we can use it consciously. Like, if you're too stressed out and you want to go to a movie to forget your

problems, that's a conscious use of dissociation.

Claudia Crenshaw Deposition 23:2 – 17.

Q. And people that have dissociation issues - - For example, he apparently in 2005 started recalling abuse by Wayland Brown. So those were dissociated memories that he had?

A. Yeah, correct. And a lot of people will use alcohol, drugs, sex, or food to just keep everything down. And part - - I think part of why things happened then is that he stopped drinking.

Q. Is it typical for someone who has been involved in a violent act to dissociate that memory?

A. Yes, absolutely. Absolutely.

Q. Even if it's been repeated a number of times?

A. Absolutely. Actually, the worse the repetition, the more that it might be dissociated. And if you talk to rape victims - - I'm not talking about Allan but female rape victims, which I work with a number - - they always say at the time of the rape, they're up in the corner. They're not right there at the rape and that they dissociate right then. And then they have - - Then they have ways of putting it places. And some rape victims remember the rapes, and some of them don't. It's interesting, isn't it?

Q. Do they forget them for 30 years?

A. Sure.

Claudia Crenshaw Deposition 24:3 – 25:6.

Q. Okay. Do you believe it's plausible for a 6th grader, someone about that age group, to be violently raped like Allan alleged in the train yard and that he dissociate that memory immediately?

A. Absolutely. Particularly usually with these experiences - - and it was Allan's experience, too - - is there are threats and threats that you're going to get hurt, your family's going to get hurt, you'll be taken away from your family. And so it's actually the best option. And that memory just gets dissociated. It's like it didn't happen. Absolutely. Absolutely.

Q. And then within a short period of time after that he goes back out with the individual and it happens again?

A. Absolutely. And I see that a lot with rape victims, date rapes, that people are raped and they dissociate and he calls up for another date, and this can go on and on. Yeah. Yeah. No, I've seen this in trauma definitely. Definitely. And he doesn't remember. You know, as he said - - and you probably have it in testimony - - that, you know, Wayland would say, we're going to the movies. We're going to the fireworks stores. And there's also the fear if you don't cooperate that that's the time that you're going to get hurt and you're going to be taken away from your family.

Q. Do you believe that someone would dissociate the memory though, or do they remember it but just know there's a threat hanging over it?

A. They - - You literally can just not remember it. Yeah. Yeah. And that's my experience working with clients with this sort of trauma.

Q. A 6th, 7th grader would be raped like he says he was and wouldn't say anything to anybody and would forget about it and then become a victim again?

A. Yes. The defense mechanism used in children and how children can survive, like, a parent dying and all, they just use denial. And it's a major defense mechanism in childhood. And dissociation is actually a higher level. And it was - - It allowed Allan to survive. So it was a very, very useful defense mechanism.

Claudia Crenshaw Deposition 44:11 – 46:2.

Q. Dr. Crenshaw, I noticed in some of your records in talking about Allan he relates to you conversations that he recalled with Wayland Brown. Is it unusual for verbal memory or memory of conversations to be dissociated for 20 years or whatnot and then be remembered?

A. Yes.

Q. That's unusual?

A. No, no, it's usual.

Q. Okay.

A. It is usual. It is not unusual.

Claudia Crenshaw Deposition 65:21 – 66:6.

Q. Let me go further. Does the child rape victim need not to remember?

A. To continue functioning?

Q. Yes.

A. Yes.

Claudia Crenshaw Deposition 92:9 – 93:1.

c. Dr. James C. Montgomery

Dr. Montgomery is board certified in psychiatry. He is certified by the American Board of Addiction Medicine and the American Society of Addiction Medicine which are overlapping organizations. He has been the Medical Director of Santé Center for Healing since 2004, the in-patient facility that treated the Plaintiff for approximately 4 months in 2005 after the Plaintiff first recalled the memories of the abuse suffered by Wayland Brown. He managed a program in Lafayette Louisiana at a psychiatric wing of a hospital that dealt purely with sexual trauma. Dr. Montgomery was Allan Ranta's attending psychiatrist. He is a designated expert of the Plaintiff and testified as follows:

A. ...“Allan had a real difficult time trusting.... He had a very vulnerable posture in terms of coming here and dealing with issues he was dealing with, so to be shaky at that point would not be surprising at all.”

James Montgomery Deposition 21:7-12.

Q. Okay. What were your initial impressions of him when you first met him?

A. The first time I met him I was struck by his anxiety. He was very frightened, very wounded. I remember it seemed very important for him to feel as though I understood, which is very typical in a first meeting; and it was very hard for him to let me guide him into things other than trauma because particularly when there's that much anxiety, one of the ways of taking a break is “Tell me about your job, let's talk about your pets, let's talk about something else, we'll come back to that,” and he had a very hard time with shifting that primarily due to the anxiety.

James Montgomery Deposition 28:18 – 29:3.

A. ...“He had some issues around sex and sexuality which also included his trauma, so that was a whole complicated treatment plan; and then he had psychiatric symptoms, his anxiety, the symptoms of posttraumatic stress disorder, which were going to require both pharmacologic treatment, some of the adjunct treatment such as the neurobiofeedback, Alpha-Stim, some of the other things he was doing and would also impact his other treatment.”

James Montgomery Deposition 30:11 – 19.

A. ...“He had several other areas where he dampened his mood. He could do it by some of his sexual acting out, going to the gym and picking up people, going to bars even when he didn’t drink, some of his relationship issues; and that’s where, in sexual trauma particularly, we see the reenactment of the trauma is much like the high you get riding a roller coaster, and that becomes mood altering.”

James Montgomery Deposition 32:25 – 33:7.

Q. Okay. The treatment plan and I guess the initial intake or the master treatment plan references three initial diagnoses: I guess PTSD, major depression, and I guess substance abuse?

A. Right.

James Montgomery Deposition 35:9 – 12.

Q. And it was not until early 2005 before he came to Santé that he began recalling these abusive memories by Wayland Brown...Is that correct? (objections omitted) Do you know that?

A. That’s what he reported.

Q. Okay. And you’ve said he was very anxious while he was here?

A. Yes.

James Montgomery Deposition 57:24 – 58:12.

Q. And these issues, they’re not static. They kind of go up, and they go down. Sometimes a child sexual abuse victim will have sometimes a good day, and sometimes they’ll have bad days. Isn’t that right?

A. Yes.

Q. And, in fact, it could go just good and bad days, but it can go on such an increase or decrease that he could require another inpatient stay at Santé or some other treatment facility, isn't that right?

A. That wouldn't be unusual.

Q. Okay. Would you agree with me that victims of child sexual assault, they carry that with them throughout their lives? (objection omitted)

A. I think any kind of trauma because of the definition of trauma as being something that involves the perception or risk of loss of life and limb stays with us throughout life.

James Montgomery Deposition 59:15 – 60:7.

Q. Okay. And you're aware that his stay here at Santé was prompted by his recollection of his abuse by Wayland Brown?

A. Yes

James Montgomery Deposition 62:8 – 11.

Q. Okay. And you're aware that Allan Ranta has - - when discussing Wayland Brown often has body pains - -

A. Right.

Q. - - when even just discussing or thinking about it. Is that typical?

A. Yes.

James Montgomery Deposition 84:25 – 85:5.

Q. There are probably a hundred other issues that he still is dealing with now?

A. Right.

Q. You would agree with me that these things take time and effort - -

A. Right.

Q. - - to ultimately get back to where the baseline should be?

A. And he dealt with it once; he'll have to deal with it many times.

James Montgomery Deposition 86:18 – 87:2.

Q. I mean, as a general rule, do you believe in disassociation?

A. Disassociation is a normal defense.

Q. Okay.

A. We all do it. My example is most physicians by the time they finish medical school have learned to disassociate the sense of smell. It is a survival technique.

James Montgomery Deposition 44:4 – 11.

Q. Would you agree with me that children who dissociate severe traumatic memories - - I think you testified earlier that's a defense mechanism that happens on a subconscious level, right?

A. Right.

Q. It's not an intentional thing?

A. Right.

Q. Would you agree that the child who dissociates needs to disassociate that memory in order to function as an everyday child, to go to school the next day, to live?

A. Actually it is the unconscious that makes the decision at that moment that this can't be processed, so it is shifted into an area of unconscious memory, blocked memory, however you want to describe it, where whatever is going on at the moment goes into registered memory, and everything else - - the other 11 million bits goes somewhere else.

James Montgomery Deposition 69:23 – 70:14.

Q. All right. An example where a child has been sexually assaulted and he dissociates that memory as a defense mechanism as a protection device, would it then correlate that that dissociation is to a greater degree than the example of a small child?

A. Certainly.

Q. So they could disassociate that memory and it's gone for all intents and purposes, and the more severe the trauma, perhaps the longer the time that memory is disassociated?(objection omitted)

A. I think it has to do - - And our understanding of this is increasing as we understand the brain. Both the mechanism and the learning process are involved in that. Because it's a protective mechanism, the more protected the memory is, the more later is that more defenses that are going to be put around it and the ease with which we access it is going to be greater.....

James Montgomery Deposition 75:13 – 78:2.

d. Dr. Steve Shindell

Dr. Steve Shindell was a treating psychologist of Allan Ranta. The first time he had the occasion to see Allan Ranta was in 1999, before Ranta recalled the abuse by Defendant Brown. He is a designated expert of the Plaintiff and testified as follows:

Q. Did he ever discuss with you issues that he thought had been repressed, like repressed memory syndrome, of having been abused by other people when he was a child?

A. No, not to my knowledge.

Steve Shindell Deposition 12:24, 13:1-2.

Q. Would you expect him a year into therapy with you having never mentioned it before to bring it up for the first time and then have a flood of memories about all these various episodes when he's with an individual?

A. No; that would be very atypical. I saw Allan for a number of years. And I think it was - - I saw the note just a few seconds ago - - probably 50 times, 45, 50 times over a large period of time. We talked over a lot of things that were potentially embarrassing, a lot of things that were difficult to talk about, some things that were illegal. I would be surprised if he came up with something that he wouldn't have been comfortable talking about.

Q. And a normal person would have been able to express that to you during the course of your therapy after a given period of time?

A. I don't know what you mean by normal. But yes, it would occur, or it would be very obvious that there's a part of their life that they aren't sharing that they are - - that they are resisting talking about.

Steve Shindell Deposition 23:23 – 24:23.

Q. Now, when a child is sexually abused, raped by a person who is an authority figure and the person in whom trust and confidence has been reposed by the child, does that, in your view, exacerbate the suffering of the child in the sense of a breach of trust? (objection omitted).

A. Well, by definition a sexual abuse would be somebody that would be in a higher-powered position. So the answer would be yes, but it would be yes in all cases.

Steve Shindell Deposition 26:14 – 23.

Q. You talked about Allan Ranta in relationship to alcohol and drug abuse. I want to ask you if that is something that you see in victims of sex abuse?

A. Yes. It certainly is more common with people with sexual abuse. It's also very common in general populations. But certainly the incidence is higher in people who have a history of sexual abuse.

Steve Shindell Deposition 38:20 – 39:1.

Q. ...In the world of sexual abuse, if a child is horribly and violently and repeatedly sexually abused and they do this dissociation that you were talking about a while ago, does a child - - Does that happen - - I hate to use a lay word like automatically. What I'm trying to say is the child is not sophisticated at age eight, nine, or ten to work through all of that and to decide, "I'm going to compartmentalize this and this and this, but I'm not going to compartmentalize - - I'm going to middle compartmentalize the following things." Do you follow what I'm - -

A. Yes.

Q. - - getting at? So what I want to ask you - - and I'm sorry for the rambling. But the question is very simple: Do children do that? Do they put it away, get it out of their mind, to live otherwise?

A. Oftentimes. The typical child that's been sexually abused remembers everything and can talk about it. The typical child doesn't dissociate. In other words, dissociation is a rare phenomenon.

Q. Rarer than - -

A. Than not dissociating.

Q. - - than not dissociating? Okay.

A. Now, somebody with, you know, horrific physical or sexual abuse, is it possible for somebody to dissociate in order to maintain and make it through life, yes.

Q. And when you say "maintain" - - I said to live - -

A. Yes.

Q. - - you say "to maintain," we mean the same thing - -

A. Yes.

Steve Shindell Deposition 45:25 – 47:10.

e. Dr. Sam Hill

Sam Hill is a licensed professional counselor/case manager at the Santé Center for Healing, the in-patient facility that treated the Plaintiff for approximately 4 months in 2005 after the Plaintiff first recalled the memories of the abuse suffered by Wayland Brown. He has his master's degree in counseling and human services. He is licensed by the state of Texas. His specialty is addiction. He is a designated expert of the Plaintiff and testified as follows:

A. ... "When he got here, he was so beaten down he was - - He had been suicidal, was still suicidal. It was several weeks, I think, before he really even brightened up enough to be able to string along any of the assignments that we asked him to do."

Sam Hill Deposition 21:21 – 25.

Q. Yeah. Let's talk about the body memories a little bit. Can you tell me what that is? What is a body memory?

A. Well, you're familiar with muscle memory, the idea of a repetitive behavior. If you swing the baseball bat just right, you know that you've swung it right. If you swing it the wrong way, you know that there's something not right about that. The muscle develops memory, and the brain stores the memory of the pain.

Q. And that could be manifested - - A psychological injury can be manifested physically?

A. Yes.

Q. And that happened with Allan Ranta?

A. Yes, it did.

Q. I don't know if you note, in the records much of his body memory is activated when he discusses Wayland Brown. Are you aware of that?

A. Yes.

Q. Do you attribute those body memories to the abuse suffered at the hands of Wayland Brown?

A. It's certainly part of it...

Sam Hill Deposition 91:23 – 92:21.

Q. A child uses - - As a defensive mechanism, some children dissociate, do they not?

A. Yes.

Q. And that dissociation is not an intentional thing; it's an automatic, subconscious sort of compartmentalization?

A. Yes, the brain's way of compartmentalizing something that's -

Q. It's so traumatic that they can't deal with it?

A. Yes. (objection omitted)

Sam Hill Deposition 96:10 – 20.

f. Dr. Paul Kimmel

Dr. Paul Kimmel is a board certified psychiatrist. He first treated Allan Ranta, August 19th, 2005. The purpose for seeing him on that date was for medication monitoring. At the time of their first meeting, Ranta was on Baclofen, Klonopin, Zoloft, Seroquel, and Labetalol. Labetalol is a beta blocker for anxiety. Seroquel is an antipsychotic for anxiety. Zoloft's an antidepressant for anxiety and depression.

Klonopin is an anti-anxiety medication and baclofen is an anti-anxiety medication. Allan was referred to this doctor by Claudia Crenshaw. He is a designated expert of the Plaintiff and testified as follows:

Q. On the first entry, the 8/19, he comes to you and he's discussing abuse by a priest on the first visit.

A. Yeah, he's providing me his history.

Q. Okay. And do you recall what information he gave you about that incident?

A. What's in my notes. Mostly gave me background history, his current state of anxiety and depression. He did say that is abuse was from Wayland Brown in Savannah. He mentioned that he had addictions, especially sex. Sometimes food and occasional abuse of alcohol and Xanax, that he's chronically suicidal.

Paul Kimmel Deposition 11:23 – 12:9.

Q. Okay. But you and Claudia didn't coordinate treatment or anything?

A. Occasionally if Allan got suicidal she would call me to let me know he's in trouble. If there was a medication adjustment that she thought needed to be made, she would call and ask me about it. So we did have contact but it was infrequent.

Paul Kimmel Deposition 22:4 – 10.

Q. All right. The bottom of that page, January 3rd, '05 - - I guess it's '06. Can you just read that record, the entry for me?

A. "Seroquel 25 milligrams. Very sedating in the morning. Symptoms didn't improve. Sleep and less nightmares but still present."

Q. Okay.

A. So apparently he had a decrease in those symptoms but they were still there.

Paul Kimmel Deposition 32: 23 – 33:7.

Q. Okay. Your - - step back from this record for a second. Your diagnosis of him - - what were your diagnoses of him overall?

A. Oh, major depression, generalized anxiety disorder, posttraumatic stress disorder, addiction.

Q. And the posttraumatic stress, that's - - in your opinion that's related to the abuse by the priest?

A. (Witness nods head.)

Paul Kimmel Deposition 34:12 - 23.

Q. About the middle of the page (Discussing January 26 report in doctor's records) it says "reports" and I can't read the rest of it. Can you - -

A. In addition to poor sleep, lower energy, tearfulness, fear and anxiety, overeating comfort foods, increased frequency of sexual acting out, good work functioning and work is helpful because it distracts him from his feelings and ruminating about what happened to him.

Q. Okay. During the course of your treatment of him, I mean, how would you characterize his progress? Was he improving?

A. It's hard to say. At times he was certainly doing better. He was able to maintain work most of the time. That's pretty good, but he had struggles the whole time too.

Paul Kimmel Deposition 39:7 - 21.

A. ... "His depression and his anxiety were major aspects of my treatment of him, as well as his symptoms of posttraumatic stress and anxiety."

Q. Okay. So they're all equally important or I mean - -

A. Oh, yeah.

Q. Okay. All right. The last page or page 2 of the report says, Mr. Ranta has actively participated in his treatment and is highly motivated although his prognosis is guarded.

A. Umm-hmm.

Q. What do you mean by that?

A. Guarded because it was so hard to manage his symptoms. As much work as he'd done, as much therapy as he'd done, as much as he'd traveled for therapy, as much body work as he'd done, EMDR - all the

modalities that were used, he was still having a great deal of distress so at that point I would say his prognosis was guarded.

Q. Okay. And by "guarded," what do you mean?

A. 'Guarded' just means you're not really sure how it's going to come out.

...

Q. There is a note, that main paragraph about halfway through. Wayland ejaculated on him.

A. Yes.

Q. Okay. Now, explain to me how that comes up. Is that -

A. He would volunteer. I rarely ask questions again because my role is medication. But if he's upset or anxious, I would ask him are you okay. What's going on and he would tell me then information and on that day that's what he told me.

Q. Okay. And is that a memory he's having or is that some sort of vision he's having?

A. I think they were part of his flashbacks which would be that it wasn't a dream. It was him remembering what had happened and re-experiencing it -

Q. Okay.

A. - - as a flashback.

Q. And these flashbacks, they appear in your records quite a bit.

A. Umm-hmn.

Q. Well, not quite a bit. I mean, they appear in your records but are these things that - - past memories he's forgotten and they are coming back to him?

A. Yes.

Q. Okay. And do you know -

A. Although usually he already has the memories by the time he sees me because he's already talked to Claudia and done work and yada, yada.

Q. Okay.

A. So these are things that he was aware of when he was talking to me, but they were recent memories of his.

Q. Okay. And something that had been out of his memory for some period of time?

A. Correct.

Paul Kimmel Deposition 20:9 – 21:18.

Q. Yeah. If you can help me with a couple of things, I would like to try to understand as fully as I could please how are children who are sexually abused by priests, particularly in an instance where the priest has violently raped the child repeatedly over an extended period of time, how are those children impacted?

A. Profoundly. That's why they learn how to dissociate because they can't really make it with all that pain and trauma if they didn't find a way to separate it out and not know about it.

Q. I'm a layman obviously to your profession so I apologize in advance to my inability to properly use your language, your professional language with what I am about to ask you.

A. You're doing fine.

Q. Is it fair to say that a child who has been abused and has ridded himself or herself of that memory needs to do that to survive?

A. (Witness nods head.)

Q. You need to say yes or no because she's taking it down.

A. Yes, yes.

Q. Okay.

A. If they have that ability. Not everybody does.

Q. I understand. And I'd like to ask a few more questions about abuse by persons in authority. Is it typical that children who are abused are abused by persons whom they trust?

A. In general but not always.

Q. No, I understand not always. I'm just asking is that a typical thing you see?

A. Yes. It's not uncommon.

Paul Kimmel Deposition 59:9 – 60:20.

g. Dr. Gregory A. Haley

Dr. Haley is an M.D. who specializes in psychiatry and is licensed in the state of Georgia.

He first saw Ranta in late 2004 through early 2005 before referring him to Santé Center for Healing in Dallas, Texas, for in-patient therapy. He is a designated expert of the

Plaintiff and testified as follows:

Q. Let me move on to page 35, which is for February 22, '05, and ask you to give us your assessment on that occasion.

A. At that time he said that he found himself constantly going to check the door to make sure that it was locked. He had had no previous checking behaviors like this. He is reporting that the top of his head felt like it had been really hurting, although he always was prone to excessive headaches, leg shaking, and so on. He also had similar pain in other regions. He reported that he had been having blackouts, seizures or convulsions of some sort around the eighth grade. And around that same time he reported he had been cutting himself, plucking his eyebrows and eyelashes out, and that's when pain in his abdomen had begun as a complaint.

Gregory Haley Deposition at 20:1-16.

A. ... "[H]e had become so labile and acting out, we weren't – and acting so paranoid and beginning to act so irrational that we weren't convinced he was going to be safe with just outpatient."

Gregory Haley Deposition at 42:10-13.

Q. And you quoted a sentence that said he came in very anxious and shaky, flooded with recollection of sexual abuse at the hands of a parish priest...

A. Correct.

Q. Alan had never told you that he had been abused –

A. Prior to that February session, no.

Gregory Haley Deposition at 31:25-32:13.

Q. And as a child, if a child is abused sexually and violently, does that child need to compartmentalize or disassociate that memory to survive?

A. Absolutely.

Gregory Haley Deposition at 33:14-18.

Q. Since that memory is dissociated, the child can't retrieve that memory; however, can there be manifestations in that child's life, whether physical or psychological, in the form of acting out such as cutting, plucking eyebrows, seizures, blackouts? (objection omitted).

Q. Can that happen?

A. Yes.

Q. But the child doesn't remember or doesn't know the source of what's causing him to act out or have these internal feelings; is that correct?

A. Correct.

Q. But they can feel depression and anxiety and other symptoms like that; correct?

A. And often do, yes.

Q. And in addition to that it can lead to various other issues in a person's life, addictions, sexual dysfunction or sexually acting out; is that right?

A. Correct.

Gregory Haley Deposition at 38:20-39:14

CONCLUSION

Given the aggravated, violent, and severe sexual abuse suffered by the Plaintiff in this case, the massive pain and suffering that has resulted therefrom, the extensive and substantial medical care already incurred by the Plaintiff since his recollection of the

abuse by Defendant Brown, in addition to the extensive and substantial need for further medical care and therapy for normal functioning, the breach of trust due to the nature of Defendant Brown and the Plaintiff's relationship – priest and parishioner, the decades of documentation of Defendant Brown's proclivities and propensities for sexual interaction and molestation of minor boys prior to the abuse suffered by the Plaintiff and the decades of concealment of this knowledge by Defendant Brown in conjunction with the Diocese of Savannah, the Plaintiff is entitled, and urges, a judgment that accurately reflects this court's and society's disgust and disdain for the outrageous conduct of Defendant Wayland Yoder Brown, in the amount of \$100 million dollars⁶ (\$100,000,000.00) for actual damages and a similar amount in punitive damages sufficient to deter similar conduct by this Defendant and others.

For the foregoing reasons, the Plaintiff respectfully requests this honorable court enter judgment against Defendant Brown, and for such other and further relief as the court deems just, prudent, and proper.

Signature page to follow

⁶ While this may seem like a large amount, it accurately reflects South Carolina's disgust for this type of conduct. See Glover v. Porter Gaud School CASE NO.: 98-CP-10-613 (jury verdict of \$105 million for the sexual abuse of school children by school teacher) (verdict form attached hereto as Exhibit A).

Moreover, to help determine the appropriate damages in this matter, the Plaintiff engaged a focus group to review this case. When \$100 million in damages were discussed, none of the participants were surprised by the figure. In fact, 3 of the 8 participants felt \$100 million an accurate reflection of the Plaintiff's damages, while 2 others felt that \$100 million was too low.

Respectfully submitted,

THE RICHTER FIRM. LLC

By: 

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Mt. Pleasant, South Carolina
Nov. 13 2009.

**PLAINTIFF'S
EXHIBIT**

R. App. 000513

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

JUDGMENT IN A CIVIL CASE

Case No.: 98-CP-10-613

HAROLD GLOVER

versus

PORTER-GAUD SCHOOL,
the ESTATE of JAMES
BISHOP ALEXANDER and
the ESTATE of BERKELY
GRIMBALL

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☐ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(e), SCRCP (Voluntary nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other - _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Other - _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by Court
Judgment Entered Against all Defendants in the Amount of 15 Million Dollars in Actual Damages. Judgment also Entered Against The Estate of James Bishop Alexander in the Amount of 45 Million Dollars Punitive Damages. Judgment also Entered Against The Estate of Berkely Grimball in the Amount of 45 Million Dollars in Punitive Damages. All Post Trial Motions were heard rather than waiting 10 Days, And Taken Under Advisement.

\$105,000,000.00

Dated at Charleston, South Carolina, October 27, 2000

Thomas Porter
Judge

FILED
OCT 27 PM 12:31
CLERK OF COURT

This judgment was entered on the 27 Day of October, 2000, and a copy mailed first class this 30 Day of October, 2000, to attorneys of record or to parties (when appearing pro-se) as follows:

DAVID FLOWERS & GREGG MEYERS

ROBERT STEPP, LAURA ROBINSON & DAVID RULERFORD

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & G.S.

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

Heather A. Cook
DEPUTY CLERK

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 10-CP-10-5520

v.

- Negligence; Gross Negligence
- Fraudulent Concealment
- Civil Conspiracy
- Professional Negligence
- Breach of Fiduciary Duty
- Judicial Estoppel
- Unfair and Deceptive Trade Practices

Jury Trial Requested

Complaint

For their complaint, the plaintiffs allege:

Parties and Jurisdiction

1. Plaintiffs are adult citizens and residents of a state other than South Carolina.

Each was sexually molested as a child by a priest of the Diocese of Charleston, James W. McCarthy, when James McCarthy was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.

2. Pseudonyms are used for the plaintiffs due to the sexual abuse injury, which is the subject of this complaint. The defendants will be informed of the identity of the plaintiffs

upon their agreement to reciprocate in discovery and to maintain plaintiffs' identities as confidential in the public record.

3. James W. McCarthy was assigned by the defendants to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971. During his time at St. William, defendants knew, or should have known, that James McCarthy was sexually abusive to children.

4. The Bishop of Charleston, a Corporation Sole, is the 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. William Parish, a Catholic Church in Ward, S.C., and although the acts associated with the abuse of the plaintiffs took place in and around Ward, S.C., in Saluda County, the acts of negligence and recklessness by others with the Diocese, in exposing the plaintiffs to the risk presented by James McCarthy, occurred in Charleston County. As a result, venue is proper in either Charleston County or Saluda County.

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. He is sued in his official capacity, and is a party necessary for complete relief. All persons working for the Diocese are subordinate to the Bishop.

6. Prior to Bishop Guglielmone, from October 2007, to March 2009, the Diocese had no Bishop, and was administered under the Code of Canon Law by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina.

7. Prior to Administrator Laughlin, from July 1999 to August 2007, the Bishop was Robert J. Baker, presently a resident of, and citizen of, Alabama.

8. 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.

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

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

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

12. John Doe 2 and Jane Doe 4 were each similarly situated as other individuals ostensibly within the definition of a class certified by a South Carolina court as part of a class action. However, by agreement among the defendants, the plaintiffs received no notice of the class action, thus had no opportunity to be heard or participate in the litigation, either in person or through counsel. By agreement among defendants, notice given in the class action was designed to be insufficient as to the plaintiffs, so as to permit the Diocese to later argue that the class action precluded any and all claims for abuse, by preventing the plaintiffs from either participating in the class action or being able to remove themselves from the class action by opting out. In being within the putative definition of the class as the defendants agreed to define the class, the plaintiffs, along with other members of that class who resided outside of South Carolina, ostensibly were formerly represented by, until in 2007 they were abandoned by, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC. Alternatively, and at minimum, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC assumed duties as to the plaintiffs by defining the class so as to ostensibly

include them. The defendants conspired against the plaintiffs to cause them special harm in the form of the effort to preclude them from making claims. The representation they were given in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

13. This action is not alleged as a class action. It involves as plaintiffs two persons who were, until they were each abandoned by their 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. But for the Richter defendants having breached their duties to plaintiffs by abandoning the plaintiffs, in agreement with and full complicity with the other defendants, the class action would ostensibly have included the plaintiffs. A number of other individuals have made similar allegations of having been excluded by design from the class action, and this complaint may be amended to state a class action.

14. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

15. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

16. Richter & Haller, LLC did business in Charleston County, South Carolina at all times pertinent to this complaint, and had its principal place of business in Charleston County.

17. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to as the "Richter defendants," as noted above in paragraph 13.

Nature of Wrongdoing

18. This complaint sets out various causes of action built around four different levels of disregard for others and corruption. First, the disregard by the Diocese defendants in operating a system which actively disregarded 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 happened and the dangers to children it solicited into danger. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy for the Catholic Church a layer of what was hoped would be protection from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese. Third, the corruption of particular lawyers who assumed a duty to act for sexual abuse victims, including the plaintiffs, but who then 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 in exchange for their cooperation in trying to protect the Church from future cases, and from claims by these plaintiffs and other sexual abuse victims. The danger to the Diocese of future cases was that future cases might be brought by lawyers actually adverse to the Diocese, as opposed to the lawyers who entered into the collusive class agreement with them. Fourth, overt misrepresentations of fact by the Diocese defendants to the court, which approved the class action settlement.

19. So confident were the corrupt lawyers in their ability to manipulate the state court judge they had selected and maneuvered the cases before, and so confident were the corrupt lawyers in gaining the cooperation of the Diocese defendants and their supposed

adversary lawyers, that the corrupt lawyers, the Richter defendants, calculated they could submit even blatantly false and inflated time records to justify their large fee, and that no objection to them would be raised by the Diocese defendants. In exchange for their cooperation, the Diocese (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention any of the false time records submitted by the Richter defendants, (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, simultaneously, compensation to the class of victims was variable, (e) agreed to make no objection to the fee being awarded before to any class member claimant was identified, and before any class member claimant was paid, and (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law. In turn, the Diocese defendants overtly misrepresented 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 Diocese defendants ignored that they made the representation.

20. 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 class action to which the Diocese was party. As alleged more fully below, plaintiffs ostensibly fall within a class defined in that action, but the notice given to the classes, by design, was changed by all defendants so as to exclude notice to the plaintiffs. As a practical matter, notice was revised so it would go only to a subset of the approved classes; those class members living in and immediately adjacent to South Carolina. The

change to the extent of the proposed notice was noted to the state court but ignored when notice was approved. All defendants cooperated together to better protect the Diocese by asking for only notice that would be insufficient to notify all members of the class.

21. The state court which approved the class may have provided for absent members of the class, but the Diocese contends the order does not mean what it says, and now argues it has no duty to absent members of the class that received no notice of the class settlement, to perpetuate the fraud the Diocese defendants intended to achieve through the class action and by cooperating with the Richter defendants.

22. Plaintiffs are absent members of a class who, by design among defendants, received no notice of the 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 their interests, because their representation by the Richter defendants was inadequate and fell below the applicable standard of care, and because the state court order appears to contemplate the insufficient notice by holding that the plaintiffs is not properly bound by any *res judicata* effect, as set forth more fully below.

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, either because the state court's ruling left room for persons not receiving notice or because the deliberate restrictions on notice clearly failed to comply with plaintiffs' due process rights, then the causes of action against the Richter defendants who, for a fee, abandoned their clients, and those who conspired against them through the class action, are irrelevant because plaintiffs can make their claims against the Diocese. If the court finds that the plaintiffs are precluded for any reasons, including the *res judicata* effect of the class action, charitable immunity,

or by the statute of limitations, then the causes of action alleged against the Diocese defendants for sexual abuse are irrelevant, and those claims are properly made against those who conspired against them as well as against the Richter defendants who failed to properly represent them.

24. 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. An interpretation is sought 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**

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

26. The defendant Diocese employed James McCarthy as a priest.

27. In his capacity as priest, James McCarthy was placed by the Diocese defendants in a position of trust and confidence, and had access to the plaintiffs and other children. In that capacity, James McCarthy sexually molested the plaintiffs and other children.

28. Prior to plaintiffs being molested, the Diocese defendants became aware that James McCarthy was dangerous to children. The Diocese defendants moved James McCarthy from place to place within the Diocese, and thereby facilitated his access to young people whom he could molest.

29. Alternatively, the Diocese defendants operated various schools, activities, and churches that were intended to attract children and families. The Diocese defendants encouraged people, including plaintiffs, 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, by representing nothing to the contrary to the public. The Diocese defendants particularly owed a duty to the plaintiffs, who were minors, and their parents, a greater degree of care because as children the plaintiffs were unable to fully appreciate risks and danger. The Diocese defendants represented to its invitees and their parents or guardians, including the plaintiffs, that its facilities and its priests were safe, and that persons would be would be protected form harm when using its facilities and when interacting with its personnel.

30. After he was moved to Ward, S.C., James McCarthy molested the plaintiffs.

31. The Diocese defendants negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy. Moving him without proper warning to children and their parents was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, plaintiffs were sexually abused by James McCarthy.

32. The Diocese defendants were negligent in failing to warn the plaintiffs or their parents about James McCarthy. The Bishop performed that duty in a grossly negligent manner.

33. The Diocese defendants knew or should have known that James McCarthy was a pedophile. Despite that knowledge, the Diocese defendants, including Bishop Guglielmone, Bishop Baker, and Rev. Monsignor Laughlin, made no effort, or no competent effort, to ascertain how many children James McCarthy had molested, and no effort, or no competent effort, to locate victims of James McCarthy. If the Diocese did make such an effort, it assumed the duty but performed it negligently. Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

34. The Dioceses 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.

35. 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 James McCarthy, the problems for the plaintiffs were first caused, and then exacerbated by the delay.

36. 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 was in 2009. This action is brought within three years of that most recent act of concealment and fraudulent conduct by the Diocese defendants.

37. 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 McCarthy's victims, or in performing that duty in a negligent manner.

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

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

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

40. The Diocese defendants had a duty to discover and to disclose to plaintiffs or their parents their knowledge that James McCarthy had 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 solicited; (b) from the parents of the plaintiffs having expressly reposed a trust and confidence in the Diocese defendants so as to entrust the plaintiffs to James McCarthy, which placed the plaintiffs in a vulnerable position with James McCarthy. That position of trust and confidence was implicit from those circumstances of plaintiffs being entrusted to James McCarthy, as well as from the nature of the dealings between the plaintiffs, their parents, and the Diocese defendants, who promoted that the plaintiffs' parents should leave the plaintiffs in the care and custody of James McCarthy, (c) from the essential nature of the Diocese defendants and their inducement to the plaintiffs' parent to have the plaintiffs participate in activities with James McCarthy as being beneficial to the plaintiffs, or at least not harmful to them, (d) from the secrecy provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese to discover, but then to maintain secrecy about, "other persons solicited" by any person such as James McCarthy, 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 Diocese defendants designation, grossly negligently), during 2005 - 2010, to locate victims such as the plaintiffs.

41. The plaintiffs were sexually abused by James McCarthy after 1962.

42. Concerning each of (a) the undisclosed dangers James McCarthy represented to the plaintiffs, and (b) assisting to repair the damage done to the plaintiffs by James McCarthy, the Diocese defendants were obligated to the plaintiffs to engage with them or their parents on their behalf in perfect good faith and with full disclosure.

43. Instead of disclosure, the Diocese defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including James McCarthy. 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.

44. Specifically, the Diocese defendants created, as embodied in the Code of Canon law, which required it, an archive (Canon 486), accessible only by the Bishop and chancellor (Canon 487). 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). Canon 489 requires that a Secret Archive also be created. In it "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." Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490). The bishop is authorized to include in the secret archive any matter which can be regarded as scandalous.

45. Matters related to agents and employees of the Diocese sexually abusing children, including James McCarthy's sexual abuse of children including plaintiffs when they were children, were regarded as scandalous, and were maintained in the Secret Archive.

46. 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).

47. Plaintiffs each fit within the "penitent" referred to in the Instruction.

48. The 1962 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. It 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." P. 16, ¶ 73.

49. James McCarthy was, and John Doe 2 is, male. Jane Doe 4 is female. Thus, the conduct by James McCarthy to the plaintiff John Doe 2 qualifies under the 1962 Instruction as "the worst crime."

50. Among other things, the 1962 Instruction directs the Diocese defendants to assume the duty of locating "other persons solicited by the same confessor" (p. 7 ¶ 29), in this instance, other persons solicited by James McCarthy. 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.

51. The Diocese defendants assumed the duty to locate victims ascribed to it by the 1962 Instruction, but performed that duty in a grossly negligent manner. The Diocese defendants failed to locate either plaintiff, failed to locate many other abuse victims, 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.

52. The 1962 Instruction was approved by the “Most Holy Father John XXIII” on March 16, 1962, according to page 16 of the 1962 Instruction.

53. 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.

54. “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.

55. Unless the Pope himself has specifically approved otherwise, secrecy was, until this complaint, to have been maintained not only by the plaintiffs, but also by every member of the Diocese defendants, and by even witnesses to sexual abuse. That secrecy is to be made despite any law, court order, or oath to which would otherwise require

disclosure. Under the 1962 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 specifically instructed otherwise, the Diocese defendants can all be expected to be obedient to 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.

56. The call for secrecy in the 1962 Instruction and in the Code of Canon law constitutes spoliation of evidence, as well as fraudulent concealment.

57. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the defendants as to James McCarthy's sexual abuse of the plaintiffs. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of the plaintiffs, or to ascertain that the plaintiffs were victims of the abuse by James McCarthy.

58. 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 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 engaged with other defendants to conspire to do so, as set forth below. The acts of 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 deliberate exclusion from the class, 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 plaintiffs 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 plaintiffs by design. And if the plaintiffs are not precluded from their claims against the Diocese by the *res judicata* effect of the class action, and the Richter defendants were merely corrupt, then the plaintiffs require no relief for either professional negligence or conspiracy.

59. This cause of action presumes that the plaintiffs are not precluded in making this claim by any prior litigation brought against the Diocese, for lack of due process in those proceedings, lack of competent representation sufficient to bind these plaintiffs, the collusive nature of the class settlement, or because the terms of the class action order do not apply to them.

60. The plaintiffs are 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 McCarthy's victims, including the plaintiffs, or in performing that duty in a negligent manner.

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

61. Allegations above, other than ¶ 57, are incorporated as if fully stated. This cause of action presumes the class action order is interpreted to bind the plaintiffs to its *res judicata* effect, despite insufficient due process and for which (by design) they got no notice, so presumes the plaintiffs are properly precluded from bringing claims against the Diocese related to sexual abuse, and presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

62. Defendants have conspired with others to injure the plaintiffs, and those actions have caused special damage to the plaintiffs.

63. The defendants have acted in numerous ways, which reflect the joint assent with minds of other persons to injure the plaintiffs, and have taken overt acts to pursue the common design to injure the plaintiffs.

64. 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 plaintiffs by making sure they and all other out of state putative class members could not participate in the state court class action and could be prevented from bringing their own action. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the plaintiffs' one-time lawyers, the Richter defendants, agreed to act against the plaintiffs'

interests, and to collaborate instead to act against the plaintiffs' interest and in the interest of the Diocese.

65. 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, plaintiffs' one-time lawyers, the Richer defendants, agreed to abandon the plaintiffs, quietly dropping their request to give nationwide notice to class members such as them, even though they had defined class action classes so as to ostensibly include them and had proposed nationwide notice. The notice designed not to reach the class as defined, and designed to exclude the plaintiffs, breached a duty to the plaintiffs assumed by the Richter defendants, either from an attorney-client relationship or a fiduciary duty assumed when bringing the class action and defining it as they chose to do..

66. The Richter defendants elected to abandon their out of state putative class member clients, and dropped their request for nationwide notice to their out of state class members, so as to prevent the plaintiffs, and others similarly situated, from finding out about the class action and from making claims against the class fund. In the class allegations, joinder was said to be impracticable because 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 and in the identical John Doe #53 Complaint redundantly filed in 06-CP-18-1636.

67. If "too many" of those hundreds of victims participated in the class action, the Richter defendants would jeopardize the large fee the Diocese had agreed to enable them to get, and the Diocese might not get the ostensible protection from future suits it was colluding to try to obtain at the lowest possible cost.

68. For the Richter defendants, both their fee, and the interests of the Diocese, were more important than the interests of their absent putative class member clients.

69. In exchange for the Richter defendants abandoning the plaintiffs and all of their other putative class member clients living outside of South Carolina, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRPC 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 SCRPC 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 used to support the fee request by the Richter defendants, (e) agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to counsel before any class member's claim was known or the class was even identified, (g) acquiesced in the unethical conduct of abandoning all out of state class members by agreeing to give them no notice of the class resolution, and (h) agreed to maneuver, in violation of SCRPC 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the class action, to a state court judge known to have extensive social and professional ties to the Richter defendants, in the aspiration that a more pliable oversight would be received for the class settlement.

70. The Diocese defendants undertook a duty to the plaintiffs to identify abuse victims such as plaintiffs and negotiated, in June, 2006, a class resolution to what was

referred to as “spousal &/or parent claims deriving from victims abused,” in the Charleston Mediated Settlement agreement at ¶ 1. At that time no class of “spousal &/or parent claims” had been certified or even alleged. 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 disobeying SCRCP 23 in Charleston County, and in judge-shopping in Dorchester County, the defendants violated judicial norms and rules. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which duplicated an existing Charleston County complaint alleging a class, resulting in the identical case pending simultaneously in circuit court in both Charleston County and Dorchester County. That was done as the means of judge shopping. The Diocese defendants also agreed to remain silent so as to enable the Richter defendants to submit false information to the court.

Details of the Conspiracy

71. 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 of Charleston.

72. 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.

73. 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.

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

75. 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.

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

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

78. 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.

79. In February 2009 the Diocese defendants published to the public through their press spokesman the lie 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 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.

80. Rule 23(d)(1) SCRCF 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."

81. From December 2005 until June 2006, the Richter defendants made no effort to seek class certification for the class they had alleged in the December class action complaint in Charleston County, nor did any other defendants. 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 parties collaborated to ask that the motions be continued rather than heard.

82. 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.

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

84. Ostensibly included in the classes as defined in the mediation were each of the plaintiffs. By defining the classes so as to ostensibly include each of the plaintiffs, and by purporting to settle their claims, the Richter defendants assumed professional obligations to them, including fiduciary duties towards them, and created a constructive attorney-client relationship, if not an actual attorney-client relationship with each plaintiff.

85. The agreement reached in that mediation is attached to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the 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.

86. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 mediation of the Charleston cases.

87. The typewritten document was approved by The Vatican in January 2007.

88. The settlement of the agreement was funded by approval of The Vatican.

89. As reflected in the attached handwritten agreement, the defendants agreed that the individual plaintiffs and the purported class representative 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 would pay only \$460,000.

90. 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 representatives were to receive, absent class members were to be required to submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive. Class members had to relinquish all rights for review to qualify for the arbitration.

91. As alleged below, not fewer than seven devices were chosen by overt agreement of the defendants to further the conspiracy against plaintiffs, and other absent putative members of the classes, from being included in any recovery for the class, and to limit the

class recovery from being “too much.” If the classes included “too many” claimants, the Diocese would be entitled to withdraw from the agreement. The Diocese defendants wanted the class settlement approved so they could later argue, as they in fact have argued, that no other sexual abuse claims which arose prior to the class approval could be made against the Diocese. The Diocese defendants knew that the class settlement had been negotiated 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 without jeopardizing that fee by getting too great a recovery for abuse victims against defendant Richter’s own Diocese. So all defendants conspired to create methods to be able to limit the number of class members who could make claims and to limit the amount class members would recover. 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

92. The first technique used by the defendants to limit the class recovery was for the defendants to agree to maneuver a Charleston class action settlement 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 overlook court rules and accept fraudulent filings was desired.

93. Instead of complying with SCRCP 23, and submitting the attached 2006 Charleston class action settlement for approval to a judge in Charleston County, 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, filed August 15, 2006 (06-CP-18-1310 and 06-CP-18-1311), and then 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 and case number 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 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 shop for the desired judge.

94. 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.

95. 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 and to the plaintiffs, ostensibly included in each of those duplicative complaints.

96. 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.

97. 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 of the defendants, simultaneously pending in two separate counties.

98. 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, and fairness hearings. The judge was expected to tolerate fraudulent filings by the defendants, an expectation that was rewarded when fraudulent filings were made, by agreement of the defendants, and the court took no action concerning those fraudulent filings.

99. The defendants 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.

100. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the judge they shopped for designate the cases as complex and assign them to that same judge. That designation was improper under the rules at the time, as set forth in more detail below.

101. 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 class settlement, as would have been the case if the same request had been made in Charleston. But any Charleston judge would likely exert independent oversight of the class resolution, and defendants sought to avoid independent oversight.

102. 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.

103. As soon as the handpicked judge assigned the Dorchester actions to herself, the defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

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

105. SCRCP 23 was not complied with as to the 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.

106. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

Conspiracy Technique Two: Using Complex Case designation Improperly.

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

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

109. The July 26, 2006 order of the South Carolina Supreme Court enabling complex case designation approved a particular form for use with complex case motions. Among other things, that motion required counsel to represent certain facts applied to the action for which complex case status was sought. The form states:

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.

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

111. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

112. Defendants falsely represented to the shopped-for judge that no settlement had been reached. Alternatively, defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

113. 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.

114. 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.

115. As set forth in the affidavit of Michael Virzi, attached 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. Plaintiffs at no time consented to the Richter defendants negotiating such a settlement.

116. At page 13, paragraph 6B, in the typed version of the Charleston class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure 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.

117. Representation of the plaintiffs by the Richter defendants in proposing an unethical fee was inadequate. Alternatively, that representation breached a fiduciary duty to the plaintiffs.

118. 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 of what the Diocese defendants and the Vatican 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.

119. The Richter defendants sacrificed the interests of absent putative class members, such as plaintiffs, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to it as the price of obtaining the cooperation of the Richter defendants in structuring a class resolution that provided only a fraction of the relief the Richter defendants would accept in a case against a Diocese other than Richter's own Diocese.

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

120. 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 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.

121. 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.

122. 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. Each knew precisely what their recovery would be before consenting to resolve their claim.

123. In addition, the terms for the opt-out abuse victims exceeded the low bar the Richter defendants agreed to set for class member recoveries, and the opt-out victims received more than was received by any comparable abuse victim who stayed in the class settlement. In addition to the fee approved by the Court, the Richter defendants charged class members an additional fee to go through the arbitration. The court approved fixed fee was not disclosed to 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.

124. No notice was given to any class member, including the plaintiffs, about the terms of the opt-out settlements. Had the plaintiffs been given notice of the terms negotiated by the opt-out abuse victims or the class representatives, they might have exercised a choice to receive one or the other recovery. The plaintiffs were abandoned by their attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed to the plaintiffs, by defendants agreeing to define the class so as to ostensibly include the plaintiffs, were breached by all defendants in this action when they agreed to notice designed not to reach the plaintiffs. 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. In the alternative, it was a breach of the fiduciary duty assumed by the Richter defendants towards the plaintiffs. That duty was implicitly assumed by other defendants as well, in ostensibly defining the classes as they were defined by agreement of all defendants, when notice was designed not to reach those within the definition.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create A Means of Limiting Total Recovery for Compensating Victims

125. In the “General Terms of Settlement” agreed to in the 2006 mediation of the Charleston class action case on June 14, 2006, there are seven essential terms of the settlement agreement.

126. The first general term is that there will be two classes for the settlement. “Actual victims of Diocese abuse,” and “Spousal &/or parent claims deriving from victims abused.”

127. The second general term was to provide a means of having a \$12 million settlement fund.

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

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

130. The fifth general term was to establish that four individuals would allocate among themselves \$460,000.

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

132. The seventh general term 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.

133. The four individual accepted the offer, 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.

134. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class.

135. 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.

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

137. After June, 2006, those individuals who represented the class, whose claims had been “resolved,” did not qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nevertheless, they were falsely designated as class representatives in subsequent Dorchester County case, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition of the class.

138. 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.

139. In the June 14, 2006 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 given to the class, and to the methods of relief given to the class members so the recovery to victims would not be “too much.” The fee for the Richter defendants could not be jeopardized by having “too many” sexual abuse victims served by the class settlement.

140. 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. That is why the fee is fixed, and why it takes priority over the recoveries of the clients in

the class. The highest priority of other defendants, after their willingness to pay class counsel's fixed fee, was to either exclude persons such as plaintiffs, or to limit recovery to persons such as plaintiffs, so that within the modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims against another Diocese, the Diocese could argue a *res judicata* benefit from the class settlement without having to pay meaningful relief 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.

141. The Diocese defendants knew or should have known that the history of systematic deceit and deception about sexual abuse required by the Vatican and Code of Canon Law, and which the Diocese defendants had in fact implemented, specifically mandated by the Vatican since at least 1962, exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

142. The Diocese defendants knew that juries had placed a high value on the intangible nature of sexual abuse claims.

143. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to a class settlement, hoping it would exclude enough victims so as to produce a desired *res judicata* effect at a fraction of the cost of a proper settlement with all victims. The Diocese defendants realized the close ties of the Richter defendants to the Diocese, and their willingness to sacrifice the interests of their clients for a fee, enabled the Diocese to try to minimize recoveries to the class members yet still get a class approved.

144. All defendants needed to avoid meaningful court oversight of the class action to limit 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 judge they desired to have.

145. When the defendants realized that “too many” victims, such as plaintiffs, might come forward in the class action, they changed, by agreement, what they would propose to the shopped-for judge for the notice to give the class, 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.

146. Failing to give notice outside South Carolina, other than immediately adjacent to South Carolina, was one means of eliminating claimants such as plaintiffs. No defendants objected to limit the notice to South Carolina.

147. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the plaintiffs. All defendants were negligent in permitting victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members.

148. 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.

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

150. No defendants disclosed that the Diocese had agreed to overlook the fraudulent information submitted to the shopped-for judge to support the fee claimed, and had agreed to make no mention of those various fraudulent time entries. Nor had the defendants disclosed that they had agreed they would request no post-award fairness hearing.

151. 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.

152. 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 plaintiffs, 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 plaintiffs by excluding them from the class recovery and to try to preclude them from any later claim, and to limit recoveries to class members so as to not exceed the amount the Diocese was willing to pay.

153. 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 were paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese to abandon clients such as the plaintiffs, and to limit recoveries to other clients, in the interest of the Diocese defendants.

154. The Richter defendants abandoned absent class members such as plaintiffs, who reside outside of South Carolina, and gave no meaningful notice to those class members that their rights had been adversely impacted when they changed their position on notice

to the class from nationwide notice to a notice limited to publications in and around South Carolina. All other defendants cooperated with that abandonment. Unless the order approving the class settlement means what it says when the court appeared to have accommodated the limited notice by ruling, at page four, “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,” and the plaintiffs are not precluded from their claims, the notice and arbitration structure caused damage to the plaintiffs. Unless the plaintiffs are not bound by the *res judicata* effect of the class action, they have been specially harmed by the conspiracy engaged in by the defendants.

Conspiracy Technique Six: Providing False Information to the Court

155. 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 it was false. Even after the information was identified as false, no action was taken to protect the plaintiffs, unless the order means that persons who received no notice are not barred by *res judicata*.

156. 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 2005-CP-10-4913. The case 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 judge.

157. 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 the defendants to be false when made in any of the Dorchester County class complaints.

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

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

160. 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.

161. 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 given to any other ostensible class member.

162. 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.

163. 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.

164. 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.

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

166. If the plaintiffs are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to them in the class action were breached by the defendants, and special harm has been caused to the plaintiffs by the acts of conspiracy of the defendants.

Conspiracy Technique Seven: Limiting Notice to only publications in and around South Carolina

167. The seventh technique used in the conspiracy among defendants to cause special harm to the plaintiffs was to agree to limit notice to only publications in and around South Carolina, resulting in notice to only those putative class members who reside in and immediately adjacent to South Carolina. The notice given was deficient in that it was designed not to provide notice to those within the definition of the class action. By agreement of all defendants, the notice was calculated to be ineffective to reach putative

absent class members. Unless the order approving the class settlement means what it says and plaintiffs are not bound by the res judicata effect of the class settlement, the defendants have conspired so as to cause special damage to the plaintiffs.

168. The Diocese defendants are well aware, from its own dealings with abuse victims that many victims reside out of South Carolina. All defendants were conscious in choosing limited notice, that doing so served the interests of the Diocese at the expense of persons such as the plaintiffs.

169. By motion filed in Dorchester County in October 2006, the Richter defendants proposed giving nationwide notice of the class action through advertising about the settlement in a newspaper with national coverage.

170. In January 2007, the Richter defendants revised their request for notice to the Dorchester County court, and the Diocese defendants acquiesced in that revision, to limit notice to only publications in newspapers with circulation in or near South Carolina. The request to provide notice through a newspaper with national circulation was abandoned.

171. The Richter defendants abandoned the plaintiffs as putative members of the class in agreeing to notice calculated not to reach them. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the plaintiffs in defining the classes so as to ostensibly include them, then revising the notice so as to provide no notice to them and all other absent members of the class who resided outside of the area immediately adjacent to South Carolina.

172. The Diocese defendants conspired with the Richter defendants to submit for court approval notice to the class that was calculated to omit absent members of the class such as the plaintiffs, and all persons situated similarly to them. The agreement was to

bar the plaintiffs from being able to make claims by the *res judicata* effect of the ostensible class action without having to compensate them for sexual abuse.

173. No effort was made to protect absent members of the class, such as the plaintiffs, by providing notice beyond the immediate area around South Carolina. If the plaintiffs are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to them in the class action were breached by the defendants, and special harm has been caused to the plaintiffs by the acts of conspiracy of the defendants.

174. The Diocese defendants made no objection to lack of nationwide notice. They made no objection 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 reduced notice agreed upon by all defendants demonstrates that the representation of the class was inadequate, and that the defendants conspired specifically to defeat the interests of persons such as the plaintiffs, to cause them special harm by giving them not even a chance at notice of the class action.

175. 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. 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 by lack of participation. 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 they were not brought for the class using the common law "loss of services" cause of action. However, if the plaintiffs are not deemed precluded from stating their claims against the Diocese for any reasons, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the defendants to defeat their claims was ineffectual, and this cause of action will be dismissed.

176. 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**

177. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiffs are precluded, by any reason, including the class action, charitable immunity, or the statute of limitations, from making claims against the Diocese.

178. 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.

179. 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.”

180. Plaintiffs were putative members of that class as it was defined in the proposed settlement.

181. When the June 14, 2006 Charleston class mediation 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 Charleston class settlement was now claimed to be a proposed settlement of both a Charleston class case and Dorchester County class actions.

182. On October 6, 2006, the Richter defendants filed proposed class definitions that included plaintiffs, and proposed a means of notice by publications with nationwide distribution to give notice to the class. That proposed notice might have given notice to the plaintiffs, enabling them to either participate or to opt out.

183. 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 alleging a class action.

184. On January 18, 2007, the Richter defendants abandoned giving notice to the plaintiffs about the class settlement that purported to include them. Their proposal for notice was revised to include only publications in and immediately around South Carolina, even though the class was not defined with geographic limitations.

185. On January 19, 2007, the proposed class definitions that included the plaintiffs were approved without objection from the Diocese defendants.

186. 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.

187. The Richter defendants engaged in negligent acts and omissions in their representation of the plaintiffs. Among other things, when they abandoned the plaintiffs, 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.

188. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the plaintiffs. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

189. Any court approval of the notice 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.

190. The Richter defendants abandoned their absent putative class member clients such as the plaintiffs by agreeing to change the proposed notice to notice calculated not to reach the plaintiffs, and calculated not to reach all putative class members situated similarly to the plaintiffs.

191. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court.

192. The plaintiffs were abandoned by the Richter defendants so that "too many" class claimants would not come forward in 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.

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

194. As a result of their attorneys, the Richter defendants, abandoning the plaintiffs, no notice was given to them of the class action, and they had no opportunity to participate in either the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out. The acts and omissions of the Richter defendants have caused damage to the plaintiffs, assuming the plaintiffs are prevented from their claims against the Diocese for any reason.

195. Plaintiffs were each 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**

196. Allegations of paragraphs 1-17 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiffs are precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations.

197. The Richter defendants chose to propose defining the classes in the class actions so as to have no geographical limit on the classes.

198. All defendants agreed on how the classes were defined.

199. In choosing to define the classes so as to include the plaintiffs, the Richter defendants each assumed fiduciary obligations to each of the plaintiffs, who were absent putative members of the classes they defined.

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

201. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the plaintiffs by requesting geographically limited notice of the class action and settlement, as opposed to the nationwide notice they initially proposed.

202. The state court judge overseeing the class action was shopped for by all defendants.

203. The state court judge was not asked to give notice to all class members, only a subset of class members that excluded the plaintiffs.

204. The Richter defendants originally proposed nationwide notice, but then abandoned the proposal. The lack of nationwide notice was observed in the record of the

class action, but even after that limitation was noted, the Richter defendants did not request it.

205. On October 6, 2006, the Richter defendants filed proposed class definitions that included the plaintiffs, and proposed a means of nationwide notice to the class that might have given notice to the plaintiffs.

206. The Richter defendants in its Charleston class action filing, and in the June 14, 2006 settlement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the plaintiffs.

207. On January 18, 2007, the Richter defendants abandoned giving to the plaintiffs notice about the class settlement that ostensibly included them.

208. On January 19, 2007, the class definitions that included the plaintiffs were approved without objection from the Diocese defendants.

209. No meaningful notice, at any point, was given to class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

210. The Richter defendants contend that mention of a class action or a class action settlement in a news media outlet is sufficient due process "notice" of a class action or class action settlement within the meaning of SCRCP 23. Mention of a class action or class action settlement in a news media outlet is not notice of a class action or class action settlement within the meaning of SCRCP 23.

211. The Richter defendants each breached their fiduciary duties to the plaintiffs so they would not participate in making a claim against the fund established for the class

action settlement. If notice had been given nationwide, as originally proposed, “too many” claimants might have come forward in the class action, which would have jeopardized the fixed fee the Richter defendants had negotiated for themselves at the expense of their clients.

212. The Richter defendants arranged to have their fixed fee paid before notice to the class and before the claims process.

213. The Richter defendants arranged to have their fixed fee paid before membership in the class was known.

214. The Richter defendants arranged to have their fixed fee paid before distribution to the class was known.

215. The Richter defendants arranged to have their fixed fee paid before class members had an opportunity to object to or comment on the fixed fee and its priority over class member recovery.

216. Having “too many” claimants also was believed by the Richter defendants to not be in the interest of the Diocese, 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. To promote the interests of the Diocese in trying to later 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 agreed to change the proposed notice to the class from notice in

publications with nationwide distribution, and also agreed to accept for the class compensation that ranked among the lowest known victim compensation.

217. As a result of the Richter defendants abandoning the interests of the plaintiffs, and breaching the fiduciary duties owed to them, the plaintiffs had no opportunity to participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out, or to make a claim against the Diocese for sexual abuse. The acts and omissions of the Richter defendants have caused damage to the plaintiffs.

218. 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:
Judicial Estoppel and Unfair and Deceptive Trade
Practices by the Diocese Defendants**

219. Allegations of paragraphs 1-17 above are incorporated into this cause of action as if fully stated.

220. The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

221. The Diocese defendants operate an organization engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Diocese defendants advertise and offer for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. They operate churches and schools, and activities, which cater to families.

222. The Diocese defendants encouraged people, including plaintiffs, 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. The Diocese defendants particularly owed a duty to the plaintiffs, who were minors, and their parents, a greater degree of care because as children the plaintiffs were unable to fully appreciate risks and danger. The Diocese defendants represented to its invitees and their parents or guardians, including the plaintiffs, that its facilities and its priests were safe, and that persons would be would be protected form harm when using its facilities and when interacting with its personnel.

223. For years the Diocese defendants have been aware that certain in its operations, certain of its employees have sexually abused minors.

224. As part of a business decision to address that history of sexual abuse, in 2006 the Diocese elected to adopt a class settlement to address its known history of priests and other employees sexually abusing minors.

225. The Diocese promoted that decision as a responsible action by the Diocese defendants.

226. Part of that settlement was to advertise the offer by the Diocese to distribute both services (in the form of counseling) and property (in the form of compensation) to sexual abuse victims.

227. Advertising was done by the Diocese in, among other publications, newspapers of general circulation in Charleston (*Post and Courier*), Myrtle Beach (*Sun*), Columbia (*The State*), Augusta (*Chronicle*), Rock Hill (*Herald*), Beaufort (*Gazette*), Greenville (*News*), Spartanburg (*Herald*), Orangeburg (*Times-Democrat*), Florence (*Morning News*),

and Aiken (*Standard*). Living outside of South Carolina, plaintiffs saw none of those notices, as was designed by the defendants.

228. In that advertising, tangible property was proposed to be exchanged by the Diocese, and services provided in part for the intangible injury created by acts of sexual abuse.

229. The public interest was affected by the proposed 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 predicated on the false representation made to the Court about how the Diocese would conduct itself.

230. A circuit court judge to approve the class settlement was “shopped for” and selected by the Diocese defendants, in conspiracy and collaboration with the Richter defendants. The Diocese defendants did not want any Charleston County judge, out of concern that the judge might be fully independent.

231. 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.

232. 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.

233. The Diocese defendants were aware that the Richter defendants had extensive and life-long ties to the Diocese, and would be willing to compromise the interests of the absent class members in exchange for a fixed fee payment.

234. The Diocese defendants conceived a plan to commit a fraud on the Court by representing to the court, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, while giving notice to the class in a geographically limited way. As long as their fee was paid, the Richter defendants were expected by the Diocese defendants to be willing to accommodate the interest of the Diocese, even at the expense of the absent members of the class they represented.

235. All defendants collaborated to submit false information to the Court, and no defendant objected to any of the false information submitted by any of them. Part of their agreement was to remain silent while false information was submitted.

236. To gain court approval of the class settlement the Diocese made overt misrepresentations of fact to the Court that was falsely represented to reflect an “understanding” among all defendants “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. The “understanding” communicated to the Court was to address if “someone pops back up who should have gotten notice who didn’t get notice.” The understanding communicated to the Court by the Diocese was:

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.

237. That representation to the Court appears on page 3 of a transcript dated July 13, 2007.

238. 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. In fact, the Diocese was aware, or should have been aware, 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.

239. To avoid nationwide notice, the Diocese falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Diocese 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."

240. The Diocese defendants made no disagreement when, on pages 16 - 17 of that same transcript, class counsel summarizes the 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.

241. Nor did the Diocese defendants state any disagreement when the Court 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."

242. The Diocese intended, on July 13, 2007, to create the false impression with the court that if a victim within the class definition came forward in the future, that the Diocese would extend relief to that victim. The Diocese created by impression by its statements and its silence in light of statements by others. The Diocese intended that impression to be relied on, and it was relied on. That impression was false, and was known to be false when made.

243. The Court relied on the statements and silence by the Diocese to extend in the July 30, 2007 order 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.

244. The Diocese defendants intended that the Court rely on their statements, silence, and conduct to form that impression, even though the impression was false and the Diocese had no intention of honoring the assurances given to the Court.

245. When additional victims came forward, including these plaintiffs, the Diocese refused to honor its representations to the Court, and which the Court placed in its July 30, 2007 order at page 4. Instead, the Diocese asserted the defenses it had waived, claimed the *res judicata* effect it had disclaimed, and acted exactly contrary to its assurances to the Court.

246. The Diocese defendants made their false representations to the Court for the purpose of gaining Court approval of a class settlement with only limited notice to the

class. By contending (falsely) that it would both waive its defenses and provide compensation to class members who had received no notice, the Diocese committed fraud on the Court, on the public, on the plaintiffs, and on all sexual abuse victims born before August 30, 1980. When those representations were made the Diocese had no intention of honoring the representations.

247. The Diocese amply demonstrated that its assurances to the Court were false when; despite those assurances, the Diocese refused to perform on its assurances or on the Court's order when sexually abused persons born prior to August 30, 1980, including the plaintiffs, received no notice of the class and later requested relief.

248. The Diocese has taken inconsistent positions as to different persons included in the same class definition. Those inconsistent positions also affect the public interest.

249. All of the conduct by the Diocese, 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 representations made to the Court. Multiple sexual abuse victims born prior to August 30, 1980, received no notice of the class action and have since been refused relief by the Diocese.

250. The proceedings in which those inconsistent positions were taken by the Diocese are related to this action in that each involved one or more members of the class as defined by agreement of the Diocese, who received no notice of the class settlement and for whom the Diocese promised to provide relief.

251. The Diocese was successful in maintaining its disingenuous misrepresentations to the Court, got relief from the Court based on those disingenuous representations, and

as a result of taking that position the Diocese received the benefit of class approval from the Circuit Court.

252. The inconsistency by the Diocese is part of an intentional effort to mislead the Court.

253. 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 plaintiffs from the position it asserted to the Dorchester County court in the class action.

254. Plaintiffs have 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, trebled as provided by law, with costs and attorneys fees as provided by statute.

255. The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese made a calculated business decision to invest some funds and engage in a public relations exercise, in an effort to procure positive publicity for itself 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.

256. The Diocese invested funds to design a compensation program for victims which specifically excluded many victims. The Diocese engaged in collusion with other defendants to do so, as alleged above, and 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.

257. The Diocese defendants took no appeal from the July 30, 2007 order.

258. The Diocese defendants are bound by the July 30, 2007 order in the class action.

259. When the Diocese was contacted on behalf of the plaintiffs, having received no notice of the class action, the plaintiffs were refused relief. Instead, 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 defenses it waived on the record, and has done so even as to victims for whom the Diocese did not even attempt to provide notice.

260. 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.” Despite its representations, the Diocese defendants intend to use the collusive class action cases to attempt to terminate liability of the Diocese, to do so at a fraction of the recovery a truly adversarial counsel might demand on these facts.

261. The Diocese defendants made their misrepresentations 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.

262. 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.

263. 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.

264. 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.

265. 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.

266. The plaintiffs 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.

267. The plaintiffs are 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.

Demand for Jury Trial

268. Plaintiffs demand a trial by jury.

Relief Sought

Wherefore, Plaintiffs seeks relief in the form of:

269. 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,

270. Costs and disbursements of this action,

271. Attorneys fees as authorized by law,

272. Punitive damages as authorized by law, and for

273. 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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers
1 Poston Road Suite 110

Charleston SC 29407
843-556-1025
attygm@gmail.com

Attorney for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

*See Terms
Attached on
E+H. #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:
 - Ⓐ ACTUAL VICTIMS OF DOMESTIC ABUSE
 - Ⓑ SPOUSAL &/or Parent claims deriving from victims abused
2. Class Settlement Fund will be for \$12,000,000 FUNDED AS FOLLOWS:
 - Ⓐ \$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 process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

(D)

4. Court shall be asked to approve attorney's fee for class counsel at between \$950,000 + \$2.5 million, subject to Defendant's 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 or 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 executed & shall proceed to settlement in the amounts set out in "5." above with appropriate general releases &/or dismissals with prejudice executed in favor of defendant.

~~* Class representation & proceeds~~

(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 Deely, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and with authority of the
Successor of Charleston

June 14, 2006

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;

- I. 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 / 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;
- 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"

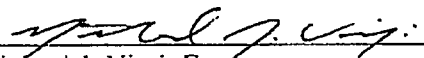
had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

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 10th day of December, 2008


Notary Public **My Commission Expires July 25, 2013**
My Commission Expires : _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO. 10-CP-10- 7233

John Doe 10,)
)

Plaintiff,)
)

v.)

The Bishop of Charleston, a)
 Corporation Sole; Robert)
 Gugliemone, The Bishop Of)
 Charleston, in his official)
 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.)
)

Negligence; Gross Negligence
 Fraudulent Concealment
 Civil Conspiracy
 Professional Negligence
 Breach of Fiduciary Duty
 Judicial Estoppel
 Unfair and Deceptive Trade Practices

Jury Trial Requested

Complaint

For his complaint, the plaintiff alleges:

Parties and Jurisdiction

1. Plaintiff is an adult citizen and resident of a state other than South Carolina. He was sexually molested as a child by a priest of the Diocese of Charleston, Frederick Hopwood, when Mr. Hopwood was assigned to Saint Mary's in Greenville, S.C.

2. A pseudonym is used for the plaintiff due to the sexual abuse injury, which is the subject of this complaint. The defendants will be informed of the identity of the plaintiff upon their agreement to reciprocate in discovery and to maintain the plaintiff's identity as

BY

JULIE J. ARMSTRONG
 CLERK OF COURT

2010 SEP -3 AM 11:36

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confidential in the public record.

3. Frederick Hopwood was assigned by the defendants to Saint Mary's in Greenville, S.C. in approximately 1984. Prior to his move to Greenville, Mr. Hopwood served as a priest and was known to sexually abuse children. During his time at St. Mary's, defendants knew, or should have known, that Frederick Hopwood was sexually abusive to children, and posed a danger to children.

4. The Bishop of Charleston, a Corporation Sole, is the 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, a Catholic Church in Greenville, S.C. Although the acts associated with the abuse of the plaintiff 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 to the risk presented by Frederick Hopwood, occurred in Charleston County. As a result, venue is proper in either Charleston County or Greenville County.

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. He is sued individually, and in his official capacity, and is a party necessary for complete relief. All persons working for the Diocese are subordinate to the Bishop.

6. Prior to Bishop Gugliemone, from October 2007, to March 2009, the Diocese had no Bishop, and was administered under the Code of Canon Law by the Rev.

Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina.

7. Prior to Administrator Laughlin, from July 1999 to August 2007, the Bishop was Robert J. Baker, presently a resident of, and citizen of, Alabama.

8. 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.

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

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

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

12. John Doe 10 was similarly situated as other individuals ostensibly within the definition of a class certified by a South Carolina court as part of a class action in 2007. However, by agreement among the defendants, the plaintiff received no notice of the class action, thus had no opportunity to be heard or participate in the litigation, either in person or through counsel. By agreement among defendants, notice given in the class action was designed to be insufficient as to the plaintiff, so as to permit the Diocese, starting in 2009, to argue that the class action precluded any and all claims for abuse, by preventing the plaintiff from either participating in the class action or being able to remove himself from the class action by opting out. In being within the putative definition of the class as the defendants agreed to define the class, the plaintiff, along with other members of that class who resided outside of South Carolina, ostensibly was formerly represented by, until in 2007 he was abandoned by, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC.

13. Alternatively, and at minimum, defendants Lawrence E. Richter, Jr., David K.

Haller, and Richter and Haller, LLC assumed duties as to the plaintiff by defining the class so as to ostensibly include him. The defendants conspired against the plaintiff to cause him special harm in the form of the effort to preclude him from making any claim against the Diocese. The representation the plaintiff was given in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

14. 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 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.

15. But for the Richter defendants having breached their duties to plaintiff by abandoning the plaintiff, in agreement with and full complicity with the other defendants, the class action would ostensibly have included the plaintiff. A number of other individuals have made similar allegations of having been excluded by design from the class action, and this complaint may be amended to state a class action.

16. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

17. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

18. Richter & Haller, LLC did business in Charleston County, South Carolina at all times pertinent to this complaint, and had its principal place of business in Charleston County.

19. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the "Richter defendants."

Nature of Wrongdoing

20. This complaint sets out various causes of action built around four different levels of disregard for others and corruption. First, the disregard by the Diocese defendants in operating a system which actively disregarded 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 happened and the dangers to children it solicited into danger. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy for the Catholic Church a layer of what was hoped would be protection from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese. Third, the corruption of particular lawyers who 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 in exchange for their cooperation in trying to both limit relief to victims and protect the Church from future cases, and from claims by this plaintiff and other sexual abuse victims. The danger to the Diocese of future cases was that future cases might be brought by lawyers actually adverse to the Diocese, as opposed to the lawyers who entered into the collusive class agreement with them. Fourth, overt misrepresentations of fact by the Diocese defendants to the court, which approved the class action settlement, and fraudulent concealment of that

misrepresentation until 2009.

21. So confident were the corrupt lawyers in their ability to manipulate the state court judge they had selected and maneuvered the cases before, and so confident were the corrupt lawyers in gaining the cooperation of the Diocese defendants and their supposed adversary lawyers, that the corrupt lawyers, the Richter defendants, calculated they could submit even blatantly false and inflated time records to justify their large fee, and that no objection to them would be raised by the Diocese defendants. In exchange for their cooperation, the Diocese (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention any of the false time records submitted by the Richter defendants, (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, simultaneously, compensation to the class of victims was variable, (e) agreed to make no objection to the fee being awarded before any class member claimant was even identified, and before any class member claimant was paid, and (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law.

22. In turn, the Diocese defendants overtly misrepresented 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 Diocese defendants ignored that they made the representation. The duplicity by the Diocese defendants was disclosed only in 2009, when they first asserted that the class action precluded other sexual abuse victims from any relief even though they had no notice of the class action.

23. 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 class action to which the Diocese was party. As alleged more fully below, plaintiff ostensibly falls within a class defined in that action, but the notice given to the classes, by design, was changed by all defendants so as to exclude notice to the plaintiff. As a practical matter, notice was revised so it would go only to a subset of the approved classes — the subclasses being those class members living in and immediately adjacent to South Carolina. The change to the extent of the proposed notice was noted to the state court but ignored when notice was approved by the court. All defendants cooperated together to better protect the Diocese by asking for only notice that would be insufficient to notify all members of the class, and the Diocese actively misled the court in seeking approval for the limited notice with the false promise that the Diocese would protect the interests of persons such as the plaintiff who received no notice.

24. Until 2009 the promise by the Diocese was not publicly known to have been false.

25. Until September 19, 2009, when the South Carolina Supreme Court ordered that the proceedings in the class action be concluded, the Richter defendants were charged with correcting the known deficiency in the class action notice, and took no steps to correct the deficiency in the notice to the class.

26. Similarly, until September 19, 2009, when the South Carolina Supreme Court ordered that the proceedings in the class action be concluded, the Diocese defendants were aware that various persons within the class received no notice, and did nothing to clarify its overt misrepresentation to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

27. Until 2010, the plaintiff was unaware of (a) any class settlement by the Diocese,

(b) that the Diocese waived charitable immunity for any person in the class definition, (c) that the Diocese waived the statute of limitations for any person in the class definition. Plaintiff was unaware of any of those things because, by agreement of all defendants, plaintiff got no notice of any of those things.

28. In its order approving the class action, the state court may have provided for absent members of the class, such as the plaintiff. However, beginning in 2009 the Diocese began to contend the court's order does not mean what it says, and starting in 2009 the Diocese began to argue it has no duty to absent members with the class definition that received no notice of the class settlement or the various waivers of defenses by the Diocese. In doing so the Diocese perpetuates the fraud the Diocese defendants intended to achieve in 2007 through the class action and through cooperation with the Richter defendants.

29. Plaintiff is an absent member of a class who, by design among defendants, received no notice of the 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, because his representation by the Richter defendants was inadequate and fell below the applicable standard of care, and because the state court order appears to contemplate the insufficient notice by holding that the plaintiff is not properly bound by any *res judicata* effect, 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.

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, either because the state court's

ruling left room for persons not receiving notice, or because the deliberate restrictions on notice clearly failed to comply with plaintiff's due process rights, then the causes of action against the Richter defendants who, for a fee, abandoned their client, and those who conspired against them through the class action, are irrelevant because plaintiff can make his claims against the Diocese. If the court finds that the plaintiff is precluded for any reason, including the *res judicata* effect of the class action, charitable immunity (which the Diocese waived for those within the class definition), or by the statute of limitations (which the Diocese waived for those within the class definition), then the causes of action alleged against the Diocese defendants for sexual abuse are irrelevant, and those claims are properly made against those who conspired against him as well as against the Richter defendants who failed to properly represent him.

31. In March, 2009, the South Carolina Supreme Court ordered that all proceedings in the class action be concluded by September 19, 2009. The class action is concluded.

32. 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 plaintiff.

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

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

34. The defendant Diocese employed Frederick Hopwood as a priest.

35. 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.

36. Prior to 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 the Diocese, and thereby facilitated his access to young people whom he could molest. The plaintiff was molested after Hopwood was known to be dangerous to children.

37. 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 plaintiff and his parents, 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 Frederick Hopwood, by representing nothing to the contrary to the public. The Diocese defendants particularly owed a duty to the plaintiff, who was a minor, and his parents, a greater degree of care because as a child the plaintiff relied on 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 would be protected from harm when using its facilities and when interacting with its personnel.

38. After he was moved to Greenville, S.C., Frederick Hopwood molested the plaintiff.

39. The Diocese defendants negligently supervised Frederick Hopwood. The Bishop was grossly negligent in supervising Frederick Hopwood. Moving him without proper warning to children and their 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.

40. The Diocese defendants were negligent in failing to warn the plaintiff or his parents about Frederick Hopwood. The Bishop performed that duty in a grossly negligent manner.

41. The Diocese defendants knew, or should have known, that Frederick Hopwood was a pedophile. Despite that knowledge, the Diocese defendants, including Bishop Guglielmone, Bishop Baker, and Rev. Monsignor Laughlin, 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, it assumed the duty but performed it negligently. Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

42. The Dioceses 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.

43. 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.

44. 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 was in 2009, and it was discovered by the plaintiff in 2010. 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.

45. 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**

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

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

48. The Diocese defendants 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 solicited; (b) from

the parents of the plaintiff having expressly reposed their trust and confidence in the Diocese defendants so as to entrust the plaintiff to the presence of Frederick Hopwood, which placed the plaintiff in a vulnerable position with 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 parents, and the Diocese defendants, who promoted that the plaintiff's parents 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 parents 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 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 Diocese defendants designation, grossly negligently), during 2005 - 2010, to locate victims such as the plaintiff.

49. The plaintiff was sexually abused by Frederick Hopwood after 1962.

50. 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 parents on his behalf in perfect good faith and with full disclosure.

51. 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.

52. Specifically, the Diocese defendants created, as embodied in the Code of Canon law, which required it, an archive (required by Canon 486), accessible only by the Bishop and chancellor (required by Canon 487). 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 (required by Canon 488). Canon 489 requires that a Secret Archive also be created. In it "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." Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (required by Canon 490). The bishop is authorized to include in the secret archive any matter which can be regarded as scandalous.

53. Matters related to agents and employees of the Diocese sexually abusing children, including Frederick Hopwood's sexual abuse of children including plaintiff when he was a child, were regarded as scandalous, and were maintained in the Secret Archive.

54. Matters related to agents and employees of the Diocese sexually abusing children, including Frederick Hopwood's sexual abuse of children including plaintiff 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 practice by the Diocese defendants to destroy evidence of known criminal activity.

55. 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. (Required by the Instruction, 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). 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).

56. Plaintiff fits within the "penitent" referred to in the Instruction.

57. 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.

58. Frederick Hopwood was, and the plaintiff is, male. The conduct by Frederick Hopwood to the plaintiff qualifies under the 1962 Instruction as "the worst crime."

59. 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 Frederick Hopwood. 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.

60. The Diocese defendants assumed the duty to locate victims ascribed to it by the 1962 Instruction, but performed that duty in a grossly negligent manner. The Diocese defendants failed to locate plaintiff, failed to locate many other abuse victims, 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.

61. The 1962 Instruction was approved by the “Most Holy Father John XXIII” on March 16, 1962, according to page 16 of the 1962 Instruction.

62. 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.

63. “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.

64. Unless the Pope himself has specifically approved otherwise, secrecy was, until this complaint, to have been maintained not only by the plaintiff, but also by every

member of the Diocese defendants, and by even witnesses to sexual abuse. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the 1962 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 specifically instructed otherwise, the Diocese defendants can all be expected to be obedient to 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.

65. The call for secrecy in the 1962 Instruction and in 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.

66. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the 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.

67. 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 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 engaged with other defendants to conspire to do so, as set forth below. The acts of 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 deliberate exclusion from the class, 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 by the *res judicata* effect of the class action, and the Richter defendants were merely corrupt, then the plaintiff requires no relief for either professional negligence by the Richter defendants or conspiracy involving the Richter defendants.

68. This cause of action presumes that the plaintiff is not precluded in making this claim by any prior litigation brought against the Diocese, for lack of due process in those proceedings, lack of competent representation sufficient to bind this plaintiff, the

collusive nature of the class settlement, or because the terms of the class action order do not apply to the plaintiff.

69. 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**

70. Allegations above, other than ¶ 66, are incorporated 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 and for which (by design) the plaintiff got no notice, so presumes the plaintiff is properly precluded from bringing claims against the Diocese related to sexual abuse, and presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

71. Defendants have conspired with others to injure the plaintiff, and those actions have caused special damage to the plaintiff.

72. The defendants have acted in concert in numerous ways, which reflect the joint assent with minds of other persons to injure the plaintiff, and defendants have taken overt acts to pursue the common design to injure the plaintiff.

73. 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 all other out-of-state putative class members could not participate in

the state court class action, and could be prevented from bringing their own action. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the plaintiff's one-time lawyers, the Richter defendants, agreed to act against the plaintiff's interests, and to collaborate instead to act against the plaintiff's interest and in the interest of the Diocese.

74. 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, plaintiff's one-time lawyers, the Richer defendants, agreed to abandon the plaintiff, quietly dropping their request to give nationwide notice to class members such as the plaintiff, even though the Richter defendants had defined class action classes so as to ostensibly include the plaintiff and had originally proposed giving nationwide notice. The notice designed not to reach the class as defined, and designed to exclude the plaintiff, breached a duty to the plaintiff assumed by the Richter defendants, either from an attorney-client relationship or a fiduciary duty assumed when they elected to bring the class action and define the classes as they chose to do so as to include the plaintiff.

75. The Richter defendants elected to abandon their out of state putative class member clients, and dropped their request for nationwide notice to their out of state class members, so as to prevent the plaintiff, and others similarly situated, from finding out about the class action and from making claims against the class fund. In the class allegations, joinder was said to be impracticable because 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 and in the identical John Doe #53 Complaint redundantly filed in 06-CP-18-1636.

76. If “too many” of those hundreds of victims participated in the class action, the Richter defendants would jeopardize the large fee the Diocese had agreed to enable them to get, and the Diocese might not get the ostensible protection from future suits it was colluding to try to obtain at the lowest possible cost.

77. For the Richter defendants, both their fee, and the interests of the Diocese, were more important to them than were the interests of their absent putative class member clients.

78. In exchange for the Richter defendants abandoning the plaintiff and all of their other putative class member clients living outside of South Carolina, 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’s claim was known or the class was even identified, (g) acquiesced in the unethical conduct of abandoning all out of state class members by agreeing to give them no notice of the class resolution, and (h) agreed to 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 class

action, to a state court judge known to have extensive social and professional ties to the Richter defendants, in the aspiration that a more pliable oversight would be received for the class settlement.

79. The Diocese defendants undertook a duty to the plaintiff to identify abuse victims such as plaintiff and negotiated, in June, 2006, a class resolution to what was referred to as "spousal &/or parent claims deriving from victims abused," in the Charleston Mediated Settlement agreement at ¶ 1. At that time no class of "spousal &/or parent claims" had been certified or even alleged. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCF 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 disobeying SCRCF 23 in Charleston County, and in judge-shopping in Dorchester County, the defendants violated judicial norms and rules. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which duplicated an existing Charleston County complaint alleging a class, resulting in the identical case pending simultaneously in circuit court in both Charleston County and Dorchester County. That was done as the means of judge-shopping. The Diocese defendants also agreed to remain silent so as to enable the Richter defendants to submit false information to the court.

Details of the Conspiracy

80. 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.

81. 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.

82. 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.

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

84. 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.

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

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

87. 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.

88. In February 2009 the Diocese defendants published to the public through their press spokesman the lie 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.

89. Rule 23(d)(1) SCRPC 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.”

90. From December 2005 until June 2006, the Richter defendants made no effort to seek class certification for the class they had alleged in the December class action complaint in Charleston County, nor did any other defendants. 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.

91. 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.

92. At that 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 agreement of the parties.

93. 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 claims, 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.

94. 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 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.

95. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 mediation of the Charleston cases.

96. The typewritten document was approved by The Vatican in January 2007.

97. The settlement of the agreement was funded by approval of The Vatican.

98. As reflected in the attached handwritten agreement, the defendants agreed that the individual plaintiffs in those actions and the purported class representative 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 would pay only \$460,000.

99. 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 representatives were to receive, absent class members were to be required

to submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive. Class members had to relinquish all rights for review to qualify for the arbitration.

100. As alleged below, not fewer than seven devices were chosen by overt agreement of the defendants to further the conspiracy against plaintiff, and other absent putative members of the classes, from being included in any recovery for the class, and to limit the class recovery from being “too much.” If the classes included “too many” claimants, the Diocese defendants would be entitled to withdraw from the agreement. The Diocese defendants wanted the class settlement approved so they could later argue, as they in fact have argued, that no other sexual abuse claims which arose prior to the class approval could be made against the Diocese. The Diocese defendants knew that the class settlement had been negotiated 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 without jeopardizing that fee by getting too great a recovery for abuse victims against defendant Richter’s own Diocese. So all defendants conspired to create methods to be able to limit the number of class members who could make claims and to limit the amount class members would recover. 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

101. The first technique used by the defendants to limit the class recovery was for the defendants to agree to maneuver a Charleston class action settlement 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 overlook court rules and accept fraudulent filings was desired.

102. Instead of complying with SCRCP 23, and submitting the attached 2006 Charleston class action settlement for approval to a judge in Charleston County, 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, filed August 15, 2006 (06-CP-18-1310 and 06-CP-18-1311), and then 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 and case number 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 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 shop for the desired judge.

103. 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.

104. 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 and to the plaintiff, ostensibly included in each of those duplicative complaints.

105. 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.

106. 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 of the defendants, simultaneously pending in two separate counties.

107. 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, and fairness hearings. The judge was expected to tolerate fraudulent filings by the defendants, an expectation that was rewarded when fraudulent filings were made, by agreement of the defendants, and the court took no action concerning those fraudulent filings.

108. 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.

109. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the judge they shopped for designate the cases as complex and assign them to that same judge. That designation was improper under the rules at the time, as set forth in more detail below.

110. 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 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 any Charleston judge would likely exert independent oversight of the class resolution, and defendants sought to avoid independent oversight.

111. 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.

112. As soon as the handpicked judge assigned the Dorchester actions to herself, the defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

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

114. SCRCP 23 was not complied with as to the 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.

115. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

Conspiracy Technique Two: Using Complex Case designation Improperly.

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

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

118. The July 26, 2006 order of the South Carolina Supreme Court enabling complex case designation approved a particular form for use with complex case motions. Among other things, that motion required counsel to represent certain facts applied to the action for which complex case status was sought. The form states:

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.

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

120. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

121. Defendants falsely represented to the shopped-for judge that no settlement had been reached. Alternatively, defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

122. 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.

123. 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.

124. 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.

125. At page 13, paragraph 6B, in the typed version of the Charleston 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.

126. Representation of the plaintiff by the Richter defendants in proposing an unethical fee was inadequate. Alternatively, that representation breached a fiduciary duty to the plaintiff.

127. 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 of what the Diocese defendants and the Vatican 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.

128. 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 it as the price of obtaining the cooperation of the Richter defendants in structuring a class resolution that provided only a fraction of the relief the Richter defendants would accept in a case against a Diocese other than Richter's own Diocese.

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

129. 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 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.

130. 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.

131. 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. Each knew precisely what their recovery would be before consenting to resolve his or her claim.

132. In addition, the terms for the opt-out abuse victims exceeded the low bar the Richter defendants agreed to set for class member recoveries, and the opt-out victims received more than was received by any comparable abuse victim who stayed in the class settlement. In addition to the fee approved by the Court, the Richter defendants charged class members an additional fee to go through the arbitration. The court approved fixed fee was not disclosed to 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 was held.

133. No notice was given to any class member, including the plaintiff, about the terms of the opt-out settlements. Had the plaintiff been given notice of the terms available for the class, the terms negotiated by the opt-out abuse victims, or the terms applicable to the class representatives, he could have exercised a choice to receive one or the other recoveries. The plaintiff was abandoned by his attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed to the plaintiff, by defendants agreeing to define the class so as to ostensibly include the plaintiff, were breached by all defendants in this action when they agreed to notice designed not to 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. In the alternative, it was a breach of the fiduciary duty assumed by the Richter defendants towards the plaintiff. That duty was implicitly assumed by other defendants as well, in ostensibly defining the classes as they were defined by agreement of all defendants, when notice was designed not to reach those within the definition.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create A Means of Limiting Total Recovery for Compensating Victims

134. In the “General Terms of Settlement” agreed to in the 2006 mediation of the Charleston class action case on June 14, 2006, there are seven essential terms of the settlement agreement.

135. The first general term is that there will be two classes for the settlement. “Actual victims of Diocese abuse,” and “Spousal &/or parent claims deriving from victims abused.”

136. The second general term was to provide a means of having a \$12 million settlement fund.

137. The third general term was “Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims.”

138. The fourth term was that the court would be asked to approve a fixed fee for class counsel “between \$950,000 & \$2.5 million.”

139. The fifth general term was to establish that four individuals would allocate among themselves \$460,000.

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

141. The seventh general term 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.

142. The four individual accepted the offer, 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.

143. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class.

144. 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.

145. 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.”

146. After June, 2006, those individuals who represented the class, whose claims had been “resolved,” did not qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nevertheless, they were falsely designated as class representatives in subsequent Dorchester County case, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition of the class.

147. 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.

148. In the June 14, 2006 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 given to the class, and to the methods of relief given to the class members so the recovery to victims would not

be “too much.” The fee for the Richter defendants could not be jeopardized by having “too many” sexual abuse victims served by the class settlement.

149. 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. That is why the fee is fixed, and why it takes priority over the recoveries of the clients in the class. The highest priority of other defendants, after their willingness to pay class counsel’s fixed fee, was to either exclude persons such as plaintiff, or to limit recovery to persons such as plaintiff, so that within the modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims against another Diocese, the Diocese could argue a *res judicata* benefit from the 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.

150. The Diocese defendants knew or should have known that the history of systematic deceit and deception about sexual abuse required by the Vatican and Code of Canon Law, and which the Diocese defendants had in fact implemented, specifically mandated by the Vatican since at least 1962, exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

151. The Diocese defendants knew that juries had placed a high value on the intangible nature of sexual abuse claims.

152. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to a class settlement, hoping it would exclude enough victims so as to produce a desired *res judicata* effect at a fraction of the cost of a proper settlement with all victims. The Diocese defendants realized the close ties of the Richter defendants to the Diocese, and their willingness to sacrifice the interests of their clients for a fee, enabled the Diocese to try to minimize recoveries to the class members yet still get a class approved.

153. All defendants needed to avoid meaningful court oversight of the class action to limit 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 judge they desired to have.

154. When the defendants realized that “too many” victims, such as the plaintiff, might come forward in the class action, they changed, by agreement, what they would propose to the shopped-for judge for the notice to give the class, 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.

155. Failing to give notice outside South Carolina, other than immediately adjacent to South Carolina, was one means of eliminating claimants such as the plaintiff. No defendants objected to limit the notice to South Carolina.

156. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the plaintiff. All defendants were negligent in permitting

victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members.

157. 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.

158. By design of all defendants, the class had no opportunity or 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.

159. No defendants disclosed that the Diocese had agreed to overlook the fraudulent information submitted to the shopped-for judge to support the fee claimed, and had agreed to make no mention of those various fraudulent time entries. Nor had the defendants disclosed that they had agreed they would request no post-award fairness hearing.

160. 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.

161. 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, 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 the class recovery and to try to preclude him from any later claim, and to limit recoveries to class members so as to not exceed the amount the Diocese was willing to pay.

162. 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 were paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese to abandon clients such as the plaintiff, and to limit recoveries to other clients, in the interest of the Diocese defendants.

163. The Richter defendants abandoned absent class members such as the plaintiff, who reside outside of South Carolina, and gave no meaningful notice to those class members that their rights had been adversely impacted when they changed their position on notice to the class from nationwide notice to a notice limited to publications in and around South Carolina. All other defendants cooperated with that abandonment. Unless the order approving the class settlement means what it says when the court appeared to have accommodated the limited notice by ruling, at page four, “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,” and the plaintiff is not precluded from his claims, the 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 Court

164. 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 it was false. Even after the information was identified as false, no action was taken to protect the plaintiff,

unless the order means that persons who received no notice are not barred by *res judicata*.

165. 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. The case 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 judge.

166. 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 the defendants to be false when made in any of the Dorchester County class complaints.

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

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

169. 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.

170. 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 given to any other ostensible class member.

171. 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.

172. 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.

173. 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.

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

175. If the plaintiff is barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity defense waived as to persons in the class definition, statute of limitations waived as to persons in the class definition, or for any

other reasons, 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: Limiting Notice to only publications in and around South Carolina.

176. The seventh technique used in the conspiracy among defendants to cause special harm to the plaintiff was to agree to limit notice to only publications in and around South Carolina, resulting in notice to only those putative class members who reside in and immediately adjacent to South Carolina. The notice given was deficient in that it was designed not to provide notice to those within the definition of the class action. By agreement of all defendants, the notice was calculated to be ineffective to reach putative absent class members. Unless the order approving the class settlement means what it says and 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.

177. The Diocese defendants are well aware, from its own dealings with abuse victims, that many victims reside out of South Carolina. All defendants were conscious that choosing limited notice served the interests of the Diocese at the expense of persons such as the plaintiff.

178. By motion filed in Dorchester County in October 2006, the Richter defendants proposed giving nationwide notice of the class action through advertising about the settlement in a newspaper with national coverage.

179. In January 2007, the Richter defendants revised their request for notice to the Dorchester County court, and the Diocese defendants acquiesced in that revision, to limit notice to only publications in newspapers with circulation in or near South Carolina. The request to provide notice through a newspaper with national circulation was abandoned.

180. The Richter defendants abandoned the plaintiff as a putative member of the class in agreeing to notice calculated not to reach him. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the plaintiff in defining the classes so as to ostensibly include him, then revising the notice so as to provide no notice to him and all other absent members of the class who resided outside of the area immediately adjacent to South Carolina.

181. The Diocese defendants conspired with the Richter defendants to submit for court approval notice to the class that was calculated to omit absent members of the class such as the plaintiff, and all persons situated similarly to them. The agreement was to bar the plaintiff from being able to make claims by the *res judicata* effect of the ostensible class action without having to compensate him for Frederick Hopwood's sexual abuse.

182. No effort was made to protect absent members of the class, such as the plaintiff, by providing notice beyond the immediate area around South Carolina. If the plaintiff is are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity (which was waived as to those within the class definition), 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 defendants, and special harm has been caused to the plaintiff by the acts of conspiracy of the defendants.

183. The Diocese defendants made no objection to lack of nationwide notice. They made no objection 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 reduced notice agreed upon by all defendants demonstrates that the representation of the class was inadequate, and that 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.

184. 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, by lack of participation. 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 they were not brought for the class using the common law "loss of services" cause of action. However, if the plaintiff is not deemed precluded from stating his claims against the Diocese for any reason, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the defendants to defeat his claims was ineffectual, and this cause of action will be dismissed.

185. 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**

186. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiff is precluded, by any reason, including the class action, charitable immunity, or the statute of limitations, from making his claims against the Diocese.

187. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCF 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.

188. 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.”

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

190. When the June 14, 2006 Charleston class mediation 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 Charleston class settlement was now claimed to be a proposed settlement of both a Charleston class case and Dorchester County class actions.

191. On October 6, 2006, the Richter defendants filed proposed class definitions that included the plaintiff, and proposed a means of notice by publications with nationwide

distribution to give notice to the class. That proposed notice might have given notice to the plaintiff, enabling him to either participate or to opt out.

192. 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.

193. On January 18, 2007, the Richter defendants abandoned giving notice to the plaintiff about the class settlement that purported to include him. Their proposal for notice was revised to include only publications in and immediately around South Carolina, even though the class was not defined with geographic limitations.

194. On January 19, 2007, the proposed class definitions that included the plaintiff was approved without objection from the Diocese defendants.

195. 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.

196. The Richter defendants engaged in negligent acts and omissions in their representation of the plaintiff. Among other things, when they abandoned the plaintiff, 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.

197. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the plaintiff. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiff, or even to all in-state victims.

198. Any court approval of the notice 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.

199. The Richter defendants abandoned their absent putative class member clients such as the plaintiff by agreeing to change the proposed notice to notice calculated not to reach the plaintiff, and calculated not to reach all putative class members situated similarly to the plaintiff.

200. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court.

201. The plaintiff was abandoned by the Richter defendants so that "too many" class claimants would not come forward in 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.

202. Having “too many” claimants also was believed to not be in the interest of the Diocese, and because of his conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese more than the interests of putative class members such as the plaintiff.

203. As a result of his attorneys, the Richter defendants, abandoning the plaintiff, no notice was given to him of the class action, and he had no opportunity to participate in either the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out. 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.

204. 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**

205. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiff is precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations.

206. The Richter defendants chose to propose defining the classes in the class actions so as to have no geographical limit on the classes.

207. All defendants agreed on how the classes were defined.

208. In choosing to define the classes so as to include the plaintiff, the Richter defendants each assumed fiduciary obligations to the plaintiff, who was an absent putative member of one of the classes they defined.

209. 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.

210. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the plaintiff by requesting geographically limited notice of the class action and settlement, as opposed to the nationwide notice they initially proposed.

211. The state court judge overseeing the class action was shopped-for by all defendants.

212. The state court judge was not asked to give notice to all class members, only a subset of class members that excluded the plaintiff.

213. The Richter defendants originally proposed nationwide notice, but then abandoned the proposal. The lack of nationwide notice was observed in the record of the class action, but even after that limitation was noted, the Richter defendants did not request it.

214. On October 6, 2006, the Richter defendants filed proposed class definitions that included the plaintiff, and proposed a means of nationwide notice to the class that might have given notice to the plaintiff.

215. The Richter defendants in its 2005 Charleston class action filing, and in the June 14, 2006 settlement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the plaintiff.

216. On January 18, 2007, the Richter defendants abandoned giving to the plaintiff notice about the class settlement that ostensibly included him.

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

218. No meaningful notice, at any point, was given to class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiff, or even to all in-state victims.

219. The Richter defendants contend that mention of a class action or a class action settlement in a news media outlet is sufficient due process "notice" of a class action or class action settlement within the meaning of SCRCP 23. Mention of a class action or class action settlement in a news media outlet is not notice of a class action or class action settlement within the meaning of SCRCP 23.

220. That the Richter defendants contend that news mention of a class action is the equivalent of notice under SCRCP 23 is a reflection of the professional negligence of the Richter defendants towards the plaintiff in conducting a class action.

221. The Richter defendants each breached their fiduciary duties to the plaintiff so he would not participate in making a claim against the fund established for the class action settlement. If notice had been given nationwide, as originally proposed, "too many" claimants might have come forward in the class action, which would have jeopardized the fixed fee the Richter defendants had negotiated for themselves at the expense of their clients.

222. The Richter defendants arranged to have their fixed fee paid before notice to the class and before the claims process.

223. The Richter defendants arranged to have their fixed fee paid before membership in the class was known.

224. The Richter defendants arranged to have their fixed fee paid before distribution to the class was known.

225. The Richter defendants arranged to have their fixed fee paid before class members had an opportunity to object to or comment on the fixed fee and the priority it was to be given over class member recovery.

226. Having “too many” claimants also was believed by the Richter defendants to not be in the interest of the Diocese, 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. To promote the interests of the Diocese 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 agreed to change the proposed notice to the class from notice in publications with nationwide distribution, and also agreed to accept for the class compensation that ranked among the lowest known victim compensation.

227. As a result of the Richter defendants abandoning the interests of the plaintiff, and breaching the fiduciary duties owed to him, the plaintiff had no opportunity to

participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out, or to make a claim against the Diocese for sexual abuse. The acts and omissions of the Richter defendants have caused damage to the plaintiff.

228. 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:
Judicial Estoppel and Unfair and Deceptive Trade
Practices by the Diocese Defendants**

229. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated.

230. The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

231. The Diocese defendants operate an organization engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Diocese defendants advertise and offer for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. They operate churches and schools, and activities, which cater to families.

232. The Diocese defendants encouraged people, including plaintiff, 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. The Diocese defendants particularly owed a duty to the plaintiff, who was a minor, and his parents, a greater degree of care because as a child the plaintiff was unable to fully appreciate risks and

danger. The Diocese defendants implicitly 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 form harm when using its facilities and when interacting with its personnel. No exception was made for Frederick Hopwood.

233. For years the Diocese defendants have been aware that certain of its operations, and certain of its employees, have sexually abused minors.

234. As part of a business decision to address that history of sexual abuse, in 2006 the Diocese elected to adopt a class settlement to address its known history of priests and other employees sexually abusing minors.

235. The Diocese promoted that decision as a responsible action by the Diocese defendants. Then Bishop Baker issued the press release that is Attachment C to this complaint. Its terms are incorporated into this cause of action as if fully stated pursuant to SCRCP 10(c).

236. Part of that settlement was to advertise the offer by the Diocese to distribute both services (in the form of counseling) and property (in the form of compensation) to sexual abuse victims.

237. Advertising was done by the Diocese in, among other publications, newspapers of general circulation in Charleston (*Post and Courier*), Myrtle Beach (*Sun*), Columbia (*The State*), Augusta (*Chronicle*), Rock Hill (*Herald*), Beaufort (*Gazette*), Greenville (*News*), Spartanburg (*Herald*), Orangeburg (*Times-Democrat*), Florence (*Morning News*); and Aiken (*Standard*). Living outside of South Carolina, plaintiff saw none of those notices, as was designed by the defendants.

238. In that advertising, tangible property was proposed to be exchanged by the Diocese, and services provided in part for the intangible injury created by acts of sexual abuse.

239. The public interest was affected by the proposed 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 predicated on the false representation made to the Court about how the Diocese would conduct itself.

240. Among the false statements made at the time by the Diocese defendants was the Bishop Baker's 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." When stated, it was known that the class settlement proposed was to be limited to only persons in and around South Carolina. In its public statements, the Diocese defendants misrepresented the reach of its proposed class settlement, and did not disclose that in fact the proposed resolution was designed to omit many persons who had been sexually abused.

241. A circuit court judge to approve the class settlement was "shopped for" and selected by the Diocese defendants, in conspiracy and collaboration with the Richter defendants. The Diocese defendants did not want any Charleston County judge, out of concern that the judge might be fully independent.

242. 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.

243. 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.

244. The Diocese defendants were aware that the Richter defendants had extensive and life-long ties to the Diocese, and would be willing to compromise the interests of the absent class members in exchange for a fixed fee payment.

245. The Diocese defendants conceived 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 notice to the class in a geographically limited way. As long as their fee was paid, the Richter defendants were expected by the Diocese defendants to be willing to accommodate the interest of the Diocese, even at the expense of the absent members of the class they represented.

246. All defendants collaborated to submit false information to the Court, and no defendant objected to any of the false information submitted by any of them. Part of their agreement was to remain silent while false information was submitted.

247. To gain court approval of the class settlement the Diocese made overt misrepresentations of fact to the Court that was falsely represented to reflect an “understanding” among all defendants “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. The “understanding” communicated to the Court was to address

if “someone pops back up who should have gotten notice who didn’t get notice.” The understanding communicated to the Court by the Diocese defendants was:

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.

248. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. It was undisclosed to others outside of that litigation, including the plaintiff, until 2009.

249. 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. In fact, the Diocese was aware, or should have been aware, 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.

250. To avoid nationwide notice, the Diocese falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Diocese 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.”

251. The Diocese defendants made no disagreement when, on pages 16 - 17 of that same transcript, class counsel summarizes the 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.

252. Nor did the Diocese defendants state any disagreement when the Court 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.”

253. The Diocese intended, on July 13, 2007, to create the false impression with the court that if a victim within the class definition came forward in the future, that the Diocese would extend relief to that victim. The Diocese created by impression by its statements and its silence in light of statements by others. The Diocese intended that impression to be relied on, and it was relied on. That impression was false, and was known to have been false when made.

254. The Diocese concealed until 2009 its true position, which was to use that false position starting in 2009 to deprive other sexual abuse victims of any relief. That fraudulent concealment by the Diocese became known only in 2009.

255. The Court relied on the statements and silence by the Diocese to extend in the July 30, 2007 order 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.

256. The Diocese defendants intended that the Court rely on their statements, silence, and conduct to form that impression, even though the impression was false and the Diocese had no intention of honoring the assurances given to the Court.

257. When additional victims came forward, the Diocese refused to honor its representations to the Court, and which the Court placed in its July 30, 2007 order at page 4. Instead, the Diocese asserted the defenses it had waived, claimed the *res judicata* effect it had disclaimed, and acted exactly contrary to its assurances to the Court 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.

258. The Diocese defendants made their false representations to the Court for the purpose of gaining Court approval of a class settlement with only limited notice to the class. By contending (falsely) that it would both waive its defenses and provide compensation to class members who had received no notice, the Diocese committed fraud on the Court, on the public, on the plaintiff, and on all sexual abuse victims born before August 30, 1980. When those representations were made the Diocese had no intention of honoring the representations.

259. The Diocese amply demonstrated that its assurances to the Court were false when, despite those assurances, the Diocese refused to perform on its assurances or on the Court's order when sexually abused persons born prior to August 30, 1980, received no notice of the class and later requested relief. That refusal includes the plaintiff.

260. The Diocese has taken inconsistent positions as to different persons included in the same class definition. Those inconsistent positions also affect the public interest.

261. All of the conduct by the Diocese, 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 representations made to the Court. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action, and have since been refused relief by the Diocese when they made a claim for relief.

262. The proceedings in which those inconsistent positions were taken by the Diocese are related to this action in that each involved one or more members of the class as defined by agreement of the Diocese, who received no notice of the class settlement and for whom the Diocese promised to, but then denied, to provide relief.

263. The Diocese was successful in maintaining its disingenuous misrepresentations to the Court, got relief from the Court based on those disingenuous representations, and as a result of taking that position the Diocese received the benefit of class approval from the Circuit Court.

264. The inconsistency by the Diocese is part of an intentional effort to mislead the Court.

265. 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, compared to the position it asserted to the Dorchester County court in the class action.

266. 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, trebled as provided by law, with costs and attorneys fees as provided by statute.

267. The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese made a calculated business decision to invest some funds and engage in a public relations exercise, in an effort to procure positive publicity for itself 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. The statement of then Bishop Baker that is attachment C to this complaint was one aspect of that public relations campaign that was postured to be inclusive but was by design created so as to be under-inclusive.

268. The Diocese invested funds to design a compensation program for victims which specifically excluded many victims. The Diocese engaged in collusion with other defendants to do so, as alleged above, and 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.

269. The Diocese defendants took no appeal from the July 30, 2007 order.

270. The Diocese 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.

271. When the Diocese was contacted on behalf of other abuse victims who had received no notice of the class action, the Diocese refused them relief. Instead, the Diocese asserted against victims who did not get notice, exactly as they promised the court 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, and the

Diocese defendants have done so even as to victims for whom the Diocese did not even attempt to provide notice, such as the plaintiff.

272. 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 “for whatever reason” received no notice. Despite its representations, the Diocese defendants intend to use the collusive class action cases to attempt to terminate liability of the Diocese, to do so at a fraction of the recovery a truly adversarial counsel might have demanded on these facts.

273. The Diocese defendants made their misrepresentations 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.

274. 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.

275. 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.

276. 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.

277. 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.

278. 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.

279. 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.

Demand for Jury Trial

280. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

281. 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,
282. Costs and disbursements of this action,
283. Attorneys fees as authorized by law,
284. Punitive damages as authorized by law, and for
285. 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
286. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



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attygm@gmail.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

*See Terms
attached on
E+H. #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:

- Ⓐ ACTUAL VICTIMS OF DOMESTIC ABUSE
- Ⓑ SPOUSAL +/or Parent claims deriving from victims abused

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

- Ⓐ \$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 process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

(17)

4. Court shall be asked to approve attorney's fees for class counsel at between \$950,000 + \$2.5 million, subject to Defendant's 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 or 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 executed & shall proceed to settlement in the amounts set out in "5." above with appropriate general releases &/or dismissals with prejudice executed in favor of defendant.

~~* Class of action & proceeds~~

(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.

June 14, 2006

James Deely, Attorney
 ON BEHALF OF DEFENDANTS
 Attorney in and with authority of the
 Successor of Unibody

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;

1. 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 / 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;
- 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"

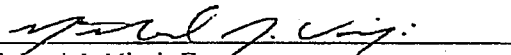
had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

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 10th day of December, 2008.


Notary Public My Commission Expires July 25, 2013
My Commission Expires : _____

THE DIOCESE OF CHARLESTON

January 21, 2007

**Open Letter by Bishop Robert J. Baker on the Resolution of a Class Action
Settlement for Child Sexual Abuse Cases**

Sexual misconduct and abuse of children is an unfortunate reality in our society. Children require protection by society, since they cannot adequately provide it for themselves. The Diocese of Charleston is adamant that the abuse of children, including physical injury, sexual molestation, or grave emotional damage, will not be tolerated, by anyone, especially Church personnel.

For the past several years my staff and I have been working diligently with victims of sexual abuse to come to just resolution for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades. Today, I am pleased to announce an agreement has been reached and submitted to the Court of Common Pleas for approval and oversight.

While the instances of abuse addressed through this action span decades, we take to heart the pain and anguish which they may have caused to the individuals affected and those around them. Can a human family have real peace and joy if some of its members are feeling the pain of previous offenses? As a communion of persons, a family, the good of the Church is tied to the spiritual good of all of her members, without exception. In order for individuals who have been sexually abused to heal and the entire Church to grow in peace and the love of Christ, we must seek to truly mend the hurts of the past.

The demands of justice and the desire to heal the hurts of those abused by those sent to minister to them weigh heavily upon my heart. I deeply regret the anguish of any individual who has suffered the scourge of childhood abuse and am firmly committed to a just resolution of any instance in which a person who holds the responsibility of protector has become a predator.

Any instance of childhood abuse is not only a grave moral evil; it has damaging consequences that can affect the child for the rest of his or her life and influences the Church in its credibility in evangelization efforts for years to come. I believe that a proactive approach to healing the evil that has been done is not only constructive, but absolutely necessary.

The details of the settlement include an initial fund to settle instances of abuse at a predetermined amount of damages. In the event claims exceed the initial fund, there is an agreement in place to access additional funds.

I hope and pray that you will join me in praying and working for the good of those who have been harmed. It is my fervent hope that this settlement will allow us, as the Catholic community

Office of the Bishop

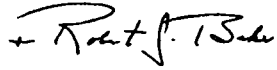
119 Broad Street · Charleston, South Carolina 29401

P.O.Box 818 · Charleston, South Carolina 29402 · Phone (843) 853-2130 ext. 203 · FAX (843) 724-6387

Attachment C

of faith in South Carolina, to bring closure to an ugly period in our history and look forward with joyful hope to the future of our Church, where we can carry on the mission of Jesus Christ to bring light, truth, compassion, healing, and peace into our world.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert J. Baker". The signature is written in a cursive style with a small cross at the beginning.

Most Reverend Robert J. Baker
Bishop of Charleston

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO. 12-CP-10-5559

Jane Doe 11,)

Plaintiff,)

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.)

Defendants.)

Civil Conspiracy
 Professional Negligence
 (Legal Malpractice)
 Breach of Fiduciary Duty

Jury Trial Requested

FILED
 2012 AUG 23 PM 3:41
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

Complaint

For her complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Plaintiff is an adult citizen and resident of a state other than South Carolina. She is the spouse of a person who was sexually molested as a child by a priest of the Diocese of Charleston, James W. McCarthy, also known at times as Leo McCarthy, Leo J. McCarthy, and James W. McCarthy, when he was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.

2. A pseudonym is used for the Plaintiff due to the sexual abuse injury sustained by her husband. The Defendants will be informed of the identity of the Plaintiff upon their

agreement to reciprocate in discovery and to maintain Plaintiff's identity as confidential in the public record.

3. The Bishop of Charleston, a Corporation Sole, is the 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.

4. The Diocese was created in 1880 by an Act of the South Carolina General Assembly.

5. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. The Diocese operated St. William Parish, a Catholic Church in Ward, S.C.. James W. McCarthy was assigned by the Diocese Defendants to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971. During his time at St. William, the Diocese Defendants knew, or should have known, that James McCarthy was sexually abusing children.

6. The acts associated with the abuse of the Plaintiff's spouse took place in and around Ward, S.C., in Saluda County, but the acts associated with the conspiracy occurred in major part in Charleston County.

7. Venue is proper in Charleston County.

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 in his official capacity, and is a party necessary for complete relief. All persons working for the Diocese are subordinate to the Bishop.

9. Prior to Bishop Guglielmone, from October 2007, to March 2009, the Diocese

had no Bishop, and was administered under the Code of Canon Law by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County.

10. Prior to Administrator Laughlin taking charge of the Diocese, from July 1999 to August 2007, the Bishop in charge of the Diocese was Robert J. Baker, presently a resident of, and citizen of, Alabama.

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

12. Jane Doe 11 was similarly situated as other individuals ostensibly within the definition of a class certified by a South Carolina court as part of a class action. However, by collusive agreement among the Defendants, the Plaintiff received no notice of the class action, thus had no opportunity to be heard or participate in the litigation, either in person or through counsel. By collusive agreement among Defendants, notice given in the class action was designed to be insufficient as to the Plaintiff, so as to permit the Diocese to later argue that the class action precluded any and all claims for abuse, by preventing the Plaintiff from either participating in the class action or being able to remove herself from the class action by opting out of the class action.

13. Defendants continue to extend their best efforts to conceal the collusive nature of the class action. Acts to conceal the collusive nature of the class action extend into 2012. The plaintiff brings this action within three years of the active concealment by the defendants.

14. In being within the putative definition of the class as the Defendants agreed to define the class, the Plaintiff, along with other members of that class who resided outside

of South Carolina, ostensibly were formerly represented by, until in 2007 each was abandoned by, Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC. Alternatively, and at minimum, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC assumed duties as to the Plaintiff by defining the class so as to ostensibly include her. The Defendants conspired against the Plaintiff to cause her special harm in the form of the effort to preclude her from making any claim. The representation the Plaintiff was given in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

15. In this complaint, Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC are collectively referred to as "the Richter defendants."

16. This action is not alleged as a class action. It involves as Plaintiff one person who was, until she was abandoned by her counsel, the Richter defendants, a putative member of (a) a class as alleged in a state court class action, (b) a collusive class settlement agreed to among Defendants, and (c) a class approved by a state court. But for the Richter Defendants having breached their duties to Plaintiff by abandoning the Plaintiff, in agreement with and full complicity with the other Defendants, the class action would ostensibly have included the Plaintiff. A number of other individuals have made similar allegations of having been excluded by design from the class action, and this complaint may be amended to state a class action.

17. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in Charleston County as a practicing attorney.

18. David K. Haller is a citizen and resident of South Carolina doing business in Charleston County as a practicing attorney.

19. Richter & Haller, LLC did business in Charleston County at all times pertinent to this complaint, and had its principal place of business in Charleston County.

20. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to as the "Richter defendants."

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

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

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

Nature of Wrongdoing

24. This In 2005 a class action against the Diocese defendants was begun in Charleston County.

25. In 2009 the class action against the Diocese defendants had not been concluded.

26. On March 19, 2009, in an appeal involving the class action, and specifically involving the Richter Defendants and the Diocese defendants, the South Carolina Supreme Court ordered, "we hereby direct that the underlying matters be concluded within six months of the date of this order. No extension shall be granted absent prior permission by this Court."

27. By September 19, 2009, the class action was ended by order of the South Carolina Supreme Court.

28. The Defendants have each ignored that order of the Supreme Court and in 2012 continue to collude in the class action.

29. This complaint sets out allegations of corruption and collusion by lawyers and parties to manipulate three Charleston County cases, and later Dorchester County cases,

to cooperate among Defendants to try to buy for the Catholic Church a layer of what was hoped would be protection from civil lawsuits almost certain to keep coming over that historical sexual abuse and the fraudulent concealment of abuse by the Diocese. It also sets forth allegations of fact related to corruption of particular lawyers who assumed a duty to act for victims of the sexual abuse, including the Plaintiff, but who then acted negligently, willfully and wantonly, by abandoning their client so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese in exchange for their cooperation with the Diocese in trying to protect the Church from future cases, and from claims by this Plaintiff and other spouses of sexual abuse victims. The danger to the Diocese of future cases was that future cases might be brought by lawyers actually adverse to the Diocese Defendants, as opposed to the Richter Defendants, some of whom had life-long ties to the Diocese Defendants. Those life-long ties were never disclosed to the class, and created a willingness among the Richter defendants (combined with cooperation from the Diocese Defendants to obtain the fee for the Richter Defendants) to enter the collusive class agreement with the Diocese Defendants. The Complaint also sets forth overt misrepresentations of fact by the Defendants to the Court which approved the class action settlement.

30. So confident were the corrupt lawyers in their ability to manipulate the state court judge they had selected and maneuvered the class action cases before, and so confident were the corrupt lawyers in gaining the cooperation of the Diocese Defendants, their supposed adversaries, that the corrupt lawyers, the Richter defendants, calculated they could (a) submit blatantly false and inflated time records to justify their large fee, (b) that no objection to them would be raised by the Diocese Defendants, (c) no scrutiny would

be paid those blatantly false time records by the state court judge they had among themselves colluded to “shop for” and maneuver the class action cases before, and (d) in 2012 the Richter Defendants would move before the state judge to again rule in the class action, purporting to represent clients they did not represent, to get a ruling in a case that had been closed since 2009 by order of the South Carolina Supreme Court, to obtain relief supposedly for clients they did not represent (and whom they knew to be represented by other counsel), but relief in fact designed to protect the Diocese Defendants as well as themselves.

31. In exchange for their cooperation with the Richter defendants, the Diocese (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention any of the false time records submitted by the Richter Defendants, (c) agreed to a range to be established for the fee to the Richter defendants, (d) agreed to state only the weakest and most vague argument that the fee awarded to the Richter defendants should be the low end of the agreed range for the fee, (e) agreed to make no objection to an unethical fixed fee for class counsel while, simultaneously, compensation to the class of victims was variable, (f) agreed to make no objection to the fee being awarded to class counsel before any class member claimant was identified, before class members had any opportunity to opt-out, before any class claims had been presented, and before any class member claimant was paid, (g) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court, ethical practices, and South Carolina law, and (h) in 2012 raised no objections to the Richter Defendants seeking to reopen the closed class action suit on behalf of persons the Diocese knew to be represented by counsel other than class counsel.

32. In turn, the Diocese Defendants overtly misrepresented 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 and approved the class relying on that representation, the Diocese Defendants ignored that they made the representation, abandoned the commitment they made on the record to the Circuit Court and to the public, and demonstrated that the representation when it was made to the Circuit Court was false when made, and was false when made to the public through Bishop Baker's public statements. Correspondingly, the Richter defendants failed in 2008 to secure by court order for their clients, the class members, the assurances of treatment the Diocese overtly misrepresented to the Court would be made available to class members who received no notice when the court failed to secure those assurances overtly in the order, and in 2012 purported to file in the same class action, which had been closed since 2009, a motion which purports to represent individuals known by all Defendants to be represented by other counsel. The motion in fact seeks to promote the interests of the Richter defendants by furthering the collusive actions with the Diocese defendants.

33. Of the five levels of wrongdoing alleged in this Complaint, the causes of action hinge, in part, on whether or not the Plaintiff is regarded as being bound by the *res judicata* effect of the class action to which the Diocese was party. As alleged more fully below, Plaintiff ostensibly falls within a class defined in that action, but the notice given to the classes, by design, was changed by all Defendants so as to exclude notice to the Plaintiff. As a practical matter, notice was revised so it would go only to a subset of the approved classes; those class members living in and immediately adjacent to South

Carolina who happened to read a particular newspaper. The change to the extent of the proposed notice to the class was noted to the state court by objectors to the class but the state judge that was hand-picked by the Defendants through their judge-shopping techniques ignored the issue in 2007 when notice was approved for the class action. The Richter defendants, colluding with the Diocese defendants, in 2008 took no appeal from the notice they knew would be insufficient. All Defendants cooperated together to better protect the Diocese by asking for only notice that would be insufficient to notify all members of the class. In 2012, after their fraud and collusion was discovered and disclosed in documented court proceedings, the Richter Defendants sought to protect themselves and the Diocese defendants by seeking to have the shopped-for state judge make supplemental rulings, on behalf of clients they knew were represented by other counsel, in the class action which the South Carolina Supreme Court had closed in September, 2009.

34. The state court order which approved the class appeared to have provided for absent members of the class who received no notice, but the Diocese Defendants now contend, contrary to representations made to the Court in 2007, that the Diocese has no duty to absent members of the class that received no notice of the class settlement. By that argument the Diocese Defendants seek to perpetuate the civil conspiracy the Diocese Defendants intended to achieve through the class action and with the collusive cooperation of the Richter Defendants.

35. Plaintiff was an absent member of a class who, by collusive design among Defendants, received no notice of the class action. As such, Plaintiff should not be bound by any *res judicata* effect of the class action because the class action was collusive,

because the procedure used did not adequately insure the protection of her interests, because her representation by the Richter Defendants was inadequate and fell below the applicable standard of care, because the state court order appears to contemplate the insufficient notice by holding that the Plaintiff is not properly bound by any *res judicata* effect, as set forth more fully below. Nor should the plaintiff be bound by any orders that emanate from a 2012 filing by and on behalf of the Richter Defendants in that closed class action, where class counsel filed on behalf of themselves rather than on behalf of any client represented by class counsel, and in fact has made a court filing attempting to affect the interests of individuals knowing those individuals were represented by other counsel and designed to compromise the interests of those individuals rather than to promote the interests of those individuals.

36. 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. Only an interpretation is sought as to the preclusive effect of the class action as applied to the Plaintiff.

37. In 2012, a circuit judge concluded that the notice provisions in the class action was insufficient to constitute Due Process for any individual, such as the Plaintiff, within the class definition who lived out of state.

**For a First Cause of Action:
Civil Conspiracy (against all Defendants)**

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

39. The Diocese Defendant employed as a priest a person known at times as James McCarthy. He was also known for a time as Leo McCarthy.

40. The Diocese Defendants placed James McCarthy in Ward, S.C.

41. In his capacity as priest, James McCarthy was placed by the Diocese Defendants in a position of trust and confidence, and had access to the Plaintiff's spouse when her spouse was a child, and had access to other children. In that capacity, James McCarthy sexually molested the Plaintiff's spouse when he was a child. James McCarthy also molested other children.

42. James McCarthy invited children to his residence and provided alcohol to children prior to molesting them.

43. Prior to Plaintiff's spouse being molested, the Diocese defendants became aware that James McCarthy was dangerous to children. The Diocese defendants moved James McCarthy from place to place within the Diocese, and thereby facilitated his access to young people whom he could molest.

44. The Diocese Defendants negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy. Moving him without proper warning to children and their parents, and without proper supervision, was grossly negligent.

45. The Diocese Defendants have for decades maintained a policy and practice of fraudulent concealment when their agents and employees were known to sexually abuse children. The most recent act of fraudulent concealment by the Diocese defendants was in 2012. This action is brought within three years of that most recent act of concealment and fraudulent conduct by the Diocese Defendants.

46. The Diocese Defendants operate under secrecy provisions in its administrative operating procedures in the Code of Canon Law and in the 1962 document titled

"Instruction." The Instruction charges the Diocese to discover, but then to maintain secrecy about, "other persons solicited" by any person, such as James McCarthy, who commits the "unspeakable crime" of sexually abusing a child. In addition, the Diocese defendants operate with a policy and practice of secrecy as to matters which relate to sexual abuse.

47. The Diocese defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including James McCarthy. 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.

48. Specifically, the Diocese defendants utilized a records retention practice of secrecy, in which the Diocese created an archive, accessible only by the Bishop and chancellor, which included matters concerning sexual abuse. Documents were not permitted to be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia. The Diocese required that a "Secret Archive" also be created, where "documents are to be kept secret" and "protected most securely." The administrative rules and policy the Diocese uses on document retention 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." Only the Bishop is to have the key to the Secret Archive, and documents are not to be removed from that archive. The Bishop is authorized to include

in the secret archive any matter which can be regarded as scandalous, and the practice by the Diocese has been to include in the Secret Archive matters related to sexual abuse.

49. In 1962 the Diocese defendants expanded on the secrecy required concerning sexual abuse, receiving 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).

50. These administrative policies relate to secrecy for criminal conduct rather than to matters of doctrine or religious faith.

51. The 1962 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. It 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." P. 16, ¶ 73. These references include criminal sexual abuse of minors.

52. The 1962 Instruction directs the Diocese defendants to assume the duty of locating "other persons solicited by the same confessor" (p. 7 ¶ 29), in this instance, other persons solicited by James McCarthy. 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. These policies apply to criminal matters involving sexual abuse of minors.

53. The 1962 "Instruction" is an official publication of the Holy See.

54. The 1962 Instruction was approved by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 Instruction.

55. The 1962 "Instruction" is applicable to the Diocese Defendants.

56. The 1962 "Instruction" is applicable to criminal sexual conduct with minors by agents or employees of the Diocese Defendants.

57. 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.

58. "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 none is made in practice.

59. Unless the Pope himself has specifically approved otherwise, and there is no indication that he has, secrecy was to have been maintained by the Defendants, and by even witnesses to sexual abuse. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the 1962 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. That has been the administrative practice of the Diocese Defendants on matters as to criminal sexual conduct as to minors. Accordingly, unless the Pope has specifically instructed

otherwise, the Diocese defendants can all be expected to be obedient to the 1962 Instruction, to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse, even where it constitutes criminal sexual conduct of minors. The Diocese defendants have, to date, done so.

60. The Pope has taken no action to relieve Defendants from the secrecy imposed on them by the 1962 Instruction.

61. In 2008 the Diocese defendants voluntarily assumed the duty to locate victims ascribed to it by the 1962 Instruction, but conspired with the other Defendants to make the undertaking a fraud, and to deliberately omit the Plaintiff. The Diocese Defendants failed to locate the Plaintiff, her husband, or many other abuse victims, and with the cooperation of other Defendants 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 or her spouse, and did so to serve their own ends.

62. Defendants have conspired to injure the Plaintiff, and those actions have caused special damage to the Plaintiff. The defendants have acted in numerous ways which reflect the joint assent to injure the Plaintiff, and have taken overt acts to pursue the common design to injure the Plaintiff. Details of the overt acts which reflect that joint assent are set forth below.

63. Some actions that have been taken have been legal; other actions were legal but violated professional standards embodied 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 she and all other out-of-state putative class members could not participate

in the state court class action, on one hand, and on the other, to make sure the Plaintiff would be prevented from opting out of the class action and bringing her own action.

64. In exchange for a sufficient amount of money directed to colluding lawyers as a fee, the Plaintiff's one-time lawyers, the Richter defendants, agreed to act against the Plaintiff's interest, and to collaborate instead to act against the Plaintiff's interest and in the interest of the Diocese.

65. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese Defendants to be silent as to the fraudulent means used to justify that fee, the Plaintiff's one-time lawyers, the Richter defendants, agreed to abandon the Plaintiff, quietly dropping their request to give nationwide notice to class members such as her, even though The Richter Defendants had, in coordination with the Diocese Defendants, defined class action classes so as to ostensibly include the Plaintiff and had originally proposed nationwide notice to those classes. That proposal to give nationwide notice was then changed to notice only in the area immediately around South Carolina. The revised proposal for notice was designed by the defendants not to reach the individuals within the class as defined, and instead was designed to exclude the Plaintiff, and breached a duty to the Plaintiff assumed by the Richter defendants.

66. The Richter defendants assumed a duty to the Plaintiff either from an attorney-client relationship with the Plaintiff or from a fiduciary duty assumed as to the Plaintiff when the Richter defendants brought the class action and defined the class as they chose to define it, so as to include the Plaintiff.

67. The Richter defendants elected to abandon their out of state putative class member clients, such as the Plaintiff, by dropping their request for nationwide notice to

the out-of-state class members, so as to prevent the Plaintiff, and others similarly situated, from finding out about the class action and from making claims against the class fund.

Doing so protected the interests of the Richter defendants at the expense of their ostensible clients, and promoted the interests of the Diocese defendants.

68. In the class allegations, joinder was said to be impracticable because 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, and in the identical John Doe #53 Complaint redundantly filed in 06-CP-18-1636, also at ¶ 36.

69. If “too many” of those hundreds of victims participated in the class action, the Richter defendants would jeopardize the large fee the Diocese had agreed to enable them to get, and the Diocese might not get the ostensible protection from future suits it was colluding to try to obtain at the lowest possible cost.

70. For the Richter defendants, both their fee, and the interests of the Diocese, were more important than the interests of their absent putative class member clients.

71. In exchange for the Richter defendants abandoning the Plaintiff and all of the other putative class members living outside of South Carolina, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCF 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 SCRCF 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 were used to support the fee request by the Richter defendants, (e) agreed to the unethical conduct of a settlement

which established a fixed fee amount for class counsel while establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to counsel before any class member's claim was known or the class was even identified, (g) acquiesced in the unethical conduct of abandoning all out-of-state class members by agreeing to give those class members no notice of the class resolution, and (h) agreed to violate SCRPC 23 and other professional standards by moving the class action cases to a state court judge outside of Charleston County known to have extensive social and professional ties to the Richter defendants, in the aspiration that a more pliable oversight would be received for the class settlement.

72. The Diocese defendants undertook a duty to the Plaintiff to identify abuse victims and their spouses, such as the Plaintiff, and negotiated, in June, 2006, a class resolution to what was referred to as "spousal &/or parent claims deriving from victims abused," in the 2006 Charleston Mediated Settlement agreement at ¶ 1. At that time no class of "spousal &/or parent claims" had been certified or even alleged. To get approval of the class settlement, the Diocese defendants colluded, along with the Richter defendants, to circumvent the requirements of SCRPC 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County.

73. In disobeying SCRPC 23 in Charleston County, and in judge-shopping in Dorchester County, the defendants violated judicial norms and rules. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which duplicated an existing Charleston County

complaint alleging a class, resulting in the identical case pending simultaneously in circuit court in both Charleston County and Dorchester County on behalf of the same individual class representative, and on behalf of the same putative class. That was done as the means of judge shopping. The Diocese defendants also agreed to remain silent so as to enable the Richter defendants to submit false information to the judge that was hand-picked by the Defendants in the expectation that the judge would provide a pliable, and less than independent, oversight of the class settlement and class claims process.

Details of the Conspiracy

74. 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 of Charleston.

75. 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.

76. 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.* That action was assigned case number 05-CP-10-2053. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

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

78. 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.* That case was assigned case number 05-CP-10-3293. No complaint is

made against the other attorneys who signed that complaint along with the Richter defendants.

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

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

81. After 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.* That case was assigned case number 05-CP-10-4193. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

82. In February 2009 the Diocese defendants published to the public through their press spokesman a lie. The lie was 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 in furtherance of the routine and consistent administrative 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.

83. Rule 23(d)(1) SCRCF 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."

84. From December 2005 until June 2006, the Richter defendants made no effort to seek class certification for the class they had alleged in the December class action complaint in Charleston County, nor did any other Defendants. 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, on topics other than on class certification, and sent out hearing notices, the Defendants collaborated to ask that the motions be continued rather than heard.

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

86. At that conference, which took place over two days, the parties purported to settle all claims of all class members in two classes, as the classes were defined by agreement of the parties. That agreement was reduced to writing in 2006.

87. 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 her claims, the Richter defendants assumed professional obligations to them, including fiduciary duties towards them, and created a constructive attorney-client relationship, if not an actual attorney-client relationship with each plaintiff. The Richter defendants are unaware of such obligations, and deny such obligations exist despite South Carolina cases which affirm those obligations.

88. Correspondingly, by volunteering to settle claims for a class which had not been alleged in any pending action, the Diocese also assumed a duty to the Plaintiff to give her notice of the proposed settlement, which the Diocese had no intention of doing.

89. 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 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.

90. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 mediation of the Charleston cases.

91. The typewritten document was approved by The Vatican in January 2007.

92. The settlement of the agreement was funded by approval of The Vatican.

93. Because the fund established for the class settlement exceeded \$10 million, the Diocese defendants were obligated to get approval of the Vatican. The Diocese is required to get approval of the Vatican before it can "alienate the patrimony" by an amount in excess of \$10 million.

94. As reflected in the attached handwritten agreement, the Defendants agreed that certain individuals and the purported class representative 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 would pay only \$460,000.

95. In that 2006 mediated agreement, claims of absent class members were proposed to be resolved on terms materially different than the terms applicable to those individuals and the purported class representative. Instead of a clearly identified cash payment the same as, or similar to, what the individuals and the purported class representative was to receive, absent class members were to be required to waive all rights first, and second submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive. Class members had to relinquish all rights for review to

qualify for the arbitration, whereas the individuals addressed in the 2006 mediated class settlement received a known distribution prior to having to surrender their rights.

96. As alleged below, not fewer than eight techniques were chosen by overt agreement among the Defendants to further the conspiracy against Plaintiff, and other absent putative members of the classes, from being included in any recovery for the class, and to limit the class recovery from being “too much.” If the class settlement included “too many” claimants, the Diocese would be entitled to withdraw from the agreement, and the Richter defendants would not be entitled to the large fee they would otherwise obtain by colluding with the Diocese.

97. For their part, the Diocese defendants wanted the class settlement approved so they could later argue, as they in fact have argued, that no other sexual abuse claims which arose prior to the class approval could be made against the Diocese. The Diocese defendants knew that the class settlement had been negotiated 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 without jeopardizing that fee by getting too great a recovery for abuse victims against defendant Richter’s own Diocese. So all Defendants conspired to create methods to be able to limit the number of class members who could make claims and to limit the amount class members would recover. 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 Avoid Charleston Judges

98. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver a Charleston class action settlement 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 an alternative 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 overlook court rules and accept fraudulent filings was desired.

99. Instead of complying with SCRCP 23, and submitting the attached 2006 Charleston class action settlement for approval to a judge in Charleston County, the Defendants agreed to cooperate among themselves so as to have the Richter defendants file, and the Diocese defendants accept service of, newly filed class action cases in Dorchester County. Two such cases were filed August 15, 2006 (case numbered 06-CP-18-1310 and case numbered 06-CP-18-1311), and then the pending (and 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.*, which was assigned case number 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 and new case number 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 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 shop for the desired judge so as to avoid judges not desired.

100. 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.

101. Filing duplicative class actions to have the same case pending simultaneously in two different venues for the same class representative and class is inherently abusive conduct by class counsel, as is the Diocese defendants cooperating to accept service of the duplicative class action filed in two different venues. Such conduct violates professional standards and breaches an independent duties to the court and to the Plaintiff, who was ostensibly included in each of those duplicative complaints. Nor were the actions adverse.

102. 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 although a settlement had been reached in each Charleston case.

103. 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 all Defendants, simultaneously pending in two separate counties for the same class representative and the same class.

104. 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, and fairness hearings. The judge was expected to tolerate fraudulent filings by the defendants, an expectation that was rewarded when fraudulent filings were made, by agreement of the Defendants, and the court took no action concerning those fraudulent filings, even after the fraud of the filings was explicitly disclosed to the court.

105. 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. The Defendants continue to fear independent oversight by any judge other than the judge the Defendant colluded to hand-pick.

106. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the judge they shopped for designate the three Dorchester County cases as complex and assign them to that same shopped-for judge. That designation was improper under the rules at the time, as set forth in more detail below.

107. 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 class settlement. Had the same request been made in Charleston, and had it been successful, only a single judge would have been assigned to the cases. But any Charleston judge would likely exert independent oversight of the class resolution, and Defendants all sought to avoid independent oversight through the use of judge-shopping.

108. 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.

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

110. The administrative judge was not told that any of the cases sought to be dismissed without prejudice alleged a class action.

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

112. SCRCP 23 was not complied with as to the 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.

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

Conspiracy Technique Two: Using Complex Case designation Improperly.

114. In October 2006, the Defendants colluded to seek complex case designation of the Dorchester County class action cases.

115. At that time, the Charleston cases were still pending, including the Charleston County class action.

116. A July 26, 2006 order of the South Carolina Supreme Court enabled complex case designation, and approved a particular form for use with motions for complex case status. Among other things, that motion required all counsel to represent to the court that

certain facts applied to the action for which complex case status was sought. The required form stated, 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.

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

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

119. On information and belief, Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached, when in fact a class settlement had been reached prior to any Dorchester County cases being filed.

Alternatively, Defendants disclosed that all Dorchester County cases were already settled before they were filed and Defendants solicited, and obtained, the shopped-for judge's consent to misrepresent facts so as to ignore the Supreme Court's requirements for complex case status.

120. In 2009 all Defendants, and the shopped-for judge, ignored the directive from the South Carolina Supreme Court to conclude the class action by September 19, 2009.

121. In 2012 the Richter defendants would ask that shopped-for judge to again ignore the Supreme Court's order of March 19, 2009 by filing a motion to obtain advisory opinions on behalf of themselves, and ostensibly on behalf of individuals known by the Richter defendants to be represented by other counsel. They did so by ignoring that the class action had been ordered to be closed in 2009 by the SC Supreme Court.

122. Complex case status was approved in 2006 by the shopped-for judge, 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.

123. 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 members and a fixed fee amount for class counsel, with the fee to class counsel be paid prior to the claims period.

124. As set forth in the affidavit of Michael Virzi, Attachment B to this complaint and incorporated pursuant to SCRCF 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.

125. At page 13, paragraph 6B, in the typed version of the Charleston class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure 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.

126. Representation of the Plaintiff by the Richter defendants in proposing an unethical fee was inadequate and fell below the standard of care applicable to counsel. Alternatively, that representation breached a fiduciary duty to the Plaintiff.

127. 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 of what the Diocese defendants and the Vatican 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 was paid.

128. 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 it as the price of obtaining the collusion of the Richter defendants in structuring a class resolution that provided only a fraction of the relief the Richter defendants would accept in a case against a Diocese other than Richter's own Diocese.

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

129. The fourth technique to conspire against the Plaintiff was to make no disclosure to her or to any putative class members, about either the superior settlement terms agreed to by the Defendants with the individuals named in the 2006 mediated settlement, or the superior settlement terms reached with the individuals who opted out of the class settlement.

130. 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.

131. Neither the individuals named in the 2006 mediated class settlement agreement nor the opt-out abuse victims had to submit their claims to binding arbitration.

Their claims were given specific dollar amounts prior to them relinquishing any rights. Each knew precisely what their recovery would be before consenting to resolve their claim.

132. In addition, the terms for the opt-out abuse victims exceeded the low bar the Richter defendants agreed to set for class member recoveries, and the opt-out victims received more than was received by any comparable abuse victim who stayed in the class settlement. In addition to the fee approved by the shopped-for judge, the Richter defendants charged class members an additional fee to go through the arbitration. The fixed fee approved by the shopped-for judge was not disclosed to 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, since no post-award fairness hearing was held.

133. No notice was given to any class member, including the Plaintiff, about the terms of the opt-out settlements, depriving the Plaintiff of the choice to receive one or the other recovery. The Plaintiff was abandoned by her attorneys, the Richter defendants, with the collusion and collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed towards the Plaintiff, by Defendants agreeing to define the class so as to ostensibly include her, were breached by all Defendants in this action when they agreed to request notice designed not to 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. In the alternative, it was a breach of the fiduciary duty assumed by the Richter defendants towards the Plaintiff. That duty was implicitly assumed by other Defendants as well, in

agreeing to a class settlement for a class that included the Plaintiff but which had been alleged in no action pending at the time of the 2006 class settlement. Defendants defined the classes by agreement, and colluded to request notice designed not to reach those within the definition.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create A Means of Limiting Total Recovery for Compensating Victims

134. In the “General Terms of Settlement” agreed to in the 2006 mediation of the Charleston class action case on June 14, 2006, there are seven essential terms of the settlement agreement.

135. The first general term is that there will be two classes for the settlement. “Actual victims of Diocese abuse,” and “Spousal &/or parent claims deriving from victims abused.”

136. No case pending at the time of the 2006 mediated class settlement agreement alleged a “spousal or parent” class.

137. The second general term of the 2006 mediated class settlement was to provide a means of having a \$12 million settlement fund.

138. The third general term of the 2006 mediated 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.”

139. The fourth term of the 2006 mediated class settlement was that the court would be asked to approve a fixed fee for class counsel “between \$950,000 & \$2.5 million.”

140. The fifth general term of the 2006 mediated class settlement was to establish that four individuals would allocate among themselves \$460,000.

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

142. The seventh general term of the 2006 mediated class settlement was that the seven terms were an offer from the Diocese and were to be "acted upon with reasonable promptness" by the four individuals who would allocate \$460,000 among them.

143. The four individual accepted the offer from the Diocese in the 2006 mediated class settlement, 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.

144. Once those individuals accepted the offer, their respective claims were resolved. Their resolution did not depend on court approval of the class.

145. 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.

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

147. After June, 2006, those individuals who represented the class, whose claims had been "resolved," did not qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nevertheless, they were falsely designated as class representatives in subsequent Dorchester County case, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition of the class.

148. 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.

149. The June 14, 2006 mediated class settlement reserved details for later specificity. That 2006 mediated class settlement states, "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 (a) the notice given to the classes, and (b) to the variable relief given to the class members so the recovery to victims would not be "too much." The fee for the Richter defendants could not be jeopardized by having "too many" sexual abuse victims served by the class settlement. "Too many" class claimants would jeopardize the fee for the Richter defendants.

150. The structure of the notice and the arbitration process for the class was devised to enable working backwards from the desired end result to limit the variable 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. That is why the fee is fixed but class recovery is variable, why the fee takes priority over the recoveries for the persons in the class, why the judge to approve the fee was shopped-for, why the criteria applicable to complex case status were falsified, and why fraudulent information was submitted to the shopped-for judge both to obtain complex case status and to obtain the fixed fee. The highest priorities of other defendants, after their willingness to pay class counsel's fixed fee, was to either exclude persons such as the Plaintiff, and to limit recovery to persons such as the Plaintiff, so that

within the modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims against another Diocese, the Diocese could argue a *res judicata* benefit from the class settlement without having to pay meaningful relief 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 about the settlement itself.

151. The Diocese defendants knew or should have known that the history of systematic deceit and deception about sexual abuse required by the Vatican, the administrative rules within the Code of Canon Law, and the policies which the Diocese defendants had in fact implemented, specifically mandated by the Vatican in the Instruction since at least 1962, exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

152. The Diocese defendants waived the statute of limitations and charitable immunity defenses for the persons within the 2006 mediated settlement classes.

153. The Diocese defendants knew that juries had placed a high value on the intangible nature of sexual abuse claims.

154. To try to limit future sexual abuse claims, the Diocese defendants elected in 2006 to consent to a class settlement, hoping it would exclude enough victims so as to produce a desired *res judicata* effect at a fraction of the cost of a proper settlement with all victims. The Diocese defendants realized the close ties of the Richter defendants to the Diocese, and the willingness of the Richter defendants to sacrifice the interests of

their clients for a fee, enabled the Diocese to try to minimize recoveries to the class members yet still get a class approved.

155. All Defendants needed to avoid meaningful court oversight of the class action to limit 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 judge they desired to have and for whom who they successfully “shopped.”

156. After the 2006 mediated settlement the Defendants realized that “too many” victims, such as the Plaintiff, might come forward in response to the nationwide notice originally proposed in 2006 by the Richter defendants. As a result, all Defendants colluded to restrict by agreement what they would propose to the shopped-for judge as notice to give the classes. Because the Defendants had successfully shopped-for the judge they expected to be more pliable, the Defendants expected approval of the reduced notice they agreed to propose, and through that method they planned to limit how many victims would participate. Defendants also created the arbitration process to further limit relief available to those who did participate by authorizing the arbiter to continue to adjust all awards given so as to stay within the overall limits that were agreeable to the Diocese. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

157. Failing to give notice outside South Carolina, other than immediately adjacent to South Carolina, was one means of eliminating claimants such as the Plaintiff. The Diocese defendants made no objection to limit the notice to South Carolina.

158. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiff. All Defendants were negligent in permitting

the Diocese defendants to self-identify victims, rather than insisting on giving meaningful notice to putative class members as a way of identifying victims. The Diocese had administrative rules which required it to destroy information about sexual abuse claims more than ten years old, and had a history of fraudulent concealment of sexual abuse reports.

159. Paying class counsel his fixed fee before any notice was given to the class, before any class claimant had been identified, and before any class member's claim had been submitted, was another way of limiting the recovery to the class.

160. By design of all Defendants, the members of the classes had no opportunity for input or comment on the proposed fixed fee, to be paid ahead of all class claims, since by agreement among all Defendants the shopped-for judge approved the fee without notice to the class and before the class members were known.

161. No Defendant disclosed to the class or to the public that the Diocese had agreed to overlook the fraudulent information submitted to the shopped-for judge to support the fee claimed for the Richter defendants, and had agreed to make no mention of those various fraudulent time and billing entries. Nor had any Defendants disclosed that they had agreed they would request no post-award fairness hearing.

162. 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.

163. The Defendants agreed to change the notice proposed for the class 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 Plaintiff, then Defendant sset 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 her from the class recovery and to try to preclude her from any later claim, and to limit recoveries to class members so as to not exceed the amount the Diocese was willing to pay.

164. By agreement among Defendants, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the classes to make sure that the Richter defendants were paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese to abandon clients such as the Plaintiff, and to limit recoveries to other clients, to serve the interest of the Diocese defendants.

165. The Richter defendants abandoned absent class members such as the Plaintiff, who resides outside of South Carolina, and gave no meaningful notice to those class members that their rights had been adversely impacted when the Richter defendants, with collusion of the Diocese defendants, changed their position on notice to the classes from nationwide notice to a notice limited to publications in and around South Carolina. All other defendants cooperated with the Richter defendants abandoning their clients such as the Plaintiff. Unless the order approving the class settlement means what it says when the court appeared to have accommodated the limited notice by ruling, at page four, "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," and the Plaintiff is not precluded from her claims, the notice and arbitration structure produced when her former counsel abandoned her interests in favor of their own interests caused damage to the Plaintiff. 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.

Conspiracy Technique Six: Providing False Information to the Court

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

167. 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 2005-CP-10-4913. The case filing itself was collusive, and was filed in Dorchester County only to avoid oversight by any Charleston judge, and pursuant to the collusion by all Defendants to shop for a particular judge.

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

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

170. Patently false information has also been given to the Charleston County Court, and to the public, by the Diocese defendants.

171. All Defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston complaint which alleged a class action.

172. By agreement of all Defendants, SCRCP 23 was not complied with in dismissing the Charleston complaint which alleged a class action. Plaintiff was given no notice of the class action, no information about its dismissal, no information about the Charleston class settlement, and no information about the settlement provided those who opted out of the class settlement. Nor was notice given to any other ostensible putative class member.

173. 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 shopped-for judge.

174. 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, were 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.

175. 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 time billings 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.

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

177. If the Plaintiff is barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reason, then duties to her 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: Limiting Notice to only publications in and around South Carolina

178. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was to agree to limit notice of the class settlement to only publications in and around South Carolina, resulting in notice to only those putative class members who reside in and immediately adjacent to South Carolina. The notice given was deficient in that it was designed to omit notice to many persons, such as the Plaintiff, within the definition of the class action. By collusive agreement of all Defendants, the notice was calculated to be ineffective to reach putative absent class members. Unless the order approving the class settlement means what it says, and 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.

179. The Diocese defendants are well aware, from its own dealings with abuse victims, that many victims reside out of South Carolina. All Defendants were conscious,

in choosing to revise the notice requested to be only limited notice, that doing so served the interests of the Diocese at the expense of persons such as the Plaintiff.

180. By motion filed in Dorchester County in October 2006, the Richter defendants proposed giving nationwide notice of the class action through advertising about the settlement in a newspaper with national coverage.

181. In January 2007, the Richter defendants revised their request for notice to the Dorchester County court, and the Diocese defendants acquiesced in that revision, to limit notice to only publications in newspapers with circulation in or near South Carolina. The request to provide notice through a newspaper with national circulation was abandoned.

182. The Richter defendants abandoned the Plaintiff as a putative member of the class in agreeing to notice calculated not to reach her. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the Plaintiff in defining the classes so as to ostensibly include her, then revising the notice to propose to the shopped-for judge so as to provide no notice to the Plaintiff or to any other absent members of the class who resided outside of the area immediately adjacent to South Carolina.

183. The Diocese defendants conspired with the Richter defendants to submit for approval by the shopped-for judge notice to the class that was calculated to omit absent members of the class such as the Plaintiff, and all persons situated similarly to her. The agreement was made among Defendants to bar the Plaintiff from being able to make claims by the *res judicata* effect of the ostensible class action without having to compensate her for the sexual abuse to her spouse.

184. No effort was made to protect absent members of the class, such as the Plaintiff, by providing notice beyond the immediate area around South Carolina. If the Plaintiff is barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to her 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.

185. The Diocese defendants made no objection to lack of nationwide notice. They made no objection 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 reduced class notice agreed upon by all Defendants to submit to the shopped-for judge demonstrates that the representation of the class was inadequate, and that the Defendants conspired specifically to defeat the interests of persons such as the Plaintiff, to cause her special harm by giving them not even a chance at notice of the class action.

Conspiracy Technique Eight: Ignoring the South Carolina Supreme Court

186. The eighth technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was the Richter Defendants efforts to ignore the rulings of the South Carolina Supreme Court which ended the class action.

187. As alleged above, in March 2009 the South Carolina Supreme Court ordered the Defendants and the shopped-for judge to conclude the class action by September 19, 2009.

188. The South Carolina Supreme Court at no point extended its deadline. Its March 2009 order stated that its time limits could be extended only by ruling of the South Carolina Supreme Court.

189. No action was taken in 2009 by the Defendants or by the shopped-for judge to conclude the class action.

190. In 2012, the Richter defendants, completely ignoring the rulings of the South Carolina Supreme Court, filed a motion with the shopped-for judge in Dorchester County. The motions seeks rulings on behalf of no client of the Richter defendants, and on behalf of no member of the class, but to advance their own interests, to solicit from the shopped-for judge protections to protect the Richter defendants from their collusive conduct with the Defendants.

191. The Richter defendants filed in 2012, in the class action closed in 2009, a motion on behalf of individuals known to be outside the class and known to be represented by counsel other than themselves.

192. The motion was filed on behalf of no member of the class in the class action closed in 2009.

193. In so doing, the Richter defendants have furthered the interests of themselves rather than the interest of any client. The Richter defendants seek to maintain an action to obtain possible employment for themselves, and in addition seek to use the shopped-for judge as a shield for orders to collaterally attack other actions pending in the circuit court which challenge their conduct and expose the fraudulent behaviors of all Defendants.

194. The motion ignores the order of the South Carolina Supreme Court which ended the class action on September 19, 2009.

195. The Richter defendants constitute one or more “persons” under the law of South Carolina.

196. The Richter defendants have willfully maintained a civil action in the circuit court in Dorchester County to obtain possible employment for themselves.

197. No client the Richter defendants represent has any direct or substantial interest in the motion filed in 2012. The motion is filed solely on behalf of out-of-state clients abandoned by the Richter defendants during the now-closed class action, known to have been excluded from the class, and known by the Richter defendants to be represented by other counsel.

198. No client represented by the Richter defendants in the now-closed class action has any direct and substantial interest in the 2012 motion filed, or the relief sought by the motion.

199. The Richter defendants believe, based on the long social and professional ties between them and the shopped-for judge, that the shopped-for judge will order any relief they request, which is the reason all Defendants shopped-for that judge.

200. The 2012 motion is part of the continuing effort by the Richter defendants to defraud or mislead the court by continuing to defraud or mislead the shopped-for judge. Alternatively, the 2012 motion is part of the continuing effort to engage the shopped-for judge in collusive litigation.

Harm to the Plaintiff from the Conspiracy among Defendants

201. 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 participate so as to publicly identify and influence the corrupt course of the class action, including the judge-shopping. The Plaintiff was deprived of the opportunity to influence the class suit, and to try to assist herself and other out-of-state abuse victims from not being limited to the corrupted procedures and manipulations of the class suit before a judge that the Defendants had colluded to shop-for, and who was prepared to permit fraud in those proceedings.

202. Among other things, the Plaintiff was unable to participate to influence the miniscule recovery allocated for parent and spousal claims because those claims were not brought for the class using the common law "loss of services" cause of action for parental claims. Only in the class action context can the Plaintiff have made such a contention, since she was included in that class definition but does not herself have a parent claim.

203. Even if the Plaintiff is not deemed to be precluded from stating her claims against the Diocese for any reason, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the defendants to defeat her claims will prove ineffectual.

204. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiff was specially damaged, and she 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: Count One**

205. Allegations of paragraphs 1-23 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the Plaintiff is precluded, by any reason, including the prior class action, or charitable immunity, or the statute of limitations, from making claims against the Diocese.

206. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCF 10(c), is 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.

207. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, at page 2, the proposed group whose claims were settled in the 2006 Charleston class action mediation was a class specified as “spousal &/or parent claims deriving from victims abused.”

208. Plaintiff was a putative member of that class as it was defined in the 2006 mediated class settlement.

209. The Defendants delayed preparing the formal, typed version of the 2006 Charleston class mediation agreement from June, 2006 to January, 2007, to permit them time to accomplish the judge-shopping alleged above.

210. The formal, typed versions of the 2006 mediated class settlement was approved by the Richter defendants, the Vatican, and the Diocese defendants, after the illicit agreement by Defendants on “judge shopping” had been accomplished.

211. Once the “judge shopping” had been accomplished, the 2006 Charleston mediated class settlement was claimed to be a proposed settlement of both a Charleston

class case and newly filed Dorchester County class actions, when in fact, the 2006 Charleston mediated class settlement resolved cases then pending only in Charleston County, and the class settlement agreement existed before any Dorchester County actions were filed.

212. On October 6, 2006, the Richter defendants filed in Dorchester County, proposed class definitions that included the Plaintiff, and a motion which proposed a means of notice to the class by publication with nationwide distribution. That proposed notice might have given notice to the Plaintiff, enabling her to either participate or to opt out.

213. The Richter defendants assumed a duty to the Plaintiff in each of the filings in (a) the June 14, 2006 class settlement agreement which by agreement proposed a class settlement that included the Plaintiff, and (b) in its October 6, 2006 Dorchester County filing which alleged a class action which included the Plaintiff.

214. The Diocese defendants voluntarily assumed a duty to the Plaintiff on June 14, 2006 when it agreed as a volunteer to include in the Charleston mediated settlement a class including the Plaintiff when no ending case alleged a class which included the Plaintiff.

215. On January 18, 2007, the Richter defendants abandoned giving notice to the Plaintiff about the class settlement that purported to include her. Their proposal for notice was revised to include only publications in and immediately around South Carolina, even though the class was not defined with geographic limitations.

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

217. 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 any form of notice which might reach 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.

218. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they abandoned the Plaintiff, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the Plaintiff reasonably informed, failed to provide her with information with respect to obtaining her informed consent, failed to consult with her about the means for accomplishing her objectives, represented her without her 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.

219. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the area in which the Plaintiff resides. If any notice was given it was deficient in that it was not designed to accomplish notice to out-of-state spouses of abuse victims such as the Plaintiff.

220. Any court approval of the notice was deficient in terms of protecting the Plaintiff because the shopped-for judge overseeing the class action had been given, by agreement of the defendants, fraudulent information on which to base decisions.

221. The Richter defendants abandoned their absent putative class member clients such as the Plaintiff by agreeing to change the proposed notice to notice calculated not to reach the Plaintiff, and calculated not to reach all putative class members situated similarly to the Plaintiff.

222. The Richter defendants abandoned their client's interests and acted in a professionally negligent manner by submitting fraudulent information to the court.

223. The Plaintiff was abandoned by the Richter defendants so that "too many" class claimants would not come forward in 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.

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

225. As a result of their attorneys, the Richter defendants, abandoning the Plaintiff, no notice was given to her of the class action, and she had no opportunity to participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out. The acts and omissions of the Richter defendants have caused damage to the Plaintiff, assuming the Plaintiff is prevented from asserting her claims against the Diocese for any reason.

226. Plaintiff was 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:
Professional Negligence by the Richter Defendants: Count Two**

227. Allegations of paragraphs 1-23 above, and 205 to 226 above, are incorporated into this cause of action as if fully stated. This cause of action presumes that the Plaintiff is precluded, by charitable immunity or the statute of limitations or any other reason, from making claims against the Diocese.

228. In colloquy with the shopped-for judge in the class action, the Richter Defendants purported to secure for the Plaintiff, whether or not she participated in the class action, protections for her against the statute of limitations and charitable immunity defenses the Diocese might assert against the Plaintiff.

229. During a hearing held before the shopped-for judge on July 13, 2007, the Richter defendants claimed to have secured a waiver by the Diocese for “anybody [who] has been missed” a waiver of the defenses that the Diocese waived in the class action. “[T]he diocese waives all the same defenses that they have given up in this class settlement,” is how class counsel summarized his accomplishment.

230. Class counsel failed to secure any of those protections in any written order of the shopped-for judge.

231. In 2011 the Diocese disclosed that it disagrees that it waived defenses for “anybody [who] had been missed.”

232. In 2007 the Richter defendants were well aware that the Diocese had a history of fraud and concealment on abuse topics, and was untrustworthy, and could not be counted on to honor any commitment, even commitments made on the record to the shopped-for judge or in public statements.

233. The Plaintiff was unaware until 2012 that the Richter defendants had purported to represent her or had purported to protect her from the known untrustworthiness of the Diocese.

234. In failing to secure by order what the Richter defendants purported to secure for the Plaintiff, the Richter defendants acted in a manner that fell below the standard of care.

235. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCF 10(c), is 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, including this failure to secure by order benefits which the Richter defendants purported to secure against a defendant known to be dishonest and manipulative.

236. Plaintiff was within the “anybody [who] has been missed” category of the putative class as it was defined in the 2006 mediated class settlement, the 2007 typed formal version of that settlement, and the persons known by July 2007 to be omitted from the group of out-of-state class members for whom no effort at giving notice was to be made.

237. In this respect, the Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they failed to secure by order rights and benefits which they purported to secure, they abandoned the Plaintiff, failed to provide her competent representation, failed to act with reasonable diligence, failed to keep the Plaintiff reasonably informed, failed to provide her with information with respect to obtaining her informed consent, failed to consult with her about the means for accomplishing her objectives, represented her without her 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.

238. The Richter defendants knew the Diocese would do nothing of its own volition, and knew the Diocese had a history of deception, fraud, and manipulation. As class counsel himself contended before the shopped-for judge on March 9, 2007, "I want to say publicly that the diocese did nothing of its own initiative. The diocese was brought here kicking and screaming." Class counsel was well aware that the Diocese was untrustworthy, and would honor only commitments which a court order compelled the Diocese to honor. Yet class counsel did nothing to either notify the Plaintiff of the class action, or to secure by written order for the Plaintiff, the entitlement class counsel purports to secure for her.

239. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the area in which the Plaintiff resides. If any notice was given it was deficient in that it was not designed to accomplish notice to out-of-state spouses of abuse victims such as the Plaintiff.

240. No order from the shopped-for judge protected the rights which class counsel purported to obtain for the Plaintiff, even if she "was missed" and failed to participate in the class action.

241. The Richter defendants abandoned their absent putative class member clients such as the Plaintiff by agreeing to give her no notice and by failing to protect for her the rights class counsel purported to secure.

242. The Richter defendants abandoned their client's interests and acted in a professionally negligent manner by failing to secure rights they purported to secure.

243. The acts and omissions of the Richter defendants have caused damage to the Plaintiff, assuming the Plaintiff is prevented from asserting her claims against the Diocese for any reason.

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

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

245. Allegations of paragraphs 1-23 and 205 - 244 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the Plaintiff is precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations.

246. The Richter defendants chose to propose defining the classes in the class actions so as to have no geographical limit on the classes.

247. All defendants agreed on how the classes were defined.

248. In choosing to define the classes so as to include the Plaintiff, the Richter defendants each assumed fiduciary obligations to her as an absent putative member of the class they defined.

249. As an alternative to the Fourth and Fifth Causes of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to the Plaintiff as an absent member of the putative class.

250. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiff by (a) requesting geographically limited notice of the class action and settlement, as opposed to the nationwide notice they initially proposed, and (b) by failing to secure for the Plaintiff rights which the Richter defendants purported to secure for her.

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

252. The shopped-for state court judge was not asked to give notice to all class members, only a subset of class members that excluded the Plaintiff.

253. The shopped-for state court judge was not asked to secure by order rights for the Plaintiff which on the record the Richter defendants purported to secure for the Plaintiff.

254. The Richter defendants originally proposed nationwide notice, but then abandoned the proposal, with the consent and collusion of the Diocese defendants. The lack of nationwide notice was observed in the record of the class action, but even after that limitation was noted, the Richter defendants did not request it.

255. On October 6, 2006, the Richter defendants filed proposed class definitions that included the Plaintiff, and proposed a means of nationwide notice to the class that might have given notice to the Plaintiff.

256. On July 13, 2007, the Richter defendants purported on the record before the shopped-for state court judge to have secured for the Plaintiff even if she was “missed” a benefit for her that was not later reflected in any order from the shopped-for judge.

257. The Richter defendants in its Charleston class action filing, and in the June 14, 2006 settlement, and in its October 6, 2006 filing in Dorchester County, and in its comments on the record on July 13, 2007, assumed fiduciary duties to the Plaintiff.

258. On January 18, 2007, the Richter defendants abandoned giving to the Plaintiff notice about the class settlement that ostensibly included them.

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

260. On July 13, 2007, the Richter defendants purported to secure for the Plaintiff benefits even if she was "missed" in the class action, but no effort was made to reduce those benefits to an order and the Diocese, while making no objection to the rights purported to have been secured on the record on July 13, 2007, in 2011 the Diocese denied it had made any such commitment to secure such rights for persons such as the Plaintiff who had been "missed" in the notice given for the class action.

261. No meaningful notice, at any point, was given to class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

262. The Richter defendants reflect their ignorance of class action obligations by, among other things, contending that mention of a class action or a class action settlement in a news media outlet is sufficient due process "notice" of a class action or class action settlement within the meaning of SCRCP 23. Mention of a class action or class action settlement in a news media outlet is not notice of a class action or class action settlement within the meaning of SCRCP 23, and the contention by the Richter defendants reflects

their inadequate understanding of their obligations to absent class member clients under SCRCP 23.

263. The Richter defendants each breached their fiduciary duties to the Plaintiff so she would not participate in making a claim against the fund established for the class action settlement. If notice had been given nationwide, as originally proposed, “too many” claimants, including the Plaintiff, might have come forward in the class action, which would have jeopardized the fixed fee the Richter defendants had negotiated for themselves at the expense of their clients, and had arranged with the sopped-for judge to have been paid before notice to the classes was given.

264. The Richter defendants arranged to have their fixed fee paid before notice to the class and before the claims process had begun.

265. The Richter defendants arranged to have their fixed fee paid before membership in the class was known.

266. The Richter defendants arranged to have their fixed fee paid before distribution to the class was known.

267. The Richter defendants arranged to have their fixed fee paid before class members had an opportunity to object to or comment on the fixed fee and its priority over class member recovery.

268. Having “too many” claimants also was believed by the Richter defendants to not be in the interest of the Diocese, 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.

269. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class. To promote the interests of the Diocese in trying to later 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 agreed to change the proposed notice to the class from notice in publications with nationwide distribution, agreed to accept for the class compensation that ranked among the lowest known victim compensation, and agreed to omit from any class action order the rights supposedly secured for persons, such as the Plaintiff, who were "missed" by the notice known to be insufficient to provide notice to her and any other out-of-state class member.

270. As a result of the Richter defendants abandoning the interests of the Plaintiff, and breaching the fiduciary duties owed to her, the Plaintiff had no opportunity to participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out, or to make a claim against the Diocese for sexual abuse. The acts and omissions of the Richter defendants have caused damage to the Plaintiff.

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

For a Seventh Cause of Action: Injunctive Relief

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

273. The Diocese is properly enjoined from asserting against the Plaintiff any of the defenses, including the statute of limitations and charitable immunity, which on the

record in 2007 it agreed it waived for “anybody who has kind of, lack of a better word, comes out of the woodwork,” and “if anybody has been missed.”

274. As articulated by then Bishop Baker in comments he initiated to the public in January, 2007, the Bishop agreed to “a just resolution of any instance” of sexual abuse.

275. According to the Diocese defendants, any instance of childhood abuse is a grave moral evil.

276. According to the Diocese defendants, any instance of childhood abuse has damaging consequences that can affect a child for the rest of his or her life.

277. The Court should enjoin the Diocese from asserting in this action any of the defenses waived by the Diocese as to abuse victims in its public comments made in 2007.

Demand for Jury Trial

278. Plaintiffs demand a trial by jury.

Relief Sought

Wherefore, Plaintiffs seeks relief in the form of:

279. Actual damages to be awarded to the Plaintiff by the finder of fact against the various defendants,

280. Costs and disbursements of this action,

281. Punitive damages as authorized by law,

282. Injunctive relief to enjoin the Diocese defendants from asserting any of the defenses waived as to abuse victims in its 2007 public comments, and 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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers
Jeff Anderson & Associates, P.A.
1 Poston Road Suite 110
Charleston SC 29407
843-556-1025
attygm@gmail.com

Attorney for 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: _____
(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:
 - ② ACTUAL VICTIMS OF DISCRETE ABUSE
 - ③ SPOUSAL &/or Parent claims deriving from victims abused
2. Class Settlement Fund will be for \$12,000,000 FUNDED AS FOLLOWS:
 - ② \$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.

4. Court shall be asked to approve attorney's fees for class counsel at between \$950,000 + \$2.5 million, subject to Defendant's 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 or 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 executed & shall proceed to settlement in the amount set out in "5." above with appropriate general releases &/or dismissals with prejudice entered in favor of defendant.

~~* Class of parties to be paid~~

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 Deely, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and with authority of the
Diocese of Charleston

June 14, 2006

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

Attachment B - 000002

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;

Attachment B - 000003

- 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

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:

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

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

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'

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

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;

- 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";

M34

- 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, 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.

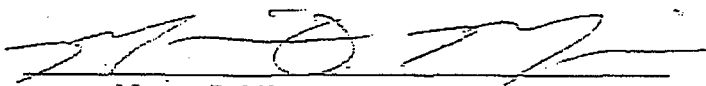


Michael J. Virzi, Esq.

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-23- 1843

John Doe 193,)

13-CP-10-3733

Plaintiff,)

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.)

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Injunctive Relief
UTPA

Jury Trial Requested

Defendants.)

FILED
GREENVILLE CO. S.C.
PAUL B. WICKHAM
2013 APR -2 A 9:52

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. John Doe 193 is an adult citizen and resident of South Carolina who, as a child and a student at Our Lady of the Rosary Church, in Greenville SC, operated by the Diocese of Charleston, was sexually abused by a priest of the Diocese of Charleston, Father Michael Kaney.

2. Plaintiff had no recollection of the abuse until the June, 2010, when he first began to recall the abuse and related it to a mental health professional. The recollections are

corroborated by circumstantial evidence and an expert has established the abuse and the fact of the repressed memories.

3. The pseudonym John Doe 193 is used for the Plaintiff due to the sexual abuse injury, which is the subject of this complaint.

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

5. On information and belief, Michael Kaney was removed from the priesthood for his sexual misconduct, a decision made in Charleston County. No effort was made to locate the victims of Michael Kaney, including the Plaintiff. In 1986 Michael Kaney was placed on indefinite leave by the Diocese of Charleston for his sexual misconduct. He moved to Houston, Texas. A 1986 article in the Houston Chronicle notes him as being "on indefinite leave from the Diocese of Charleston in South Carolina."

6. 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 Greenville County. He is sued individually in his official capacity. He is

a party necessary for complete relief.

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

8. 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.

9. 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 Greenville County. He is sued in his official capacity.

10. 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.

11. 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 Greenville County, and specifically elicited, through advertising placed in the Greenville News, participation by members in 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.

12. 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 Greenville County, and specifically elicited, through advertising placed in the Greenville News, participation by members in 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.

13. 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 Greenville County, and specifically elicited, through advertising placed in the Greenville News, participation by members in 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. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the “Richter defendants” unless otherwise particularly specified.

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

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

17. Venue of this action is proper in Greenville County.

18. The Diocese defendants are already aware of the identity of John Doe 193, 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 in the public record, and upon their actual performance of participating in reciprocal discovery as opposed to just promising reciprocal discovery without actually providing discovery.

19. 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.

20. John Doe 193 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, the Plaintiff received no notice of the class action, and at the time of the class action he had no recollection of his own abuse, 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.

21. At no time has during the time period of the 2006 class action settlement did John Doe 193 have a recollection of his abuse. The Richter defendants in 2006 were aware that among abuse victims, some were unable to recall their sexual abuse into adulthood, a deficiency among abuse victims known to the Richter defendants but ignored by the Richter defendants.

22. Before the 2006 class settlement was reached in the 2005 class action, the Richter defendants had undertaken representation of another adult sexual abuse victim who had, as put by the Richter defendants, “repressed, or dissociated, the memories of” his childhood abuse. Despite that awareness, the Richter defendants defined the class in the 2005 class action so as

to include John Doe 193.

23. 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.

24. 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.

25. 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.

26. 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."

27. At the time of the 2006 mediated settlement agreement, the Richter Defendants were aware that some sexual abuse victims repress memories of their childhood sexual abuse.

28. 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.

29. 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.

30. 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.

31. The class action was closed on September 19, 2009 by virtue of the March 19, 2009 Supreme Court order.

32. Since September 20, 2009, the Dorchester County trial court has had no jurisdiction over the class action.

33. 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 closed Dorchester County class action case. The pleading was not accompanied by any motion to reopen the closed class action case. As such, the pleading ignored the March 19, 2009 order of the Supreme Court, which closed the class action on September 19, 2009.

34. The Richter defendants continue to act as if the class action remains perpetually an open matter, because they believed that their friend, the shopped-for class action judge, would undertake their bidding in any respect. As to the 2012 motion filed by Defendant Haller, the Richter defendants believed the shopped-for judge would ignore the order of the South Carolina Supreme Court and issue additional rulings in the closed, 2005 class action, as Defendant Haller requested.

35. 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.

36. Judge Goodstein had been asked to recuse herself by a motion in 2008. She recused herself in 2013.

37. 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, by preventing 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.

38. 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 had no recollection of his childhood sexual abuse by any person affiliated with the Diocese defendants.

39. Each Defendant was aware that persons within the class definition of the 2005 class action might have repressed memory. Despite that, the Richter defendants made no allowance in the class action definitions for instances of repressed memory, and did so as part of their collusion with the Diocese defendants to cause the Plaintiff special harm in the form of the effort to preclude 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.

40. 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.

41. But for the Richter defendants having breached the duties each of them owed to the Plaintiff by abandoning the Plaintiff in the class action, 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

42. Between 1965 and 1967, when John Doe 193 was between 12 and 14 years of age, he was sexually abused by Michael Kaney.

43. The day after the sexual abuse, John Doe 193 reported the abuse to a nun who also worked for the Diocese defendants. The nun's response was to slap him. Without any investigation, and to retaliate against the Plaintiff for telling the truth about Michael Kaney, the nun admonished the Plaintiff not to be disrespectful, told him not to tell lies about priests (even though he was telling the truth), and the nun called his parents to report, falsely, that John Doe 193 had lied about a priest. The call to his parents was made by the nun to further the retaliation against the Plaintiff, and to get his parents to also discipline the Plaintiff.

44. In fact, John Doe 193 was reporting the truth, but he was made by the nun to apologize to the priest who had molested him. By that method, Michael Kaney was given assurance by the nun that he could continue to molest children without any effective oversight.

45. From that report the Diocese Defendants knew, or should have known, that Michael Kaney was dangerous to children, and that the Plaintiff was sexually abused as a child by Michael Kaney. The Diocese Defendants should have had a record that the abuse had been

reported, unless the record has been destroyed as one of the Diocese Defendants' systematic methods for concealing sexual abuse.

46. This Complaint sets out various causes of action built around four different levels of disregard for others and corruption. 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. 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. 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 entered into the collusive class agreement with them. 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.

47. 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, 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.

48. In turn, the Richter Defendants agreed to assist the Diocese Defendants in overtly misrepresented 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 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. Class counsel either was complicit in the misconduct of the Diocese Defendants or was negligent in being outmaneuvered and hoodwinked by the Diocese Defendants.

49. The duplicity by the Diocese defendants was disclosed to this Plaintiff only after 2011, when the Diocese asserted to his representative that the class action precluded him from any relief even though he had no notice of the class action, and no recollection of his own sexual abuse, at the time of the class action.

50. 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 had no memory of their childhood abuse, 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 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.

51. Until 2011 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.

52. 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.

53. 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 would not recall the abuse and 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.

54. As a person who reported abuse when he was a child, the Diocese Defendants each knew, or should have known, about the Plaintiff and his abuse by Michael Kaney.

55. Until 2011, 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. Plaintiff was unaware of any of

those things because, by agreement of all Defendants, 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.

56. In its order approving the class action, the state court may have provided for absent members of the class, such as the Plaintiff. However, beginning in 2009 the Diocese Defendants began to contend the court's order 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 through cooperation with the Richter defendants.

57. 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 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. Not only was the Plaintiff's representation by the Richter defendants inadequate, and fell below the applicable standard of care, and the state court order appears to contemplate that any person who failed to get notice would not properly be bound by any *res judicata* effect, 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.

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, 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 who, for a fee, abandoned their client, and those who conspired against the Plaintiff through the class action, are irrelevant because Plaintiff can make his claims against the Diocese Defendants. 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 the causes of action alleged against the Diocese Defendants for sexual abuse are irrelevant, and claims 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.

59. In March, 2009, the South Carolina Supreme Court ordered that all proceedings in the class action be concluded by September 19, 2009. The class action is concluded.

60. 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 Plaintiff.

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

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

62. The defendant Bishop of Charleston employed Michael Kaney as a priest.

63. In his capacity as priest, Michael Kaney 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, Michael Kaney sexually molested the Plaintiff and many other children.

64. Prior to the Plaintiff being molested, the Diocese Defendants became aware that Michael Kaney was dangerous to children. After knowing he was dangerous, the Diocese Defendants moved Michael Kaney 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 Kaney was known to be dangerous to children.

65. 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 plaintiff and his parents, 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 Michael Kaney, 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 Parents, 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 Michael Kaney. 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.

66. After he was moved to Greenville, S.C., Michael Kaney molested the Plaintiff.

67. The Diocese defendants negligently supervised Michael Kaney. The Bishop of Charleston was grossly negligent in supervising Michael Kaney. Moving Kaney 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 Michael Kaney and had no recollection of the sexual abuse until June, 2010.

68. The Diocese defendants were negligent in failing to warn the Plaintiff or his parents about Michael Kaney. The Bishop of Charleston performed that duty in a grossly negligent manner.

69. The Diocese Defendants knew, or should have known, that Michael Kaney was a pedophile. Despite that knowledge, the Diocese Defendants, made no effort, or no competent effort, to ascertain how many children Michael Kaney had molested, and no effort, or no competent effort, to locate victims of Michael Kaney. 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.

70. 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.

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

72. 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 2011, discovered by the plaintiff only after it was made in 2011. 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.

73. 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 Kaney's victims, or in performing that duty in a negligent manner.

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

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

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

76. The Diocese Defendants each had a duty to discover and to disclose to Plaintiff or his parents their knowledge that Michael Kaney 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 parents

of the Plaintiff having expressly reposed their trust and confidence in the Diocese Defendants so as to entrust the Plaintiff into the presence of Michael Kaney, which placed the Plaintiff in a vulnerable position with Michael Kaney. That position of trust and confidence was implicit from those circumstances of Plaintiff being entrusted to the presence of Michael Kaney, as well as from the nature of the dealings between the Plaintiff, his parents, and the Diocese Defendants, who promoted to the Plaintiff's parents that the Plaintiff should leave the Plaintiff in the presence of Michael Kaney, (c) from the essential nature of the Diocese Defendants and their inducement to the Plaintiff's parents to have the Plaintiff participate in activities with Michael Kaney 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 Michael Kaney, 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 Plaintiff.

77. The Plaintiff was sexually abused by Michael Kaney after 1962.

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

79. 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

Michael Kaney. 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.

80. Specifically, the Diocese Defendants created a culture of secrecy that caused the nun to whom the Plaintiff reported to immediately, and without investigation, dismiss and challenge the Plaintiff, and to reject and humiliate him as a child for having reported his sexual abuse by Kaney.

81. 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.

82. The Diocese Defendants established an archive (required by Canon 486 of the Code of Canon law), accessible only by the Bishop of Charleston and chancellor of the Diocese of Charleston (limited accessibility is required by Canon 487). 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 (required by Canon 488). Canon 489 requires that the Diocese of Charleston was also to 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.”

83. 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.

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

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

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

87. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Michael Kaney's sexual abuse of children including Plaintiff 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.

88. 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).

89. Plaintiff fits within the meaning of “penitent” referred to in the “Instruction.”

90. 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.

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

92. Michael Kaney was, and the Plaintiff is, male. The conduct by Michael Kaney towards the Plaintiff qualified under the 1962 “Instruction” as “the worst crime.”

93. 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 Michael Kaney 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.

94. 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 Plaintiff, failed to locate many

other abuse victims, 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. Among other things, the nun to whom the Plaintiff reported his abuse failed to make a proper record of the abuse, or the record of it was discarded as scandalous.

95. 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.”

96. 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.

97. “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.

98. 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.

99. 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 Michael Kaney's known sexual interest in children, and the sexual abuse of the Plaintiff he reported as a child.

100. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the Diocese Defendants as to Michael Kaney'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 Michael Kaney.

101. 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. 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 either professional negligence by the Richter defendants or conspiracy involving the Richter defendants, and can seek relief against the Diocese Defendants.

102. 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 bind this Plaintiff, (c) the collusive nature of the class settlement, or (d) because by their terms the class action orders do not apply to the Plaintiff.

103. 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 Kaney'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**

104. 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 presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

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

106. 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.

107. 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.

108. In exchange for a sufficient amount of money directed to 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 against the Plaintiff's interest and in the interest of the Diocese Defendants, to whom class counsel had connection and allegiances. 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.

109. 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 Richter defendants, agreed to abandon the Plaintiff, and to define the class so as to include him despite being well aware of their being adult individuals, such as the Plaintiff, who were sexually abused as children who as an adult did not recall his childhood abuse. The Richter defendants defined the class action classes so as to ostensibly include the Plaintiff, and created no exception for his known status. Additionally, the Richter defendants purported to secure benefits for the Plaintiff 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 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.

110. By purporting to undertake his representation in how the class was defined, but 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 the fiduciary

duty assumed by class counsel when he elects to bring a class action and defined a class so as to include the Plaintiff.

111. 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.

112. The Richter defendants elected to abandon their putative class member clients who had repressed memory of their childhood abuse so as to prevent the Plaintiff, and others similarly situated, from being able to act when their memories were recovered by making 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.

113. 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.

114. 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.

115. In exchange for the Richter defendants abandoning the Plaintiff and all of their other putative class member clients who as adults had no memory of childhood sexual abuse, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCF 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 SCRCF 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) acquiesced in the unethical conduct of the Richter defendants abandoning all class members who as adults did not recall their childhood sexual abuse, and (h) agreed to maneuver, in violation of SCRCF 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.

116. In the 2006 class settlement the Diocese Defendants undertook a duty to the classes as identified, including the Plaintiff to identify abuse victims, such as the Plaintiff, who had reported his sexual abuse to a nun. To get approval of the class settlement, the Diocese Defendants circumvented the requirements of SCRCF 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 the hand-picked judge in Dorchester County. In circumventing the requirement in SCRCF 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. 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. 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. 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

117. 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.

118. 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.

119. 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.

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

121. 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.

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

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

124. 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.

125. In February 2009 the Diocese Defendants published to the public through their press spokesman the lie 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.

126. Rule 23(d)(1) SCRCF 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.”

127. 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.

128. 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.

129. 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.

130. 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.

131. 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 repressed memory. The Defendants intended to include the Plaintiff in the class definition.

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

133. The typewritten version of the 2006 class settlement agreement was approved by The Holy See (also known as The Vatican) in January 2007.

134. The 2006 class settlement agreement was funded by approval of The Holy See (also known as The Vatican).

135. 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.

136. 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 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 the fee for class counsel. Class members had to relinquish all rights for review to qualify for the arbitration, which was binding arbitration.

137. 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.

138. 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, and have argued specifically as to this Plaintiff, John Doe 1993, that despite his lack of recollection of his childhood sexual abuse until after 2006, 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.

139. 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 his repressed memory 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, even for those childhood abuse victims prior to 2006 who repressed memories of their sexual abuse until after the 2006 class settlement was concluded. 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

140. 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 overlook court rules and accept fraudulent filings was desired.

141. 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 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.

142. 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.

143. 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 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.

144. 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.

145. 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.

146. 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 disclosed.

147. 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.

148. 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 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 permit the false representations of fact.

149. 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 would exert independent oversight of the 2006 class settlement, and Defendants sought to avoid independent oversight.

150. 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.

151. 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.

152. 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.

153. 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.

154. 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.

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

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

157. 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 motion required the Defendants to represent that certain facts applied to the action for which complex case status was sought. The form states:

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.

158. 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.

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

160. 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.

161. 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.

162. 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.

163. 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.

164. 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.

165. 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.

166. 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.

167. 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.

168. 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 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

169. 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 class settlement.

170. 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.

171. 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.

172. 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. 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 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 was 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.

173. No notice was given to any class member, including the Plaintiff, about the terms of the opt-out settlements. Had the Plaintiff begun to recover the memories of his childhood abuse, and 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 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 assumed by class counsel to the Plaintiff, by Defendants agreeing to define the class so as to ostensibly include the Plaintiff, were breached by all Defendants in this action when they agreed to define the class in a way that did not exclude those who by 2006 had not recalled their own childhood sexual abuse. 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 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 Create A Means of Limiting Total Recovery for Compensating Victims

174. 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.

175. 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.”

176. 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 Plaintiff.

177. 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.”

178. 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.”

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

180. 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.

181. 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.

182. 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.

183. 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.

184. 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.

185. 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.”

186. 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. 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.

187. 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.

188. 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.

189. 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. 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. The highest priority of the Diocese Defendants, after their willingness to pay class counsel’s fixed 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 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, and for persons who did not in 2006 recall their childhood abuse to be included in the class definitions despite their lack of recollection in 2006.

190. The Diocese Defendants knew in 2006 that repressed memory claims had a different timetable for recovery than cases without repressed memory. The Diocese Defendants also 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.

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

192. 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 to the Diocese Defendants of the Richter 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 approved.

193. 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.

194. 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.

195. 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 or, in the instance of this Plaintiff, because he got no notice and because in 2006 he had no begun to recover the memories of his childhood sexual abuse. The Defendants 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.

196. 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, or to provide for those who in 2006 had not recalled their childhood sexual abuse. 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 this Plaintiff being able to make a claim for his childhood sexual abuse.

197. 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.

198. 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.

199. 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.

200. 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.

201. 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, made no exception in the class definition for persons such as the Plaintiff who in 2006 had no recollection of his childhood abuse, 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 even after he recovered memories of his childhood sexual abuse.

202. 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 future possible claims, and to generally depress the recoveries to sexual abuse victims, to serve the interests of the Diocese defendants.

203. The Richter defendants abandoned absent class members such as the Plaintiff, who in 2006 had no memory of his childhood abuse, 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. Unless the order approving the class settlement means what it says at page 4, where the court appears to have accommodated absent class members 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," and 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 Court

204. 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, unless the order means that persons who received no notice are not barred by *res judicata*.

205. 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.

206. 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.

207. 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.

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

209. 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.

210. By agreement of all Defendants, SCRCF 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 was given to any other ostensible class member.

211. 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.

212. 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.

213. 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.

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

215. If 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, 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: Making no Provision for those whose memories of childhood sexual abuse was repressed, and obtaining no written order for absent class members who got no notice.

216. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was to make no provision for the Plaintiff in the class definition, and in not following up with 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 who go 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.

217. By agreement of all defendants, the class definition did not exclude the Plaintiff, and no provision was made for those who in 2006 had repressed the memory of their childhood sexual abuse.

218. 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.

219. All Defendants in 2006 were well aware that many victims repress their memory of childhood sexual abuse. All Defendants in 2006 were conscious that choosing to define the classes so as to include this Plaintiff served the interests of the Diocese at the expense of persons such as the Plaintiff.

220. The Richter defendants abandoned the Plaintiff as a putative member of the class in agreeing to make no accommodation for his repressed memories. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the Plaintiff in defining the classes so as to ostensibly include him, but making no provision for his repressed memories.

221. 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 to them. 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 him for Michael Kaney's sexual abuse.

222. 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. The Diocese Defendants have 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 him for Michael Kaney's sexual abuse.

223. 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 was provided for the Plaintiff and others. Those representations were false, and were not embodied in any written order.

224. If the Plaintiff 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 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.

225. 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 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 claims from the prohibitions of the class action.

226. 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 they were not brought for the class using the common law “loss of services” cause of action. However, if the Plaintiff is not deemed precluded from stating his 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.

227. 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**

228. 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 were merely professionally negligent in excluding the Plaintiff from having a preserved claim.

229. 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.

230. 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.”

231. Plaintiff was a putative member of that class as it was defined in the proposed settlement, despite his having, in 2006, no memory of his childhood sexual abuse.

232. 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.

233. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the Plaintiff. Since in 2006 the Plaintiff had no memory of his childhood abuse, the notice was ineffective in giving notice to the plaintiff, so as to enable him to either participate or to opt out.

234. 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.

235. 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. This cause of action presumes the Richter Defendants were professionally negligent in failing to provide a written order to secure the representations made on the record.

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

237. 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.

238. 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.

239. 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.

240. 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.

241. 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.

242. 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.

243. 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.

244. 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.

245. 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 those claims that would not have existed but for the negligent conduct of the Richter defendants.

246. 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**

247. 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 were merely professionally negligent in excluding the Plaintiff from having a preserved claim.

248. The Richter defendants chose to agree to define the classes in the class actions so as to have neither a geographical limit on the classes or to accommodate in any way those who, as the Richter defendants knew, repressed the memory of their childhood sexual abuse.

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

250. In choosing to define the classes so as to include the Plaintiff, despite his lack of recollection in 2006, the Richter defendants each assumed fiduciary obligations to the Plaintiff, who was an absent putative member of one of the classes they defined.

251. 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.

252. 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 when he was able to recall the childhood abuse and pursue his claim for relief, or to preserve his ability to make his claim independent of the modest relief obtained by the Richter defendants for sexual abuse victims.

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

254. The state court judge was not asked to preserve in any written order any rights for absent members of the class who had no memory in 2006 of their childhood sexual abuse, or to protect the rights of those persons.

255. 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.

256. 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.

257. 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.

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

259. 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.

260. 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 006 class settlement as a shield. The Richter defendants were negligent in failing to protect the Plaintiff's interest.

261. 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 that among the lowest-known victim compensation.

262. 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.

263. 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**

264. 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.

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

266. In pleading a class action the Richter defendants assumed a fiduciary duty to the Plaintiff of which the Diocese was aware.

267. 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.

268. 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.

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

270. 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**

271. 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.

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

273. 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.

274. 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.

275. 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.

276. 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.

277. 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 Plaintiff would be accommodated, or through a shopped-for judge who was aware that the representations being made were false.

278. 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 in 2006 had no recollection of his childhood sexual abuse. 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 a claim after his recollections of abuse were recovered after the 2006 class action concluded, in 2009.

279. 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.

280. 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.

281. 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, and would not be subject to the control or influence of the Richter defendants.

282. 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.

283. 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 did not recall their childhood sexual 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, 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 they represented.

284. 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.

285. 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.

286. 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.

287. 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. 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 abusive victims, such as the Plaintiff, repressed memories of their childhood sexual abuse and in 2006 could reasonably be expected not to recall childhood abuse. At the time of the 2007 hearing in which those false representations were made, the Richter defendants represented — against a Diocese other than class counsel’s own — an adult whose childhood memories of sexual abuse had been repressed. For that single client class counsel recovered over \$4 million, as opposed to the maximum relief which could be obtained by any member of the class of \$200,000 (\$160,000 after the additional fee class counsel applied to abuse victims).

288. To get approval that protected the Diocese from, among other things, 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.”

289. 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.

When the Plaintiff communicated with the Diocese, the Plaintiff's 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 "understanding."

290. 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."

291. 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, 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.

292. As to this Plaintiff, the Diocese concealed until 2011 the falsity of class counsel's representations to the shopped-for judge. The true position of the Diocese has been, starting in 2009 the Diocese Defendants have deprived 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 2011.

293. 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.

294. 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.

295. When this Plaintiff began in 2010 to recall his childhood sexual abuse, and informed the Diocese in 2011 of the abuse, the Diocese of course (and 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 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.

296. 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.

297. 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.

298. 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. 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 Plaintiff they purported to represent.

299. 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.

300. 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 his claim against the Diocese for his childhood sexual abuse.

301. 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.

302. 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.

303. 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 the interests of the absent members of the class, first the Richter defendants' own financial interests, then the interests of the Diocese Defendants.

304. 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.

305. 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.

306. 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.

307. As intended by the Richter defendants in 2007 as the *quid pro quo* for their fee, when the Diocese was contacted in 2011 by the Plaintiff, who had received no notice of the class action and until 2010 had not recalled his childhood sexual abuse, 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 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.

308. 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 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.

309. 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, 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.

310. 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.

311. 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. To date, the South Carolina Supreme Court has not less than twice declined to exhibit the slightest interest in the misconduct of the 2006 class settlement oversight, and may well ignore it all in the future.

312. 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.

313. 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.

314. 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.

315. 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.

316. 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.

317. 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. 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.

318. 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

319. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

- 320. 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,
- 321. Costs and disbursements of this action,
- 322. Attorneys fees as authorized by law,
- 323. Punitive damages as authorized by law, and for
- 324. 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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers, SC Bar No. 9908
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366 Jackson Street
St. Paul MN 55101
651-227-9990
Gregg@andersonadvocates.com

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

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)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

*See Terms
Attached on
E+H. #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:

- Ⓐ ACTUAL VICTIMS OF DOMESTIC ABUSE
- Ⓑ SPOUSAL &/or Parent claims deriving from victims abused

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

- Ⓐ \$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 process 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 attorney's fee for class counsel at between \$950,000 + \$2.5 million, subject to Defendant's 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 as 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 executed & shall proceed to settlement in the amounts set out in "5." above with appropriate general releases &/or dismissals with prejudice executed in favor of defendant.

~~* Class of Plaintiffs & Defendants~~

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 Desly, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and with authority of the
Diocese of Charleston

June 14, 2006

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

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;

- 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

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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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

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'

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

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;

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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";

- 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.

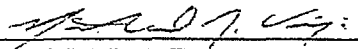
Defendants stated to the court that the above entries were "by far conservative" estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus Defendants appear to have made false statements to a tribunal in support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

MMV

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.

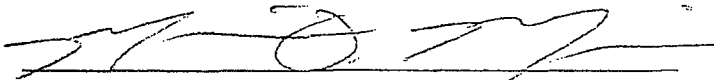


Michael J. Virzi, Esq.

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-10- 4175

Father Doe 194,)
)

Plaintiff,)
)

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.)

Defendants.)
)

Negligence; Gross Negligence
 Fraudulent Concealment
 Civil Conspiracy
 Professional Negligence
 Breach of Fiduciary Duty
 Injunctive Relief
 UTPA

Jury Trial Requested

FILED
 2013 JUL 17 AM 11:17
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Father Doe 194 is an adult citizen and resident of Minnesota who at one time was stationed with the military in the Charleston area and had a child who participated in activities sponsored by the Defendant Diocese of Charleston. His child, who is referred to as John Doe 194, was sexually abused by Frederick Hopwood, a priest of the Diocese of Charleston.

2. The pseudonym Father Doe 194 is used for the Plaintiff due to the sexual abuse injury to his child, John Doe 194, 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 or his child.

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, and of Father Doe 194, as they have already rejected a request to assist with the effects of the abuse of John Doe 194. 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 as confidential with respect to the public record the identity of the Plaintiff and his child, 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 the parent of a child born on or before August 30, 1980, and as a minor, was sexually abused by an agent or employee of the Diocese of Charleston, in this instance Frederick Hopwood.

19. The Plaintiff has not previously made a claim that was adjudicated, resolved, or released.

20. Father Doe 194 was situated similarly to other individuals ostensibly within that definition of a class first 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, or parents and spouses of those persons. 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.

21. 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.

22. 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.

23. 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.

24. 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.

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

26. 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 2006 settlement.”

27. At the time of the 2006 settlement, the Richter Defendants were aware that some sexual abuse victims and their parents lived outside of South Carolina.

28. The 2006 settlement 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.

29. 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.

30. 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.

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

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

33. 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.

34. 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.

35. 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.

36. 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 the injury he sustained when his child was sexually abused by Frederick Hopwood.

37. The defendants cooperated among themselves in the 2006 class settlement 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.

38. 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.

39. Each Defendant was aware that persons within the class definition of the 2005 class settlement 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.

40. 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.

41. 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

42. The Plaintiff's child was exposed to Frederick Hopwood through his participation in events sponsored by the Diocese of Charleston, and was sexually abused by Frederick Hopwood.

43. Hopwood was known by the Diocese defendants 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. That knowledge was not communicated to the Plaintiff.

44. The Diocese Defendants knew, or should have known, that Frederick Hopwood was

dangerous to children, and that the Plaintiff's child was sexually abused by Frederick Hopwood.

45. 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.

46. 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.

47. 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.

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

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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 outside of South Carolina got in the class action no Due Process from the notice given in the class action.

55. 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.”

56. 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.

57. The Diocese Defendants each knew, or should have known, about the Plaintiff and his child’s 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.

58. 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.

59. 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.

60. 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.

61. 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.

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, 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.

63. 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."

64. 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**

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

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

67. 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's child and other children. In that capacity, Frederick Hopwood sexually molested the Plaintiff's child and many other children.

68. 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's child was molested after Hopwood was known to be dangerous to children, which created an injury to the Plaintiff.

69. Alternatively, the Diocese Defendants operated various schools, activities, and churches that were intended to, and did, attract children and families, including the Plaintiff's child. The Diocese Defendants encouraged people, including Plaintiff and his child, 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 charged with looking after his child's interests, a greater degree of care because the Plaintiff relied on the Diocese Defendants for his child's safety within the Diocese, and his child 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.

70. 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 injured when his child was sexually abused by Frederick Hopwood.

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

72. 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.

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

74. 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 from his child's abuse were first caused, and then exacerbated, by the delay of the Diocese Defendants in rectifying the abuse by Hopwood.

75. 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.

76. 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**

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

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

79. The Diocese Defendants each had a duty to discover and to disclose to Plaintiff 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 Plaintiff having expressly reposed his trust and confidence in the Diocese Defendants so as to entrust putting the Plaintiff's child into the presence of Frederick Hopwood, which placed the Plaintiff's child in a vulnerable position with respect to Frederick Hopwood. That position of trust and confidence was implicit from those circumstances of Plaintiff entrusting his child to be in the presence of Frederick Hopwood, as well as from the nature of the dealings between the Plaintiff and the Diocese Defendants, who promoted to the Plaintiff that he should leave his child in the presence of Frederick Hopwood,
- c. from the essential nature of the Diocese Defendants and their inducement to the Plaintiff to have his child participate in activities with Frederick Hopwood as being beneficial to the Plaintiff's child, or at least not harmful to his child,
- 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.

80. The Plaintiff's child was sexually abused by Frederick Hopwood after 1962.

81. 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 in perfect good faith and with full disclosure.

82. 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.

83. 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.

84. 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's child. 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.

85. 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.

86. 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.

87. The Diocese Defendants operated with an archive.

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

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

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

91. 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.

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

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

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

95. 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."

96. 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.

97. 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.

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

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

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

101. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Frederick Hopwood's sexual abuse of children including Plaintiff's 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.

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

103. 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.

104. 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).

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

106. Plaintiff's child fit within the meaning of "penitent" referred to in the "Instruction."

107. 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.

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

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

110. 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.

111. 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 or his child, 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 or his child as victims of Hopwood.

112. 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.

113. 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.

114. Nothing about reporting sexual abuse of children infringes on religious belief. “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.

115. Unless the Pope himself has specifically approved otherwise, administrative secrecy was and is to be maintained not only by the Plaintiff and his child, 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 that 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.

116. 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's child.

117. 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's child. Consistent with that obligation of secrecy, the Diocese Defendants made no effort to either prevent sexual abuse of the Plaintiff's child, or to ascertain that the Plaintiff's child was a victim of abuse by Frederick Hopwood.

118. 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 or his child 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.

119. 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.

120. 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.

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

122. 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**

123. 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.

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

125. 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.

126. 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.

127. 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 then collaborated with the Diocese defendants to work against the Plaintiff's interest and in the interest of the Diocese Defendants.

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

129. 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.

130. 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 possibly 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.

131. 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.

132. 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.

133. 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.

134. 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.

135. 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.

136. 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 SCRPC 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 SCRPC 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.

137. 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.

138. 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.

139. 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.

140. 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.

141. 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

142. 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.

143. 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.

144. 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.

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

146. 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.

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

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

149. 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.

150. 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 the Diocese acknowledging to the public that it was 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.

151. Rule 23(d)(1) SCRPC 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.”

152. 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.

153. 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.

154. 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.

155. 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.

156. Ostensibly included in one of 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.

157. 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.

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

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

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

161. 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.

162. 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.

163. 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.

164. 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.

165. 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 and his child, 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.

166. 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.

167. 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

168. 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.

169. 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.

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

171. 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).

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

173. 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.

174. 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.

175. 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 Dorchester County complaints through the class definition used in one or more of those complaints.

176. The 2006 class action in Dorchester County deprived the Plaintiff of Due Process through the conduct of the Defendants.

177. 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.

178. 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.

179. 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.

180. 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.

181. 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.

182. 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 misled by Defendants rather than actively participating in misconduct of Defendants.

183. 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.

184. 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.

185. 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.

186. 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.

187. 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.

188. 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.

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

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

191. 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.

192. 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.

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

194. 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.

195. 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.

196. 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.

197. 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.

198. As set forth in the affidavit of Michael Virzi, attachment B to this complaint and incorporated pursuant to SCRCF 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.

199. 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.

200. 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.

201. 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.

202. 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.

203. 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

204. 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.

205. 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.

206. 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.

207. 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.

208. 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.

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

210. 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 was held.

211. 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.

212. 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

213. 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.

214. 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."

215. 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.

216. 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."

217. 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."

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

219. 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.

220. 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.

221. 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.

222. 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.

223. 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.

224. 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.”

225. 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.

226. 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.

227. 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.

228. 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.

229. 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.

230. 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.

231. 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.

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

233. 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 later 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.

234. 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.

235. 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.

236. 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.

237. 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.

238. 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.

239. 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.

240. 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.

241. 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.

242. No Defendants disclosed to the class 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.

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

244. 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.

245. 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.

246. 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.

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 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, who used the Richter Defendants for their own purposes.

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

249. 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.

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

251. 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

252. 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*.

253. 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.

254. 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.

255. 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.

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

257. 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.

258. By agreement of all Defendants, SCRCF 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.

259. 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.

260. 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.

261. 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.

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

263. 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 from 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.

264. 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.

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

266. 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.

267. 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.

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

269. 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.

270. 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 on April 12, 2013, "they never got their due process rights of notice and an opportunity to be heard."

271. 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.

272. 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.

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

274. 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.

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

276. 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.

277. 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.

278. 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.

279. 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.

280. 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.

281. 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.

282. 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**

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. 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.

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

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

286. 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, about which the Richter defendants were unaware.

287. 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.

288. 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 “spousal &/or parent claims deriving from victims abused.”

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

290. 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.

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

292. 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.

293. 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.

294. 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.

295. 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.

296. 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.

297. 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.

298. 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.

299. 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.

300. 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.

301. 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.

302. 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.

303. 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.

304. 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.

305. 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**

306. 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.

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

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

309. 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.

310. 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.

311. 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.

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

313. 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.

314. 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.

315. 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.

316. 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.

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

318. 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.

319. 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.

320. 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.

321. 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.

322. 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**

323. 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.

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

325. 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.

326. 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.

327. 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.

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

329. 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**

330. 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.

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

332. 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 and other states. In electing to bring a class action complaint for sexual abuse victims of the agents and employees of the Diocese Defendants, and the parents and spouses of those victims, the Richter Defendants specifically offered a service to the

people of South Carolina, and other states, and purported to alter the legal rights of the public as to that sexual abuse, including the Plaintiff's rights.

333. 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.

334. 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.

335. 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.

336. 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.

337. 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.

338. 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.

339. 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.

340. 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.

341. 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.

342. 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.

343. 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.

344. 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.

345. 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.

346. 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.

347. 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. It was also known that other parents and spouses had not been located.

348. To get approval that protected the Diocese from, among other things, the Plaintiff's parent's 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."

349. 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 and his child 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.”

350. 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.”

351. 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.

352. 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, but known to the Plaintiff only in 2012, 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.

353. The shopped-for judge who oversaw the 2006 class 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.

354. 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.

355. When this Plaintiff in 2012 informed the Diocese of Hopwood's abuse of his child, 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.

356. 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.

357. 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.

358. 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, and their parents and spouses, the definitions 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.

359. 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.

360. 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.

361. 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.

362. 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.

363. 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.

364. 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.

365. 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.

366. 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.

367. 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 (or their parents or spouses) who “for whatever reason” received no notice, and would undertake no relief for victims the Diocese Defendants were not compelled to undertake.

368. The Richter Defendants intended the collusive class action to terminate liability by the Diocese for abuse victims, their spouses and their parents, to limit overall compensation paid to abuse victims, spouses and parents, 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.

369. 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.

370. 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.

371. 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.

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 and enabled the Diocese Defendants to do.

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

Dorchester County cases in which any of the Diocese Defendants were supposedly adverse parties.

374. 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.

375. 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.

376. 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.

377. 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

378. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

379. 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,

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," for a proper compensation of an abuse victim or his parent or spouse, and for

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

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Attorneys for the Plaintiff

Attachment A -000001

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

*See Terms
Attached on
E+H. #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:

- Ⓐ ACTUAL VICTIMS OF DOMESTIC ABUSE
- Ⓑ SPOUSAL &/or Parent claim deriving from victims abused

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

- Ⓐ \$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 claim process 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 Defendant's 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 or 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 executed & shall proceed to settlement in the amounts set out in "5." above with appropriate general releases &/or dismissals with prejudice executed in favor of defendant.

~~Class of victims & survivors~~

Attachment A - 000004
(5)

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 Deshy, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and under authority of the
Successor of Charleston

June 14, 2006

Attachment A - 000004

Attachment B - 000001

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

Attachment B - 000002

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;

MIV

Attachment B - 000003

- 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

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:

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

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

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'

Attachment B - 000007

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 - 000008

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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Attachment B - 000009

- 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

Attachment B - 000010

- 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, including Plaintiff, without taking appropriate steps to deal with the conflict of interests created thereby.

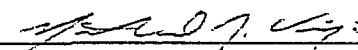
MIV

Attachment B - 000011

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.

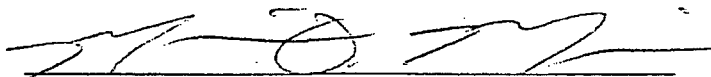
Further affiant sayeth naught.


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