

The State of South Carolina
In The Court of Appeals

Appeal from Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge

Appeal 2012-213521
Case No. 10-CP-42-2349

Jane Doe, as guardian for John Doe, ... Appellant

v.

Boy Scout Troop 292, Spartanburg SC; Palmetto Council of the Boy Scouts of America; St.
Margaret's Episcopal Church; Shelby Culbreth; Jackie LaFontaine; Brandon Smith; Rob Green;
Roy Cole; Bob Faulks; and Scott O'Neill, ... Respondents

Record On Appeal

Volume One

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) C.A. NO. 2010-CP-42-2349

Jane Doe, as guardian for John Doe,)

Plaintiff,)

vs.)

Boy Scout Troop 292, Spartanburg,)
SC, Palmetto Council of the Boy)
Scouts of America, St. Margaret's)
Episcopal Church, Shelby Culbreath,)
Jackie LaFontaine, Brandon Smith,)
Rob Green, Roy Cole, Bob Faulks,)
and Scott O'Neill,)

Defendants.)

CONSENT SCHEDULING ORDER

By consent of the parties for the issuance of a Scheduling Order, and pursuant to Rule 40 of South Carolina Rules of Civil Procedure, the following schedule is established in this case.

1. Motions to join other parties and to amend the pleadings shall be filed no later than May 16, 2011.

2. The plaintiff shall file and serve a document identifying by full name, address, and telephone number each person whom the plaintiff expects to call as an expert by June 15, 2011.

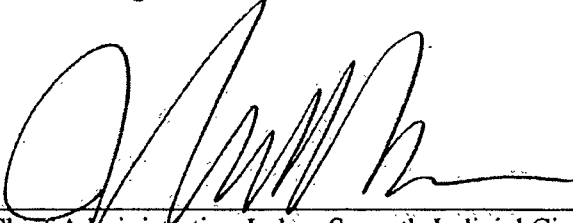
3. The defendant shall file and serve a document identifying by full name, address, and telephone number of each person whom the defendant expects to call as an expert at trial by July 15, 2011.

4. Mediation shall be completed on or before October 10, 2011.

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5. This case is subject to being called for trial not before November 14, 2011.

IT IS SO ORDERED.

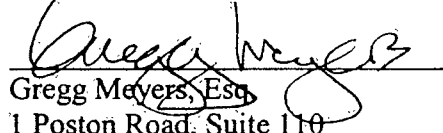


Chief Administrative Judge, Seventh Judicial Circuit

3/21, 2011

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SPARTANBURG COUNTY
2011 MAR 31 AM 8:50
M. HOPE BLANCHLEY

I CONSENT:



Gregg Meyers, Esq.

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Charleston, SC 29407

Attorney for Plaintiff

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M. HOPE BEAULLEY

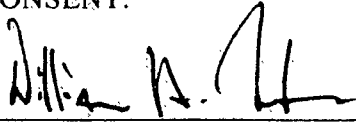
I CONSENT:



Michael R. Jeffcoat, Esq.
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SPARTANBURG COUNTY
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Palmetto Council of the Boy
Scouts of America, St. Margaret's
Episcopal Church, Shelby Culbreth,
Jackie LaFontaine, Brandon Smith,
Rob Green, Roy Cole, Bob Faulks,
and Scott O'Neill

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SPARTANBURG COUNTY
2011 JUL 31 AM 8:50
M. JEFFREY

I CONSENT:



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M. HOPE BLAUGLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

PROBATE COURT

IN THE MATTER OF OLIVER CLAY HAGEMAN

CASE NUMBER 2011GC4200036

CERTIFICATE OF APPOINTMENT

This is to certify that

Lucy B. Taylor

is/are the duly qualified

☐ PERSONAL REPRESENTATIVE

☒ GUARDIAN

☐ CONSERVATOR

☐ TRUSTEE

☐ _____

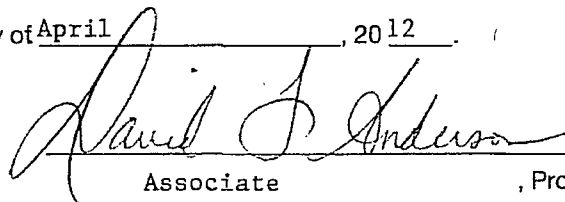
in the above matter and that this appointment, having been executed on
the 26th day of April, 2012.
now in full force and effect, including authorization to receive all
monies, income, principal, interest & dividends of and belonging to
said estate.

RESTRICTIONS:

NONE.

Executed this 27th day of April, 2012.

Do not accept a copy of this certificate without
the raised seal of the Probate Court.



Associate

, Probate Court Judge

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF SPARTANBURG	)	CASE NO.: 2011-GC-42-00036
IN THE MATTER OF THE GUARDIANSHIP	)	
FOR: Oliver Clay Hageman	)	
Lucy B. Taylor	)	
Petitioner	)	
v.	)	
Oliver C. Hageman and Jessica Hageman	)	
Respondent	)	



ORDER APPOINTING GUARDIAN

Petitioner, Lucy B. Taylor of South Carolina at Spartanburg, filed a Petition and Summons requesting the adjudication of Oliver Clay Hageman, (Mr. Hageman) as an incapacitated person and seeking the appointment of permanent guardian for Mr. Hageman.

By Order of this Court dated, February 13, 2011, Robert Patrick Martin, Esquire was appointed as the Guardian Ad Litem ("GAL") and Counsel for Mr. Hageman. By Order of this Court dated, July 22, 2011, Dr. Yashbir S. Rana, MD and Dr. Jerome B. Aya-ay, MD were appointed as Physicians/Examiners. Victor Page, Esq. was appointed as Visitor.

APPLICABLE LAW

This Court has subject matter jurisdiction over this matter pursuant to S.C. Probate Code 62-5-102 and venue is proper in Spartanburg County pursuant to S.C. Code 62-5-302. Pursuant to S.C. Probate Code 62-5-304, the Court has authority to

"appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person."

FINDINGS OF FACT

Based on the pleadings, testimony during the hearing, and the Court's file, I find the following facts:

- A. Mr. Hageman's home state is South Carolina and his permanent residence is in Spartanburg County, while he spends much of his time in New York.
- B. Based on the sworn, written Doctor's Statement Regarding Incapacity and Doctor's Affidavit Regarding Incapacity of Dr. Yashbir S. Rana, MD and the Examiner's Report of Dr. Jerome B. Aya-ay, MD, which were previously filed with this Court, I find that Mr. Hageman is an incapacitated person and the appointment of a guardian is necessary as a means of providing continuing care and supervision of Mr. Hageman.
- C. No permanent guardian has been previously appointed.
- D. Petitioner has nominated Lucy B. Taylor to serve as the permanent guardian for Mr. Hageman. Lucy B. Taylor is qualified to serve as permanent guardian for Mr. Hageman and has consented to the respective service.

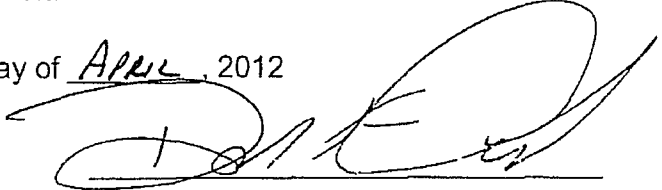
- E. The appointment of a permanent guardian is necessary as a means of providing continuing care and supervision of the person of Mr. Hageman.
- F. Both the Guardian ad Litem and the Visitor were in favor of the appointment as requested.

RULING

Based on the pleadings, testimony during the hearing, and the Court's file, I find that the requirements of S.C. Probate Code have been met and pursuant to S.C. Code 62-5-304, I find that the appointment of a Permanent Guardian is appropriate.

I hereby appoint Lucy B. Taylor as permanent guardian for Ms. Hageman with all of the general powers and duties of a guardian pursuant to S.C. Probate Code 62-5-312. Each year on the anniversary of her appointment, Lucy B. Taylor shall file the Annual Report of Guardian.

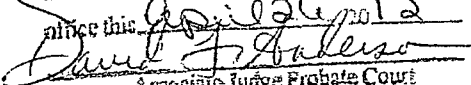
IT IS SO ORDERED this 26 day of APRIL, 2012


The Honorable David F. Anderson

Dated: APRIL 26, 2012
Spartanburg, South Carolina

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of

office this April 26, 2012


Associate Judge Probate Court
Spartanburg County, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
PROBATE COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2011GC4200036

IN THE MATTER OF:

OLIVER CLAY HAGEMAN

- ☐ Jury Verdict. This action came before the court for a trial by jury. The issues have been tried and the verdict 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. ☐ Rule 12(b), SCRPC ☐ Rule 40(c)(3), SCRPC
☐ Rule 41(a), SCRPC (Vol. Nonsuit) ☐ Settled
☐ Other, Explain: _____

IT IS ORDERED AND ADJUDGED: ☒ See attached Order
☐ Statement of Judgment by Court

Dated at Spartanburg, South Carolina, this 26TH day of
APRIL, 2012

DAVID F. ANDERSON
Associate Judge

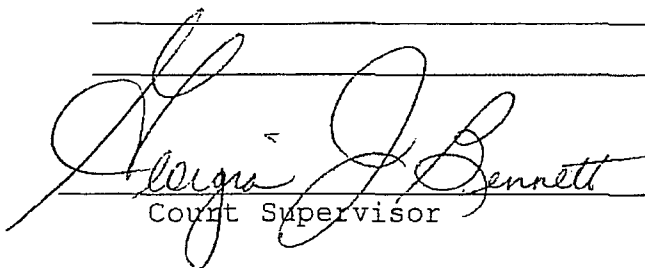
This judgment was entered on the 26TH day of APRIL, 2012 and a copy mailed first class this 27th day of APRIL, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Mr. Michael R. Jeffcoat

Attorney at Law

PO Box 1860

Lexington, SC 29071


Court Supervisor

LD

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

Jane Doe, as guardian for John Doe,)
)
Plaintiff,)

vs.)

ORDER

Boy Scout Troop 292, Spartanburg, SC;) Civil Action No. 2010-CP-42-2349
Palmetto Council of the Boy Scouts of)
America; St. Margaret's Episcopal)
Church; Shelby Culbreth; Jackie)
LaFontaine; Brandon Smith; Rob Green;)
Roy Cole; Bob Faulks; and Scott)
O'Neill,)
)
Defendants.)

THIS MATTER CAME BEFORE THE COURT on Defendants Boy Scout Troop 292, Palmetto Council of the Boy Scouts of America, St. Margaret's Episcopal Church, Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob Green, Roy Cole, Bob Faulks, and Scott O'Neill's (collectively, the "Defendants") motion for summary judgment. For the reasons that follow, the Court grants summary judgment in favor of Defendants.

I. FACTUAL BACKGROUND

Plaintiff Jane Doe, as the purported guardian for John Doe, a twenty-one-year-old resident of the State of New York, commenced this civil action alleging claims for intentional infliction of emotional distress and negligent supervision arising out of John Doe's suspension from Boy Scout Troop 292 (the "Troop").

Until early October 2005, John Doe was a member of the Troop, which was formed to allow special needs children to participate in scouting. Following a regular Troop meeting on either September 27 or October 4, 2005, the Troop's managing

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committee (the "Troop Committee") made the decision to suspend John Doe from the Troop. Defendants submit that this decision was based upon several acts of misconduct by John Doe, including his refusal to reimburse the Troop for the cost of popcorn that he was supposed to sell during a Troop fundraising drive but which he instead allegedly ate, and his entering the vehicle of Troop volunteer Shelby Culbreth ("Culbreth") without permission.

Pursuant to established procedure, the Troop wrote a letter (the "Letter") to John Doe's father informing him of John Doe's suspension effective October 10, 2005. The entire substance of the undated Letter provides as follows:

This is a letter to inform you that as of 10/10/05, your son [John Doe] will not longer be able to participate in any functions that Troop 292 may hold now or in the future. That is to include meetings and other outside functions.

The Letter was prepared for signature by Culbreth, as Troop Committee Chairperson, and was signed on Culbreth's behalf by Jackie LaFontaine, who typed the Letter. There is no evidence that any of the remaining Defendants were involved in the decision to suspend John Doe from participation in the Troop, or in the preparation and sending of the Letter.

On or around October 7, 2005, John Doe reported to a school official that James Rhinehart ("Rhinehart"), the Troop's Scoutmaster, had sexually abused both John Doe and Rhinehart's stepson, who also was a member of the Troop. After a police investigation resulted in charges against Rhinehart for the abuse of both boys, Rhinehart pled guilty to a single charge related to his stepson, and currently is serving a jail sentence. The charge related to John Doe was dismissed.

On April 29, 2010, Plaintiff filed the present lawsuit. Plaintiff asserts a claim against the Troop and Culbreth for intentional infliction of emotional distress, contending

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that the Letter was sent in retaliation for John Doe reporting Rhinehart's alleged abuse. Plaintiff also raises a claim for negligent supervision against the remaining Defendants for allowing the Letter to be sent. Defendants moved for summary judgment on each of Plaintiff's claims.

On May 16, 2012, the Court held a hearing on Defendants' motion, and for the reasons that follow, the Court grants summary judgment in favor of Defendants.

II. DISCUSSION

A. Legal Standard

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). In determining whether summary judgment is proper, a court must view the facts in the light most favorable to the non-moving party. *Id.* Under South Carolina Rule of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361-62, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Ellis*, 358 S.C. at 518, 595 S.E.2d at 822. Rather,



the non-moving party must come forward with specific facts showing there is a genuine issue for trial. *Id.* at 518-19, 595 S.E.2d at 822.

B. Intentional Infliction of Emotional Distress

Defendants contend they are entitled to summary judgment on Plaintiff's claim for intentional infliction of emotional distress because no juror could reasonably find the Troop or Culbreth's conduct to be sufficiently extreme or outrageous to permit recovery. The Court agrees.

Under South Carolina law, a plaintiff must establish four elements to state a claim for intentional infliction of emotional distress:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme or outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by plaintiff was so severe that no reasonable person could be expected to endure it.

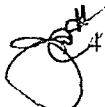
Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 401, 596 S.E.2d 42, 48 (2004).

The burden rests with the plaintiff to establish a prima facie case as to each element. *AIG*

Holdings LLC v. Dunn, 392 S.C. 160; 169, 708 S.E.2d 218, 223 (Ct. App. 2011). To prevail on an emotional distress claim, a plaintiff generally is required to present proof of "hostile or abusive encounters or coercive or oppressive abuse" by the defendant.

Gattison v. S.C. State Coll., 318 S.C. 148, 154, 456 S.E.2d 414 (Ct. App. 1995).

The Supreme Court, moreover, has admonished that "[i]n order to prevent claims for intentional infliction of emotional distress from becoming a panacea for wounded feelings rather than reprehensible conduct, the court plays a significant gatekeeping role in analyzing a defendant's motion for summary judgment." *Hansson v. Scalise Builders*



of S.C., 374 S.C. 352, 358, 650 S.E.2d 68, 72 (2007) (internal quotation marks and citations omitted). Thus, when presented with a motion for summary judgment, it is incumbent upon the court to determine whether “reasonable minds could differ as to whether [the] alleged conduct was sufficiently ‘outrageous’” and “whether [the] resulting emotional distress was sufficiently ‘severe.’” *Id.* at 358, 650 S.E.2d at 72. Only where reasonable persons might disagree as to whether defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery should an emotional distress claim go to the jury. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994).

As an initial matter, the Court notes that Plaintiff has failed to offer sufficient evidence to rebut Defendants’ contention that the decision to send the Letter was made in good faith and based upon John Doe’s prior misconduct as a Troop member. Specifically, Plaintiff has proffered no concrete evidence to rebut Culbreth’s testimony that John Doe’s suspension from the Troop was based exclusively upon specific acts of misconduct. Furthermore, there is no evidence to prove that any of the Defendants had knowledge that John Doe had reported sexual abuse by Rhinehart at the time the Letter was sent. Indeed, John Doe’s deposition testimony suggests that he did not report the allegations of abuse until *after* his father received the Letter informing him of John Doe’s suspension from the Troop.

Because Plaintiff is unable to show that John Doe’s allegations of abuse were made before the Letter was sent, it follows that no jury could reasonably find that the decision to suspend John Doe from the Troop or send the Letter was based upon John Doe’s allegations of abuse. Instead, the record evidence demonstrates that the Troop and

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Culbreth acted in good faith and for a proper purpose in sending the Letter. Such conduct plainly cannot give rise to an intentional infliction of emotional distress claim. See *Hawkins v. Greene*, 311 S.C. 88, 91, 427 S.E.2d 692, 693 (Ct. App. 1993) ("Where evidence is undisputed that the defendant acted in good faith and in a reasonable manner, his conduct cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community."). Therefore, Defendants are entitled to summary judgment on Plaintiff's claim for intentional infliction of emotional distress.

Furthermore, assuming for purposes of providing Plaintiff all deference at this stage, this Court finds that his claim for outrage *still* fails as a matter of law. Even if Plaintiff were able to show that the decisions to suspend John Doe from the Troop and to send the Letter were, in fact, retaliation for John Doe's reports of alleged abuse by Rhinehart, no jury could reasonably find such conduct to be sufficiently extreme or outrageous to give rise to a claim for intentional infliction of emotional distress.

As effectively set forth in Defendants' brief in support of summary judgment, the threshold for establishing a claim of outrage under South Carolina law is very high. See, e.g., *Doe v. Erskine College*, 2006 U.S. Dist LEXIS 35780 (D.S.C. 2006) ("[e]ven callous, offensive or extremely insensitive behavior does not necessarily establish the tort of outrage."); *Roberts v. Dunbar Funeral Home*, 288 S.C. 48, 52, 339 S.E.2d 517, 518 (Ct. App. 1986) ("[f]acts which show extreme insensitivity on the part of the defendant do not necessarily establish the tort of outrage."); *Melton v. Medtronic, Inc.*, 389 S.C. 641, 651, 698 S.E.2d 886, 891 (Ct. App. 2010) (agitated doctor's refusal to further treat patient shortly before patient's surgery for implantation of medical device was "arguably

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insensitive," but did not rise to the level of outrage); *Shipman v. Glenn*, 314 S.C. 327, 329, 443 S.E.2d 921, 922 (Ct. App. 1994) (supervisor's conduct in ridiculing speech impediment of and threatening to fire an employee who had cerebral palsy, while callous and offensive, did not provide sufficient basis for outrage claim); *Gattison v. S.C. State College*, 318 S.C. 148, 157, 456 S.E.2d 414, 419 (Ct. App. 1986) (in a whistle blower case, facts that demonstrate the defendants treated the plaintiff in an unprofessional and inappropriate manner, but did not include allegations of hostile or abusive encounters or coercive or oppressive conduct did not amount to outrage).

Against this exacting backdrop, Plaintiff's allegation that Culbreth and the Troop sent a facially un-offensive letter to John Doe's father suspending him from further Troop activities in retaliation for his reporting sexual abuse clearly fails to state a claim for the tort of outrage. There is simply no allegation of extreme or outrageous conduct by Defendants sufficient to support such a claim. Instead, Plaintiff relies wholly upon an inference drawn from the timing of the letter and John Doe's report to the police to conclude that the letter was sent in retaliation for the report. There is nothing in the record to suggest that any Defendant told John Doe that he was being punished for reporting abuse, or communicated anything offensive or outrageous to John Doe or his family regarding the Letter or the decision it communicated.

South Carolina courts consistently have held that allegations of retaliatory discharge, without more, are insufficient to state a claim for intentional infliction of emotional distress, regardless of the extent of mental anguish caused by the alleged retaliation. In *Hudson v. Zenith Engraving Co., Inc.*, 273 S.C. 766, 259 S.E.2d 812 (1979), for example, the Supreme Court rejected the claim that maliciously and



intentionally discharging an employee in retaliation for pursuing a workers' compensation claim rose to the level of outrageous conduct. The Court explained:

[I]t has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

Id. at 770, 259 S.E.2d at 814 (quoting Restatement (Second) of Torts § 46, cmt. d (1977) (internal alterations omitted)). Absent verbal assault or a hostile, abusive encounter with an employer's agents, the Court concluded that a mere retaliatory discharge failed to constitute outrageous conduct sufficient to give rise to an emotional distress claim. *Id.* at 770, 259 S.E.2d at 814. The Court of Appeals reaffirmed this principle in *Corder v. Champion Road Machinery International Corp.*, 283 S.C. 520, 324 S.E.2d 79 (Ct. App. 1984), explaining that although retaliatory discharge "is reprehensible conduct and may cause mental anguish to the discharged employee, it is not in itself the kind of extreme conduct which gives rise to a legal claim for outrage." *Id.* at 523, 324 S.E.2d at 79.

Although Plaintiff alleges that John Doe's suspension from the Troop was in retaliation for his reporting Rhinehart's alleged abuse, she has presented no evidence, nor even claimed that the alleged retaliation was accompanied by verbal assaults or any hostile or abusive encounters separate from John Doe's suspension. It is well established that allegations of retaliatory conduct, without more, cannot reasonably be regarded as so extreme and outrageous as to permit recovery for an intentional infliction of emotional distress claim. Thus, viewing the record in the light most favorable to Plaintiff and



drawing all reasonable inferences in her favor, the Court concludes that her intentional infliction of emotional distress claim fails as a matter of law.

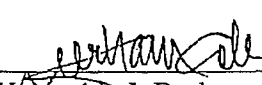
C. Negligent Supervision

Plaintiff raises a negligent supervision claim against all of the Defendants other than the Troop and Culbreth, alleging that these Defendants had a duty to prevent the alleged outrageous misconduct of the Troop and Culbreth by which John Doe was punished for reporting Rhinehart's alleged abuse. This claim, however, is derivative of Plaintiff's claim for intentional infliction of emotional distress. Because Plaintiff's emotional distress claim fails as a matter of law, it follows that this claim must as well. Furthermore, there is no evidence that any of these Defendants had any involvement in the decision to suspend John Doe or to send the Letter, or that any of these Defendants were even aware of the Letter. Defendants therefore are entitled to summary judgment on Plaintiff's claim for negligent supervision.

THEREFORE, IT IS ORDERED THAT Defendants' motion for summary judgment is granted.

IT IS SO ORDERED.

October 29, 2012


The Honorable J. Derham Cole

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2012 NOV - 1 AM 10:13
A. HOPE DEAN
CLERK OF COURT

The South Carolina Court of Appeals

Jane Doe, as guardian for John Doe, Appellant,

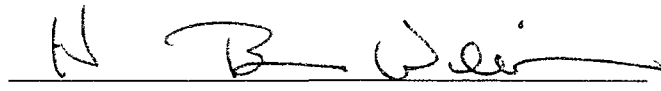
v.

Boy Scout Troop 292, Spartanburg, SC; Palmetto
Council of the Boy Scouts of America; St. Margaret's
Episcopal Church; Shelby Culbreth; Jackie LaFontaine;
Brandon Smith; Rob Green; Roy Cole; Bob Faulks; and
Scott O'Neill, Respondents.

Appellate Case No. 2012-213521

ORDER

Respondents have filed a motion to dismiss this appeal. Appellant filed a return and a motion to extend time, which this court construes as a motion to accept Respondents' return out of time. Appellant's motion to extend time is granted and the return is accepted. After careful consideration of the parties' filings, Respondents' motion to dismiss is denied. Nothing in this order prevents Respondents from arguing the issues in their appellate brief.



FOR THE COURT

Columbia, South Carolina

cc:
Gregg E. Meyers
William Harrell Foster, III
Benjamin Neale Garner

FILED

July 3, 2013 EEC

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State of South Carolina)

In The Court of Common Pleas

County of Spartanburg)

Case Number 10-CP-42- 2349

Jane Doe, as guardian for John Doe,)

Plaintiff,)

v.)

Boy Scout Troop 292, Spartanburg, SC,)
Palmetto Council of the Boy Scouts of)
America, St. Margaret's Episcopal Church,)
Shelby Culbreth, Jackie LaFontaine,)
Brandon Smith, Rob Green, Roy Cole,)
Bob Faulks, and Scott O'Neill,)

Defendants.)

COMPLAINT

For her complaint, the plaintiff alleges:

PARTIES AND JURISDICTION

1. Jane Doe has custody of, and is guardian for, John Doe, a developmentally disadvantaged individual born in May, 1991. At the time of the events which gave rise to this complaint, the Plaintiff was a minor resident of South Carolina. They are each referred to by pseudonym in this action due to the intensely personal nature of the conduct alleged in this complaint. References in this complaint to the Plaintiff refer to John Doe, even though the action is brought by his guardian, Jane Doe.

2. Boy Scout Troop 292, Spartanburg, SC, at all times pertinent to this complaint was a Boy Scout Troop operating within Spartanburg County. It is referred to in this complaint as Troop 292. Until he was expelled from it for reporting sexual abuse, the plaintiff was a member of Troop 292, and was in the troop because he had known developmental disabilities.

3. After September, 2005, each defendant knew, or should have known, that plaintiff

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not only had pre-existing conditions of developmental disability, but also had pre-existing conditions of having been a sexual abuse victim. Plaintiff was known to have been molested by James Rhinehart. James Rhinehart's access to the plaintiff was through the plaintiff's participation in Troop 292.

4. Palmetto Council of the Boy Scouts of America is a local council of the Boy Scouts of America, under whose authority Boy Scout Troop 292 operates, and to which it reports. It is referred to in this complaint as the Council.

5. St. Margaret's Episcopal Church is the sponsor of Boy Scout Troop 292, operating within Spartanburg County. It is referred to in this complaint as the Church. Troop 292 held events at the Church.

6. Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob Green, Roy Cole, Bob Faulks, and Scott O'Neill are each officials with, or supervising, Troop 292. In their respective role they were each involved in the events described in this complaint, and each was grossly negligent in their respective involvement. Their respective actions or inactions all took place in Spartanburg County.

7. This is an action for intentional inflictions of emotional distress as to Troop 292, and for negligence as to the Church and Council. Defendants knew, or should have known, that the plaintiff had developmental disabilities, and was peculiarly susceptible to the actions taken against him after September, 2005. Troop 292 intentionally harmed the plaintiff by actions which constitute intentional infliction of emotional distress. Its officials were grossly negligent in those actions.

8. The Council and the Church were each negligent in failing to prevent the injury to the plaintiff. Their officials were grossly negligent in those actions.

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9. The court has jurisdiction of this action in that the tortious actions and acts of negligence took place in Spartanburg County, and involves persons and entities who at the time of the events resided in Spartanburg County.

NATURE OF WRONGDOING

10. At all times pertinent to this complaint, plaintiff had, and was known to have, the pre-existing conditions of both developmental disability and having been sexually abused by James Rhinehart, with access to the plaintiff by James Rhinehart known to the defendants to have come from the plaintiff's participation in Troop 292.

11. James Rhinehart has admitted criminal allegations of sexually molesting various individuals, including the plaintiff. The plaintiff was the first victim of James Rhinehart's to report James Rhinehart's sexual abuse. James Rhinehart was sentenced to prison, having admitted to various acts of sexually abusing minors. One of James Rhinehart's admitted victims was the plaintiff.

12. After plaintiff's report of abuse by James Rhinehardt became known, Troop 292 excluded plaintiff from all participation in Troop 292. By the letter to his father, Oliver Hageman, attached to this complaint as an Exhibit, and incorporated into this complaint pursuant to SCRCF 10(c), Shelby Culbreth, Committee Chairman of Troop 292, informed the plaintiff that he "will no longer be able to participate in any functions that Troop 292 may hold now in the future. That is to include meetings and other outside functions."

13. Pursuant to that letter, plaintiff was in fact excluded from all activities of Troop 292.

14. Plaintiff's exclusion injured the plaintiff and aggravated his known pre-existing

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conditions so as to worsen those conditions.

15. A copy of the Culbreth letter was sent to each defendant, who had supervisory authority over the intentional action by Troop 292 and Shelby Culbreth.

**FOR A CAUSE OF ACTION:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

16. Allegations above are incorporated into this complaint as if fully stated.

17. Plaintiff was the first child to report James Rhinehart's sexual misconduct with plaintiff and other children. Because of plaintiff's report, James Rhinehart was investigated, and criminally prosecuted.

18. Behavior by officials of Troop 292 to punish, by his immediate and permanent exclusion from all Troop 292 activities, a child known to have pre-existing conditions of developmental delays and mental impairments, and in addition to those known pre-existing conditions who was also known to have been sexually abused by James Rhinehart while participating in activities for Troop 292, is atrocious, utterly intolerable in a civilized community, and so extreme and outrageous as to exceed all possible bounds of decency;

19. Troop 292 officials acted with intent to inflict emotional distress or acted recklessly when it was certain or substantially certain such distress would result from their conduct. Plaintiff was known by defendants to benefit from his participation in Troop 292 (apart from the sexually abusive portions of his participation). Plaintiff was known to be otherwise socially isolated except for his participation in Troop 292.

20. Actions by Troop 292 and its officials to report the child who first complained about James Rhinehart's sexual abuse caused the plaintiff to suffer emotional distress.

21. The emotional distress suffered by the plaintiff was so severe that no reasonable

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person, particularly with the known pre-existing conditions the plaintiff had, could be expected to endure it.

22. Troop 292 intended its harm to the plaintiff, and attempted by acting aggressively towards the plaintiff to cover up James Rhinehart's abusive conduct towards children, and to discourage others from reporting James Rhinehart. South Carolina law requires abusive conduct to be reported, and penalizing the child who reports was extreme and outrageous conduct by Troop 292.

23. Stacey Culbreth acted with gross negligence in effectuating the tortious intention of Troop 292 through the letter sent to Oliver Hageman, and as a proximate result the plaintiff was injured, and is entitled to actual and punitive damages in amounts to be assessed by the finder of fact.

**FOR A CAUSE OF ACTION:
NEGLIGENT SUPERVISION**

24. Allegations above are incorporated into this complaint as if fully stated, excepting only allegations of intentional conduct.

25. Defendants other than Troop 292 were negligent, and individual defendants other than Stacey Culbreth were grossly negligent, in failing to counteract the extreme and outrageous conduct of Troop 292.

26. By their inaction, defendants other than Troop 292 and Culbreth permitted the harm to the plaintiff to persist. Each had the authority to counteract the tortious conduct of Troop 292, and was grossly negligent in failing to do so.

27. Each defendant other than Troop 292 and Culbreth knew or should have known that punishing plaintiff for reporting abuse would be injurious to plaintiff. The penalty by Troop

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292 was designed to be injurious.

28. By their inaction, defendants other than Troop 292 allowed the Plaintiff to be excluded. Each was grossly negligent in failing to take action to stop the Plaintiff from being harmed by defendants Troop 292 and Culbreth.

29. Each defendant other than Troop 292 and Culbreth at all times had the capacity to prevent the exclusion of the Plaintiff from Troop 292. Each was grossly negligent in failing to do so.

30. Defendants each had a duty to the plaintiff to prevent him from being penalized for reporting sexual abuse. That duty is imposed by law, as well as existing from the assumed position of each defendant to the plaintiff, and the special circumstances of the plaintiff being known to have the pre-existing conditions alleged.

31. Troop 292 acted intentionally as to plaintiff. Other defendants were grossly negligent as to plaintiff, and those actions and inactions of gross negligence proximately caused harm to the Plaintiff, who was socially isolated and ostracized by the conduct of these defendants.

32. The Plaintiff has developmental and other disadvantages known to defendants, or about which defendants should have known, and was and is ill-equipped to cope with the exclusion created for him by the defendants.

33. Conduct by defendants created harm for the plaintiff, and entitles him to actual and punitive damages to be assessed by the finder of fact.

RIGHT TO JURY TRIAL

34. Plaintiff requests a jury trial of this action.

WHEREFORE, the plaintiff requests relief as follows:

1. Actual and punitive damages as may be determined by the finder of fact, and
2. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Attorneys for the Plaintiff

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State of South Carolina

In The Court of Common Pleas

County of Spartanburg

Case Number 10-CP-42- 2350

Jane Doe, as guardian for John Doe,

Plaintiff,

v.

Doni Rhinehart,

Defendant.

COMPLAINT

For her complaint, the plaintiff alleges:

PARTIES AND JURISDICTION

1. Jane Doe has custody of, and is guardian for, John Doe, a developmentally disadvantaged individual born in May, 1991. At the time of the events which gave rise to this complaint, the Plaintiff was a minor resident of South Carolina. They are each referred to by pseudonym in this action due to the intensely personal nature of the conduct alleged in this complaint. References in this complaint to the Plaintiff refer to John Doe, even though the action is brought by his guardian, Jane Doe.

2. Doni Rhinehart is, or at all times pertinent to this complaint was, a resident of Spartanburg County.

3. This is an action for childhood sexual abuse which occurred at the residence of Doni Rhinehart, among other places, by her spouse. The court has jurisdiction of this action in that the actions and negligence involved took place in Spartanburg County, and involves persons and entities who at the time of the events resided in Spartanburg County.

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NATURE OF WRONGDOING

1. At all times pertinent to this complaint, including at the time of the sexual abuse Doni Rhinehart was married to James Brian Rhinehart. They resided in Spartanburg County.

2. James Rhinehart has admitted criminal allegations of sexually molesting various individuals, including the plaintiff. Acts of molestation occurred in the Rhinehart home. Other acts of molestation occurred in other locations.

3. James Rhinehart was sentenced to prison, having admitted to various acts of sexually abusing minors. One of James Rhinehart's admitted victims was the plaintiff John Doe.

4. When he was a minor, the plaintiff spent the night at the home of James and Doni Rhinehart. The plaintiff also attended boy scout events at their home.

5. Abusive sexual contact between James Rhinehart and the plaintiff occurred during the plaintiff's stay with the Rhineharts.

6. The plaintiff was not the first minor molested by James Rhinehart. Doni Rhinehart knew, or should have known, that James Rhinehart was a pedophile. Doni Rhinehart condoned his sexual conduct with children, and refused to either report it, warn parents about it, or to otherwise protect children from the abuse. Doni Rhinehart negligently supervised the plaintiff during his stays in her home, negligently supervised her husband, and failed to give a proper warning to either the plaintiff or his parents about James Rhinehart.

FOR A CAUSE OF ACTION: NEGLIGENT SUPERVISION

7. Allegations above are incorporated into this complaint as if fully stated.

8. Doni Rhinehart was negligent in supervising the plaintiff and in supervising James Rhinehart while the plaintiff was a guest in her home.

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9. Doni Rhinehart failed to warn either the plaintiff or his parents of James Rhinehart's known propensity to have a sexual interest in children, and she knew or should have known that James Rhinehart posed a severe danger to the Plaintiff that the Plaintiff would be sexually abused while in her home.

10. Doni Rhinehart allowed the Plaintiff to be in the presence of James Rhinehart, knowing that proximity created a significant risk of sexual abuse.

11. By her silence and negligence, Doni Rhinehart allowed the Plaintiff to be sexually abused.

12. Doni Rhinehart failed to take action to stop the Plaintiff from being in the presence of a person likely to sexually abuse him, and in failing to warn him about that danger.

13. Doni Rhinehart at all times had the capacity to warn, and the capacity to prevent the Plaintiff's sexual abuse by her warning and disclosure about James Rhinehart. She also had the capacity to interrupt James Rhinehart's sexual abuse of the Plaintiff, and the capacity to report it, none of which she undertook.

14. Doni Rhinehart had a duty to the Plaintiff to warn her house guests about James Rhinehart's sexual interest in children, and a duty to prevent James Rhinehart from injuring the Plaintiff while he was in her residence. Alternatively, in hosting the Plaintiff, Doni Rhinehart assumed those duties if they were not implicit or explicitly assumed.

15. Doni Rhinehart breached her duties to the Plaintiff.

16. Doni Rhinehart's negligence was a proximate cause of Plaintiff's molestation.

17. At the time of the sexual abuse, the Plaintiff was a minor. As a young child, he lacked legal capacity to consent to intimate sexual contact and did not so consent.

18. Once improper sexual access to him ceased, the Plaintiff attempted to lead a

normal life. The Plaintiff has developmental disadvantages known to Doni Rhinehardt, or about which she should have known, and was and is ill-equipped to cope with the sexual abuse.

19. Doni Rhinehart's negligence also exposed the Plaintiff to increased risk of future harms.

DAMAGES

20. As a direct and proximate result of her negligence, Doni Rhinehart has caused the Plaintiff lasting, severe, and deeply-rooted emotional and mental impairments which inhibit his social and community interactions and his ability to engage in fruitful and productive relationships. Those injuries occurred during his minority and create lasting effects into his majority, and increased risk of injury into the future.

RIGHT TO JURY TRIAL

21. Plaintiff requests a jury trial of this action.

WHEREFORE, the plaintiff requests relief as follows:

1. Actual and punitive damages as may be determined by the finder of fact, and
2. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Attorneys for the Plaintiff

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Jane Doe, as guardian for John Doe,	)	Civil Action No. 2010-CP-42-2349
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANTS' MOTION FOR</u>
	)	<u>SUMMARY JUDGMENT</u>
Boy Scout Troop 292, Spartanburg, SC;	)	
Palmetto Council of the Boy Scouts of	)	
America; St. Margaret's Episcopal	)	
Church; Shelby Culbreth; Jackie	)	
LaFontaine; Brandon Smith; Rob Green;	)	
Roy Cole; Bob Faulks; and Scott	)	
O'Neill,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants Boy Scout Troop 292 ("Troop 292"), Palmetto Council of the Boy Scouts of America, St. Margaret's Episcopal Church, Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob Green, Roy Cole, Bob Faulks, and Scott O'Neill (collectively, the "Defendants"), by and through their undersigned counsel, hereby move for summary judgment on each of the claims set forth in Plaintiff's Complaint. The grounds for this Motion include, but are not limited to, the following:

1. Plaintiff has not and cannot present evidence sufficient to establish a genuine issue of material fact as to her claim for outrage against Defendants Troop 292 and Culbreth because, among other reasons, the uncontroverted evidence establishes that Troop 292 and Culbreth: (a) did not intentionally or recklessly inflict severe emotional distress upon John Doe and were not substantially certain that such distress would result from their conduct, and (b) did

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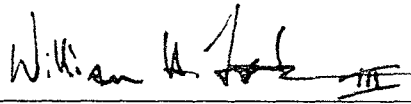
not engage in any conduct which may be reasonably regarded as so extreme and outrageous as to exceed all possible bounds of decency.

2. Plaintiff has not and cannot present evidence sufficient to establish a genuine issue of material fact as to her claim for negligent supervision against all Defendants other than Troop 292 and Culbreth because, among other reasons, the uncontroverted evidence establishes that Troop 292 and Culbreth did not engage in any tortious conduct which those Defendants had a legal duty to prevent.

This Motion is based upon the pleadings and all attachments thereto, the affidavits of Rob Green and Shelby Culbreth attached as Exhibits A and B, respectively, to this Motion, the South Carolina Rules of Civil Procedure, the applicable statutory and case law, evidentiary support, and a memorandum of law to be submitted prior to the hearing on this Motion.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Attorneys for Defendants

February 21, 2012

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Exhibit A

The affidavit of Rob Green appears in the record beginning at page 225

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Exhibit B

The Affidavit of Shelby Culbreth
appears in the Record beginning at
page 227

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Jane Doe, as guardian for John Doe,	)	Civil Action No. 2010-CP-42-2349
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANTS' MEMORANDUM IN</u>
	)	<u>SUPPORT OF MOTION FOR</u>
Boy Scout Troop 292, Spartanburg, SC;	)	<u>SUMMARY JUDGMENT</u>
Palmetto Council of the Boy Scouts of	)	
America; St. Margaret's Episcopal	)	
Church; Shelby Culbreth; Jackie	)	
LaFontaine; Brandon Smith; Rob Green;	)	
Roy Cole; Bob Faulks; and Scott	)	
O'Neill,	)	
	)	
Defendants.	)	
	)	

Defendants Boy Scout Troop 292, Palmetto Council of the Boy Scouts of America, St. Margaret's Episcopal Church, Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob Green, Roy Cole, Bob Faulks, and Scott O'Neill (collectively, the "Defendants"), by and through their undersigned counsel, hereby submit their Memorandum in Support of Motion for Summary Judgment. For the reasons set forth herein, Plaintiff's claims fail as a matter of law, and Defendants are entitled to summary judgment.

FACTUAL BACKGROUND

This case was filed by Plaintiff, Jane Doe, as the purported guardian for John Doe, a twenty-one year old residing in the State of New York. Until early October 2005, John Doe was a member of Boy Scout Troop 292 (the "Troop"), a troop formed to allow special needs children to participate in scouting. Following a regular Troop meeting on either September 27 or October 4, 2005, the Troop's managing committee (the "Troop Committee") made the decision to suspend John Doe from the Troop. (Affidavit of Shelby Culbreth ("Culbreth

Aff.”), attached hereto as **Exhibit A**, at ¶¶3, 4.) The decision was based upon several specific acts of misconduct by John Doe, including his refusal to reimburse the Troop for the cost of popcorn which he was supposed to sell during a Troop fundraising drive, but which he instead admittedly ate, and his entering the vehicle of Troop volunteer Shelby Culbreth (“Culbreth”) without permission. (Id. at ¶3.)

Pursuant to established procedure, the Troop wrote a letter to John Doe’s father informing him of John Doe’s suspension. (Affidavit of Rob Green (“Green Aff.”), attached hereto as **Exhibit B**, at ¶4; Letter to Father of John Doe (the “Letter”), attached hereto as **Exhibit C**.) The Letter was undated, but indicates that John Doe’s suspension was effective as of October 10, 2005. (Letter, **Exhibit C**.) The Letter was prepared for signature by Culbreth, as Troop Committee Chairperson, and was signed on Culbreth’s behalf by LaFontaine, who typed the Letter. (Id.) There is no evidence that any of the remaining named Defendants were involved in the decision to suspend John Doe from participation in the Troop, or in the preparation and sending of the Letter.

On or around October 7, 2005, John Doe reported to a school official that James Rhinehart (“Rhinehart”), the Troop’s Scoutmaster, had sexually abused both John Doe and Rhinehart’s stepson, who also was a member of the Troop. (See October 7, 2005 Incident Report, attached hereto as **Exhibit D**.) After a police investigation resulted in charges against Rhinehart for the abuse of his stepson, Rhinehart plead guilty, and currently is serving a jail sentence. Upon information and belief, Rhinehart has never admitted to, and was not ultimately prosecuted for, the abuse of John Doe.

On April 29, 2010, Plaintiff filed the present lawsuit. In this action, Plaintiff asserts claims against the Troop and Culbreth for intentional infliction of emotional distress based

upon their sending the Letter suspending John Doe from the Troop. (Compl. at ¶¶18-23.) Specifically, Plaintiff contends that the Letter was sent in retaliation for John Doe reporting Rhinehart's alleged abuse. (Id.) Plaintiff also asserts a claim against the remaining Defendants for negligent supervision of the Troop and Culbreth based upon their allowing the Letter to be sent. (Compl. at ¶¶25-30.)¹ However, these claims are entirely without merit, as:

- The uncontroverted evidence establishes that the decision to send the Letter was made in good faith based upon John Doe's prior misconduct as a Troop member. Plaintiff has presented no evidence that Defendants even knew of the alleged abuse at the time the Letter was sent, much less that the Letter was intended to retaliate against John Doe for reporting the alleged abuse;
- Even if the Letter was prompted by John Doe reporting the alleged abuse – which it was not – the act of sending the Letter is wholly insufficient to state a claim for intentional infliction of emotional distress under South Carolina law;
- The record evidence plainly establishes that the Troop's intention in sending the Letter was simply to inform John Doe's father of John Doe's suspension from the Troop, and that the Troop neither intended nor expected to injure John Doe in any way; and
- Because Plaintiff has failed to establish that the Troop and Culbreath acted tortiously in sending the Letter, Plaintiff's derivative claim for negligent supervision against the remaining Defendants also fails as a matter of law.

For these reasons, as explained more fully below, Plaintiff has failed to create a genuine issue of material fact on any of its claims against Defendants, and Defendants are entitled to summary judgment.

¹ Plaintiff has expressly represented that her Complaint does not seek relief for the alleged sexual abuse of John Doe, and contains no cause of action based upon the alleged sexual abuse of John Doe. (Deposition of Jane Doe ("Jane Doe Depo."), excerpts of which are attached hereto as **Exhibit E**, at 172:2-24; 179:3-180:6.)

DISCUSSION

I. Legal Standard

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under S.C. R. Civ. P. 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Id. at 518-519, 595 S.E.2d at 821.

II. Plaintiff Cannot Establish the Elements of Intentional Infliction of Emotional Distress Against the Troop and Culbreth.

Plaintiff alleges a claim for intentional infliction of emotional distress against the Troop and Culbreth based solely upon the Letter to John Doe’s father informing of John Doe’s suspension from the Troop. To state a claim for intentional infliction of emotional distress

under South Carolina law, Plaintiff must demonstrate that: (1) the defendants engaged in conduct that was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (2) the defendants intentionally or recklessly inflicted severe emotional distress or were certain or substantially certain that such distress would result from their conduct; (3) the defendants' actions caused John Doe's emotional distress; and (4) the emotional distress suffered by John Doe was so severe that no reasonable person could be expected to endure it. Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 401, 596 S.E.2d 42, 48 (2004). Here, Plaintiff cannot satisfy the elements of her claim for intentional infliction of emotional distress, and that claim must be dismissed.

A. Plaintiff Has Failed to Establish Extreme or Outrageous Conduct on the Part of the Troop or Culbreth.

The question of whether a defendant's conduct may be reasonably regarded as so extreme and outrageous to permit recovery is one for the trial court, and only where reasonable persons might differ is the question one for the jury. Hawkins v. Greene, 311 S.C. 88, 91, 427 S.E.2d 692, 693 (1993); see also Cosby v. Legal Servs. Corp., 2006 U.S. Dist. LEXIS 96837 at *18-19 (D.S.C. 2007) ("Based on the numerous decisions which have been decided on this causes of action, only an extraordinary set of facts will rise to the level of a tort of outrage claim, and summary judgment is proper if the alleged conduct does not rise to that level.").

To satisfy this element, a defendant is generally required to present proof of "hostile or abusive encounters or coercive or oppressive abuse" by the defendant. Fleming v. Rose, 338 S.C. 524, 538, 526 S.E.2d 732, 740 (Ct. App. 2001). Where evidence is undisputed that the defendant acted in good faith and in a reasonable manner, his conduct cannot be characterized

as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community. Hawkins, 311 S.C. at 91, 427 S.E.2d at 693.

In the present case, Plaintiff claims that the Troop and Culbreth acted outrageously by sending the Letter to John Doe's father suspending him from the Troop in retaliation for his reporting Rhinehart's alleged abuse. (Compl. at ¶¶18-23.) However, Plaintiff has presented absolutely no evidence in support of this wildly speculative theory. Rather, the uncontroverted evidence establishes that the Letter suspending John Doe from Troop activities was prompted solely by specific acts of misconduct by John Doe, and was completely unrelated to John Doe's reporting of Rhinehart's alleged abuse. Because the Troop and Culbreth acted in good faith and in a reasonable manner in sending the Letter, Plaintiff's claim for intentional infliction of emotional distress fails as a matter of law. Furthermore, even if the Letter was prompted by John Doe's reports of alleged abuse – which it was not – it would be insufficient as a matter of law to support a claim for intentional infliction of emotional distress, and summary judgment is required.

1. Plaintiff has Failed to Present any Evidence that the Letter Was Prompted by John Doe's Report of Rhinehart's Sexual Abuse.

The material circumstances surrounding the Troop's decisions to suspend John Doe from Troop activities, and to send the Letter to John Doe's father informing him of the suspension, are not in dispute. The decisions were made by the Troop Committee at a special meeting that took place in either late September or early October, 2005. (Culbreth Aff., Exhibit A, at ¶4.) The meeting was attended by Culbreth, the Troop Committee's Chairperson, along with Troop Committee members Jackie LaFontaine, James Rhinehart, and Doni Rhinehart. (Id.) The decision to suspend John Doe was based solely upon John Doe's

specific acts of misconduct as a Troop member, including his refusal to reimburse the Troop for the cost of popcorn which he was supposed to sell during a Troop fundraising drive, but which he instead admittedly ate, and his entering Culbreth's vehicle without permission. (Id. at ¶3.)²

The Troop Committee previously had been advised by Rob Green, Scout Executive for the Palmetto Council of the Boy Scouts of America (the "Palmetto BSA"), that the suspension of a Troop member should be communicated in writing to the member's parents. (Green Aff., **Exhibit B**, at ¶4.) Therefore, after deciding to suspend John Doe from the Troop, the Troop Committee sent the Letter to John Doe's father informing him of the suspension. (Culbreth Aff., **Exhibit A**, at ¶8.)

At the time the Letter was sent under her direction as Troop Committee Chairperson, Culbreth had no knowledge that John Doe was an alleged victim of sexual abuse by James Rhinehart, or that John Doe had reported any such abuse. (Culbreth Aff., **Exhibit A**, at ¶5.) Culbreth did not learn of John Doe's allegations of sexual abuse until several weeks after the letter was sent. (Id. at ¶6.) Moreover, Plaintiff has presented no evidence that any other member of the Troop Committee (or any named Defendant in this matter) was aware of John Doe reporting Rhinehart's alleged sexual abuse at the time the Letter was sent. (See Father of John Doe Depo., **Exhibit G**, at 217:6-219:19.)

Plaintiff has presented absolutely no evidence to rebut the plain testimony of Culbreth that John Doe's suspension and the Letter were the result of specific acts of misconduct by

² In a statement to the police given on 10/10/05, John Doe's father acknowledged that John Doe had been warned that, "if he did not turn in the money for a popcorn drive they had, he would be kicked out of the club," and that John Doe was "very angry about that." See Investigation Report, attached hereto as **Exhibit F**; Deposition of Father of John Doe ("Father of John Doe Depo."), excerpts attached hereto as **Exhibit G**, at 121:7-16; 203:11-20.) John Doe's father also acknowledged that the money was not paid. (Id., **Exhibit G**, at 207:16-208:14.)

John Doe, and had no relation to John Doe's allegations of abuse by James Rhinehart. Indeed, Plaintiff's self-serving speculation that the Letter was motivated by John Doe's report of abuse is not supported by the testimony of her own witnesses. John Doe testified at deposition that he did not report the alleged abuse until after he received the Letter:

Q: Well, wasn't it that the letter came and you saw that you had been thrown out and that's when you reported him?

A: Yes.

(Deposition of John Doe ("John Doe Depo."), excerpts attached hereto as **Exhibit H**, at Vol. II, 76:24-77:1.) Furthermore, John Doe's father, who first received the Letter, cannot recall whether it was delivered before or after John Doe reported the alleged abuse. (Father of John Doe Depo., **Exhibit G**, at 194:6-11; 202:7-12.) Plainly, if Plaintiff cannot establish that John Doe's allegations of abuse were made before the Letter was received, no jury could reasonably find that the decision to suspend John Doe or send the Letter was based upon those allegations.

In summary, Plaintiff has failed to present any evidence that the decision to send the Letter suspending John Doe from the Troop was in any way related to John Doe reporting Rhinehart's alleged abuse, or even that the Troop Committee was aware of the alleged abuse at the time it sent the Letter. Moreover, Plaintiff has failed to refute the record evidence establishing that the decision to send the Letter was based solely upon John Doe's misconduct as a member of the Troop. Thus, the uncontroverted evidence is that the Troop and Culbreth acted in good faith and for a proper purpose in sending the Letter. Accordingly, they cannot be deemed to have committed the tort of outrage, and are entitled to summary judgment. See Hawkins, 311 S.C. at 91, 427 S.E.2d at 693.

2. The Letter Suspending John Doe from Troop Activities Cannot be Characterized as So Extreme and Outrageous as to Support a Claim for Intentional Infliction of Emotional Distress.

As set forth above, Plaintiff has failed to present any evidence establishing that the Letter was in any way related to John Doe's reports of alleged abuse by Rhinehart. However, even if Plaintiff could demonstrate that John Doe's suspension was prompted by reports of the alleged abuse - which she cannot - the alleged conduct of the Troop and Culbreth still would not rise to the level necessary to support a claim for intentional infliction of emotional distress under South Carolina law.

Initially, the threshold for establishing a claim for intentional infliction of emotional distress under South Carolina law is very high. The case of Doe v. Erskine College, 2006 U.S. Dist LEXIS 35780 (D.S.C. 2006), demonstrates that even extraordinarily callous conduct is insufficient as a matter of law to establish the tort of outrage. In Erskine College, the plaintiff was a female college student who claimed to have been sexually assaulted by a male student in his dorm room. Id. at *3-10. After the plaintiff reported the rape to the college and the local police department, she allegedly encountered resistance and a lack of cooperation from the college, and harassment from the plaintiff and his acquaintances. Id. After a hearing conducted by the school's disciplinary committee, the alleged rapist was found not to have committed sexual assault. Id. at *19. Moreover, both the plaintiff and the alleged rapist were found to have committed sexual misconduct. Id. After the incident, the plaintiff's grades suffered and she became ineligible for several scholarships. Id. at *21-22. The plaintiff eventually attempted suicide. Id.

The plaintiff filed a formal complaint with the Office of Civil Rights, which, after an investigation, found that the college was guilty of several violations, including: (a) failure to follow its own sexual harassment policy; (b) conducting a limited investigation and not timely issuing reports or findings; (c) failing to take prompt and effective action to resolve the complaint subjecting the plaintiff to further harassment by her peers and continued contact with the alleged rapist; and (d) allowing serious charges to remain unresolved for more than nine (9) months. Id. at *22, 23. The plaintiff also filed suit against the college. On her claim for intentional infliction of emotional distress the plaintiff alleged that the college:

- (a) failed to remove the plaintiff from on-campus encounters with her alleged rapist (a dean of the college told the plaintiff that a restraining order against the alleged rapist was not necessary because he “would have a good “heart-to-heart talk” with the boy);
- (b) failed to investigate the plaintiff’s complaint in a timely manner (the dean told the plaintiff’s parents that he had conducted his own investigation, and that the alleged rapist was very bright, very intelligent, and “going places”);
- (c) refused to allow the chief of the college’s department of public safety, whose recommendation that the alleged rapist be required to commute to school from off-campus housing was rejected by the dean, to testify at the hearing held by the school’s disciplinary committee;
- (d) distributed the plaintiff’s medical records, which revealed that the plaintiff had a pelvic inflammatory disease (“PID”), to the school’s disciplinary committee without her consent; and
- (e) wrote a letter upholding the disciplinary committee’s decision in which it was noted that the plaintiff had a sexually transmitted disease (“STD”).

Id. at *42.

Despite these allegations of egregious conduct, the South Carolina district court granted the college’s motion for summary judgment on the intentional infliction of emotional distress claim, finding that the defendant’s alleged conduct failed to rise to the “extreme and outrageous” level. Id. at *42, 43. In so holding, the court recognized that, “[e]ven callous,

offensive or extremely insensitive behavior does not necessarily establish the tort of outrage.”
Id. at *43, fn 18.

The Erskine College decision is consistent with the holdings of other South Carolina courts, which have long recognized that “[f]acts which show extreme insensitivity on the part of the defendant do not necessarily establish the tort of outrage.” Roberts v. Dunbar Funeral Home, 288 S.C. 48, 52, 339 S.E.2d 517, 518 (Ct. App. 1986). For example, the South Carolina Court of Appeals held that a physician could not be liable for intentional infliction of emotional distress where he mistakenly indicated to the plaintiff that the plaintiff’s premature newborn infant was dead, and then, after the infant’s condition improved, allegedly told the plaintiff, “[t]he funniest thing has happened – your baby is alive.” Hawkins, 311 S.C. at 91, 427 S.E.2d at 693; see also Melton v. Medtronic, Inc., 389 S.C. 641, 651, 698 S.E.2d 886, 891 (Ct. App. 2010) (agitated doctor’s refusal to further treat patient shortly before patient’s surgery for implantation of medical device was “arguably insensitive,” but did not rise to the level of outrage); Shipman v. Glenn, 314 S.C. 327, 329, 443 S.E.2d 921, 922 (Ct. App. 1994) (supervisor’s conduct in ridiculing speech impediment of and threatening to fire an employee who had cerebral palsy, while callous and offensive, did not provide sufficient basis for outrage claim); Gattison v. S.C. State College, 318 S.C. 148, 157, 456 S.E.2d 414, 419 (Ct. App. 1986) (in a whistle blower case, facts that demonstrate the defendants treated the plaintiff in an unprofessional and inappropriate manner, but did not include allegations of hostile or abusive encounters or coercive or oppressive conduct did not amount to outrage).

Importantly, in a line of cases which are directly analogous to the present case, South Carolina courts have expressly recognized that allegations of retaliatory discharge are insufficient to state a claim for intentional infliction of emotional distress, regardless of the

extent of mental anguish caused by the alleged retaliation. The first of these cases was Raley v. Darling Shop of Greenville, 216 S.C. 536, 59 S.E.2d 148 (1950). There, the plaintiff alleged her employer threatened her with discharge unless she withdrew a worker's compensation claim she had filed with the South Carolina Industrial Commission. Id. at 538, 59 S.E.2d at 148. When she did not withdraw the claim, the employer allegedly discharged her in retaliation for making the claim. The plaintiff's complaint alleged the employer's conduct was willful, wanton, and malicious with the intent to deprive her of her legal rights, and that she suffered mental anguish as a result thereof. Despite these allegations, the Supreme Court held the plaintiff failed to state a claim. Id. at 538-39, 59 S.E.2d at 149.

Similarly, in Hudson v. Zenith Engraving Co. Inc., 273 S.C. 766, 259 S.E.2d 812 (1979), the plaintiff asserted a claim for outrage based upon alleged retaliatory discharge. The Supreme Court expressly rejected the argument that the act of maliciously and intentionally discharging the plaintiff in retaliation for pursuit of a worker's compensation claim in itself constituted outrageous conduct. The Court noted:

[it] has not been enough that the defendant has acted with an intent which is tortious or even criminal or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

Id. at 770, 259 S.E.2d at 814 (quoting Restatement of Torts (2d), §46, comment (d)). The Supreme Court found that, although the complaint alleged the termination of plaintiff's employment amounted to "outrageous conduct" and stated it was "extreme and outrageous, beyond all possible bounds of decency and utterly intolerable in a civilized community," the claim failed as a matter of law because the plaintiff had not alleged the discharge was

accompanied by any verbal assault or hostile, abusive encounter with the employer's agents.

Id. In other words, the Supreme Court expressly recognized that mere retaliatory discharge, regardless of how it is characterized by a plaintiff, cannot support a claim for outrage.

Finally, in Corder v. Champion Rd. Machinery International Corp., 283 S.C. 520, 324 S.E.2d 79 (S.C. Ct. App. 1984), the South Carolina Court of Appeals held that:

allegations of retaliatory discharge, without more, are not sufficient to state a claim for outrage. While wrongful discharge for any reason is reprehensible conduct and may cause mental anguish to the discharged employee, it is not in itself the kind of extreme conduct which gives rise to a legal claim for outrage. This is apparent from the prior decisions of our Supreme Court.

Id. at 523, 324 S.E.2d at 81 (internal citations omitted).

These cases establish that an employer may not be held liable for outrage based solely upon its termination of an employee, regardless of the retaliatory nature of the termination, and regardless of the resulting mental anguish. In order to state a claim for outrage, a plaintiff must allege verbal assault, or hostile and abusive encounters, separate from the termination.

Applying this precedent to the present case, it is plain that Plaintiff's claim for outrage would fail even if she could prove that the Letter was sent as a result of John Doe's reports of alleged abuse. The suspension of John Doe from the Troop – regardless of the reason for the suspension and despite the severity of the mental anguish alleged to have resulted – is not sufficient to state a claim for outrage. To prove the type of extreme conduct supporting a claim for outrage, Plaintiff also must present evidence of separate verbal assaults, or hostile or abusive encounters, separate from the suspension. Plaintiff has failed to do so, and her claim for intentional infliction of emotional distress fails as a matter of law.

B. Plaintiff Has Failed to Establish that the Letter was Intended to Emotionally Harm John Doe, or that Emotional Harm was Substantially Certain to Result from the Letter.

To recover on her claim for outrage, Plaintiff must show that, in sending the Letter, the Troop and Culbreth intentionally or recklessly inflicted severe emotional distress on John Doe, or were certain or substantially certain that such distress would result. Bergstrom, 358 S.C. at 401, 596 S.E.2d at 48 (2004). Plaintiff has presented absolutely no evidence to satisfy this element. In fact, a review of the Letter establishes that it was designed to minimize any potential negative impact on John Doe stemming from his suspension from the Troop.

Initially, the Letter's contents plainly do not convey that John Doe was being punished for reporting Rhinehart's alleged abuse. The Letter simply states:

This is a letter to inform you that as of 10/10/05, your son [John Doe] will no longer be able to participate in any functions that Troop 292 may hold now or in the future. That is to include meetings and other outside functions.

(Letter, Exhibit C.) The Letter does not reference John Doe's allegations of abuse, and gives no indication that the decision to suspend John Doe from the Troop was related to those allegations. Plainly, the Letter was not intended to give the impression that John Doe was being punished for reporting the alleged abuse.

Moreover, there is no evidence that the Troop or Culbreth ever intended for John Doe to even see the Letter. Per the procedure recommended by the Palmetto BSA, the Letter was addressed and delivered to John Doe's father. (Green Aff., Exhibit B, at ¶4.) Once John Doe's father received the Letter, he alone was responsible for communicating to John Doe that he would no longer be involved with the Troop. Although John Doe's father may have told John Doe that he was being suspended from the Troop because he reported the alleged abuse, that irresponsible and cruel conduct certainly was not attributable to, and could not have been

foreseen by, the Troop or Culbreth.³ (See Father of John Doe Depo., **Exhibit G**, at 215:5-25.)

The record evidence establishes that, in communicating John Doe's suspension, the Troop Committee: (a) determined and followed standard procedure recommended by the Palmetto BSA; (b) prepared a letter, the least intrusive method of communication available; and (c) sent the Letter to John Doe's father, the person best equipped to soften any negative impact from John Doe's suspension from the Troop. In sending the Letter, the Troop Committee intended only to inform John Doe's father of the decision to suspend John Doe, and did not intend nor expect to cause emotional harm to John Doe. (Culbreth Aff., **Exhibit A**, at ¶8.) Plaintiff has failed to present any evidence to establish that the Troop and Culbreth sent the Letter with the intent to emotionally harm John Doe, or knew that such harm was substantially certain to result from the Letter. As such, Plaintiff's claim for intentional infliction of emotional distress fails as a matter of law.

III. Plaintiff's Claim for Negligent Supervision Fails as a Matter of Law.

Plaintiff asserts a claim for negligent supervision against all Defendants other than the Troop and Culbreth. This claim is based upon Plaintiff's unsupported allegation that these Defendants had a duty to prevent the outrageous conduct of the Troop and Culbreth by which John Doe was punished for reporting Rhinehart's alleged abuse. (Compl. at ¶¶25-30.) Therefore, this claim is derivative of Plaintiff's claim for intentional infliction of emotional distress, and Plaintiff cannot prevail without first establishing underlying tortious conduct of the Troop or Culbreth.

³ Notably, John Doe could not read well. John Doe's father admitted that John Doe only learned of the contents of the Letter because his father shared them with John Doe. (Father of John Doe Depo., **Exhibit F**, at 214:14-19.)

As explained above, Plaintiff cannot succeed on its claim for intentional infliction of emotional distress against the Troop or Culbreth. Accordingly, Plaintiff's derivative claim for negligent supervision likewise fails as a matter of law. Further, Plaintiff has offered absolutely no evidence that any of the other named Defendants in this action had any involvement in the challenged decision to suspend John Doe or to send the letter, or that any of these parties were even aware of the Letter. In fact, it would appear the only basis for suing these additional Defendants is that they received a courtesy copy of the subject correspondence. Defendants respectfully submit that more is required to attach liability under the law of South Carolina.

CONCLUSION

Based on the foregoing, there is no genuine issue of material fact concerning any of Plaintiff's claims in this matter. Accordingly, Plaintiff's claims fail as a matter of law, and Defendants are entitled to summary judgment.

Respectfully submitted,

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May 14, 2012

Exhibit A

The affidavit of Shelby Culbreth
appears in the Record beginning at
page 227

Exhibit B

The affidavit of Rob Green appears in the
Record beginning at page 225

Exhibit C

The October, 2005 letter by which Troop 292 expelled John Doe appears in the Record at page 159

Exhibit D

Pages from the October 7, 2005
police Incident Report appear in the
Record beginning at page 160

Exhibit E

Pages from the deposition of Jane Doe appear in the Record beginning at page 177

Exhibit F

A page from the October 12, 2005
police investigative report appears
in the Record at page 162

Exhibit G

Selected pages from the deposition of
Father John Doe appear in the Record
beginning at p. 164

Exhibit H

Selected pages from the deposition of
John Doe appear in the Record
beginning at p. 190

State of South Carolina	)	In The Court of Common Pleas
	)	
County of Spartanburg	)	Case Number 10-CP-42-2349
	)	
Jane Doe, as guardian for John Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Boy Scout Troop 292, Spartanburg, SC,	)	
Palmetto Council of the Boy Scouts of	)	
America, St. Margaret's Episcopal Church,	)	
Shelby Culbreth, Jackie LaFontaine,	)	
Brandon Smith, Rob Green, Roy Cole,	)	
Bob Faulks, and Scott O'Neill,	)	
	)	
Defendants.	)	

Motion to Amend The Complaint

Plaintiff moves pursuant to SCRCP 15 to amend the complaint to state a claim for facts now testified to by the John Doe Plaintiff, and already in the case as part of the present complaint.

A proposed amended complaint is attached.

Counsel sought consent for the proposed amended complaint but had no response from counsel for the defendants.

Respectfully submitted,



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Attorneys for the Plaintiff

State of South Carolina	)	In The Court of Common Pleas
	)	
County of Spartanburg	)	Case Number 10-CP-42-2349
Jane Doe, as guardian for John Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Boy Scout Troop 292, Spartanburg, SC,	)	
Palmetto Council of the Boy Scouts of	)	
America, St. Margaret's Episcopal Church,	)	
Shelby Culbreth, Jackie LaFontaine,	)	
Brandon Smith, Rob Green, Roy Cole,	)	
Bob Faulks, and Scott O'Neill,	)	
	)	
Defendants.	)	
	)	

AMENDED COMPLAINT

For her complaint, the plaintiff alleges:

PARTIES AND JURISDICTION

1. Jane Doe has custody of, and is guardian for, John Doe, a developmentally disadvantaged individual born in May, 1991. He has an IQ of approximately 60. At the time of the events which gave rise to this complaint, the Plaintiff was a minor resident of South Carolina. They are each referred to by pseudonym in this action due to the intensely personal nature of the conduct alleged in this complaint. References in this complaint to the Plaintiff refer to John Doe, even though the action is brought by his guardian, Jane Doe.

2. Boy Scout Troop 292, Spartanburg, SC, at all times pertinent to this complaint was a Boy Scout Troop operating within Spartanburg County and within the rules and policies of the Boy Scouts of America. It is referred to in this complaint as Troop 292. Until he was expelled from it for reporting sexual abuse, the plaintiff was a member of Troop 292, and was in the troop because he had known developmental disabilities.

3. After September, 2005, each defendant knew, or should have known, that plaintiff not only had pre-existing conditions of developmental disability, but also had pre-existing conditions of having been a sexual abuse victim. Plaintiff was known to have been molested by James Rhinehart. James Rhinehart's access to the plaintiff was through the plaintiff's participation in Troop 292.

4. Palmetto Council of the Boy Scouts of America is a local council of the Boy Scouts of America, under whose authority Boy Scout Troop 292 operates, and to which it reports. It is referred to in this complaint as the Council.

5. St. Margaret's Episcopal Church is the sponsor of Boy Scout Troop 292, operating within Spartanburg County. It is referred to in this complaint as the Church. Troop 292 held events at the Church.

6. Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob Green, Roy Cole, Bob Faulks, and Scott O'Neill are each officials with, or supervising, Troop 292. In their respective role they were each involved in the events described in this complaint, and each was grossly negligent in their respective involvement. Their respective actions or inactions all took place in Spartanburg County.

7. This is an action for intentional inflictions of emotional distress as to Troop 292, for negligence as to the Church and Council, and for negligence by all defendants which gave rise to sexual abuse. Defendants knew, or should have known, that the plaintiff had developmental disabilities, and was peculiarly susceptible to the actions taken against him after September, 2005. Defendants each knew, or should have known, that the Boy Scouts prohibit one-on-one contact between adults and youth members, but each failed to comply with the "two deep leadership" standard of the Boy Scouts. As a result, the plaintiff was sexually abused. In

addition, Troop 292 intentionally harmed the plaintiff by actions which constitute intentional infliction of emotional distress. Its officials were grossly negligent in those actions.

8. The Troop, the Council, and the Church were each negligent in failing to prevent the injuries to the plaintiff. Their officials were grossly negligent in those actions.

9. The court has jurisdiction of this action in that the tortious actions and acts of negligence took place in Spartanburg County, and involves persons and entities who at the time of the events resided in Spartanburg County.

NATURE OF WRONGDOING

10. At all times pertinent to this complaint, Plaintiff had, and was known to have, the pre-existing conditions of developmental disability. After the Plaintiff reported that he and another minor troop member were sexually abused by their Scoutmaster, defendants also knew that the plaintiff had been sexually abused by Scoutmaster James Brian Rhinehart, known as Brian Rhinehart. The Defendants each knew that Brian Rhinehart's access to the Plaintiff came from the Plaintiff's participation in Troop 292 and the failure by all Defendants to assure that Brian Rhinehart had no one-on-one contact with the plaintiff.

11. Brian Rhinehart sexually abused the troop member to which he admitted abuse, and the Plaintiff, during periods when Brian Rhinehart was the only adult with each of the boys, or the only adult with both of the boys.

12. Brian Rhinehart has admitted having sexual contact with the other troop member, and entered an Alford plea to criminal allegations of sexually molesting a minor troop member.

13. The Plaintiff was the first victim of Brian Rhinehart's to report Brian Rhinehart's sexual abuse, and the means by which Brian Rhinehart was charged and sentenced to sexual

misconduct with a minor.

14. After the Plaintiff reported sexual abuse, Troop 292 excluded plaintiff from all participation in Troop 292. The individual Defendants failed to use the progressive progressive discipline called for the BSA Guide to Safe Scouting, failed to involve the Plaintiff's parents or grandparents in the supposed dispute they now contend motivated their letter to exclude the Plaintiff from Troop 292.

15. By the letter to the plaintiff's father, attached in redacted form to this amended complaint as an Exhibit, and incorporated into this amended complaint pursuant to SCRCF 10(c), Shelby Culbreth, Committee Chairman of Troop 292, informed the plaintiff that as of October 10, 2005, the Plaintiff "will no longer be able to participate in any functions that Troop 292 may hold now or in the future. That is to include meetings and other outside functions." The letter was hand-delivered to the Plaintiff's home within days of his reporting sexual abuse by his Scoutmaster, and at a time when the Scoutmaster was contending that the Plaintiff was angry for the Scoutmaster's having insisted that the Plaintiff reimburse the Troop for popcorn he had eaten.

16. None of the Defendants can produce any prior correspondence to the Plaintiff, even though the BSA Guide to Safe Scouting states, "Parents of youth members who misbehave should be informed and asked for assistance in dealing with it." The "popcorn theory" is a pretext designed to explain an allegation of sexual abuse by means other than the allegation being true.

17. None of the Defendants can produce any accounting records to substantiate the claim that money was owed to the Boy Scouts.

18. Upon investigation by law enforcement, the other victim the Plaintiff reported

confirmed that he was being sexually abused by the Scoutmaster.

19. Upon confirmation by the other victim the Plaintiff reported, the Scoutmaster elected to acknowledge sexual contact with that victim and enter an Alford plea to that victim. The Scoutmaster Reinhart now denies all sexual abuse of any person, despite his Alford plea and despite his sworn written acknowledgment that he had sexual contact with the other victim.

20. Pursuant to the letter which excluded him after he reported sexual abuse, Plaintiff was in fact excluded from all activities of Troop 292 immediately after he reported sexual abuse by his Scoutmaster.

21. At no point did any of the Defendants reconsider the decision to exclude the Plaintiff from Troop 292, or apologize to him for his exclusion, not even after Scoutmaster Reinhart admitted to sexual contact with the victim that the Plaintiff reported.

22. Plaintiff's exclusion injured the plaintiff and aggravated his known pre-existing conditions so as to worsen those conditions.

23. A copy of the Culbreth letter was sent to each defendant, who had supervisory authority over the intentional action by Troop 292 and Shelby Culbreth.

**FOR A FIRST CAUSE OF ACTION:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(AGAINST TROOP 292 AND DEFENDANT CULBRETH)**

24. Allegations above are incorporated into this complaint as if fully stated.

25. Plaintiff was the first child to report Scoutmaster Rhinehart's sexual misconduct with Plaintiff and another child. Because of Plaintiff's report, Rhinehart was investigated, and criminally prosecuted.

26. Behavior by officials of Troop 292 and Defendant Culbreth to punish, by

immediate and permanent exclusion from all Troop 292 activities, a child known to have pre-existing conditions of developmental delays and mental impairments, and in addition to those known pre-existing conditions who was also known to have reported being sexually abused by Scoutmaster Rhinehart while participating in activities for Troop 292, is atrocious, utterly intolerable in a civilized community, and so extreme and outrageous as to exceed all possible bounds of decency;

27. Troop 292 and Culbreth acted with intent to inflict emotional distress or acted recklessly when it was certain or substantially certain such distress would result from their conduct. Plaintiff was known by Defendants Troop 292 and Culbreth to benefit from his participation in Troop 292 (apart from the sexually abusive portions of his participation). Plaintiff was known to be otherwise socially isolated except for his participation in Troop 292.

28. Actions by Troop 292 and Defendant Culbreth to exclude the Plaintiff, the child who first complained about Scoutmaster Rhinehart's sexual abuse, and to not reverse that decision after Scoutmaster Rhinehart admitted to sexual contact with a troop member, caused the Plaintiff emotional distress.

29. Before he admitted the molestation, Scoutmaster Rhinehart and the Defendants Troop 292 and Culbreth decided on a pretext to justify excluding the Plaintiff from the Troop. The pretext was created by Scoutmaster Rhinehart to try to deflect the report made by the Plaintiff. That pretext included that Plaintiff had misbehaved in particular ways and failed to pay a modest sum for popcorn. The alternative explanations for the Plaintiff's exclusion were a pretext invented to deflect the sexual abuse charge against Scoutmaster Rhinehart.

30. Had the complaints about Plaintiff not been a pretext, Troop 292 and its Defendant officials would have used the graduated methods outlined by the Boy Scouts of

America in its Guide to Safe Scouting to respond to any instance of misbehavior. Defendants failed to involve the Plaintiff's parents or his caretaker grandparents in the supposed misbehavior claims, and failed to alert them to work through the supposed problems, each of which steps are called for by the Guide. That those actions were not taken is in keeping with the problems being a pretext.

31. The emotional distress suffered by the plaintiff was so severe that no reasonable person, particularly with the known pre-existing conditions the plaintiff had, could be expected to endure it.

32. Troop 292 and Defendant Culbreth intended its harm to the Plaintiff, and attempted, by acting aggressively towards the Plaintiff, to cover up Scoutmaster Rhinehart's sexual abuse towards troop members, and to discourage others from reporting Scoutmaster Rhinehart. South Carolina law requires abusive conduct to be reported, and penalizing the child who reports abuse was extreme and outrageous conduct by Troop 292 and Defendant Culbreth that inflicted harm on the Plaintiff.

33. Stacey Culbreth acted with gross negligence in effectuating the tortious intention of Troop 292 through the letter sent to the Plaintiff's father, and aligning the Troop and herself in such a way as to support Scoutmaster Rhinehart's effort to conceal his sexual abuse. Doing so was extreme and outrageous conduct utterly intolerable in a civilized society. As a direct and proximate result of that effort to coordinate with Scoutmaster Rhinehart to keep concealed his sexual abuse of the troop members, the Plaintiff was injured, and the Plaintiff is entitled to actual and punitive damages in amounts to be assessed by the finder of fact.

**FOR A SECOND CAUSE OF ACTION:
NEGLIGENT SUPERVISION**

34. Allegations above are incorporated into this complaint as if fully stated, excepting only allegations of intentional conduct.

35. Defendants other than Troop 292 were negligent, and individual defendants other than Stacey Culbreth were grossly negligent, in failing to counteract the extreme and outrageous conduct of Troop 292 after Scoutmaster Rhinehart admitted to sexual misconduct with a troop member.

36. The Boy Scouts of America "Guide to Safe Scouting" draws on "90-plus years of experience" and applies to "All volunteers participating in official Scouting activities." Preface to the Guide. Each volunteer "should become familiar with the Guide to Safe Scouting." Preface to the Guide.

37. By their inaction, Defendants (other than Troop 292 and Culbreth) permitted the harm to the Plaintiff to persist. Each had the authority to counteract the tortious conduct of Defendants Troop 292 and Culbreth, and each was grossly negligent in failing to do so.

38. According to the Boy Scouts of America, through its "Guide to Safe Scouting," it is important to not retaliate against a child who reports abuse. "How an adult responds to a child when he tries to disclose abuse can influence the outcome of the child's victimization." Defendants breached that duty to the Plaintiff.

39. Each Defendant other than Troop 292 and Culbreth knew or should have known that punishing Plaintiff for accurately reporting abuse would be injurious to Plaintiff. The penalty by Troop 292 and Culbreth was designed to be injurious.

40. By their inaction, particularly after Scoutmaster Rhinehart admitted sexual misconduct with one troop member, Defendants other than Troop 292 and Culbreth allowed the

Plaintiff to be excluded and the harm from the exclusion to be inflicted. Each was grossly negligent in failing to take action to stop the Plaintiff from being harmed by defendants Troop 292 and Culbreth.

41. Each defendant other than Troop 292 and Culbreth at all times had the capacity to prevent the exclusion of the Plaintiff from Troop 292, or to reverse that exclusion. Each was grossly negligent in failing to do so.

42. Defendants each had a duty to the Plaintiff to prevent him from being penalized for reporting sexual abuse, and to avoid each Defendant aligning its efforts with Scoutmaster Rhinehart's efforts to evade responsibility for his sexual abuse. The duty to avoid penalizing a person who reports sexual abuse is imposed by law, as well as being a duty assumed by each Defendant to the Plaintiff through participation in the Boy Scouts, and the special circumstances of the Plaintiff's being known to the Defendants to have the pre-existing conditions alleged above.

43. Troop 292 and Defendant Culbreth acted intentionally to injure the Plaintiff. Other defendants were grossly negligent as to Plaintiff, and those actions and inactions of gross negligence proximately caused harm to the Plaintiff, who was socially isolated and ostracized by the conduct of these Defendants.

44. The Plaintiff has developmental and other disadvantages known to defendants, or about which defendants should have known, and was (and is) ill-equipped to cope with the exclusion created for him by the defendants.

45. Conduct by defendants created harm for the plaintiff, and entitles him to actual and punitive damages to be assessed by the finder of fact.

**FOR A THIRD CAUSE OF ACTION:
NEGLIGENT SUPERVISION**

46. Allegations above are incorporated into this complaint as if fully stated, excepting only allegations of intentional conduct.

47. Each Defendant was negligent, and individual defendants were grossly negligent, in supervising Scoutmaster Rhinehart. Defendants each failed to comply with the Boy Scout rule and policy prohibiting Rhinehart having one-on-one contact with any troop member, and each failed to provide supervision sufficient to provide “two deep leadership” as called for by the Boy Scout Guide to Safe Scouting.

48. The Boy Scouts have adopted these rules and policies and they apply to all volunteers.

49. The reason the Boy Scout adopted these rules and policies is because 90 years of experience has taught the Boy Scouts that [anyone can abuse a child].

50. Troop 292 was negligent in permitting Scoutmaster Rhinehart to be alone with Troop members.

51. Palmetto Council of the Boy Scouts of America was negligent in permitting Troop 292 to operate without assuring that its supervision was sufficient to comply with Boy Scout minimum rules and policies of “two deep leadership” and “no one-on-one contact” between its scoutmaster and the troop members, which are known “barriers to abuse within scouting.”

52. St. Margaret’s Episcopal Church was the sponsor of Troop 292. It was negligent in providing facilities to Troop 292 without any requirement that Troop 292 operate while on its premises while complying with Boy Scout minimum rules and policies of “two deep leadership” and “no one-on-one contact” between its scoutmaster and the troop members, which are known “barriers to abuse within scouting.”

53. Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob Green, Roy Cole, Bob Faulks, and Scott O'Neill were each grossly negligent in participating in the activities of Troop 292 and its sponsor, St. Margaret's Episcopal without complying with the supervision requirements of "two deep leadership" and "no one-on-one contact" between its scoutmaster and the troop members, which are known "barriers to abuse within scouting." The individual defendants failed to comply with the rules and policies which are known to present barriers to abuse within scouting.

54. Sexual abuse by Scoutmaster Rhinehart occurred on the grounds of St. Margaret's Episcopal Church and at other locations.

55. Sexual abuse by Scoutmaster Rhinehart occurred in connection with scouting activities.

56. By their failure to exercise even slight care in complying with the rules and policies of the Boy Scouts of America which were known to present barriers to sexual abuse of troop members, Defendants were grossly negligent.

57. The gross negligence and negligence of the defendants, as alleged in this cause of action, proximately harmed the Plaintiff, and entitles him to actual and punitive damages to be assessed by the finder of fact.

RIGHT TO JURY TRIAL

58. Plaintiff requests a jury trial of this action.

WHEREFORE, the plaintiff requests relief as follows:

1. Actual and punitive damages as may be determined by the finder of fact, and

2. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Attorneys for the Plaintiff

State of South Carolina	)	In The Court of Common Pleas
	)	
County of Spartanburg	)	Case Number 10-CP-42-2349
Jane Doe, as guardian for John Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Boy Scout Troop 292, Spartanburg, SC,	)	
Palmetto Council of the Boy Scouts of	)	
America, St. Margaret's Episcopal Church,	)	
Shelby Culbreth, Jackie LaFontaine,	)	
Brandon Smith, Rob Green, Roy Cole,	)	
Bob Faulks, and Scott O'Neill,	)	
	)	
Defendants.	)	

State of South Carolina	)	In The Court of Common Pleas
	)	
County of Spartanburg	)	Case Number 10-CP-42-2350
Jane Doe, as guardian for John Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Doni Rhinehart,	)	
	)	
Defendants.	)	

Opposition to Motions for Summary Judgment

Plaintiff opposes the motions for summary judgment in these actions.

Viewed in the light most favorable to the Plaintiff, the record in this action supports the causes of actions alleged on the following facts.

These cases arise from acts of sexual abuse by a Boy Scout Scoutmaster and retaliation for reporting it directed at John Doe, a developmentally disadvantaged minor. In October, 2005 John Doe was 14. (Police report shows his DOB as 5-3-1991). Medical records reflect that his IQ is approximately 60. His grandmother is his guardian, and brings these cases on his behalf.

The defendants are, in case 10-CP-42-2350, Doni Rhinehart, an adult volunteer who started Troop 292 for developmentally disadvantaged children (Dickson dep. at p. 121), and the wife of the Scoutmaster who molested John Doe in her residence. The Scoutmaster admitted molesting another troop member (His sworn statement is attached). In case 10-CP-42-2350, the defendants are the Troop (which consisted of developmentally disadvantaged minors, Dickson deposition at p. 121), the Scout "council," known as the Palmetto Council of the Boy Scouts America, that approved the troop and the Scoutmaster; St. Margaret's Episcopal Church (the sponsor of the Troop and where meetings were held and events of abuse occurred), and individuals associated with the Troop and Church who participated in the retaliatory conduct.

Essentially, when the child reported on October 7, 2007 that he and another troop member were being sexually abused, he was immediately expelled from the troop. John Doe testified that he was afraid of the Scoutmaster because he communicated that he owned firearms and implied he could be dangerous. John Doe dep vol. 1 at pages 132 to 133.

The expulsion letter, effective October 10, 2005, was delivered to John Doe's home, addressed to his father, immediately after the abuse was reported. (Dickson

dep at pp. 126 – 129). Being expelled was very upsetting to John Doe (Dickson dep at 126 – 129; Father of John Doe Dep. at 251-252.

Within thirteen days, on October 20, 2005, the other child in the troop (designated as John Doe 2) had confirmed to police that he had indeed been molested by the Scoutmaster (Dickson Dep. at 207), as John Doe 1 had reported on October 7, 2005, and by October 20, 2005, the Scoutmaster had signed a sworn statement which acknowledged that he had sexual contact with John Doe 2 (Sworn statement).

It is undisputed that the Scoutmaster, Brian Rhinehart, entered a guilty plea to lewd act on a minor under North Carolina v. Alford, and is serving a prison sentence over that charge. Even after the Scoutmaster confirmed that he was molesting the troop member, no change was made by any of the Defendants to John Doe's expulsion from the troop.

Instead, the defendants have attempted to develop the alternative theory the Scoutmaster initially advanced when he first responded to the allegations. As the police record shows (NMRS 00186), on October 10, 2005 the Scoutmaster attempted to explain the abuse report from John Doe by assigning to John Doe a motive for his report stemming from money withheld from a popcorn sale fundraiser. The police report states: "He [the Scoutmaster] told the victim [John Doe] that if he did not turn in the money for a popcorn drive they had, he would be kicked out of the club. The victim was very angry about that."

Beverly Dickson knew about the abuse allegation before the police. She called Brian Rhinehart, the Scoutmaster, the same night she heard about the abuse

allegation from John Doe. She talked with him. Scoutmaster Rhinehart made no mention of unpaid popcorn initially, but in a few days he used it to explain the abuse allegations. Dickson Dep. at 157 to 158.

John Doe recalled being accused of taking an \$8 box of popcorn. John Doe Dep. vol 2 at page 184. His parents were not aware of it. (Father of John Doe 1 at pp. 251 – 252, testifying there was no other correspondence or accounting records over any missing “popcorn” money, and that if \$10 was missing the parents could have replaced it). This is also significant because the Boy Scouts require, in the Guide to Safe Scouting, that any misbehavior by a Troop member will be the subject of progressive discipline that will involve the Troop member’s parents. Guide to Safe Scouting at p. 445 (“The unit committee should review repetitive or serious incidents of misbehavior in consultation with the parents of the child to determine a course of action.”). No such steps were taken, in violation of the rules and policies for adult Scout volunteers. No accounting records for the supposedly “missing” money can be located, and no other correspondence related to misbehavior has been produced. Nor are there any minutes of discussing any “missing” money, nor are there any accounting records which reflect any “missing” popcorn money.

Nor did any of the Defendants revise or reconsider the decision to exclude John Doe from the Scouts once it was known that the Scoutmaster admitted molesting the troop member John Doe reported was being molested with him.

There are factual disputes about the retaliatory expulsion from Troop 292 and whether it was in response to the October 5, 2005 report of abuse.

The plaintiff reported four instances of sexual abuse by the Scoutmaster. On three occasions the Scoutmaster had isolated himself with John Doe, on the fourth the Scoutmaster isolated himself with John Doe and the other troop member who the Scoutmaster admitted to abusing. Two of the incidents with John Doe occurred on the grounds of the sponsoring church — once behind the church at the creek, the other time in the parking lot in the Scoutmaster's truck. The other two occurred at the Rhinehart house, once during a scouting event. In each instance, the Scoutmaster enabled one-on-one time with the children he molested, and others permitted it, directly contrary to Boy Scouts of America rules and policies which all adult volunteers are responsible for maintaining. As the Guide instructs, on page 443, "anyone could be a molester."

According to the Guide, at page 443, "the chartered organization is responsible for ensuring that sufficient leadership is provided for all activities." Palmetto Council and the sponsoring church are each responsible to comply with Boy Scout rules and policies, as is the Troop and individual defendants.

In each instance, each defendant failed to follow the Boy Scout's "Two Deep" rule, meaning the Defendants have each failed to provide at all times that two adults would be present with any troop members. In this setting, the Two Deep rule was especially important since each member of this particular scout troop was a developmentally disadvantaged child.

The Two Deep rule obligation was also imposed on Defendant Doni Rhinehart, as she was an adult associated with the scout troop and held scout events

at her home, but as described by John Doe, she permitted John Doe to be isolated with her then husband during those scouting events (and on other occasions), on each occasion violating the Two Deep rule. E.g., John Doe Dep. at pages 168 – 169. Having one-on-one contact is a “known hazard” that the Scouts have identified “through 90-plus years of experience.” Doni Rhinehart ignored that experience.

Neither John Doe nor his guardian was aware of the obligation by Doni Rhinehart to comply with the Two Deep rule, nor was the rule disclosed to them during their respective depositions.

As noted above, Scoutmaster Rhinehart admitted to sexually abusing another scout in the troop. His sworn statement says (mistakes in original):

I, Brian Rhinehart, I have no touch [John Doe’s] penis. I have touched [victim 1’s] penis once in his bedroom, over a year ago. I have told [victim 1] that if he is running around with his boxers on and his penis penis is out I will thump it.

On the one occasion I rubbed his penis, [victim 1] got an erection and no ejaculation.

Summary judgment should be denied. Negligent supervision applies “if the employee intentionally harms another when the employee: (1) is upon the premises of the employer . . . (2) the employer knows or has reason to know that he has the ability to control his employee, and (3) the employer knows or should know of the necessity and opportunity for exercising such control.” E.g., Moore v. Berkeley County School District, 486 S.E.2d 9, 12 (S.C. App. 1998). Each criteria is met on this record. The Scoutmaster has intentionally harmed John Doe and another Troop member. Each of the defendants in both cases is aware, from the Guide to Safe Scouting, that Boy Scout rules and policies prohibit one-on-one contact, yet none of them complies with the prohibit against one-on-

one contact. The rationale for the prohibition is that preventing one-on-one contact is known by the scouts through 90-plus years of experience to form a "barrier" to abuse within scouting.

The Boy Scouts of America own documents reflect the awareness that minimizing childhood sexual abuse calls for the organization to minimize opportunities (Guide at page 443), by eliminating the one-on-one time to "protect members from known hazards." Defendants each ignored the clear policy guidelines and Scout restrictions, failed to follow them, failed to make its Scoutmaster follow them, and failed to monitor the Scoutmaster when he was spending one-on-one time with Troop members. Each defendant knows, or should know, that any of its volunteers establishing one-on-one time poses a risk that a child may be sexually abused, as was the minor plaintiff.

On this record, and its inferences, where the Troop and its sponsor and its Council breached overt rules against one-on-one time with minors that were mandated specifically to protect minors from sexual abuse, there is sufficient basis both for a finding of negligent supervision and a finding of gross negligence by the individual defendants.

Conclusion

Them motions for summary judgment should be denied.

Respectfully submitted,



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Attorneys for the Plaintiff

The Exhibits attached to this pleading appear in the Record at:

December 30, 2005 report of John Doe's IQ from his medical records is at page 163

Pages from the February 8, 2012 Deposition of Beverly Dickson begin at page 213

Pages from the May 19, 2011 Deposition of Father John Doe begin at page 164

Pages from the January 27, 2012 Deposition of John Doe, Vol. 1 begin at page 190

Pages from the February 2, 2012 Deposition of John Doe, Vol. 2 begin at page 201

Redacted page from the October 12, 2005 police Investigative Report is at page 162

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Jane Doe, as guardian for John Doe,	)	Civil Action No. 2010-CP-42-2349
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANTS' MEMORANDUM IN</u>
	)	<u>OPPOSITION TO MOTION TO</u>
Boy Scout Troop 292, Spartanburg, SC;	)	<u>AMEND COMPLAINT</u>
Palmetto Council of the Boy Scouts of	)	
America; St. Margaret's Episcopal	)	
Church; Shelby Culbreth; Jackie	)	
LaFontaine; Brandon Smith; Rob Green;	)	
Roy Cole; Bob Faulks; and Scott	)	
O'Neill,	)	
	)	
Defendants.	)	

Defendants Boy Scout Troop 292, Palmetto Council of the Boy Scouts of America, St. Margaret's Episcopal Church, Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob Green, Roy Cole, Bob Faulks, and Scott O'Neill (collectively, the "Defendants"), by and through their undersigned counsel, hereby submit their Memorandum in Opposition to Plaintiff's Motion to Amend Complaint. As set forth herein, Plaintiff's Motion must be denied, as the proposed amendment would result in extraordinary prejudice to Defendants, and is futile.

I. FACTUAL BACKGROUND

This case was filed by Plaintiff, Jane Doe, as the purported guardian for John Doe, a twenty-one year old residing in the State of New York. Until early October 2005, John Doe was a member of Boy Scout Troop 292 (the "Troop"), a troop formed to allow special needs children to participate in scouting. Following a regular Troop meeting on either September 27 or October 4, 2005, the Troop's managing committee (the "Troop Committee") made the decision to suspend John Doe from the Troop. The decision was based upon several specific acts of

misconduct by John Doe, including his refusal to reimburse the Troop for the cost of popcorn which he was supposed to sell during a Troop fundraising drive, but which he instead admittedly ate, and his entering the vehicle of Troop volunteer Shelby Culbreth (“Culbreth”) without permission. Pursuant to established procedure, the Troop wrote a letter to John Doe’s father informing him of John Doe’s suspension.

On or around October 7, 2005, John Doe reported to a school official that James Rhinehart (“Rhinehart”), the Troop’s Scoutmaster, had sexually abused both John Doe and Rhinehart’s stepson, who also was a member of the Troop. After a police investigation resulted in charges against Rhinehart for the abuse of his stepson, Rhinehart plead guilty, and currently is serving a jail sentence. Upon information and belief, Rhinehart has never admitted to, and was not ultimately prosecuted for, the abuse of John Doe.

On April 29, 2010, Plaintiff filed the present lawsuit, asserting claims against the Troop and Culbreth for intentional infliction of emotional distress based upon their sending the Letter suspending John Doe from the Troop. (Compl. at ¶¶18-23.) Specifically, the Complaint alleges that the Letter was sent in retaliation for John Doe reporting Rhinehart’s alleged abuse. (*Id.*) Plaintiff also asserts a claim against the remaining Defendants for negligent supervision of the Troop and Culbreth based upon their allowing the Letter to be sent. (Compl. at ¶¶25-30.)

Although Plaintiff Jane Doe was aware of potential claims against Defendants for the alleged sexual abuse of John Doe, she consciously chose not to assert such claims for personal reasons relating to her faith. (Deposition of Jane Doe (“Jane Doe Depo.”), attached hereto as **Exhibit A**, at 173:2-23; 178:20-180:13.) The parties have engaged in discovery now for roughly two (2) years.

On February 21, 2012, Defendants moved for summary judgment on all of Plaintiff's claims. A hearing on the Motion was conducted before the Honorable Derham Cole on May 16, 2012. Judge Cole took the Motion under advisement, and to date no order has issued.

Following the hearing on the Motion for Summary Judgment, and more than two (2) years after the case was filed, Plaintiff filed a Motion to Amend the Complaint to assert direct claims against Defendants for the alleged sexual abuse of John Doe. If allowed, this proposed amendment would result in extreme prejudice to Defendants, as it would drastically and fundamentally change the litigation after the completion of discovery and shortly before trial. Furthermore, the proposed amendment is futile, as Plaintiff has no legal standing to assert claims on behalf of John Doe, for whom she apparently has not been appointed legal guardian. Accordingly, and as explained more fully below, Plaintiff's Motion to Amend must be denied.

II. DISCUSSION

A. Legal Standard

Rule 15(a) of the South Carolina Rules of Civil Procedure sets forth the standard for granting motions to amend a pleading. It provides in pertinent part that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires *and does not prejudice any other party*." Rule 15(a), SCRPC (emphasis added). Although leave to amend should generally be "freely given," it should be denied where the proposed amendment would be futile. Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010); Higgins v. Medical Univ. of South Carolina, 326 S.C. 592, 604-05, 486 S.E.2d 269, 275 (Ct. App. 1997).

B. Defendants Would Suffer Extreme Prejudice if the Amendment is Allowed.

This action was filed on April 29, 2010, by Jane Doe, as guardian for John Doe. Plaintiff's Complaint includes causes of action for intentional infliction of emotional distress and negligent supervision. Both of these claims relate only to Defendants' alleged wrongdoing in sending the Letter suspending John Doe from the Troop. (See Compl. at ¶¶18-30.) Although the Complaint references the alleged sexual abuse of John Doe, it does not assert any claims based upon that sexual abuse.

In her deposition on May 20, 2011, Jane Doe testified that, while she believed Defendants were partly responsible for the alleged sexual abuse, she consciously did not assert sexual abuse claims in this litigation for reasons relating to her faith. (Jane Doe Depo., **Exhibit A**, at 173:2-23; 178:20-180:13.) She also was aware of the potential for amending the Complaint to assert such claims, as during the deposition, her attorney advised Defendants' counsel to question her about the abuse "in case she wants me to move to amend." (*Id.* at 179:10-18.) Still, despite her full awareness of the potential claims, Plaintiff waited another year – until May 16, 2012 – to file the present Motion to Amend.

Therefore, Plaintiff consciously elected to proceed in this action for more than two (2) years without asserting claims for sexual abuse. During this time period, the parties completed extensive discovery on Plaintiff's existing claims, Defendants filed their Motion for Summary Judgment on those claims, and the case was set for trial. Only after the May 16, 2012 hearing on Defendants' Motion for Summary Judgment did Plaintiff file the present motion for leave to amend.

If the amendment is allowed at this late stage of the proceedings, Defendants would suffer immense prejudice. For two (2) years, Defendants have structured their defense in this

action around the existing claims, *i.e.*, that they wrongfully sent, or allowed to be sent, the Letter suspending John Doe from the Troop; and on the alleged damages stemming from those claims, *i.e.*, the emotional injury which John Doe allegedly suffered as a result of the Letter. Defendants completed discovery on those alleged claims and damages, and are in the finishing stages of preparing to defend against those claims and damages at trial.

The sexual abuse claims alleged in the proposed amendment are part of an entirely different case. The new claims would revolve around the alleged duty of Defendants to prevent John Doe's sexual abuse. This duty is not implicated in the existing claims concerning the sending of the Letter. Defendants' counsel has devoted no time or effort in this litigation to investigating the extent of this purported duty, to Defendants' efforts to comply with this duty, or to developing the facts of John Doe's alleged abuse in relation to Defendants' purported duties. Furthermore, Defendants have not focused discovery on the alleged emotional injury to John Doe that resulted from the alleged sexual abuse. However, it would reason that such injury would far exceed any that would result from the receipt of a letter. Plainly, the stakes of this litigation would increase exponentially if the proposed amendment is allowed.

To transform this case into a sexual abuse case after the completion of discovery and shortly before trial would result in extreme prejudice to Defendants. Furthermore, there is no justification for allowing the amendment at this late date, as Plaintiff has been aware of the potential claims for over two (2) years and consciously chose not to assert them.¹ Accordingly, Plaintiff's Motion to Amend must be denied.

¹ In fact, Jane Doe has been aware of these potential claims since October 2005, as she claims John Doe reported the alleged abuse to her prior to the involvement of the police on October 7. (Jane Doe Depo., **Exhibit A**, at 255:14-257:10) Jane Doe was also apparently involved in the decision not to pursue the criminal charge against Rhinehart based on this alleged abuse. (*Id.* at 158:23-159:1-.)

C. Plaintiff's Proposed Amendment Would be Futile, as Plaintiff Lacks Standing to Assert the Claims Stated in the Amended Complaint.

As discussed above, the plaintiff in this action, and in the proposed Amended Complaint, is Jane Doe, as guardian for John Doe. However, in her deposition taken on May 20, 2011, Jane Doe revealed that, although she had recently signed some papers related to guardianship, she had not been appointed John Doe's legal guardian. (Jane Doe Depo., **Exhibit A**, at 11:2-11.) To this date, Jane Doe has presented no evidence that she has been actually been appointed John Doe's legal guardian for this or any purpose.

In fact, at the current time it would not be possible for Jane Doe to serve as John Doe's legal guardian. At all times relevant to this litigation, Jane Doe has lived in Gowensville, South Carolina. (*Id.* at 45:3-7.) At the time of his deposition in January 2012, John Doe resided in Elmira, New York, where he had lived for over a year. (Deposition of John Doe ("John Doe Depo."), attached hereto at **Exhibit B**, at Vol. I, 9:1-11:16.) Upon information and belief, John Doe still lives in New York. There is no evidence that Jane Doe is supporting John Doe or otherwise functioning in the capacity of his guardian.

John Doe was born on May 3, 1991, and, therefore, is twenty-one (21) years of age. (*Id.* at 11:10-13.) Because John Doe has achieved the age of emancipation (18 years), Jane Doe has no legal right to act in a representative capacity for John Doe, including filing and maintaining an action for him in this court, unless she has been appointed his legal guardian. *See* 62-5-312 (explaining that legally appointed guardian "has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child"). Without proof of legal guardianship, Jane Doe has no standing to assert the proposed claims on behalf of John Doe. Jane Doe has failed to present an Order of Appointment or any other evidence that she has been appointed John Doe's legal guardian. (*See* S.C. Code Ann. §§ 62-5-303 and -304 (providing

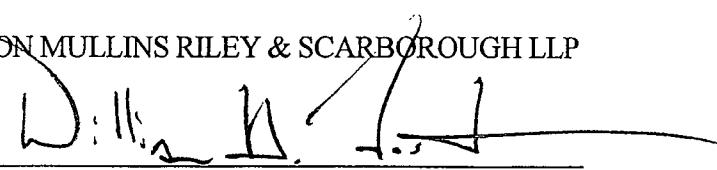
procedure for appointment of legal guardian).) Accordingly, the proposed Amended Complaint is futile, and Plaintiff's Motion to Amend the Complaint must be denied.

III. CONCLUSION

Based on the foregoing, Plaintiff's proposed amended Complaint would be extremely prejudicial to Defendants, and would be futile. Accordingly, Plaintiff's Motion to Amend the Complaint must be denied.

Respectfully submitted,

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Attorneys for Defendants

July 17th, 2012

Exhibit A

Pages from the deposition of Jane Doe
appear in the Record beginning at page
177

Exhibit B

Pages from the deposition of John Doe,
Vol. 1, appear in the record beginning at
page 190

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Jane Doe, as guardian for John Doe,	)	Civil Action No. 2010-CP-42-2349
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANTS' SUPPLEMENTAL</u>
	)	<u>MEMORANDUM IN OPPOSITION</u>
Boy Scout Troop 292, Spartanburg, SC;	)	<u>TO MOTION TO AMEND</u>
Palmetto Council of the Boy Scouts of	)	<u>COMPLAINT</u>
America; St. Margaret's Episcopal	)	
Church; Shelby Culbreth; Jackie	)	
LaFontaine; Brandon Smith; Rob Green;	)	
Roy Cole; Bob Faulks; and Scott	)	
O'Neill,	)	
	)	
Defendants.	)	
	)	

At oral argument before the Court Wednesday, July 18, 2012, counsel for Plaintiff Jane Doe sought to excuse Jane Doe's admitted decision not to include a claim for alleged sexual abuse in this action on: (1) his initial belief that John Doe would be unable to assist in the proof of a claim involving sexual abuse (which he claimed was only changed when he read John Doe's deposition from late January 2012) and (2) Jane Doe's alleged desire to protect John Doe from having to testify regarding the alleged sexual abuse. Plaintiff offered no other explanation for this decision, or the delay in taking any action to amend her Complaint until the case was more than two (2) years old, and after Defendants had completed discovery, moved for and argued for summary judgment on the only claims before the Court.

Unfortunately, Plaintiff's proffered grounds are plainly and demonstrably false.

Attached as Exhibit A to this Supplemental Memorandum please find Jane Doe's pending Complaint against Doni Rhinehart, the now deceased wife of James Brian Rhinehart (the alleged abuser of John Doe in this case), filed simultaneously (i.e., the very same day)

with the present action. This Complaint-filed by the *same* Jane Doe Plaintiff, on behalf of the *same* John Doe, at the *same* time, by the *same* counsel-seeks damages from Ms. Rhinehart based solely upon the alleged sexual abuse by Brian Rhinehart. Thus, Plaintiff's argument to the Court that her Motion to Amend is based on some "sudden" revelation that John Doe can testify in support of a sexual abuse claim is nothing more than a ruse and a lie.

Gamesmanship and lack of candor to the Court should not be condoned or rewarded. Plaintiff's Motion to Amend the Complaint must be denied.

Respectfully submitted,

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Attorneys for Defendants

July 19, 2012

Exhibit A

The Complaint appears in the Record beginning at page 22.

The State of South Carolina
In The Court of Appeals

Appeal from Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge

Case No. 10-CP-42-2349

Jane Doe, as guardian for John Doe, ... Appellant

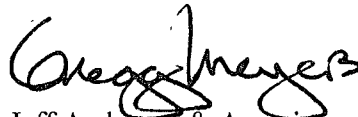
v.

Boy Scout Troop 292, Spartanburg SC; Palmetto Council of the Boy Scouts of America; St.
Margaret's Episcopal Church; Shelby Culbreth; Jackie LaFontaine; Brandon Smith; Rob Green;
Roy Cole; Bob Faulks; and Scott O'Neill, ... Respondents

Notice of Appeal

Plaintiff Jane Doe as guardian for John Doe hereby appeals an order of the Honorable J.
Derham Cole dismissing this action by grant of a motion for summary judgment. Notice of the
order applicable to each case was received by counsel on November 5, 2012. A copy of the
order is enclosed with this Notice.

Respectfully submitted,



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Other counsel of Record:

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Attachment
Order Filed November 1, 2012
9 pages

A copy of the November 1, 2012 order granting summary judgment appears in the Record beginning at page 12.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appeal 2012
Case No. 10-CP-42-2349

Jane Doe, as guardian for John Doe.....Appellant

v.

Boy Scout Troop 292, Spartanburg SC; Palmetto Council of the Boy Scouts of America;
St. Margaret's Episcopal Church; Shelby Culbreth; Jackie LaFontaine; Brandon Smith;
Rob Green; Roy Cole; Bob Faulks; and Scott O'Neill..... Respondents

MOTION TO DISMISS

Pursuant to Rules 240 and 260 of the South Carolina Appellate Court Rules, Respondents Boy Scout Troop 292 (the "Troop"), Palmetto Council of the Boy Scouts of America, St. Margaret's Episcopal Church, Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob Green, Roy Cole, Bob Faulks, and Scott O'Neill (hereinafter "Respondents") hereby move to dismiss the above-captioned appeal filed by Appellant Jane Doe, as guardian for John Doe ("Appellant").

Appellant has premised her appeal wholly upon arguments either raised for the first time to this Court or expressly abandoned before the trial court. Appellants' arguments are thus not preserved for appeal as a matter of law, and this Court should dismiss her appeal in its entirety. *Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 510-

11, 598 S.E.2d 712, 715 (2004); *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 625, 503 S.E.2d 471, 478-79 (1998).

Procedural Background

Appellant filed this action on April 29, 2010, asserting a claim against Respondents Troop and Culbreth for intentional infliction of emotional distress ("outrage") based upon their sending a letter to John Doe's father suspending John Doe from the Troop. (Compl. ¶¶ 18-23, attached as Exhibit A.)¹ Specifically, Appellant claimed the letter was purportedly sent in retaliation for John Doe reporting alleged sexual abuse by a Scoutmaster for the Troop, Brian Rhinehart. (*Id.*) Plaintiff also asserted a claim against the remaining Respondents for negligent supervision based upon their allowing the letter to be sent. (*Id.* ¶¶ 25-30.)

Critically, however, Appellant testified that she had deliberately chosen *not* to bring a claim based on the alleged sexual abuse against the above listed Respondents and that her Complaint did not seek any damages based on the alleged abuse. (Jane Doe Dep. 179:3-12, May 20, 2011, cited excerpts attached as Exhibit B.) On or about the same date Appellant commenced this civil action, Appellant filed a Complaint against Doni Rhinehart, Brian Rhinehart's ex-wife, claiming that she was negligent in allowing John Doe to be sexually abused in her home and seeking damages for the alleged sexual abuse. (Rhinehart Compl. ¶¶ 8, 20, attached as Exhibit C.)

¹ The letter states:

This is a letter to inform you that as of 10/10/05, your son [John Doe] will no longer be able to participate in any functions that Troop 292 may hold now or in the future. That is to include meetings and other outside functions.

(Letter from Troop to John Doe's father, attached as Ex. D.)

On February 21, 2012, Respondents filed a motion for summary judgment seeking the dismissal of Plaintiff's Complaint. (Resp't Mot. Summ. J. 1, attached as Exhibit E.) On May 14, 2012, Respondents filed their supporting memorandum of law, arguing that the uncontroverted evidence showed the decision to send the letter to John Doe's father was made in good faith and based solely on John Doe's misconduct as a Troop member. (Resp't Mem. Supp. Summ. J. 3, 6-8, attached as Exhibit F.) Respondents further noted that there was no evidence that the named Defendants [Respondents in this matter] were even aware of John Doe's alleged complaint when the letter was sent. (*Id.* at 7-8.) In the alternative, Respondents argued that even if the letter had been sent in retaliation for John Doe's report of sexual abuse—which was not the case—the act of sending the letter is wholly insufficient to state a claim for intentional infliction of emotional distress under South Carolina law. (*Id.* at 9-13.)

Respondents also argued that in sending the letter, the Troop Committee intended only to inform John Doe's father of the decision to suspend John Doe, and thus did not intend nor expect to cause emotional harm to John Doe. (*Id.* at 14.) Finally, Respondents argued that Appellant's failure to establish the underlying negligence claim rendered her derivative claim for negligent supervision deficient as a matter of law. (*Id.* at 15-16.)

The same day Respondents filed their memorandum in support of summary judgment, Appellant's counsel filed a Rule 56(f) affidavit opposing both Respondents' Motion and a Motion filed by Ms. Rhinehart's estate, and claimed Appellant needed additional discovery to oppose these motions. (Meyers Aff. ¶¶ 4, 6, attached as Exhibit G.) Specifically, Appellant sought production of minutes of Troop committee meetings and accounting records she believed would bolster her contention that the "real"

motivation for Respondents in sending the letter was retaliation. (*Id.* ¶ 6.) Appellant also sought to introduce “evidence” of various Boy Scout policies and noted an intent to file a motion to amend her Complaint. (*Id.* ¶¶ 9, 10-11.)

At the hearing on May 16, however, Appellant expressly *withdrew* her objection to the alleged lack of discovery on the record:

MR. FOSTER: . . .

I wanted to address before we get into the substance of our motion some concerns that were expressed by my colleague, Mr. Meyers, that somehow there was discovery he needed to respond to our motion for summary judgment. Your Honor, we – we think that’s inaccurate. He referenced in correspondence to – to me.

MR. MEYERS: Bill, if I might, I think this has just kinda gone by the wayside.

MR. FOSTER: Okay.

MR. MEYERS: I got responses from him, you know, about a day ago, and I was able last night to try to use them. So I think I’m good to go.

MR. FOSTER: Fair enough.

(Summ. J. Hr’g Tr. 3, May 16, 2012, attached as Exhibit H.) Appellant also apparently provided the Court a document entitled “Opposition to Motions for Summary Judgment,” but it does not appear that this pleading was ever filed with the Court. (Appellant’s Opposition, p. 1, attached as Exhibit I.) After hearing from each party, the trial court took Respondents’ Motion under advisement.

On October 29, 2012, the trial court issued an order granting Respondents’ Motion in its entirety. (Opinion, p. 1, attached as Exhibit J.) In so doing, the court found as an initial matter that Appellant had failed to offer substantial evidence to rebut Respondents’ contention that the decision to send the letter was made in good faith and based solely upon John Doe’s misconduct. (*Id.* at 5-6.) The court also found:

Assuming for purposes of providing Plaintiff all deference at this stage, this Court finds that his claim for outrage *still* fails as a matter of law.

Even if Plaintiff were able to show that the decisions to suspend John Doe from the Troop and to send the Letter were, in fact, retaliation for John Doe's reports of alleged abuse by Rhinehart, no jury could reasonably find such conduct to be sufficiently extreme or outrageous to give rise to a claim for intentional infliction of emotional distress.

(*Id.* at 6.) Citing the extensive precedent from this Court and the South Carolina Supreme Court establishing the very high threshold for establishing the tort of outrage, the trial court noted the lack of any allegation of extreme or outrageous conduct by Respondents apart from or accompanying the letter and held that Appellant's claim failed as a matter of law. (*Id.* at 6-9.) The trial court also dismissed Appellant's derivative claim of negligent supervision, finding that the lack of any underlying tort rendered that claim moot. (*Id.* at 10.)

Appellant failed to file a motion for reconsideration pursuant to Rule 59 or otherwise challenge the trial court's opinion below. Instead, Appellant filed the instant appeal, arguing for the *first* time as follows:

- (1) the trial court err [sic] in applying adult standards to a case involving a fourteen (14) year old developmentally disadvantaged Boy Scout who had witnessed sexual abuse of one Troop member and had himself been sexually abused;
- (2) the trial court erred in failing to construe the Record in the light most favorable to the Appellant and by applying two incorrect legal standards; and
- (3) the trial court erred in granting summary judgment on a novel question of law before discovery was complete, while a motion to amend was pending, and in failing to apply the "as is just" standard of SCRCF 56(f).

(Appellant's Br. 13-17.) Unfortunately for Appellant, *none* of these arguments were raised to the trial court and, therefore, the issues are not properly preserved for review by this Court. The summary judgment ruling of the trial court is the law of the case and the

Appellant cannot maintain this appeal due to his failure to raise the issues and arguments to the trial court that he now seeks to bring to this Court.

ARGUMENT

In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal. *Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 510-11, 598 S.E.2d 712, 715 (2004) (stating that it is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court). As the Supreme Court has reasoned:

Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve - intentionally or by chance - in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *see also Ellie, Inc. v. Micchichi*, 358 S.C. 78, 102-03, 594 S.E.2d 485, 498 (Ct. App. 2004).

Even had Appellant raised the issues, the trial court did not address them in his order. Thus, similarly, an issue not ruled upon by the trial judge is not preserved for appeal. *Harkins v. Greenville County*, 340 S.C. 606, 620, 533 S.E.2d 886, 893 (2000); *I'On, L.L.C.*, 338 S.C. at 422, 526 S.E.2d at 724 (emphasizing the "long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments"). When an issue is not explicitly ruled on in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appeal.

Shealy v. Aiken County, 341 S.C. 448, 459-60, 535 S.E.2d 438, 444 (2000) (explaining that a trial judge's general ruling is insufficient to preserve specific issue for appellate review; where trial judge does not explicitly rule on argument raised, and no Rule 59 motion filed, appellate court may not address the issue); *Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 85, 529 S.E.2d 6, 9 (2000) (holding that constitutional issue was not preserved for appellate review because the lower court failed to rule on the issue and appellant did not raise the omission in its Rule 59 motion). Rulings not challenged below or in a proper appeal are the law of the case. *See Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970).

Further, it is well-established that an issue conceded in the trial court cannot be argued on appeal. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998). Similarly, where an objection is expressly withdrawn, it cannot be raised on appeal. *Rosamond Enters., Inc. v. McGranahan*, 278 S.C. 512, 513, 299 S.E.2d 337, 338 (1983) (dismissing appeal because the sole issue presented was based upon an objection that was expressly withdrawn during the proceedings below); *see also Pinckney v. Pettijohn Builders*, 289 S.C. 405, 408, 346 S.E.2d 533, 534 (Ct. App. 1986) (explaining that where counsel states at trial that he has no objection to a specific aspect of a charge, he may not argue on appeal that the charge was erroneous).

Applying these well-established principles to the appeal at hand leaves no doubt but that Appellant has failed to present any cognizable issues on appeal.

1. Appellant's first argument was never raised below.

In her first issue on appeal, Appellant claims the trial court erred by applying an "adult" standard to her outrage claim. (Appellant's Br. 13.) Appellant contends her case

presents a novel issue in that she is unaware of any prior case in which adults allegedly retaliated against a child. (*Id.*) Given John Doe's age at the time in question (14) and his developmental disadvantages, Appellant claims the trial court erred in not adjusting the standard for outrage based on his age, intelligence and developmental disadvantages. (*Id.* at 15.)

Setting aside the obvious legal flaws inherent in Appellant's argument, Respondent submits it is crystal clear that she never raised this "novel" legal theory below. Indeed, a review of the Rule 56(f) affidavit (including attachments), the unfiled Opposition to Motions for Summary Judgment, and the Appellant's arguments at the May 16, 2012 hearing before the trial court shows no reference to any adjusted legal standard. Further, had Appellant wished to assign error to the trial court's failure to apply, rule upon, or mention this "adjusted" standard, she had every opportunity to do so in a Rule 59 motion. Appellant failed to do so because she did not raise it at all, and it is improper for her to ask this Court to pass judgment on the trial court's opinion based on arguments never presented below. To do so would ignore this Court's and the South Carolina Supreme Court's long-standing issue preservation jurisprudence.

2. Appellant's argument that the trial court excluded circumstantial evidence of intent is both incorrect and not preserved.

Appellant also claims that the trial court erred in "excluding circumstantial evidence of intent" with regard to Respondent's alleged knowledge of John Doe's complaint of abuse and corresponding intent to retaliate against John Doe by sending the subject letter. (Appellant's Br. 13, 16.) The trial court, however, construed all evidence in favor of Appellant. Furthermore, before the trial court, Appellant failed to specifically

identify the alleged circumstantial evidence at issue, and the record is utterly devoid of either (a) a ruling by the trial court excluding the evidence now cited by Appellant or (b) any motion to alter or amend by the Appellant to challenge the purported exclusion of such evidence by the trial court. Thus, to the extent Appellant intends to base her appeal on this “evidentiary” issue, she is barred from doing so. *See Jamison v. Ford Motor Co.*, 373 S.C. 248, 260, 644 S.E.2d 755, 762 (Ct. App. 2007) (“The failure to make a proffer of excluded evidence will preclude review on appeal.”); *see also State v. Roper*, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) (explaining that a reviewing court may not consider error claimed in the exclusion of testimony unless the record fairly shows what the rejected testimony would have been).

Respondent further notes that Appellant’s argument is actually contradicted on the face of the Order, as the trial court clearly based its decision on the *assumption* that Respondents sent the letter in retaliation for having reported Rhinehart’s alleged sexual abuse. (Exhibit J. – Opinion, p. 6.) Accordingly, Appellant’s argument that the lower court erred in excluding some unspecified circumstantial evidence of intent is both procedurally barred and simply, plainly false.

3. Appellant’s argument that the trial court erred by applying the standard of proof for claims unaccompanied by physical injury was never raised below and actually contradicts Appellant’s representations to the trial court.

In her second argument, Appellant claims the lower court erred by applying an allegedly heightened standard of proof for outrage claims unaccompanied by physical

injury. (Appellant's Br. 16.)² Plaintiff apparently contends some lesser burden of proof should apply because John Doe was also a victim of sexual abuse by Rhinehart. (*Id.*)

The record below, however, is devoid of (a) any argument by Appellant that the trial court improperly applied some heightened standard to her claim, (b) any argument by Appellant that a lesser or different standard should be applied, or (c) any argument by way of a Rule 59 motion by Appellant regarding the standard applied by the lower court in its order. Indeed, Appellant's argument *contradicts* her own admission in the record below that she had deliberately chosen *not* to bring a claim based on the alleged sexual abuse and that her Complaint did not seek any damages based on the alleged abuse. (Exhibit B. - Jane Doe Dep. 179:3-12, May 20, 2011.) Appellant should not be allowed to fashion issues from whole cloth for the first time on appeal, and the above arguments must be dismissed. See *Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 737 S.E.2d 601, 612 n.11 (2013) ("Appellant may not argue a different position on appeal."); *McLeod v. Starnes*, 396 S.C. 647, 657, 723 S.E.2d 198, 204 (2012) ("A party may not argue one ground at trial and an alternate ground on appeal."); *McClurg v. Deaton*, 395 S.C. 85, 86 n.1, 716 S.E.2d 887, 887 n.1 (2011) ("Issue preservation requires that the question presented to the appellate court 'must first have been fairly and properly raised in the lower court and passed upon by that court.'").

4. Appellant cannot base her appeal on an alleged lack of discovery as she waived this argument on the record below.

Appellant's final argument is that the trial court erred in ruling on her "novel" claim without regard to her Rule 56(f) affidavit and claim of incomplete discovery

² Respondent is compelled to note that Appellant's argument contradicts her position in the record below that she had deliberately chosen *not* to bring a claim based on the alleged sexual abuse and that her Complaint did not seek any damages based on the alleged abuse.

responses. (Appellant's Br. 17.) Appellant also apparently contends that the trial court erred in failing to continue Respondents' motion to allow for the additional discovery responses to be provided and in failing to review the proposed Amended Complaint. (*Id.* at 18.) Appellant's duplicitous arguments must be rejected.

As noted above, Appellant's response to Respondents' Motion was largely in the form of a Rule 56(f) affidavit from her counsel, Greg Meyers. Among other things, the affidavit claimed Appellant needed additional discovery to respond to both Respondent's motion for summary judgment as well as a motion for the same relief filed in the Rhinehart case. (Exhibit G. - Meyers Aff. ¶ 4.) However, Appellant expressly *withdrew* this very argument on the record before the trial court.

MR. MEYERS: Bill, if I might, I think this has just kinda gone by the wayside.

MR. FOSTER: Okay.

MR. MEYERS: I got responses from him, you know, about a day ago, and I was able last night to try to use them. So I think I'm good to go.

MR. FOSTER: Fair enough.

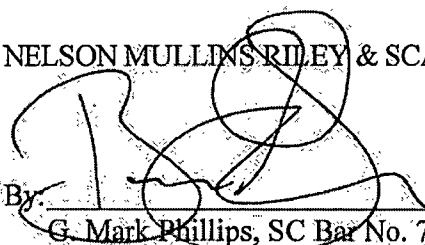
(Exhibit H. - Summ. J. Hr'g Tr. 3.) Having assured the trial court that her alleged discovery concerns had been addressed (and cutting off Respondents' arguments on the issue as no longer necessary), Appellant cannot revive this argument now. Indeed, this would represent the very sort of gamesmanship the rule of issue preservation is intended to foreclose. *See I'On, L.L.C.*, 338 S.C. at 422, 526 S.E.2d at 724 ("It prevents a party from keeping an ace card up his sleeve -- intentionally or by chance -- in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.").

Finally, Plaintiff cannot ask this Court to consider the trial court's alleged "failure" to consider her proposed Amended Complaint as grounds for appeal. (Appellant's Br. 18.) Appellant's motion to amend was filed *after* the trial court's May 16, 2012, hearing on Respondents' motion for summary judgment. (See File-Stamped Appellant's Motion to Amend Compl. at 1, attached as Exhibit K.) Thus, Appellant's motion to amend was not before the trial court when it undertook consideration of the summary judgment motion. Moreover, had Appellant wished to argue that the trial court's opinion was flawed for an alleged lack of consideration of her proposed Amended Complaint, she was required to preserve this issue by filing a timely Rule 59 motion to reconsider. Appellant failed to do so, and is barred from raising this issue now. See *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (finding issue not preserved for appellate review where lower court did not rule on the issue, and the party failed to make a Rule 59 motion asking the lower court to rule on the issue); *Halbersberg v. Berry*, 302 S.C. 97, 104, 394 S.E.2d 7, 12 (Ct. App. 1990) (holding an issue not explicitly ruled on by lower court was waived for appellate review where omission was not brought to trial court's attention through the proper motion).

Conclusion

For the foregoing reasons, Respondents respectfully request that the Court dismiss this appeal in its entirety.

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March 25, 2013

Exhibit A

The Complaint appears in the Record
beginning at page 22.

Exhibit B

Pages from the deposition of Jane
Doe appear in the Record beginning
at page 177

Exhibit C

The Complaint in Doe v Rhinehart
appears in the Record beginning at
page 29.

Exhibit D

The October, 2005 letter by which
Troop 292 expelled John Doe appears
in the record at page 159

Exhibit E

The Defendants' Motion for Summary Judgment appears in the Record beginning at page 34.

The attachments to the Defendants' Motion for Summary Judgment are referenced in the Record beginning at page 36 and below.

The attachments to the Defendants' Memorandum in Support of the Motion for Summary Judgment are referenced in the Record beginning at page 54 and below.

Exhibit A

The affidavit of Shelby Culbreth and its Exhibit A, the October 2005 Troop 292 expulsion letter, appears in the Record beginning at page 227

FILED
CLERK OF COURT
SHELBY COUNTY
2012 MAY 17 AM 8:38
M. HOPE BLACKLEY

Exhibit B

The affidavit of Rob Green appears in
the Record beginning at page 225

FILED
CLERK OF COURT
JULY 17 AM 8:38
M. HOPE BLACKLEY

Exhibit C

The October, 2005 letter by which Troop 292 expelled John Doe appears in the record at page 159

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SPRINGFIELD COUNTY
2012 MAY 17 AM 8:38
M. HOPE BLACKLEY

Exhibit D

The October 7, 2005 police Incident Report appears in the Record beginning at page 160

FILED
CLERK OF COURT
JANUARY COUNTY
MAY 17 AM 8:38
M. HOPE BLACKLEY

Exhibit E

Pages from the deposition of Jane Doe
appear in the Record beginning at page
177

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CLERK OF COURT
ST. LOUIS COUNTY
2012 MAY 17 AM 8:38
M. HOPE BLACKLEY

Exhibit F

The October 12, 2005 police
Investigation Report appears in the
Record at page 162

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CLERK OF COURT
SPARTANBURG COUNTY
2012 MAY 17 AM 8:39
M. HOPE BLACKLEY

Exhibit G

Pages from the deposition of Father Doe
appear in the Record beginning at page
164

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TREASURE COUNTY
2012 MAY 17 AM 8:39
M. HOPE BLACKLEY

Exhibit H

Pages from the deposition of John Doe, Vol. 2
appear in the Record beginning at page 201

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SPRINGFIELD COUNTY
2012 MAY 17 AM 8:39
M. HOPE BLACKLEY

Exhibit G

The affidavit of plaintiff's counsel pursuant to SCRCP 56f, and its attachments, appear in the Record beginning at page 231. The Exhibit designation is a duplicate

Exhibit H

The transcript of the May 16, 2012 hearing
appears in the Record beginning at page 129

Exhibit I

The Plaintiff's Opposition to the Motion for Summary Judgment and its attachments appear in the record beginning at page 76.

Exhibit J

The order of November 1, 2010 granting summary judgment appears in the Record beginning at page 12.

Exhibit K

The Motion to Amend the Complaint appears
in the Record beginning at page 62.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
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4 Jane Doe as Guardian for)
John Doe,)
5 Plaintiff,) TRANSCRIPT OF RECORD
2010-CP-42-2349
6 -vs-)
7 Boy Scout Troop, 292,)
et al,)
8 Defendants.) May 16, 2012
Spartanburg, South Carolina
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B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE

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

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WILLIAM HARRELL FOSTER, ESQUIRE
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Linda D. Moffitt
Circuit Court Reporter

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INDEX

Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: This is Doe vs. Boy Scout Troop 292, et
2 al. Defendant's motion for summary judgment.

3 MR. FOSTER: Yes, sir, Your Honor.

4 THE COURT: Okay. Are you ready to proceed?

5 MR. FOSTER: Yes, sir. May it please the Court. Bill
6 Foster for the defendants.

7 Your Honor, this is a difficult case. It's not
8 without some obvious sadness. John Doe is a 21-year-old
9 mentally disabled individual who now lives in a residential
10 home in New York.

11 The nominal plaintiff's or the actual plaintiff's case
12 is Jane Doe, the maternal grandmother of John Doe. I
13 wanted to address before we get into the substance of our
14 motion some concerns that were expressed by my colleague,
15 Mr. Meyers, that somehow there was discovery he needed to
16 respond to our motion for summary judgment.

17 Your Honor, we -- we think that's inaccurate. He
18 referenced in correspondence to -- to me.

19 MR. MEYERS: Bill, if I might, I think this has just
20 kinda gone by the wayside.

21 MR. FOSTER: Okay.

22 MR. MEYERS: I got responses from him, you know, about
23 a day ago, and I was able last night to try to use them.
24 So I think I'm good to go.

25 MR. FOSTER: Fair enough.

1 Your Honor, I think the -- in addition to sort of
2 explaining that we didn't believe that that was a
3 legitimate basis for opposing what we think is a very ripe
4 motion for summary judgment, we think the fact that the
5 plaintiff feels the need, be it extrinsic evidence, to
6 prove what this letter to John Doe's father meant and what
7 the motivation for the decision to suspend John Doe from
8 the Boy Scout troop -- the fact that the plaintiff
9 considers that a material and key issue demonstrates that
10 the letter and the decision fall far short of the standard
11 for outrage as a cause of action under South Carolina law.

12 Outrage is an overt act. It's a hostile act. It is
13 an act that is so extreme and outrageous in and of itself
14 that as a matter of law it's intolerable in a civilized
15 society.

16 And sending a letter that is neutral on its face to a
17 scout's father simply informing them that as of
18 10/10/2005 your son is no longer eligible to participate in
19 troop functions falls far short of that standard.

20 Your Honor, there is also some discussion of a
21 potential motion to amend.

22 Again, Your Honor, that's not the issue before the
23 Court today. The issue before the Court today is our
24 motion for summary judgment as to the claim of outrage and
25 the derivative claim of negligence.

1 Your Honor, Troop 290 -- 292 -- excuse me -- started
2 out in about 2003 as a Boy Scout troop for disabled
3 children, mentally disabled children. John Doe was one of
4 the founding troop members.

5 After a meeting in September, or September 27th of
6 2004, or October 4th of -- excuse me -- 2005 the troop
7 leadership decided to exclude John Doe from further
8 participation in the troop.

9 The uncontroverted evidence is that their motivation
10 for doing so was that he had engaged in some bad acts.
11 Among them, he had consumed some popcorn that had been
12 given to him to sell in the annual popcorn drive and
13 refused to reimburse the troop for that.

14 He'd also been caught engaging in some bad conduct
15 during troop meetings including an ultimate event which was
16 the event which was being caught in Shelby Culbreth -- one
17 of the named defendants -- cars during a troop meeting.

18 Your Honor, they consulted with the Palmetto Council
19 of the Boy Scouts of America, which is the organization
20 that provides consultative services to Boy Scout troops, as
21 to how to proceed with suspending a youth member from a
22 troop.

23 And pursuant to the procedure outlined for them they
24 wrote a letter to the custodial parent informing him that
25 this -- that the troop member was no longer eligible to

1 participate in the troop. That's the letter that was sent.

2 The plaintiff's contention is that that letter was a
3 retaliation for a report of sexual abuse that John Doe made
4 against the troop leader, James Brian Rhinehart, on or
5 about October 7th of 2005.

6 Your Honor, there is some question as the timing of
7 when the letter was sent. The letter is undated, but
8 there's no evidence that the named defendant, Ms. Culbreth
9 or the troop -- the named members of the troop -- St.
10 Margaret's, Rob Green -- any of the defendants had any
11 knowledge that the plaintiff had reported abuse or that he
12 had been sexually abused when that letter was sent.

13 Even if you assume however that the letter was
14 motivated by an intent to retaliate against John Doe for
15 having reported sexual abuse, that still in of itself falls
16 far short of as a matter of law, the legal standard for
17 outrage under South Carolina law.

18 There's also no evidence that Ms. Culbreth or the
19 troop acted in bad faith with the intent to injure John Doe
20 or they sent that letter or made the decision to exclude
21 him from the troop. And we think that there's absolutely
22 no evidence to suggest otherwise.

23 Your Honor, the essential elements of outrage are
24 familiar to the Court, but I think they're important to
25 highlight. It's the defendants engaged in conduct that was

1 so extreme and outrageous as to exceed all possible bounds
2 of decency that must be regarded as atrocious and utterly
3 intolerable in a civilized community; that the defendants
4 also acted intentionally or recklessly to inflict severe
5 emotional distress, or was substantially certain that their
6 conduct would do so.

7 Then of course it has to actually cause emotional
8 distress, and the emotional distress has to be so severe
9 that no reasonable person could be expected to endure it.

10 Your Honor, there is no evidence of extreme or
11 outrageous conduct. The first cause of action is solely
12 against Ms. Shelby Culbreth who was a committee member of
13 the troop, one of the volunteer adult leaders, and Troop
14 292. And the sole allegation there is that in sending the
15 letter to John Doe's father informing John Doe's father
16 that he -- that John Doe could no longer participate in
17 troop functions, that that act in and of itself was
18 outrage.

19 Your Honor, Cosby vs. Legal Services and numerous
20 other decisions have pointed out that whether or not the
21 allegations rise to the level of outrage is initially a
22 question of law for the court.

23 And it's only those cases that are so extreme and so
24 beyond the bounds of civilized society's standards that are
25 entitled to go to a jury. And that's just lacking here,

1 Judge. It's simply not there.

2 There's no evidence that Ms. Culbreth or the troop
3 were motivated by ill intent or motivated by intent to
4 retaliate against John Doe.

5 Ms. Culbreth has submitted her affidavit that the
6 decision in the letter was based solely on misconduct, John
7 Doe's conduct in the troop.

8 She's also testified that she was unaware that he had
9 reported any sexual abuse by the scoutmaster until she saw
10 it on the news well after the letter was sent.

11 As evidence of the motivation for the letter the
12 plaintiff has replied exclusively on the timing of the
13 letter, when the father says he received the letter. He
14 says he thinks he received the letter on the same day that
15 the police had been there, October 7th of 2005, to begin
16 their investigation of John Doe's complaint.

17 However, the father admits that this could be just a
18 mere coincidence of timing. He also admits that he was
19 aware that there was an issue with the popcorn money not
20 being paid before the -- he learned of John Doe -- or John
21 Doe informed him of the alleged abuse or that he reported
22 it to the police.

23 Critically, Your Honor, John Doe has actually given
24 his own testimony in this case, and he's admitted in his
25 deposition that he didn't report the abuse until after he

1 received the letter.

2 The question, "well, wasn't the letter that came --
3 wasn't it that the letter came and you saw that he'd been
4 thrown out of the troop, that's when you reported it?"

5 Answer: "Yes."

6 That's John Doe's deposition, Your Honor, which is
7 cited in our brief. And we've included an excerpt,
8 redacted obviously to protect the names of the children
9 involved.

10 It's also important to note, Your Honor, that John
11 Doe's father at the time of the police investigation in a
12 contemporaneous statement to the police or around the time
13 the police first showed up to do their investigation in
14 October of 2005, that he told the police officers in a
15 written statement that he was concerned that John Doe was
16 angry about being thrown out of the troop, about the
17 popcorn letter, and that's why he was worried that John Doe
18 was being vindictive.

19 So, Your Honor, the plaintiff's case in order to make
20 this innocuous, facially innocuous, letter to John Doe's
21 father, not even directed to John Doe, the plaintiff -- to
22 make that the grounds for outrage the plaintiff's got to
23 prove that the only reason a letter was sent was to punish
24 John Doe for reporting abuse, what was intended to harm him
25 because he reported abuse. And they haven't done that,

1 Your Honor.

2 Even if they could -- even if you take the plaintiff's
3 allegations, Your Honor, in this complaint as true, the
4 letter itself cannot be characterized as so extreme and
5 outrageous as to support a claim of outrage.

6 As this Court knows, the legal threshold, Your Honor,
7 for outrage is very high, and that's the threshold to get
8 past summary judgment, Your Honor.

9 You have to allege and establish facts that are so
10 shocking in and of themselves that it leaves no doubt that
11 the standard's been met.

12 Turning the Court's attention to one of the cases
13 cited -- and given some exposition in our brief -- and
14 that's the case of -- I can't find it -- Doe vs. Erskine
15 College.

16 Your Honor, that case involved an allegation of rape
17 of a college student at Erskine. The evidence was that the
18 college student reported the incident.

19 And there were numerous facts established of how the
20 college had mistreated this individual, the victim,
21 including disclosing the fact that she had -- or disclosing
22 incidences or evidence of her personal medical history that
23 she had a sexually transmitted disease at one point,
24 disclosing her medical history without her knowledge.

25 And the Court said that even with all of that evidence

1 of the hostile acts, the offensive acts directed right at
2 the plaintiff who was the victim of a rape by a fellow
3 student, that that fell short of a legal standard necessary
4 to establish a claim of outrage.

5 Your Honor, we don't even have facts like this -- like
6 those in this case. Here we have a letter addressed to the
7 father that simply says that John Doe effective 10/10/05 --
8 John Doe is no longer allowed to participate in troop
9 activities. That's all the letter says. And the letter
10 was delivered to the father.

11 And I think that's -- that's critical because the
12 plaintiff can't show the second element, Your Honor,
13 necessary to establish outrage, and that is that the
14 defendants, Ms. Culbreth and the troop, acted with the
15 intent to cause harm to John Doe.

16 Your Honor, what they did here was they sent a letter
17 to his father. The letter doesn't say anything offensive
18 at all. It doesn't suggest that there's any ill intent or
19 bad motivation behind the letter.

20 And to the extent, Your Honor, that there was any
21 communication of harm, of a harmful message, to John Doe --
22 it had to come from John Doe's father. John Doe's father
23 and his step-grandfather admitted John Doe didn't read very
24 well, and whatever would be communicated in that letter
25 would have to be communicated from the father who is free

1 to tell John Doe whatever he wanted to tell him. He told
2 him something harmful, something that may cause him severe
3 emotional harm. That's what John Doe's father did.

4 Your Honor, if -- if Ms. Culbreth or the troop
5 intended to cause severe harm to John Doe why would they
6 send the letter to his father? why would they send a
7 letter that doesn't say anything hurtful or harmful or
8 offensive at all?

9 They didn't choose or pursue a path that was designed
10 to harm John Doe. They acted in a reasonable manner. They
11 acted in, for lack of a better word, a polite manner in
12 sending that letter. And that simply is not grounds for a
13 claim of outrage.

14 Your Honor, we've also outlined some cases in our
15 brief that we think are very analogous to the case at hand,
16 and those are cases in which the plaintiffs who had
17 established as a matter of law allegations of retaliatory
18 discharge, actionable retaliatory discharge.

19 Your Honor, in those cases the Court found that even
20 when a plaintiff has alleged, for example, that she was
21 fired in retaliation for pursuing a worker's compensation
22 claim, had actionable -- actionable, legal bad motivation
23 established, that in and of itself can't claim -- can't
24 support a claim of outrage.

25 You need some overt and hostile or abusive act

1 directed to the plaintiff in order to make that retaliation
2 into a claim of outrage. And that's utterly lacking here.

3 There is absolutely -- and that goes back to the
4 fundamental legal question before the Court today, and
5 that's whether the threshold for an outrage claim has been
6 met.

7 There is no allegation that Ms. Culbreth or the troop
8 committed any overt, hostile act directed to the plaintiff.
9 They sent the letter to his father.

10 Your Honor, it's also important to note that with
11 respect to the second cause of action, negligence, that
12 cause of action merely alleges that the other named
13 defendants were somehow negligent in failing to prevent the
14 letter from being sent.

15 Your Honor, there has been no evidence. This case has
16 been pending for two years. There's no evidence that any
17 of these defendants participated or should have
18 participated in the decision of sending the letter. Of
19 course, you know, because it fails to state a claim of
20 outrage and there's a derivative claim, it fails in and of
21 itself.

22 But I think I'd be remiss in not pointing out, Your
23 Honor, that just because you're cc'ed on the letter doesn't
24 make you responsible for the letter.

25 One of the named plaintiffs is Bob Faulks. Judge,

1 he's a parent. Mr. Faulks is just a parent of another
2 troop member, and yet he's been sued. There's absolutely
3 no evidence more than two years in the case that Bob Faulks
4 has done anything wrong or that he belongs as a defendant
5 in this case.

6 Brandon Smith, a junior scout executive, had nothing
7 to do with the sending the letter or decision to exclude
8 John Doe from the troop whatsoever.

9 Scott O'Neill was a sometime volunteer. He's a local
10 Spartanburg guy who trains dogs for a living, Your Honor.
11 He's not involved or not responsible in any way for the
12 sending of the letter or the decision to exclude John Doe
13 from the troop.

14 Rev. Roy Cole, Your Honor, was briefly the interim
15 pastor of St. Margaret's. He's retired. He had no
16 involvement in the decision. There's no evidence that he
17 should have participated in the decision or should have
18 prevented the letter from being sent.

19 And the same goes, Your Honor, for St. Margaret's
20 Episcopal Church who merely sponsored the troop and allowed
21 them to use the church grounds to conduct meetings.
22 There's no evidence that St. Margaret's as an institution
23 exercised control over the decision at issue with the
24 sending of the letter or that they should have.

25 Finally, Your Honor, the Palmetto Council of B.S.A.

1 There's no evidence that the Palmetto Council or its
2 executor, Rob Green, participated in the sending of the
3 letter or the decision beyond Mr. Green having told them
4 what the procedure was, if they wanted to exclude a youth
5 member from the troop, how should we do it.

6 And Palmetto Council and Mr. Green acted as they're
7 supposed to in this arrangement in the scouting world and
8 gave them the proper procedure -- send a letter to the
9 parent communicating the decision. And that's what they
10 did. That's the only involvement that the Palmetto Council
11 and Mr. Green had in the allegations in this case.

12 Your Honor, we think this case is right for summary
13 judgment. We think that even if -- well, first, the fact
14 that you've got to try to find extrinsic evidence,
15 additional things to make the act complained of remotely
16 offensive, you've got to assume that Ms. Culbreth who is a
17 nurse who her career is taking care of children -- and she
18 works with special needs children. That's her profession.

19 You'd have to assume that Ms. Culbreth and the troop
20 intended to punish John Doe for sending -- for reporting
21 this abuse. You'd have to assume they knew about it and
22 that their sole motivation was to hurt him in order for
23 this letter and the act complained of to even be outrage.

24 And, Your Honor, if you look at all of the cases that
25 where a court in South Carolina has found that the facts

1 establish outrage, intentional infliction of emotional
2 distress, you don't have to look beyond the act to find the
3 claim.

4 And the plaintiff admits -- the plaintiff leads in
5 this case with having to look beyond the act complained of
6 to establish outrage. But even if you look at the act
7 complained of and assume the plaintiff's allegations are
8 correct, it doesn't meet that standard, Your Honor.
9 There's no allegation of any overt act, hostile or abusive
10 act, directed to John Doe.

11 It's a letter, plain on its face, sent to his father.
12 Had the plaintiff -- excuse me -- or had the defendants
13 intended to cause harm they wouldn't have chosen that
14 course of action. That's not the course of action you
15 would take to direct harm to John Doe. Thank you, Your
16 Honor.

17 THE COURT: You referred to a memorandum. Do you have
18 a copy of one?

19 MR. FOSTER: Your Honor, I believe --

20 THE COURT: Is that the one that was sent by e-mail,
21 you sent by e-mail?

22 MR. FOSTER: We filed it, Your Honor, on Monday
23 afternoon. I don't know if we actually -- I know we served
24 opposing counsel. I can have one sent to your chambers.

25 THE COURT: Why don't you send me one?

1 MR. FOSTER: Judge, he has already handed a copy of
2 our brief up?

3 THE COURT: I beg your pardon?

4 MR. FOSTER: I'm sorry. That's a copy of our brief.

5 Your Honor, this is a copy of the unpublished decision
6 in Doe vs. Erskine for the Court. I usually err on the
7 side of pestering judges with e-mail copies of things. I
8 apologize for not doing so here, Your Honor.

9 THE COURT: All right. Mr. Meyers.

10 MR. MEYERS: Thank you, Your Honor.

11 Just to orient the Court in this case, this is a scout
12 -- the case arises from a scoutmaster who is abused by my
13 John Doe client of molesting two people, two young people,
14 in the troop. Both kids are developmentally disadvantaged
15 as Mr. Foster relates.

16 My client has an I.Q. of about 60. And at this time
17 they're both about 14 years old.

18 The -- the child that I represent reports the abuse.
19 He calls somebody at a school he attended and reports it.
20 They call the police. The police then start an
21 investigation.

22 The scoutmaster was called. What I've submitted to
23 the Court is an affidavit I prepared and some base
24 documents. And that document I was able to put together
25 last night once I had Mr. Foster's responses to discovery.

1 And the critical document in that collection is what's
2 attachment A to the affidavit. It is the rules the Boy
3 Scouts have.

4 The best copy I had was from 2009, but it's a 1998
5 copyright reprinted in 2009. So it appears to be the
6 document that extends through the 2005 time period. Mr.
7 Foster says he doesn't have a 2005 copy. So what I've got
8 appears to a 2005, what applied in 2005.

9 All right. The Boy Scouts have very clear rules for
10 the context of their meetings and they -- they require two
11 adults at all times, and they prohibit one-on-one contact.
12 And as the evidence has developed in this case, it's been
13 very clear that this scoutmaster arranged for one-on-one
14 contact repeatedly. And no one did anything to stop it.

15 So there were scout events at his home. His wife who
16 is the next case that we're going to argue left and left
17 him with the children. There's troop events at the church.

18 He isolates himself with this child. And my child
19 reported that there was an instance at the scoutmaster's
20 home where he was with both young boys and abused them
21 both.

22 So that's the context in which this arises. The
23 report is made.

24 The scoutmaster within a few -- the scoutmaster is
25 told the day of the report that the report has been made.

1 He doesn't say anything to any of the people he talks to
2 that there is a dispute about my child's conduct in any
3 way.

4 But within three days of the report the scoutmaster
5 has begun to argue that, well, this is because we were
6 fussing at him that he owed \$8 for some popcorn that went
7 missing. And then it was added too that, well, this is
8 about the popcorn. And later the troop members add and
9 it's also about the child misbehaving during a meeting.

10 Well, the Boy Scouts have rules about this too, and
11 what we've provided the Court are their rules about how you
12 deal with progressive discipline. And what you do is you
13 involve the parents.

14 You don't start by kicking somebody out. The parents
15 did not know this was an issue that was an ongoing issue.
16 They didn't know anything about the popcorn money until the
17 scoutmaster starts to argue it in response to the police.

18 Now, within 13 days he admits that he's acted in an
19 inappropriate way with the other child, not the -- not the
20 child who reported but the child that it was reported was
21 also effected.

22 He refuses to admit that he molested my child, but my
23 client has testified that there were four instances where
24 that occurred.

25 So in the light most favorable to my client we start

1 today on the record that presumes that the molestation
2 occurred with both children.

3 This letter appears immediately after the report of
4 abuse, within a few days according to the testimony we
5 provided from the step-mother and from the father.

6 And it comes to their house. It's hand delivered.
7 It's given to the father. And it austen -- it doesn't say
8 any rationale. It just says your child is excluded
9 effective the 10th of October. So the exclusion is three
10 days after the first report to the police. And we think
11 it's four days after information started to flow to the
12 scoutmaster about the abuse allegation.

13 Now, we agree with Mr. Foster that they delivered a
14 letter that on its face is neutral and they delivered it to
15 his father.

16 We think that doesn't solve the problem because it is
17 a letter aimed at what we think the record has to presume
18 is a -- is an act in response to a legitimate and proper
19 and entirely justified and entirely appropriate and
20 required report to the police. Somebody is molesting a
21 child. The child reports it.

22 And the Boy Scouts have rules about this too. The Boy
23 Scouts say in the document we provided -- and it appears on
24 page 444 in the way they're numbered, collection -- "How an
25 adult responds to a child when we tries to disclose abuse

1 can influence the outcome of the child's victimization."

2 And then one sentence later, "By not criticizing the child
3 we counteract any statements the molester made to the
4 victim about the child getting into trouble."

5 The Boy Scouts don't want people criticizing children
6 when they come forward. Now, they argue that, well, we
7 didn't know about that, but because the scoutmaster knew
8 the troop certainly knew.

9 And what's undeniable is that within 13 days everybody
10 knows, because within 13 days the scoutmaster has admitted
11 it. It's in the news.

12 And what they don't do, what none of them does, is
13 come back to the child and say maybe we acted a little
14 hasty, maybe we shouldn't be excluding you, maybe we ought
15 to apologize at least for reacting this way when we didn't
16 know everything. Nobody says anything like that.

17 They maintain their course, and nobody at any point up
18 to today has ever done anything to say to this child, you
19 know, maybe we acted in a way we shouldn't have.

20 So even if their motive was not driven by this
21 allegation -- but I think on this record the Court has to
22 presume that it was, because I'm entitled to every
23 inference in my favor -- the timing alone is of some
24 significance.

25 The breach of the Boy Scouts' own rules on how you

1 handle progressive discipline and how you respond when
2 somebody reports abuse and the failure to respond once the
3 abuse became by anybody's argument known -- those three
4 things we think mean we have a letter that's in retaliation
5 for reporting abuse.

6 So really the only, I think, fair question for the
7 Court is, is because the letter is directed to the father,
8 a disabling feature, we argue it's not because as
9 Mr. Foster recognized this is a 14-year-old child who has a
10 I.Q. of 60. You can't communicate effectively to the
11 child. You've got to communicate to the father.

12 And they have to know because the troop is entirely
13 composed of developmentally disadvantaged children. You've
14 got to know that this is going to be communicated in some
15 fashion with the child. And I think you can't fault the
16 father for conveying accurately to the child what the
17 letter said, because the letter has to be directed to the
18 parent.

19 So our position has been from the beginning that the
20 timing, the substance, as well as the lack of response once
21 the abuse was admitted by the scoutmaster all reflect that
22 this is an event that qualifies for the label of outrage,
23 because if you retaliate against a child for reporting
24 sexual abuse you've done something that is -- you ought to
25 be -- if it's not regarded as outrage already, it certainly

1 ought to be. That's the heart of our position on outrage.

2 The issues about negligence have to do with everybody
3 who once they find out -- this is actually admitted by the
4 scoutmaster -- they do nothing, and they do nothing to
5 change any of it. They got the letter.

6 The rules the Boy Scouts have apply not just to the
7 troop but to the volunteers, to the council and to the
8 sponsor. They apply, those rules apply, to everybody who
9 is involved in the scouting activity. And we think those
10 rules are breached in this case. They're breached so as to
11 cause the abuse and they're breached in the response to the
12 abuse.

13 So we think because the Boy Scouts had surrounded this
14 context with their own rules the breach of those rules
15 makes a difference on the question of outrage and even a
16 facially neutral letter can qualify given the circumstances
17 of the case.

18 MR. FOSTER: Your Honor, very briefly a couple of
19 things.

20 The testimony of Jane Doe that regarding her John Doe
21 I think is important, Your Honor, as is her view of the
22 actual complaint itself that the last bit that Gregg shared
23 about negligence, there's no allegation that that -- that
24 the other individual defendants or the church or Palmetto
25 Council somehow acted negligently after it became known

1 that Rhinehart had been arrested. That happened on about
2 October the 20th, Your Honor.

3 Critically, Mr. Rhinehart never admitted to or-and
4 actually was never charged with molesting John Doe. He was
5 charged with and admitted to improper conduct directed
6 towards his own stepson which was the plaintiff's friend.

7 Your Honor, to -- there simply isn't an allegation --
8 and may I approach? I'll just hand up Jane Doe's excerpts.
9 They're actually attached to our brief as well, Your Honor,
10 just some excerpts from Jane Doe's testimony.

11 That's the grandmother, maternal grandmother, of John
12 Doe -- and also a copy of the complaint itself, which very
13 purposefully is based -- only has two causes of action,
14 Your Honor -- a cause of action for outrage based on the
15 letter to John Doe's father and a cause of action for
16 negligent supervision allowing the letter to be sent.
17 That's it.

18 We asked Jane Doe specifically in using the complaint
19 as an exhibit whether or not she was seeking damages for
20 any allegations of sexual abuse, and the answer is no.
21 That claim is not before this Court.

22 Your Honor, to allege that -- that the outrage could
23 be established by the failure of the named defendants to --
24 after what could be an unoffensive or unoutrageous, if you
25 will, letter was sent somewhere before the report of abuse

1 was known, that somehow after they learned of it the
2 failure to then apologize for a letter that was not
3 intended to cause harm in the first place, really kind of
4 strange credulity. How can you establish outrage by what
5 you didn't do later?

6 And what's important to note, Your Honor, is that when
7 the allegation became public knowledge on or about
8 October 20th of 2005 Troop 292 ceased to exist.

9 There was no more meeting. There was never another
10 scout meeting that this -- that John Doe didn't get to
11 attend. The troop went away -- the troop went away. It
12 was disbanded. It's been dissolved since November of 2005.
13 So, you know, there'd be no mechanism for the trooper or
14 Ms. Culbreth to -- to apologize or invite John Doe back.

15 And, Your Honor, again in the minds of the defendants,
16 in the minds of Ms. Culbreth who the letter was written on
17 her behalf by her niece who signed her name with her
18 permission they -- they sent this letter because John Doe
19 had not paid the popcorn money and they caught him with his
20 hand in the well of her car during a meeting. They had no
21 reason to think they owed him an apology because they
22 never retaliated against him in the first place.

23 Your Honor, the allegation of the plaintiffs is
24 sending that letter to John Doe's father outrage under
25 South Carolina law. And looking at all of the cases that

1 have been reported there's not another case, Your Honor,
2 that would hold that you can search behind an event to find
3 meanings and to assign meanings to people's actions to make
4 them outrage.

5 You've got to act outrageously as a matter of law to
6 get there. And that's just absent here, Your Honor. And
7 it's utterly improper to suggest that somehow that a breach
8 of the too deep rule in these interactions with John Doe
9 and Brian Rhinehart somehow relate to the outrage claim.

10 As Ms. -- as Jane Doe's testified, Your Honor, that's
11 not what this case is about. There's no allegation about
12 that in this case. That's in a different claim altogether.
13 It's not the outrage claim.

14 It's also important to note, Your Honor, that, you
15 know, one, a breach of a Scout handbook -- this isn't Small
16 vs. Springs Industry. This is a handbook case. That's a
17 contract type claim.

18 That's not outrage, Your Honor, to suggest that --
19 that because there was no progressive discipline that --
20 that sending the letter to John Doe's father is outrage
21 that's -- there's no support in the law for such a theory.

22 More importantly, Your Honor, that is contradicted by
23 the evidence in this case because John Doe -- I mean,
24 it's -- before this lawsuit was filed, before Gregg and I
25 became involved and all the legal things that have occurred

1 and before we came before this court today -- back in
2 October of 2005 the first thing the blood father of John
3 Doe said to the police was I'm worried that he's making
4 this up because he's angry because they told him if he
5 didn't pay for the popcorn they would kick him out of the
6 troop.

7 John Doe's father knew this letter was coming. This
8 letter was not a surprise. This letter was the reasonable
9 course of conduct to remove a youth member from a troop and
10 nothing more, and there's no evidence that it ever was
11 anything other than that.

12 And -- and the issues with respect to John Doe's I.Q.
13 and what he may have been exposed to by James -- by Brian
14 Rhinehart who is in prison where he belongs, that's not the
15 basis for the outrage claim, Your Honor. That's not what
16 we're here today to have ruled upon.

17 What we're here to have ruled upon is whether or not a
18 letter sent to a father who is entrusted with the
19 safekeeping and the mental well-being and the emotional
20 health of his son, sending a letter to him that doesn't
21 communicate anything harm on its face -- Your Honor, the
22 letter's attached I'm sure to everybody's briefs. But I'll
23 hand it up to the Court.

24 This is the letter, Judge, a letter sent by, in
25 essence, two volunteer women, Ms. Culbreth and her niece,

1 who made it their careers to care for and to protect
2 children, particularly disadvantaged or mentally disabled
3 children, whether that letter is outrageous.

4 You know, I hate to belabor the point, but had they
5 wanted to hurt John Doe they would have told John Doe to
6 his face you're kicked out because you are liar.

7 That's not what they did. You're kicked out because
8 you reported Brian Rhinehart for abuse. That's not what
9 they did. They told the dad what he expected to be told.
10 As of 10/10/2005 your son's no longer allowed to
11 participate in troop activities.

12 October 20th it hits the news. The troops dissolved.
13 There's no mechanism. There's no reason for anyone to go
14 back to John Doe and invite him back to a troop that's been
15 dissolved or to apologize.

16 In the minds of Mr. Culbreth and the named defendants
17 the only evidence is that they would have been stunned and
18 shocked and surprised and felt terrible that this happened
19 but they would have -- they had no reason to think that the
20 letter had been communicated to John Doe as an act of
21 retaliation.

22 The person who did that, Judge, if it occurred at
23 all -- and this is an undisputed fact -- is his own father.
24 And to accept the plaintiff's theory you've got to assume
25 that Ms. Culbreth thought or knew that John Doe's father

1 would impart from this vanilla letter something
2 intentionally harmful to his own son, and that just doesn't
3 get there, Judge. That just doesn't get there.

4 This case has been pending for a while. we've done a
5 lot of work. It is right for summary judgment under the
6 law of South Carolina. Thank you.

7 THE COURT: All right. I'll review the briefs and the
8 submissions made an issue an order.

9 END OF REQUESTED TRANSCRIPT OF RECORD

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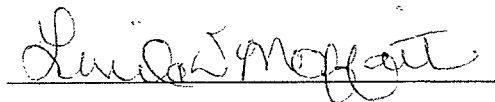
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 16th day of May 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 5, 2012

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter



COPY

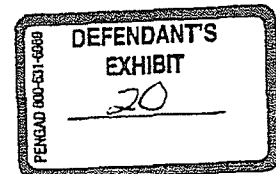
BOY SCOUT TROOP 292
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EXTRAORDINARY BOYS OVERCOMING DISABILITIES
ST MARGARET'S EPISCOPAL CHURCH
4180 HIGHWAY NINE
BOILING SPRINGS, SC 29316

This is a letter to inform you that as of 10/10/05, your son will no longer be able to participate in any functions that Troop 292 may hold now or in the future. That is to include meetings and other outside functions.

Respectfully,


Shelby Culbreth
Committee Chairman
Troop 292

Cc:
Brian Rhinehart
Jackie LaFontaine
Doni Rhinehart
Brandon Smith
Rob Green, Scout Executive
Roy Cole, Charter Organization Chair
Bob Faulks
Scott O'Neil



SC/JL

AGENCY I.D.
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I-29

INCIDENT REPORT

CASE NUMBER

2005100422

NCIC

IND. ENTY

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Sexual assault 36B	☒ YES ☐ NO	☐ YES ☒ NO	Church/synagogue	1	☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. / Public ☐ Other ☐ Unknown ☐ Police Off.
2.	☐ YES ☐ NO	☐ YES ☐ NO			
3.	☐ YES ☐ NO	☐ YES ☐ NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE
St Margarets Episcopal Church - 4180 Hwy 9				29316	
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	LOCATION NO.
6/05					19
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX
aca		#1 #2 #3	☒ YES ☐ NO	W	M
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
		Spartanburg	SC	29303	31

VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
aca		#1 #2 #3	☒ YES ☐ NO	W	M	14	N		
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
505	160	BLK	H21	DOB - 3-05-1991					
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.				
		Spartanburg	SC	29303	31				
VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN -									
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO DRUGS: ☒ YES ☐ NO TYPE: Buspar, Concerta, trazadone									
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J - This Jurisdiction S - State O - Out of State U - Unknown									

NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
Rhinehart James BRIAN		W	M	37			5'11"	190	BLK	BRO
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										
Lives in Turtle Creek										
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.					
SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☒ NO DRUGS: ☒ YES ☐ NO TYPE:		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST				

I responded to 8487 Dandelion Lane after Martha Tetosky summoned the police to the home. She is the district 2 psychologist. She advised that the student called to speak with her about being molested and sexually assaulted by his boy scout leader James "Brian" Rhinehart over the past 3 months. She advised that she was seeing and counseling him, but it was in the past. She said another person had actually spoke with him more recently. When I arrived on the scene I found to be very confused and uncertain of things. He initially reported that his mother assaulted him when she tried to awaken him this morning to get up for school, which he refused to do and since he is still at the house now I learned that the father only notified the school, who he

TYPE (GROUP)	TOTAL VALUE
STOLEN	
DAMAGED	
BURNED	
RECOVERED	
OTHER	

SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE	ADM. CLOSED	ARRESTED UNDER 18	EX CLEAR UNDER 18
☒ YES ☐ NO	☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO	☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED 18 AND OVER	☐ EX CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1 OFFENDER DEATH 2 NO PROSECUTION 3 EXTRAJURISDICTION 4 VICTIM DECLINES COOPERATION 5 JUVENILE NO CUSTODY							
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER		
Gist SL	10-07-05	105	D. B. Bald	10-07-05	310		

Record on Appeal 000160

AGENCY I.D. ...
SC0420000

SUPPLEMENTARY REPORT

CASE NUMBER

2005100423

NCIC

1720. 1721

☒ ORIGINAL
REPORT

☐ SUPPLEMENTAL
REPORT

☐ ADDITIONAL
VICTIMS

☐ ADDITIONAL
STOLEN PROPERTY

PAGE 2 of 3 PAGES

☐ MODIFIES
ORIGINAL

☐ CASE STATUS
CHANGE

☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
RECOVERED PROPERTY

Spaid documented the incident. The father said there was not an assault with his son and his wife

The son did not discuss him not getting up this morning but did ADVISE on the improper touching by the Scout leader Brian Rhinehart. He said that Rhinehart also improperly touched his step son

The father reports that his son has tied repeatedly in the past but never a lie of this magnitude so he thinks that possibly his son is being honest about this incident. Further investigation is needed into the claims of sexual assault

NARRATIVE

SUBJECT IDENTIFIED
☒ YES ☐ NO

SUBJECT LOCATED
☐ YES ☒ NO

☒ ACTIVE ☐ ADM CLOSED
☐ UNFOUNDED

☐ ARRESTED UNDER 18
☐ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

G-315L

10-07-05

615

O. B. B.

Sgt.

10-07-05 310

FOLLOW-UP INVESTIGATION ☐ YES ☐ NO

OFFICER

INVESTIGATION REPORT		Page <u>1</u> of <u>3</u>
SCO420000	TYPE: ☐ PRELIMINARY ☐ CONTINUING	CASE # 2005100422
INCIDENT TYPE Sexual Assault	VICTIM Hageman, Oliver "Clay"	
LOCATION		

10-10-05 / 1500 hours

I called the complainant, who is the victim's father. He stated that he wanted to believe the victim but the victim has been known to make false statements before. He said that the suspect, a deacon at the church and the Cub Scout leader, denies the allegations. He told the victim that if he did not turn in the money for a popcorn drive they had, he would be kicked out of the club. The victim was very angry about that. The complainant said that the victim is very vindictive. He has ripped the phone wires from the exterior of the house when he has not gotten his way in the past. I asked the complainant if I could interview the victim. We scheduled it for Wednesday, October 12, 2005 at 4:00 pm. He is bringing the victim to the Sheriff's Office.

10-12-05 / 1600 hours

Mr. [REDACTED] brought his son to the Sheriff's Office for an interview. Mr. [REDACTED] completed a voluntary statement giving some background information about the victim. I attempted to interview the victim. He stated that on three separate occasions, the suspect fondled his penis and conducted oral sex on him. He stated that the incident locations were at the suspect's house two times. Once was upstairs in the residence and the second time was downstairs in the residence. The third incident occurred at a creek behind the church (St. Margaret's Episcopal Church). [REDACTED] also said that one of the incidents at the suspect's residence occurred in his bed. He said the suspect's stepson was in the bed and the suspect was fondling him as well. [REDACTED] has some mental handicaps. When he was talking to me about the incident, he would stutter severely. He would look away when he talked about the incidents. However, when he was not talking about the suspect and the incidents, his stuttering would improve and there was much more eye contact. [REDACTED] understood the difference between the truth and a lie. He stated that the reason he told about the incidents was that he did not want the suspect to touch two other scouts. Due to [REDACTED] emotional and mental difficulties, I decided to refer him to the Children's Advocacy Center for a forensic interview. I explained the process to Mr. [REDACTED]. I told him I would call him the following day with an appointment for the Children's Advocacy Center.

10-13-05 / 1400 hours

I emailed Tabitha Weber at the CAC an intake form for the victim. I also faxed over the incident report, statement, and notes on this case. I requested a forensic interview for the victim.

10-14-05 / 1500 hours

I spoke to Tabitha at the CAC. She scheduled the victim a forensic interview for October 20, 2005 at 1:30 pm with Wiley Garrett.

10-14-05 / 1610 hours

I called the victim's father. I told him about the appointment, gave him directions and the phone number for the CAC.

10-17-05 / 0850 hours

I called the victim's father to get further information on the suspect's address. There was no answer. I left a message on the answering machine.

01-09-2006.0005

SOLIC 81

NMRS 00186

Record on Appeal 000162

Batch #

0815

Clinical Service Notes

The purpose of this targeted case management was to discuss with the nurse at MUSC in Charleston, hospital discharge plans and the client's needs, assessment and services needed from other agencies to meet client's needs. Clinician discussed having had this conversation previously with Oliver's grandparent's. Client now lives with his father and step mother. The nurse stated she was somewhat shocked at the detached attitude the step mother had regarding Oliver's behaviors. It's as though neither the parents (step mother or biological father are able or willing to manage his behavior) at this point, legal measures may need to be taken. Therapeutic interventions don't seem to be effective because the parents are ineffective. Follow up appointment given. /rj

Judith McChesney, M. Ed.

Time Service Provided

2:30 AM PM

Next Appt.

Time

AM PM

Staff Signature/Title

Judith McChesney

ID#

284

Date

03/22/2005

Svc Code

H031

Desc

Jcm

Car/NS

Bill Time

30

Ticket #

25692537

Audit #

997094

CID

9940209

Name

DEC 30 2005

Clinical Service Notes

Batch #

0765

At 9:30 AM, therapist received a call from client's step-mother, while on call at the Mental Health Center. Client's step-mother was somewhat frantic at first, talking about the client's behavior, stating that she has had to call the police on the client. Apparently, the client has been hurting the dog and throwing rocks at the mother and father, as well as the family car. Client has been destructive. The client also has been doing things such as cutting off the electricity in the house and being violent. The client has reportedly an IQ of 60 and attends Boiling Springs. Client sees Dr. Barwick and Paul Wilson. The client, in the past, saw another Mental Health Center and step mother stated that client had been placed at the Medical University in Charleston to be evaluated. Client's step-mother stated Susan Henderson, MA

Time Service Provided

9:30 AM PM

Next Appt.

Time

AM PM

Staff Signature/Title

Susan Henderson MA

ID#

325

Date

03/18/2005

Svc Code

H031

Desc

Jcm

Car/NS

Bill Time

15

Ticket #

25647796

Audit #

995251

CID

9940209

Name

DEC 30 2005

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE CASE NO. 10-CP-42-2350/2349
JANE DOE, AS GUARDIAN
FOR JOHN DOE,
 PLAINTIFF,
VS.
DONI RHINEHART,
 DEFENDANT.

AND

JANE DOE, AS GUARDIAN
FOR JOHN DOE,
 PLAINTIFF,
VS.
BOY SCOUT TROOP 292, ET AL.,
 DEFENDANTS.

DEPOSITION OF FATHER OF JOHN DOE

Pursuant to Notice of Deposition and/or agreement in
the above-entitled case, a deposition was taken on the 19th
day of May, 2011, commencing at approximately 10:10 a.m.,
attended by counsel as follows:

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(864) 235-3518,

of John Doe 1, Father

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1 By Mr. Meyers:

2 Objection to the form.

3 Direct Examination Resumed by Mr. Walsh:

4 Q. Is that right?

5 A. I asked him if he took the money and I told him to
6 be truthful, and he said he didn't.

7 Q. But before John Doe 1 made the allegations against
8 Mr. Rhinehart, the issue of the popcorn money was
9 already out there; is that true?

10 By Mr. Meyers:

11 Objection to the form.

12 Witness Answers:

13 A. Before? Okay. I'm thinking. Before John Doe 1
14 made the accusation. To the best of my knowledge,
15 there had been something said about the popcorn
16 before that.

17 Q. And so is that why you were putting in Exhibit 2 the
18 stuff about how he knows how to handle adults, that
19 he can be vindictive, that he thrives on drama, and
20 that he can accomplish the goals he sets for
21 himself, because you were uncertain if the
22 allegations against Mr. Rhinehart had something to
23 do with the allegation -- with the Boy Scout
24 dispute?

25 A. In retro -- I can answer that in retrospect. I see

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of John Doe 1, Father

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1 Q. You've seen this letter before; correct?

2 A. Yes.

3 Q. This is the letter you referenced having hand-
4 delivered to your house; correct?

5 A. (Indicates affirmative response).

6 Q. Do you recall what date you received this letter?

7 A. No. I asked my wife, and she said it was definitely
8 after the report of John Doe 1 -- about the abuse to
9 Martha Petoskey. It was after that date. She
10 couldn't remember if it was the next day or the next
11 day, but that's what she maintains.

12 Q. You testified earlier -- and let's look at
13 Defendant's Exhibit 21, the calendar -- that John
14 Doe 1 told you the evening before the police came to
15 your home that Mr. Rhinehart had been sexually
16 abusing him; correct?

17 A. Yes.

18 Q. And if you look at -- let's look at Defendant's ---
19 By Mr. Foster:

20 Well, actually, do we have the incident report? Is
21 that -- where are the earlier examples?

22 (Off the record at approximately 4:05 p.m.; back on the
23 record at approximately 4:05 p.m.)

24 (Court Reporter Marks Document as Defendant's Exhibit No.
25 22; Attached to Deposition).

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1 Q. And she thinks after she called Doni, that's when
2 the guy came?

3 A. Yes.

4 Q. Well, isn't that the 7th as well?

5 A. That the -- when we called Doni? Yes, that was the
6 7th.

7 Q. So you think the -- your wife thinks, and you're not
8 sure, but that the letter actually might have been
9 hand-delivered on the 7th, the same day as Petoskey
10 calling the police and the police coming to take the
11 first statement?

12 A. Or the 8th.

13 Q. Do you have any idea when the letter was written?

14 A. No.

15 Q. Let's look at your statement that was Defendant's
16 Exhibit Number 2, and I've got that myself here, if
17 I have to find it. This your statement right there?
18 Jim went over this a good bit earlier, but -- so
19 you're saying that either on the 7th or the 8th you
20 get the letter saying, "Effective Monday, your son,
21 Clay, will no longer be able to participate in any
22 functions that Troop 292 may hold now or in the
23 future. That is to include meetings and other
24 outside functions," signed Shelby Culbreath. See
25 that?

1 A. Yes.

2 Q. Your statement is on October 12th, which is that
3 next Wednesday. That's your signature, that's your
4 statement; correct?

5 A. Yes.

6 Q. When you talked to or when you were being questioned
7 by Jim, you admitted that you initially had some
8 doubts as to whether or not John Doe 1 was telling
9 the truth about this sexual allegation; correct?

10 A. Right.

11 Q. It's also true that you were concerned that John Doe
12 1 might be making this story up because he was angry
13 about being kicked out of the scouts; correct?

14 A. Yes. That could've been.

15 Q. You were aware prior to receiving this letter that
16 the scouts, that Troop 292, had told John Doe 1 that
17 if he didn't turn in the popcorn money they thought
18 he had taken, that he would be kicked out of the
19 troop; correct?

20 A. They had made allegations like that.

21 Q. You actually, I think -- I don't know if this has
22 been made part of the record. Let me check.

23 By Mr. Foster:

24 Was this made part of the record already?

25 By Mr. Meyers:

of John Doe 1, Father

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1 about John Doe 1's violent behavior?

2 A. No.

3 Q. Had they expressed their concern about him stealing
4 a car and trying to drive to New York?

5 A. Not that I'm aware of.

6 Q. Wouldn't these be violent behavior that we're seeing
7 in the medical record that he's exhibiting at home
8 and at school, stealing? Wouldn't these be valid
9 reasons to exclude somebody from a troop, from a Boy
10 Scout troop?

11 A. If that is what they did, yeah, if that's what he
12 did to the troop.

13 Q. What ---

14 A. But I don't see why they wouldn't just say it.
15 Because, you know ---

16 Q. Well, if they had already told you that if he didn't
17 turn in the popcorn money he would be kicked out of
18 the troop, why would they need to tell you why he
19 was being kicked out of the troop?

20 A. Okay. I want to see a receipt or something or a
21 substantiation. I never seen substantiation to the
22 fact that he took anything except their -- what they
23 said.

24 Q. Hadn't they talked to you specifically about
25 repaying the popcorn money?

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1 A.) But John Doe 1 said he didn't take it.

2 Q. And you told them we're not going to pay it?

3 A. We hadn't gotten to that point yet.

4 Q. So your testimony is that no one confronted you
5 about you need to pay -- are you going to pay the
6 popcorn money back, and you said we're not going to
7 do it?

8 A. Well, see, it's an ongoing saga, you know. We
9 probably would have if not for the Petoskey thing.
10 But then it started taking on a new complexion. We
11 had to deal with it as it was rolling. And that's
12 what I was trying to do, and it was rather
13 difficult. There was a lot of things going on at
14 once. I was trying to juggle them.

15 Q. So you never heard that immediately prior to this
16 letter being sent that John Doe 1 had actually been
17 caught literally with his hand in the console of Ms.
18 Culbreath's car?

19 A. No. No.

20 Q. This letter's addressed to you; right?

21 A. Okay. Which one now? It's the ---

22 Q. The letter, it's addressed to you; right?

23 A. Yes.

24 Q. Did you keep a copy of the original?

25 A. Yes, but I don't have it with me.

of John Doe 1, Father

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1 sense.

2 Q. Isn't it possible that the committee chairman or the
3 committee of Troop 292, either because of the
4 popcorn or because of the alleged breaking into Ms.
5 Culbreth's car, made the decision to exclude John
6 Doe 1 from the troop. And that the letter was sent,
7 unfortunately, at or around the same time as the
8 allegation against Mr. Rhinehart came to light, and
9 the two were completely unrelated? Isn't that
10 possible?

11 A. It's not impossible.

12 Q. So it's possible; right?

13 A. We have to say so.

14 Q. You would agree with me that this letter doesn't --
15 and could John Doe 1 read this letter?

16 A. Not well, no.

17 Q. So John Doe 1 really wouldn't know even what this
18 letter said unless you told him; right?

19 A. That's why I had to.

20 Q. You know John Doe 1 better than Shelby Culbreth or
21 Jackie LaFontaine or Brandon Smith or Rob Green or
22 Roy Cole, Bob Faulks, Scott O'Neil. You know him
23 better than any of those people; right?

24 A. I know him better than I know how to explain.

25 Q. Sure. I mean, you're his dad.

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of John Doe 1, Father

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1 A. I know when he's telling the truth.

2 Q. Absolutely. You know his challenges and what he's
3 been through in his life; right?

4 A. Right.

5 Q. So you wouldn't have told him that the reason you
6 have been excluded from Troop 292 is because you
7 complained of sexual abuse, would you?

8 A. I can't remember what I told him. I really can't.
9 But I remember him saying, well, I'll probably get
10 to go back later; won't I? I said I don't think so,
11 John Doe 1. I think this is it. I think this is --
12 it's over now.

13 Q. Did you tell him it was because he had reported
14 sexual abuse?

15 A. I can't remember. I can't remember why I told him,
16 but I remember that the finality of it, I impressed
17 upon him. I think I more knew than I wanted to let
18 John Doe 1 know, that it was permanent. And it
19 might have been because of the popcorn or what he
20 allegedly did to this lady's car, but I just knew it
21 was permanent, that there's something that's
22 happened that they're not going to take him back,
23 because this is too abrupt. This just kicks you out
24 with no explanation, really. And you don't do
25 people like that unless you want them gone.

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1 Lafontaine had any knowledge of ---

2 A. No, I don't. I don't have that.

3 Q. Any knowledge of ---

4 A. I don't even have anything that -- I don't know that
5 Brian Rhinehart didn't write this whole letter.

6 Q. Well, if you look at it, actually ---

7 A. He's the first name on the list.

8 Q. Sure. It's signed Shelby Culbreth. See that slash?

9 A. Yes.

10 Q. What's that look like to the right of that to you?
11 Somebody's initials?

12 A. Okay.

13 Q. If I tell you that's Jackie LaFontaine's initials,
14 that she signed this letter for Shelby?

15 A. Okay.

16 Q. You don't have any reason to believe that Shelby
17 Culbreth knew that Mr. Rhinehart was allegedly
18 abusing John Doe 1, or that John Doe 1 had even
19 reported that when -- at the time this letter was
20 sent; do you?

21 A. Okay. What was that question now?

22 Q. You testified you don't know Shelby Culbreth had any
23 idea -- you have no proof that Ms. Culbreth knew
24 that John Doe 1 was being sexually abused?

25 A. No.

1 Q. You have no proof or reason to believe Jackie
2 LaFontaine knew that John Doe 1 was being abused?

3 A. Okay. I had no way of getting Jackie LaFontaine out
4 of that.

5 Q. You don't even know Brandon Smith, do you?

6 A. No.

7 Q. Do you know who he is?

8 A. No.

9 Q. Do you have any reason to -- or any proof that
10 Brandon Smith knew that John Doe 1 had been sexually
11 abused before it was reported to the police?

12 A. I don't know the guy.

13 Q. Same question of Rob Green. Do you have any reason
14 to believe that Rob Green knew that John Doe 1 was
15 being abused prior to, you know, the report to the
16 police?

17 A. No. I don't know how their name got on there.

18 Q. How about Reverend Cole? Do you have any reason to
19 believe he knew about the alleged abuse?

20 A. No.

21 Q. Bob Faulks?

22 A. No.

23 Q. Do you even know Mr. Faulks?

24 A. No.

25 Q. Do you know Scott O'Neil?

of John Doe 1, Father

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1 A. No.

2 Q. Does the fact that these individuals are cc'd on the
3 letter even mean that they were aware the letter was
4 being written?

5 A. It actually doesn't. They could, but they could
6 not.

7 Q. CC means courtesy copy; right?

8 A. I guess.

9 Q. That means that these people also got a copy of this
10 letter; correct?

11 A. Uh-huh (affirmative).

12 Q. Doesn't mean they wrote it; right?

13 A. Right.

14 Q. Doesn't mean they actually were even aware the
15 letter was being prepared, does it?

16 A. No.

17 Q. Any reason to believe St. Margaret's Episcopal
18 Church even knew the letter was being written?

19 A. No.

20 Q. So you first learned about the alleged abuse on
21 October 6; correct, when John Doe 1 told you?

22 A. Right.

23 Q. Well, how did that come up?

24 A. He was getting ready to go to bed. I said let's get
25 in bed, John Doe 1. I was covering him up, and then

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Father Doe Cross Examination by Mr. Meyers, counsel for Plaintiff

Father of John Doe 1

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1 from slightly MR to LD, or LD back to MR. But I 2 just felt confident that we could handle it that 3 way. 4 Q. That's all I have, sir. Thank you. 5 A. You're welcome. 6 Cross-Examination by Mr. Meyers: 7 Q. Oliver, let me ask you a few questions. I'm looking 8 at a page stamped for identification as MMRS00107. 9 This is a document produced by courtesy of Mr. 10 Foster. It is the 911 call sheet from Spartanburg 11 Communications. The entry for 13:49:57, which is a 12 time entry says, "Speak with a John Doe 1, 15 years 13 old, male, speak with the JUV. Caller is a 14 counselor at the school he attends, but the child 15 father is there also." That's an entry on their 911 16 call sheet. 17 A. Okay. 18 Q. Does that suggest to you that you were actually at 19 the school? 20 A. That is when Petoskey called? 21 Q. Right. That's when the call was made to 911. 22 A. I think Petoskey called me and -- this is what day? 23 October the 7th? 24 Q. It says October 7th. 25 A. Okay. She must have told me to come to school then	1 I've made a horrible mistake, I'm terribly sorry 2 about sending you that letter? 3 By Mr. Foster: 4 Object to the form. 5 Witness Answers: 6 A. Never. 7 Q. Did you get any calls from any of the people on this 8 letter? Jackie LaFontaine? 9 A. No. 10 Q. Doni Rhinehart? 11 A. Yes. 12 Q. And what did she say? 13 A. Well, actually, John Doe 1 called her son, and then 14 she told John Doe 1 to give the phone to me. 15 Q. That's the conversation you've already described? 16 A. Right. 17 Q. Any call to the effect from any of these people, we 18 had no idea when we sent you this letter that John 19 Doe 1 was telling the truth about John Doe 2? 20 A. No. 21 Q. Now, was there any other correspondence with you 22 besides this letter, which is Father of John Doe 1 23 Exhibit 20, that had to do with popcorn money or 24 somebody breaking into a car or John Doe 1 stealing 25 somebody's car, or any other acting out event with
Page 250	Page 252
1 I believe that's true. 2 Q. And do you recall if John Doe 1 told her at school 3 or called her? 4 A. I believe he told her at school. 5 Q. But anyway, at least the 911 record says that you're 6 there also either with John Doe 1 -- 7 A. Yes. 8 Q. --- or somewhere? 9 A. She called me and I went. 10 By Mr. Foster: 11 Object to the form. 12 Cross-Examination Resumed by Mr. Meyers: 13 Q. Let me ask you this; when Brian Rhinehart admitted 14 - it took him 13 days to admit that he had molested 15 John Doe 2. He admitted it on the 20th of October 16 after initially denying it and initially saying this 17 is because of popcorn money; in other words, right 18 from the beginning he said popcorn money is the 19 reason this report is being made. 13 days later he 20 admits, well, I molested John Doe 2, but I didn't 21 molest John Doe 1, after initially denying he had 22 molested anybody. After he admitted molesting John 23 Doe 2 and the scout troop knew that John Doe 1's 24 report was accurate, at least as to that, if not as 25 to him, when did Shelby Culbreth call you and say	1 the scouts? 2 A. No. 3 Q. And have you seen any kind of accounting record from 4 the scouts of what they claim was missing? 5 A. No. 6 Q. Did they at any point say to you we need, you know, 7 to have \$10.00 come back to us or else we're going 8 to kick John Doe 1 out? 9 A. No. 10 Q. Would you have been in a position, between you and 11 your wife to come up with -- or between you and your 12 wife, Jane Doe, and Ralph to come up with \$10.00 if 13 the Boy Scouts were missing \$10.00? 14 A. Definitely. 15 Q. Let's talk about the sequence here for a moment. 16 And so if we assume that the Boy Scout letter was 17 pure as the driven snow, they had no idea that John 18 Doe 1 was being molested, you're telling me that 19 even after it became known for sure that John Doe 1 20 was -- claimed he had been molested, and John Doe 2 21 -- he reported -- he, John Doe 1, reported John Doe 22 2 had been molested, and Brian Rhinehart admitted he 23 had molested John Doe 2, nobody from the Boy Scouts 24 contacted you to apologize? 25 A. No.

63 (Pages 249 to 252)

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Electronically signed by Kay Vaughan (101-037-122-7304)

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Doe, Jane

State of South Carolina
County of Spartanburg
Jane Doe, as guardian for
John Doe,

In the Court of Common Pleas

Plaintiff,

vs.

Case No. 2010-CP-42-2349

Boy Scout Troop 292,
Spartanburg, SC, Palmetto
Council of the Boy Scouts
of America, St. Margaret's
Episcopal Church, Shelby
Culbreth, Jackie LaFontaine,
Brandon Smith, Rob Green,
Roy Cole, Bob Faulks, and
Scott O'Neill,

Defendants.

And

These Two Cases Combined
For Purposes of This Deposition

Jane Doe, as guardian for
John Doe,

Plaintiff,

vs.

Case No. 2010-CP-42-2350

Doni Rhinehart,

Defendant.

Deposition of Jane Doe

Pursuant to Notice of Deposition and/or agreement in
the above-entitled case, a deposition was taken on the 20th
day of May, 2011, commencing at approximately 10:19 a.m.,
attended as follows:

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Doe, Jane

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1 A. From the day he was born.

2 Q. Do you have legal ---

3 A. I will ---

4 Q. --- rights over him?

5 A. I had legal custody of him until he became 18. And I
6 signed papers just this week agreeing to be guardian,
7 because it's my opinion that he is perhaps not quite
8 capable of doing some things that need to be done
9 himself. And one of those things would be his ability
10 to make a decision based upon what's right and what's
11 appropriate. Both of -- they're different.

12 Q. So you signed some papers to be guardian for John Doe 1
13 just recently?

14 A. Well, that's not the first time I've signed papers
15 regarding him. But the guardianship -- well, you know,
16 Dr. Lehl (phonetic), who is president -- I'm sorry, not
17 president -- he has something to do with the school
18 system. And he called me once and, because of some
19 things that had happened -- and a lot of John Doe 1's
20 behavior has been as a result of what has happened to
21 him here, because it's just another person he was not
22 able to trust.

23 Q. Okay.

24 A. But he gave me -- he said he was going to have me named
25 as -- I'm sorry, I don't know the name of that. But

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Doe, Jane

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1 courses in Scotland. So mine is Royal Troon; it's
2 number 21.

3 Q. What town is that in?

4 A. It's in -- it's in Gowensville, but that's about all
5 that's there. We get our mail from Campobello; it's
6 delivered from that post office. So that's the address
7 I have to use.

8 Q. Okay. Who lives there?

9 A. My husband and me and John Doe 1 when he's with us.

10 Q. And your husband's name is what?

11 A. Walter Ralph, Junior. Terrible boss, wonderful
12 husband.

13 Q. And he's a ---

14 A. What I'm saying, I worked for him for nine years.

15 Q. What was his career?

16 A. He worked for Goodyear all -- for 40 -- over 40 years.
17 And at this -- in Cheraw, which is where we both lived
18 at the time, he was the store manager. And I ---

19 Q. The plant manager?

20 A. Sir?

21 Q. Was he the plant manager?

22 A. No, no. He was a store manager.

23 Q. Oh, for Goodyear, a Goodyear ---

24 A. Yes.

25 Q. --- tire store?

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Doe, Jane

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1 A. I think that Brian put fear in both of the boys, and
2 they were -- I think that's why it took John Doe 1
3 longer than I would have thought it would to tell what
4 was happening ---

5 Q. You think ---

6 A. --- because he feared ---

7 Q. You think that Brian was manipulative enough to scare
8 both boys ---

9 A. I do.

10 Q. --- into being quiet?

11 A. I do.

12 Q. Okay. So you don't think John Doe 2 would have told
13 Ms. Rhinehart?

14 A. I think that he -- most children see things go on
15 between their parents that make them sad, and they
16 avoid that at all costs if they can. And he was
17 probably told that it was not wrong and that it showed
18 he loved him, you know, that kind of thing, and it
19 would cause trouble; he would say, "It would upset your
20 mother a lot."

21 Q. Right.

22 A. That's just my take on it.

23 Q. After everything kind of came out, there were court
24 proceedings where, at some point, Mr. Rhinehart was --
25 I understand he pled guilty and then was sentenced.

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Doe, Jane

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1 Were you present when that happened?

2 A. No, sir. And I told -- I told my husband -- and he
3 will tell you this himself -- that I decided there was
4 no way John Doe 1 was going to be there and see that
5 man and get -- and so he would -- here's what he said.
6 He said, "Grandmother, if Brian thought I had anything
7 to do with this, he would be real mad at me." And I
8 said, "John Doe 1, don't ever think that anymore,
9 because you did the right thing." It should have been
10 told, and it should have been told before it was.

11 Q. Has anyone ever -- have you ever heard anyone accusing
12 John Doe 1 of sexually abusing anyone?

13 A. No. But it wouldn't surprise me, because usually
14 that's what happens. It's just like the fixation on
15 pornography. I'm sure he was showed some of it. I'm
16 not at all sure that he wasn't photographed.

17 Q. Well, prior to his contact with Mr. Rhinehart, were you
18 aware of him ever being accused of sexually abusing any
19 other person?

20 A. No. No. But I -- I don't know everything there is to
21 know about John Doe 1, sir. But I do know that he's a
22 good child, and I don't think that of all children. I
23 have a grandson I would never say that about.

24 Q. And then, other than that one conversation you had with
25 Ms. Rhinehart after the incident that was reported ---

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1 Examination by Mr. Foster:

2 Q. My name is Bill Foster. We met earlier in the day. I
3 am ---

4 A. Mr. Foster.

5 Q. I am the attorney for the Palmetto Council of Boy
6 Scouts and Troop 292, St. Margaret's Episcopal Church,
7 Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob
8 Green, Roy Cole, Bob Faulks and Scott O'Neill, the
9 Defendants in the other lawsuit ---

10 A. I see.

11 Q. --- that you have brought as Jane Doe for your
12 grandson, John Doe 1. Have you reviewed the Complaint
13 that was filed against my clients?

14 A. No.

15 Q. Were you aware that that lawsuit only seeks damages
16 based on the alleged harm to John Doe 1 from the
17 decision to send him the letter excluding him from the
18 Boy Scouts?

19 A. No, I was not aware of that.

20 Q. Were you aware that this lawsuit that you've filed on
21 behalf of John Doe 1 does not have a cause of action
22 seeking damages for the alleged sexual abuse by Brian
23 Rhinehart? Were you aware of that?

24 A. Yes.

25 Q. Okay. Can you tell me why that is?

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Doe, Jane

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1 A. Why am I aware of it or why ---

2 Q. Why in this lawsuit are you not seeking damages from my
3 clients I just named based on the alleged sexual abuse
4 by Boy Scouts?

5 A. You don't want to hear my answer, but I'll try.

6 By Mr. Meyers:

7 He does, actually.

8 By Mr. Foster:

9 Yeah.

10 By Mr. Meyers:

11 Do your best.

12 Witness Continues:

13 A. I'm going to reference the Bible again, sir.

14 Q. Okay.

15 A. And I am a good Baptist. I'm not as good as I should
16 be, but I am a good Baptist. With all my heart, I
17 believe every word in it to be the truth and inerrant.
18 And it says for us not to seek vengeance, because
19 vengeance is God's, and he will repay. And when you
20 take the vengeance yourself, you are usurping his
21 promise to avenge. And there's nothing I could think
22 of to hurt anyone that -- I don't want to hurt anybody
23 -- that would be better than that.

24 Q. Okay.

25 A. The only thing I want is to be sure that my son -- my

Depositions and..., Inc.

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Doe, Jane

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1 reporting James Rhinehart. South Carolina law requires
2 abusive conduct to be reported, and penalizing the
3 child who reports was extreme and outrageous conduct by
4 Troop 292."

5 Paragraph 23, "Stacey" (sic) "Culbreth acted with
6 gross negligence in effectuating the tortious intention
7 of Troop 292 through the letter sent to" Father of John
8 Doe 1 "and as a proximate" result "the plaintiff was
9 injured, and is entitled to actual and punitive damages
10 in amounts to be assessed by the finder of fact."

11 The next cause of action is for "Negligent
12 Supervision." And I'll summarize that, because I do
13 want to avoid reading all this to you. But in essence,
14 the other members of the troop, the other Defendants,
15 were negligent in allowing this letter to be sent to
16 John Doe 1 excluding him.

17 A. Well, it's signed by one of the people ---

18 Q. Yes, ma'am.

19 A. --- Shelby.

20 Q. By Shelby Culbreth. At least it appears to be. So
21 the Complaint that we have that you've brought and
22 we're here today to take your deposition about against
23 my clients is, in essence, based solely on the
24 decision to send the letter exclusively to John Doe 1
25 allegedly based on his having reported the abuse by

Doe, Jane

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1 Mr. Rhinehart. Do you understand that?

2 A. Yes, I do.

3 Q. There's no allegation in this Complaint that my clients
4 caused or were responsible for the sexual abuse by Mr.
5 Rhinehart?

6 A. Here's how they're responsible, sir.

7 Q. I'm not asking that question. And I'm -- I don't mean
8 to cut you off, but ---

9 A. That's fine.

10 Q. --- my question is, that's not in the Complaint; we
11 haven't been sued for that; is that right?

12 A. Right.

13 By Mr. Meyers:

14 Yeah, although you might want to ask her about it, just
15 in case she wants me to move to amend.

16 By Mr. Foster:

17 Well, the deadline for that has passed, although I'm
18 sure we can talk about that.

19 Examination Resumed by Mr. Foster:

20 Q. But I want to know what the lawsuit is about. That's
21 what the purpose of the deposition is. And ---

22 A. Well, you haven't -- you didn't let me say what I think
23 it's about, what ---

24 Q. Okay. Well ---

25 A. --- I know ---

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Doe, Jane

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1 Q. --- what's the ---

2 A. --- it's about.

3 Q. What does the Complaint allege? It's only alleging
4 that we intentionally inflicted emotional harm on John
5 Doe 1 by sending the letter; is that correct?

6 A. Yes.

7 Q. Okay.

8 A. But they did not screen the people who were going to
9 head the troop up.

10 Q. Is it your ---

11 A. Because if they had screened them, you know, Paul
12 wouldn't have left abruptly and we'd know some things
13 that we don't know now.

14 Q. Is it your belief that Brian Rhinehart had some sort of
15 record of pedophilia?

16 A. I don't think it started with these two boys, but I
17 don't know. You know, I have no way of knowing.

18 Q. Excuse me?

19 A. I said, I don't know. I have -- it's hard for me to
20 believe it would have just started with these two boys,
21 but I have no proof, so I can't answer the question
22 except to say I suppose it means that it was the first,
23 or it could have been the first.

24 Q. Okay. So if this was the first time it happened, how
25 could you screen or do some sort of investigation to

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Doe, Jane

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1 Q. You believe that John Doe 1 told someone at school ---

2 A. Mm-hmm (affirmative).

3 Q. --- that he was being sexually ---

4 A. Yeah.

5 Q. --- abused?

6 A. Yeah.

7 Q. Who was that?

8 A. I don't know her name, but I think he did mention it at
9 school. We didn't really talk about it in depth.

10 Because like I said, until yesterday, I had done very
11 little talking with him about it and he had done no
12 talking with me about it, because he felt like he had
13 done something wrong.

14 Q. Okay. And so you don't know when sort of in this time
15 frame -- October 6th, when Father of John Doe 1 says
16 John Doe 1 told him that evening that he had been
17 abused and that he told John Doe 1 he needed to "go to
18 school tomorrow and tell somebody," and then, on the
19 7th, apparently John Doe 1 did that, because Ms.
20 Petoskey called the police and they showed up at Father
21 of John Doe 1's home to get the investigation started
22 -- you don't know when John Doe 1 might have told you?

23 A. Well, I would say that it had to be before that, but it
24 couldn't have been much before that, because as far as
25 I know, he went straight home that day and told his

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Doe, Jane

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1 dad.

2 Q. Okay. Where were you when John Doe 1 told you; in the
3 car?

4 A. Yeah. I had just -- I had been over there to pick him
5 up and take him home.

6 Q. Pick him up from ---

7 A. Scouts.

8 Q. --- Boy -- from Scouts?

9 A. Mm-hmm (affirmative).

10 Q. Okay. And so you picked him up on, say, Thursday --
11 the Scout meetings for Troop 292, I think, were Tuesday
12 and Thursday?

13 A. Tuesdays. Yeah. Well, I'm not sure about the
14 Thursday, but I know they met on Tuesday.

15 Q. You know they met on Tuesdays? Okay.

16 A. I don't know any Scout troop that meets twice a week.

17 Q. Yeah. I don't know why I'm thinking twice a week.
18 That would be a lot for a Scout troop.

19 A. Yeah.

20 Q. So it would have been on -- probably Tuesday, you would
21 have picked him up and taken him home, so it could have
22 been -- you really don't know when he told you, but
23 your assumption is, it would have been near the time he
24 told his dad?

25 A. Yeah.

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Doe, Jane

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1 Q. And that's because you had told him, "Tell your dad"?

2 A. Yes.

3 Q. Please don't think I'm being judgmental, but did you
4 ever think about -- when John Doe 1 told you about it,
5 did you ever think about calling the police?

6 A. Yeah, I did think about it. And I decided that, if I
7 had done that, I would see Father of John Doe 1's
8 temper, because he would feel like he -- that was in
9 his area, and that I should not be in -- should not
10 intrude.

11 Now that I know that he called -- told him to tell
12 somebody at school and they called, you know, I could
13 kick myself for not handling it and taking him home
14 with me that day and saying -- but I can't. I have a
15 situation where I can't -- I used to do things because
16 I thought they were right, and it didn't matter to me
17 what ---

18 Q. What happened?

19 A. Yeah. But it was important that John Doe 1 see peace
20 and feel peace at our home, and love. And my husband
21 would have taken Father of John Doe 1's stance on it,
22 because he doesn't make waves if he can at all prevent
23 it.

24 Q. Do you think it's -- Father of John Doe 1's reaction,
25 do you find that to be odd?

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0001

1 State of South Carolina
In The Court of Common Pleas
2 County of Spartanburg
3 JANE DOE, as Guardian for
JOHN DOE,
4
Plaintiff,

5
vs. C.A. No.: 2010-CP-42-2349

6
BOY SCOUT TROOP 292, SPARTANBURG, SC,
7 PALMETTO COUNCIL OF THE BOY SCOUTS OF
AMERICA, ST. MARGARET'S EPISCOPAL
8 CHURCH, SHELBY CULBRETH, JACKIE LAFONTAINE,
BRANDON SMITH, ROB GREEN, ROY COLE, BOB
9 FAULKS, AND SCOTT O'NEILL,
10 Defendants.

11 JANE DOE, as Guardian for
JOHN DOE,
12
Plaintiff,

13
vs. C.A. No.: 2010-CP-42-2350

14 DONI RHINEHART,
15
Defendant.

16
17
18
19 Deposition of
20 JOHN DOE (Volume I)
21

22 Pursuant to notice of deposition and/or agreement in the
23 above entitled case, a deposition was taken on the 27th day of
24 January, 2012, commencing at approximately 10:00 a.m.,
25 attended as follows:

0002

1 APPEARANCES:
2 MICHAEL R. JEFFCOAT, Esquire
The Michael Jeffcoat Firm
3 4723-A Sunset Boulevard
Lexington, South Carolina 29072,
4

1 Where do you live right now?

2 A. I live in Elmira, New York, House 712 West Second Street.

3 Q. House 712?

4 A. Yes.

5 Q. Who lives there with you?

6 A. Nancy Griffin; my roommate, a veteran named Jim; and a
7 guy name Tim.

8 Q. So you live in Elmira, New York, House 712. And what was
9 your street?

10 A. West Second Street.

11 Q. Okay. Now, is this a house? An apartment? What?

12 A. A house.

13 Q. It's a detached house that sits by itself?

14 A. Yes. It's called a Family Care Home.

15 Q. And so how did you find that place to stay?

16 A. Well, I was getting tired of my mom like not letting me
17 go anywhere and keeping me -- well, she let me go to
18 program but she wouldn't let me -- she hardly ever let me
19 go to my friends' houses. And it was kind of depressing
20 for me to be stuck at home all the time.

21 So I talked to my social worker about getting me a
22 family -- it's nothing like your group home. It's like a
23 house where someone, like an owner of a house, let's
24 people move into it.

25 Q. Is there somebody there that kind of watches out for you

1 guys?

2 A. Yes.

3 Q. Who is that?

4 A. Nancy Griffen and her ex-husband.

5 Q. Do you know his name?

6 A. Brian -- not my scout leader. A different Brian.

7 Q. Sure. Is it Brian Griffin?

8 A. Yes.

9 Q. And so you went through your social worker to find the
10 house?

11 A. Yes.

12 Q. And do you know your social worker's name?

13 A. Tracy something.

14 Q. And is she like -- like what kind of agency is she with?
15 Like has she got --

16 A. Family Services.

17 Q. Is that for like the town of Elmira or the state of New
18 York?

19 A. No. It's. . .

20 Q. The county?

21 A. Yes, it's the county.

22 Q. Do you know the county that you're in?

23 A. I think it's Twin -- no, not --

24 Q. But whatever county Elmira is in is the county that
25 you're --

1 A. Yes.

2 Q. -- getting the services from?

3 A. Elmira, I think -- I'm not sure what county Elmira is in.
4 I forgot.

5 Q. That's fine. And if you forget, that's okay. When did
6 you move to New York?

7 A. I'm not sure.

8 Q. How old are you now?

9 A. Twenty.

10 Q. Do you know your birthday?

11 A. May 3rd.

12 Q. Do you know your year?

13 A. '91.

14 Q. Do you know how long kind of you've been living in New
15 York?

16 A. A little over a year.

17 Q. And when you went to New York, did you move in with your
18 mom?

19 A. The beginning; yes.

20 Q. What's her name?

21 A. Jessica Hageman.

22 Q. And let me ask you this because we might have all been
23 mispronouncing your last name. Is it (phonetic) or is it
24 (phonetic) or (phonetic)?

25 A. (Phonetic).

3 a bad guy for doing that because he was so respected in
4 the community, real popular, real successful. But he's a
5 child molester, you know. That kind of stuff happens.

6 Q. So how do you know that the letter came after you had
7 identified Brian as a child molester?

8 A. To be honest, [REDACTED] told me about that at school in
9 class. Because I walked in the classroom and, "I'm not
10 talking to you, John Doe." And I was like "why?" And he
11 was like, "because you managed to get yourself kicked out
12 of scouts."

13 Well, I told the truth and you shouldn't have to --
14 and Brian isn't his real dad. That's why me and him were
15 friends, but I haven't seen him and I haven't heard from
16 [REDACTED] in years.

17 Q. So you knew before you got home that you had been kicked
18 out of scouts?

19 A. No. When I first got -- he didn't say anything about --
20 well, he did -- wait a minute. He did -- he said I was
21 kicked out of scouts.

22 But when I got home, I was -- I looked like to my
23 parents that I was really shocked or whatever because I
24 didn't want to put [REDACTED]'s name in it because I was
25 protecting him.

0114

1 Q. So you and [REDACTED] were in school together?

2 A. We were in sixth grade to ninth grade.

3 Q. And you were in the same classes?

4 A. Pretty much; yeah.

5 Q. So when you had that conversation with [REDACTED] about you
6 managed to get yourself kicked out of scouts, had you
7 already disclosed that his step-father had abused you?

8 A. Yes.

9 Q. All right. Who did you disclose that to?

10 A. I called the school superintendent.

11 Q. You made a telephone call?

12 A. Yeah. That's how -- I don't know who it was but -- I
13 can't remember. But I called them and then they contacted
14 the detective and -- Detective Cantrell was her name. I
15 remember her.

16 I reported it to her and she had -- I think she said
17 she was going to have Brian for a lie detector test or
18 something. And she asked me would he pass it or fail it?
19 I said he'd fail it.

20 Q. Who said that?

21 A. Detective Cantrell from Spartanburg County Sheriff's
22 Office.

23 Q: Now, at the time that you reported this abuse from Mr.
24 Rhinehart, were you having some sort of a dispute or issue
25 with the Boy Scouts about popcorn?

0115

1 A. No.

2 Q. Do you remember that as a fundraiser, the Boy Scouts
3 would sell popcorn?

4 A. Yes, I remember selling popcorn.

5 Q. Do you remember around the time when you made the
6 allegations against Brian that there had been a fundraiser
7 for popcorn going on around that time?

8 A. Yes, I knew that.

9 Q. Were you participating in the popcorn sales?

10 A. Yes, I was very participation. Me and Brian and [REDACTED]
11 we'd go to houses in Turtle Creek. That was a very nice
12 neighborhood they lived in and we used to go to houses --
13 houses everywhere, not just their houses in -- Springfield
14 and all over the place and Lake Bowen selling popcorn. We
15 were pretty successful.

16 Q. And do you remember that there was some question about --
17 well, let me withdraw that.

18 Was the program set up that you would sell popcorn
19 and then the money that you got would go back to the Boy
20 Scouts?

21 A. Yes.

22 Q. You weren't supposed to keep the money yourself?

23 A. No.

24 Q. That if you had any popcorn left over, you were supposed
25 to give that back to the Boy Scouts?

0116

1 A. Yes.

2 Q. And if you had popcorn that you didn't sell and didn't
3 return, would you be responsible for that popcorn?

4 A. Yes.

5 Q. Do you recall prior to the issue of the letter and the
6 abuse allegations against Brian that the scouts were
7 saying that you owed -- you had to return some popcorn or
8 pay for it?

9 A. Yes, I remember that.

10 Q. Tell me what you remember about that?

11 A. I remember I was in -- I was at [REDACTED]'s house; right?
12 And [REDACTED] loves food, he loves food. He'll eat anything.
13 I remember -- I can't -- honestly, I didn't really see him
14 take anything but I recall like something -- there was a
15 box that had -- it looked like it was opened of \$8, some
16 kind of -- I forget what the name of it was. It was like

17 caramel popcorn or something and I remember it being gone.
18 And I said to Brian that somebody opened this box.
19 And he said, "well, just put it back on the shelf. We've
20 got a bunch of them." And so I did and I went back in the
21 house. And I didn't -- honestly I didn't see anything
22 that was missing. I don't usually go through people's
23 stuff. But [REDACTED] does have a history of eating food but
24 that's really fine but you shouldn't really take stuff
25 that doesn't belong to you.

0117

1 Q. So did the Boy Scouts, the leaders of the Boy Scouts ever
2 mention that they thought that you had some popcorn that
3 you needed to return or you needed to pay the money for
4 what you had missed returning?

5 A. Yes. They mentioned that. And my grandparents were
6 like -- they -- I think they went over to Brian's house at
7 Turtle Creek after I turned them in. And it was like, "I
8 didn't --" they told me like he said something, "I didn't
9 do it" or something like that when they showed up.

10 Q. Who said "I didn't do it?"

11 A. Brian. He was like making like a friendly -- he was
12 being friendly to my grandparents.

13 Q. So you're saying that after you had accused Brian, your
14 grandparents went over to Brian's house?

15 A. Yes.

16 Q. Did they pay for the popcorn that the scouts said you
17 owed?

18 A. I'm not -- I don't know. But I know they went over there
19 for some reason. I'm not sure if it was the popcorn or
20 just to ask a question. I'm not sure.

21 Q. And do you know how much popcorn that they said that you,
22 that the scouts said that you owed?

23 A. They said I owed \$8, an \$8 thing of popcorn, which was
24 the cheapest one they had.

25 Q. Did you eat any of the popcorn?

0118

1 A. No.

2 Q. Are you saying that [REDACTED] ate the popcorn?

3 A. You know, I didn't see him. But all I remember him is
4 him going out in the garage, and I don't follow him where
5 he goes because he has a habit of taking stuff like food,
6 especially food. Because he goes in the refrigerator and
7 gets food a lot because he loves to eat.

8 Q. But how do the Boy Scouts do the popcorn? I mean, didn't
9 you have popcorn that you take? Don't the scouts take it
10 to sell?

13 A. Because he molested me. And also -- I don't know if you
14 heard about this, but it was [REDACTED] too. We were in the
15 same bed together. I just remembered that.

16 Q. But other than the fact that he molested you, why do you
17 think that the troop kicked you out of the scouts other
18 than the fact that you accused Brian?

19 Like what evidence or proof do you have in your mind
20 that they're related?

21 A. You mean [REDACTED] and --

22 Q. No, sir. I'm sorry. Let me start over. You got the
23 letter, you were thrown out of the scouts, and [REDACTED] told
24 you you were thrown out of the scouts. And around that
25 same time, you also accused Brian of abusing you. Right?

0126

1 A. No. It was before that.

2 Q. I understand. I'm not saying it's before or after. What
3 I'm asking you is: What evidence or proof do you have in
4 your mind that because you accused Brian, you were thrown
5 out of the troop?

6 A. Because he was so respected in the community, that he --
7 that's why they kicked me out. Because he was so
8 respected -- he was posing as a really good person. He
9 had a wife, a daughter, two stepchildren.

10 Q. So what is it about the fact that he's respected and has
11 a family that would make you think that the troop would
12 throw you out of the scouts because you accused Brian?

13 A. Because -- can you repeat that?

14 Q. Sure. I asked you why you thought that the letter was
15 sent in response to you accusing Brian. And you said,
16 well: Brian was respected in the community, he had a
17 family.

18 And I guess what I'm wondering is: Anything else
19 other than that that the troop would throw you out of
20 scouts that would make you think that that was the reason,
21 is because you accused Brian?

22 A. I can't really think of anything.

23 Q. Well, if you believe Shelby wrote and sent the letter,
24 she's not Brian. So, I mean, would you think that she's
25 covering for Brian?

0127

1 A. Yes.

2 Q. And why do you think that?

3 A. Because they were really, really close.

4 Q. In what way? What do you -- what do you remember about
5 them that made you think that they were close?

6 A. Well, I don't remember anything like out of the ordinary.

15 it?

16 A. Well, you know, back then I wasn't really sure -- if
17 something happened, I was like -- I wasn't really sure. I
18 wasn't really good with like -- I wasn't really good with
19 time back then.

20 Q. But I guess I'm wondering: What was it that made you
21 decide on the day you called the superintendent that that
22 was the day you were going to report it?

23 A. I'm not really sure.

24 Q. Did anything happen the day before that would have made
25 you want to call the superintendent that next day?

0133

1 A. No. I just -- I was afraid of him. I had to wait until
2 a proper time while I was away from him. He owned -- he
3 was -- if he was a police officer, which he told me he
4 was, he had -- he had handguns. -- well, he didn't really
5 threaten me but he showed me he had handguns that maybe we
6 can go on a field trip one day and use. He had some kind
7 of like a nine-millimeter and a -- I don't know what kind
8 the other two were. But he had three handguns.

9 Q. When was the last time you had seen him -- Brian, that
10 is -- before you called the superintendent?

11 A. I'm not really sure.

12 Q. Now, in the time period from the first time he abused you
13 to the last, did you see him in times when he didn't abuse
14 you or was it every time he saw you in those three times,
15 he abused you?

16 So, in other words, what I'm saying is: Did he
17 abuse you the first time and then you might have seen him
18 a time or two and nothing happened and then you were
19 abused and then nothing happened and you saw him? Or was
20 it all one, two, three the next three times you saw him?

21 A. It was off and on.

22 Q. So you came into [REDACTED]'s bedroom and something happened.
23 Then you saw him how many times, do you think, before it
24 happened again?

25 A. Not really sure.

0134

1 Q. Like more than a couple of times?

2 A. A couple.

3 Q. Then you were abused again. And then how many times do
4 you think you saw him when nothing happened before it
5 happened again?

6 A. I'm not really sure.

7 Q. A couple of times, you think?

8 A. I'm not sure.

5 bed with you and [REDACTED] and then you couldn't remember if
6 the second or third time was the church and then the
7 second time at [REDACTED]'s house.

8 A. I can't remember. I remember him coming in the bed,
9 laying down in the bed with us the first time. The second
10 time, he just wanted us to calm down because he's a
11 married guy and he wants to sleep with his wife.

12 Q. So what did you calming down have to do with him sleeping
13 with his wife?

14 A. No. Look. When he was in there with us helping us go to
15 sleep, that kind of took the time away from his wife.
16 Because people, married couples want to have a
17 relationship with their wife and not be separated for a
18 long period of time.

19 Q. So how did the abuse this time happen?

20 A. Well, like what?

21 Q. Well, I mean, did he do anything then? Because I think
22 you said there were three times. And I'm trying to figure
23 out what the third one was.

24 A. You know, I know one of them was at the church and one of
25 them was upstairs and one of them was in the bedroom. But

0167

1 I'm not really sure what order they were in.

2 Q. I'm not asking about the order. But now you said
3 something happened at Dhiren's house upstairs. Okay. So
4 what happened upstairs?

5 A. When we were upstairs, he made me give him a blow job and
6 he gave me one.

7 Q. Where was [REDACTED]

8 A. He was -- at that time, he was at Camp Spearhead. And I
9 was over there helping his dad out with some stuff.

10 Q. Who was there at the house when this happened?

11 A. There was [REDACTED], and Doni.

12 Q. And where were they?

13 A. They were downstairs.

14 Q. And what were you doing at the house to help them? What
15 were you trying to do?

16 A. I was helping them with scout stuff, counting money. We
17 actually tried to sell popcorn.

18 Q. Okay. So this was around the time of the popcorn sales?

19 A. Yes.

20 Q. So this sounds like it would be more like the last time.
21 Because if the summer was the creek and Dhiren and the bed
22 was the first and you reported it in October, it sounds
23 like this was the last --

24 A. Well, I'm not really sure if the creek was summertime

- 25 because -- it felt kind of hot outside but I don't really
0168
- 1 know if it was summertime.
- 2 Q. But if you were doing the popcorn sales, the popcorn
3 sales were like in October; weren't they?
- 4 A. I'm not really sure.
- 5 Q. Because if you reported it October 7th and your dad said
6 that there was some issue with the popcorn that you were
7 mad about, did that happen just -- did this issue with
8 being mad about the popcorn happen just around the time
9 you made the allegations?
- 10 A. I'm not really sure.
- 11 Q. So what were you helping Brian with at his house with the
12 popcorn sales? You said you were counting money. Does
13 that mean that you would -- it sounds like you were in the
14 middle of the sale or the end of the sale and the money --
- 15 A. There was somebody else at the table watching me because
16 we were counting money like putting it in the envelopes
17 and stuff. Because with the money -- we don't get a -- we
18 get a profit for, we keep ourselves for -- it's for field
19 trips and stuff.
- 20 Q. So there was an office upstairs?
- 21 A. No, no. We were downstairs at the kitchen table at the
22 time we were counting the money.
- 23 Q. Was there somebody else from the scouts there?
- 24 A. Yes.
- 25 Q. Who was there?
- 0169
- 1 A. Brian.
- 2 Q. Besides Brian?
- 3 A. Well, Doni was grocery shopping and [REDACTED] was in her
4 bedroom listening to music.
- 5 Q. What about [REDACTED]?
- 6 A. I'm not really sure where she was at that time. I think
7 she was staying with her grandma and grandpa.
- 8 Q. So it was really just -- really at the time this was
9 happening, only [REDACTED] was home?
- 10 A. Yes.
- 11 Q. And then why was [REDACTED] at Camp Spearhead and not you? I
12 mean, what was he doing there?
- 13 A. Well, he was like -- it's a camp where you can -- I've
14 never heard about it but I've heard of places where you go
15 to places like that. I'm not really sure. I've never
16 been there.
- 17 Q. And did Brian pick you up and bring you over to help him
18 with the popcorn money that day or did you get dropped

State of South Carolina

In The Court of Common Pleas

County of Spartanburg

JANE DOE, as Guardian for
JOHN DOE,

Plaintiff,

vs.

C.A. No.: 2010-CP-42-2349

BOY SCOUT TROOP 292, SPARTANBURG, SC,
PALMETTO COUNCIL OF THE BOY SCOUTS OF
AMERICA, ST. MARGARET'S EPISCOPAL
CHURCH, SHELBY CULBRETH, JACKIE LAFONTAINE,
BRANDON SMITH, ROB GREEN, ROY COLE, BOB
FAULKS, AND SCOTT O'NEILL,

Defendants.

JANE DOE, as Guardian for
JOHN DOE,

Plaintiff,

vs.

C.A. No.: 2010-CP-42-2350

DONI RHINEHART,

Defendant.

Deposition of
JOHN DOE (Volume II)

Pursuant to notice of deposition and/or agreement in the
above entitled case, a deposition was taken on the 2nd day of
February, 2012, commencing at approximately 10:00 a.m.,
attended as follows:

Depositions and..., Inc.
(864) 235-3518

9 A.: Yes, because that's been like six years ago.
10 Q.: All right. And so one of the things that I think we were
11 talking about then was what made you decide to report
12 Brian at the time that you did. What do you recall -- you
13 told me that you had called a school superintendent.
14 A.: Yes.
15 Q.: And then you went to who? Some school administrator in
16 the school office?
17 A.: Well, it was -- I called the superintendent and then I --
18 I called some lady superintendent, they put me on. And I
19 told her what the names of a couple of people that were
20 giving me a hard time, and Brian was one of them.
21 He wasn't -- some people at school were like --
22 that's past. I don't --

23 Q.: But I think you mentioned you had a complaint about Brian
24 Rhinehart and also had a complaint against a coach.
25 A.: Yes.

0013

1 Q.: And then what did the school tell you when you made the
2 complaint against the coach and against Brian Rhinehart?
3 A.: They told me that they were going to look into it and
4 just to wait it out and maybe just to try push on through
5 and they were going to get me, like transfer me to a
6 different school.

7 Q.: That was Coach Rumble?
8 A.: Yes.

9 Q.: So then what -- then at some point, though, the police
10 contacted you; is that right?
11 A.: Yes.

12 Q.: So how much time went by from the time that you called
13 and complained about Brian Rhinehart and Coach Rumble
14 until the officer contacted you?
15 A.: A few days.

16 Q.: All right. Was that Detective Cantrell?

17 A.: Yes, yes.

18 Q.: And what did Detective Cantrell tell you?

19 A.: Well, I can't really remember. She did -- I do remember
20 this: She discussed with me, "do you think if Brian
21 Rhinehart took a lie detector test, would he pass it or
22 fail it?" And I said "fail it."

23 That's been so long, I can't remember. I do
24 remember Detective Cantrell, though.

25 Q.: And so did you ever have any conversations with Brian

0014

1 Rhinehart after you reported it?

2 A.: No. I wouldn't even call him because I was just -- I
3 kind of had a fear, I had a fear of him because he was --
4 I think he was, he used to be in law enforcement. He
5 owned several firearms.

6 Q.: Did he ever try to contact you after you reported him?

7 A.: Uh-uh (negative response).

8 Q.: Is that "no?"

9 A.: "No."

10 Q.: Remember, you have to give me a verbal answer.

- 15 happened, he was -- I was -- [REDACTED] didn't do anything.
16 He was just sleeping with us. And I remember, I remember
17 him grabbing my penis while I was sleeping but --
18 Q. Let me make sure I understand. The three times you've
19 described was once in the upstairs at [REDACTED] house, once
20 in his bedroom with [REDACTED] in the bed, and once at the
21 church by the creek?
22 A. You know, I'm not -- it was once at the church. That was
23 the first time when we went there to get ice for the
24 drinks.
25 Q. And why? Because you were working in the garage, did you
0046 say?
1 A. We were -- yes. We were stacking boxes and stuff.
2 Q. The popcorn boxes?
3 A. Yes.
4 Q. Were any other scouts there when you guys were working on
5 the boxes?
6 A. You know, there's -- I don't remember but it felt like it
7 was just me and Brian. Because [REDACTED] at that point in
8 time was at his grandpa's house at a lake house. But Dena
9 was there. She was in her bedroom.
10 Q. So the time that you went to the church, you thought it
11 was just you and Brian working on the popcorn boxes in the
12 garage?
13 A. Yes.
14 Q. Were there any other scout leaders present?
15 A. No.
16 Q. Then the time that you went upstairs at [REDACTED]'s house,
17 were you there -- well, why were you there?
18 A. Well, we were -- when was this?
19 Q. Not while you were upstairs -- not when you went
20 upstairs, but why were you even at his house? I think you
21 had told me that [REDACTED] was at Camp Spearhead, I think you
22 said.
23 A. Yeah. But let me think about it. I have a short-term
24 memory so I kind of get confused.
0047
1 Q. Take your time.
2 A. The time we were upstairs, he was at Camp Spearhead. But
3 the time we were working in the garage, he was at his
4 grandparents' at the lake house.
5 Q. So when you went upstairs when [REDACTED] was at camp, were
6 any other scouts there?
7 A. I can't really remember.
8 Q. Do you think some were?
9 A. I'm not sure. It doesn't -- I don't remember seeing any
10 because Tony Cathcart and Robert Cathcart were somewhere
11 else. I don't know exactly where they were but they
12 weren't there.
13 Q. You mean somewhere else like not at the house?
14 A. Not at the house. I have no clue where they were but
15 they weren't at the house.
16 Q. How many scouts were in the troop?

John Doe Direct Examination by Mr. Walsh, counsel for Ms. Rhinehart

13 troop?
14 A. I thought about it but I didn't really ask anybody about
15 it.
16 Q. I was going to say: Did you look into it at all to see
17 if there were other troops available?
18 A. No. I was more interested in military. When I was --
19 can I say something?
20 Q. Sure.
21 A. When I was in high school, there were two teachers:
22 Colonel and Robert Sanders. They had like some -- when I
23 was there, I kind of like -- we were playing like
24 football -- we do that every Friday like for cadets. And
25 I pushed a black girl, African-American. Her name was
0071
1 Jessica. Because she threw -- we were playing two-man
2 touch and she threw a ball at me and I called her a B.
3 And after that, everybody in the ROTC didn't like me.
4 Q. Okay. So when you had your meetings at the church, what
5 would you all do?
6 A. Well, just like do stuff like, you know, we would -- let
7 me think. We would talk about events we were doing, we
8 were achieving.
9 Q. Would you do like skill activities you would do like work
10 on things?
11 A. Yes.
12 Q. Work on merit badges?
13 A. Merit badges. I got my first merit badge.
14 Q. How many merit badges did you end up with?
15 A. I only got one.
16 Q. What merit badge was that?
17 A. I forgot what it was called. The first one you get in
18 Boy Scouts. It's kind of a citizen thing or whatever.
19 Q. Citizenship?
20 A. Yeah.

21 Q. And so in the time that you were being touched by Brian,
22 were you still going to the scout meetings?
23 A. Yes. But that was before -- that was after I came back.
24 Q. Right. And did he ever touch you at a scout meeting?
25 A. No -- wait a minute, wait a minute. We were at the
0072
1 church, we were at the church one time, another time. It
2 was at night and we were getting ice for the car wash
3 thing. I just remembered that.
4 Q. What car wash thing?
5 A. It was a car wash at CVS, a free car wash. And we had
6 signs and donations accepted, free -- we would just tell
7 people we'd give them a free car wash.
8 Q. What happened? You said you were at the church?
9 A. Yeah.
10 Q. Who was at the church with you?
11 A. Let me think.
12 Q. Did Brian touch you at the church another time?
13 A. We weren't at the church, in the church. We were in the
14 truck. It was like 9:00 o'clock at night and we were

15 getting ice for something, for the drinks at the car wash
16 at CVS.

17 Q. And did he touch you in the truck?

18 A. Yes. But I remember somebody was pulling in down, like
19 down at the end of the road. And he pulled my pants up
20 because he saw somebody pulling in.

21 Q. So this was another time different than the creek time?

22 A. Yes. I don't know if it was before or after. I can't
23 really remember.

24 Q. Do you remember telling the police about that?

25 A. No. The only thing I told the police is -- I don't

0073

1 remember. The only thing I told Cantrell was that about
2 the lie detectors, the only thing I can remember. I may
3 have told her something else but that's the only thing I
4 remember.

5 Q. Do you remember that you told them that there were three
6 incidents kind of like you told me today? There was two
7 at the Rhinehart house and one at the creek?

8 Do you remember telling her that there was also this
9 incident in the parking lot?

10 A. It wasn't -- we were in the truck, we were still -- we
11 were in the truck. It was at nighttime.

12 Q. In the church parking lot?

13 A. Yes. We were on -- I remember somebody pulling into the
14 church or had their turn signal on and I remember him
15 seeing that and pulling my pants up.

16 Q. Okay. Did he actually touch you then or did anything
17 actually happen then or he was just trying --

18 A. He was jacking me off.

19 Q. And because the police report from Cantrell says, "I
20 attempted to interview the victim --" which is you. He
21 stated that on three separate occasions, you were touched
22 at the suspect's house two times and then once at a creek
23 behind the church. But it doesn't say anything about this
24 incident in the parking lot. So do you think you told the
25 officer that?

0074

1 A. I don't remember. You know, I must have didn't. But I
2 just -- I didn't think about it because, you know, it was
3 at night and, you know.

4 Q. And so he was touching your penis at that point?

5 A. Yeah.

6 Q. Were you doing anything to him?

7 A. No.

8 Q. Where had you been before that?

9 A. I don't remember. I can't -- I don't remember if that
10 was before -- now, that happened there was the -- nothing
11 ever happened after that.

12 Q. That was the last time?

13 A. Yeah. But I'm not sure if it was before or after.

14 Q. Before or after what?

15 A. That was -- if that was the last time, it would be after
16 the creek thing.

1 him it was wrong.

2 But he was considered a pretty good friend even
3 though he did those things, which is a bad -- which is,
4 you know, a bad thing. But, you know, looking back on it
5 now, I agree that that was a good, the best benefit of the
6 doubt, me turning him in. Because, you know, if I had not
7 done that, the results could be disastrous.

8 Q. So if that was the last time, when do you think that was
9 compared to when you reported him? Was it a few days
10 later or a month later? You know, when do you think that
11 was.

12 A. I'm not really sure. It feels like it was about a few
13 months later because the letter -- I'm not sure what the
14 date -- I have no clue when the letter, the date the
15 letter was sent.

16 Q. Well, was there anything about the fourth time, this last
17 time, that made you decide to report Brian? Anything
18 different about that? Or why then and not after the first
19 time, second time or third time, if there was a reason?

20 A. Well, because, honestly, I'm not going to lie. Me and
21 him were really good friends, like he was -- I got the
22 notion that he was a really good scout leader. But
23 even -- I was too young to understand that that was wrong.

24 Q. Well, wasn't it that the letter came and you saw that you
25 had been thrown out and that's when you reported him?

1 A. Yes.

2 Q. Now, were you attracted to Brian?

3 A. No.

4 Q. Did you tell Wyley Garrett that you were?

5 A. I don't remember.

6 Q. If says here in Wyley Garrett's report that you admitted
7 to him that you wanted the sexual attention of Mr.
8 Rhinehart. Did you ever say that?

9 A. I don't remember saying that.

10 Q. It says here that you were talking to him in this report
11 and you said that you admitted to being abused by Mr.
12 Rhinehart and by Emanuel Blackwell.

13 A. Yes -- no. I didn't know Emanuel's last name. I forgot
14 it. His real name is Emanuel Rooker.

15 Q. Well, he's got Blackwell in the report.

16 A. I didn't realize what his last name was.

17 Q. So then it says that you were sexualized at an early age
18 and admitted that he first wanted the sexual attention of
19 Mr. Rhinehart.

20 Do you think that you did? Were you interested in
21 having him touch you and you touch him?

22 A. Well, if we were really good friends, I guess I would
23 probably be interested then. But looking back on it now,
24 it really angers me.

25 Q. Sure. I understand. I'm not talking about how you feel

15 results could have been, you know, deadly. I mean, if I
16 would have told anybody in the troop, it wouldn't go well
17 for me.

18 You know, I was terrified but -- that's why I went
19 to somebody, a police officer. Because I wouldn't -- the
20 scouts work for each other so that would be a bad idea.

21 Q. And I'm sure none of the grownups -- when I say
22 "grownups," I'm talking about the scout volunteer grownups
23 that were part of the troop -- none of them ever told you
24 that you were dismissed from the scouts because of your
25 turning in Brian Rhinehart?

0127

1 A. They didn't even mention that.

2 Q. Where did the scouts meet over at -- it was at St.
3 Margaret's Church?

4 A. Yes.

5 Q. Where at the church did you all meet?

6 A. In the room beside of the cafeteria.

7 Q. Is that a big church?

8 A. It's medium sized.

9 Q. But, as you said, they own a pretty big piece of land?

10 A. Oh, yes. They own like 50, 60 acres or -- well, almost
11 100 acres.

12 Q. Oh. It's a real big piece of land?

13 A. Yes.

14 Q. And how far is that creek from the church?

15 A. You know, I'm not really sure.

16 Q. Is it down a hill from the back of the church?

17 A. Yes.

18 Q. And, I mean, would it take us a couple of minutes to walk
19 down there?

20 A. Yes. It would take -- they owned wooded area too.

21 Q. And that's where the kids were hiking the day that you
22 and Brian Rhinehart were abruptly interrupted?

23 A. Yes.

24 Q. But how far is it -- how long does it take to walk down
25 from the church to the creek bed or the water?.

0128

1 A. Forty-five seconds, 50 seconds..

2 Q. About almost a minute then?

3 A. Yeah.

4 Q. I got you. So it might be a number of yards or
5 whatever?

6 A. Yeah.

7 Q. How deep is that creek?

8 A. I don't know. It has a canoe in it.

9 Q. Is it one that people swim in?

10 A. Yeah. It's right -- all the wooded area they own is all
11 the way up to the lake.

12 Q. As it turns out, was Troop 292, even after you got
13 dismissed and then reported Brian Rhinehart and then he
14 got arrested, was it disbanded very shortly after that?

15 A. Yes.

16 Q. Did the other kids find another scout troop or do you

John Doe Cross Examination by Mr. Jeffcoat, counsel for the Plaintiff

21 Q. Also in 2005, your scoutmaster molested you.
22 A. I'm not sure if it was -- it feels like it was 2006 --
23 I'm not sure.
24 Q. Okay.
25 A. I can't remember.

0214

1 Q. But you know your scoutmaster sexually abused you.
2 A. Yes.
3 Q. And all the members of your troop, all the boys, were
4 they all special-needs kids?
5 A. Yes.
6 Q. Kids with disabilities of some kind?
7 A. Yes. Some not as bad as others, though.
8 Q. We just spent some time going over a bunch of incidents
9 where you had some bad behavior.
10 A. Yes.
11 Q. And you admit to misbehaving at times?
12 A. Yes.

13 Q. But you told the truth about what the scoutmaster did to
14 you?
15 A. Yes.
16 Q. The scoutmaster molested you on the St. Margaret's Church
17 property; right?
18 A. Yes.
19 Q. And that's where you met for scout meetings?
20 A. Yes.
21 Q. And when he molested you, no other scout leaders or
22 parents were present at the church; is that right?
23 A. Not that I know of. No, they weren't.
24 Q. Your scoutmaster molested you downstairs at the Rhinehart
25 house in Dhiren's bedroom.

0215

1 A. Yes.
2 Q. And he stopped that molestation to go upstairs to go back
3 to his wife Doni Rhinehart.

4 BY MR. WALSH:

5 Objection.

6 EXAMINATION RESUMED BY MR. JEFFCOAT:

7 Q. That's what you said on the first day of your deposition.

8 A. I don't remember -- well, his wife had her own bed. I
9 may have been confused really about something if I said
10 that then.

11 But they usually -- they stayed downstairs in the
12 bedroom. I probably was confused if I said that.

13 Q. When he stopped molesting you that time, where did he go?

14 A. He went -- after -- he slept with us all night. But then
15 the morning he got up, he went -- I don't know -- when
16 we're in scouts, we don't have scouts all the time. We go
17 like to movies -- we don't go to movies, but like we go
18 out, social stuff. We go --

19 Q. Okay. So he slept with you in bed all night long?

20 A. Well. . .

21 Q. Is that right?

22 A. Yes. But he. . .

John Doe Cross Examination by Mr. Jeffcoat, counsel for the Plaintiff

3 was 2006.

4 Q. Well, [REDACTED] told you that at school that you had been
5 kicked out of troop; right?

6 A. Yes.

7 Q. That was the first you heard about it?

8 A. Yes.

9 Q. And you found out for sure that you were kicked out of
10 Boy Scout Troop 292 when you came home one day from school
11 and your folks told you that a letter had been
12 hand-delivered to your house?

13 A. Yes.

14 Q. And they kicked you out of the troop because you told the
15 police about the scoutmaster molesting you?

16 A. Yes.

17 BY MR. PHILLIPS:

18 Object to the form.

19 EXAMINATION RESUMED BY MR. JEFFCOAT:

20 Q. And you remember that --

21 A. I have a feeling they did that. I'm almost positive they
22 did that.

23 Q. Because there wasn't any other reason to do it?

24 A. There's no other reason for them to do that.

25 Q. And you remember that the letter came to your house after

0223

1 you told the truth about what the scoutmaster did?

2 A. Yes.

3 BY MR. PHILLIPS:

4 Object to the form.

5 EXAMINATION RESUMED BY MR. JEFFCOAT:cro

6 Q. You said you were really upset when you found out you had
7 been kicked out of the troop.

8 BY MR. PHILLIPS:

9 Object to the form.

10 WITNESS ANSWERS:

11 A. Would you repeat that?

12 Q. You said earlier that you were really upset when you
13 found out you had been kicked out of Boy Scouts.

14 BY MR. PHILLIPS:

15 Objection.

16 WITNESS ANSWERS:

17 A. I was upset before that.

18 Q. With everything that your scoutmaster did to you, you
19 also mentioned that there were nights when you would stay
20 awake and you would worry about Brian Rhinehart coming
21 after you.

22 BY MR. PHILLIPS:

23 Object to the form.

24 WITNESS ANSWERS:

25 A. Yeah.

0224

1 Q. You mentioned how hard you worked selling popcorn to
2 raise money for Troop 292.

3 A. Yes.

4 Q. And you said you sold a lot of popcorn.

John Doe Cross Examination by Mr. Jeffcoat, counsel for the Plaintiff

7 name?

8 A. Oh, the Bear.

9 Q. The Bear Patrol?

10 A. Yeah.

11 Q. There were some scout activities at the Rhinehart house?

12 A. Yes.

13 Q. And were there ever camping trips with your Boy Scout
14 troop?

15 A. Yes. Two actually. I only went on one of them, though.

16 Q. And was that when Brian Rhinehart was the scoutmaster or
17 before when the other gentleman was your scoutmaster?

18 A. When was this?

19 Q. When you went camping.

20 A. Yes. Mr. Hoyle wasn't even there. He left the troop.

21 Q. So Mr. Hoyle had already left the troop and so the
22 scoutmaster when you went camping was Brian Rhinehart;
23 right?

24 A. Yeah.

25 Q. Were there any other adults there that time?

0227

1 A. At the --

2 Q. When you went camping?

3 A. Yes.

4 Q. John Doe, you were the quartermaster for your patrol?

5 A. Yes.

6 Q. That means you were the number three individual in
7 leadership for your patrol; correct?

8 A. I'm not really sure what rank or whatever it means.

9 Q. But you had a patrol leader; correct?

10 A. Yes.

11 Q. You had an assistant patrol leader; correct?

12 A. Yes.

13 Q. And then you were the quartermaster; correct?

14 A. Yes.

15 Q. And it was part of your scouting duty as quartermaster to
16 help count the money for the popcorn sales.

17 A. Yes.

18 Q. And you were required to do that at the Rhinehart house
19 on at least one occasion; correct?

20 A. Yes.

21 BY MR. PHILLIPS:

22 Object to the form.

23 A. Yes.

24 EXAMINATION RESUMED BY MR. JEFFCOAT:

25 Q. In fact, Boy Scout Troop 292 stored their cases of

0228

1 popcorn at the Rhinehart residence; didn't they?

2 A. Yes.

3 Q. The troop didn't store the popcorn at St. Margaret's
4 Church; did they?

5 A. No.

6 Q. And Brian Rhinehart would sometimes give you rides home
7 from Troop 292 activities; wouldn't he?

8 A. Yes.

John Doe Cross Examination by Mr. Jeffcoat, counsel for the Plaintiff

- 9 Q. He'd give you rides home from the church; right?
- 10 A. Yes.
- 11 Q. And sometimes --
- 12 A. No, not from the church. From his house.
- 13 Q. From his house. Okay. And sometime [REDACTED] was with you
- 14 and sometimes he wasn't; is that right?
- 15 A. No, he was never with me that I know of. Some of the
- 16 time, he was. Once or twice, he was.
- 17 Q. And when you were counting money for the troop at the
- 18 Rhinehart house, there were occasions when Brian Rhinehart
- 19 was the only adult present; correct?
- 20 A. Yes.
- 21 Q. And you already mentioned, you already testified that
- 22 Brian Rhinehart molested you one time in the truck at
- 23 night in the church parking lot. Correct?
- 24 A. Yes.
- 25 Q. And that was the day that you had been shopping with your
- 0229 scoutmaster for soap at Wal-Mart. Is that the same day?
- 1 A. I'm not really sure. Yes, it was, because we were
- 2 getting ice.
- 3 Q. On that day when you went to Wal-Mart, you left the
- 4 Rhinehart house; correct?
- 5 A. Yes.
- 6 Q. And Doni Rhinehart was there when you left?
- 7 A. [REDACTED] or [REDACTED] -- or Doni?
- 8 Q. Doni. You mentioned before that [REDACTED] was playing video
- 9 games and that Doni was doing something else so --
- 10 A. Yeah. And he asked me to help him pick out some soap.
- 11 It was kind of heavy and he needed help carrying them.
- 12 Q. So Doni knew that the two of you were leaving; correct?
- 13 BY MR. WALSH:
- 14 Objection.
- 15 WITNESS ANSWERS:
- 16 A. Yes.
- 17 Q. Now, you mentioned before that all the other boys in your
- 18 troop had special needs of one kind or another; correct?
- 19 A. Yes.
- 20 Q. And there were times when you liked going to Boy Scouts
- 21 and there were times when you didn't?
- 22 A. Yes.
- 23 Q. Did you ever do like little league sports or anything
- 24 like that when you were a kid?
- 25
- 0230 A. I played soccer.
- 1 Q. How old were you when you played soccer?
- 2 A. Six.
- 3 Q. Did you play after you were six years old?
- 4 A. No.
- 5 Q. Did you play one season?
- 6 A. One season; yeah.
- 7 Q. Do you remember why you stopped playing sports?
- 8 A. I wasn't cut out for soccer.
- 9 Q. What do you mean by that?
- 10

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Jane Doe, as guardian for John Doe,

Plaintiff,

vs.

Case Number 10-CP-42-2349

Boy Scout Troop 292, Spartanburg, SC,
Palmetto Council of the Boy Scouts of
America, St. Margaret's Episcopal Church,
Shelby Culbreth, Jackie LaFontaine,
Brandon Smith, Rob Green, Roy Cole,
Bob Faulks, and Scott O'Neill,

Defendants.

Jane Doe, as guardian for John Doe,

Plaintiff,

vs.

Case Number 10-CP-42-2350

Doni Rhinehart,

Defendant.

- - -
Wednesday, February 8, 2012
- - -

EVERYWORD, INC.
Post Office Box 1459
Columbia, South Carolina 29201
803-212-0012

Beverly Parker Dickson Hageman

1 A. That was what she said to me. I never
2 called her anymore.

3 Q. Okay.

4 A. I didn't understand why she didn't
5 want us to call, though, you know. I guess she
6 just -- I don't know. I didn't get that, because
7 she was the one that addressed us to come to the
8 Boy Scouts in the first place. It wasn't like we
9 went out looking for a Boy Scout. She sent us a
10 letter from school, her and Brian, saying they
11 were starting this Boy Scout club up and they
12 wanted all the special need kids. And it sounded
13 like a wonderful thing.

14 And I can't understand why all the
15 sudden she said don't call her anymore because I
16 never really called her anyway. His grandmomma
17 did all that.

18 Q. Were you aware that your husband
19 testified that John Doe Number 1 actually told him
20 about the alleged abuse the night before the 7th?

21 A. Was I what now?

22 Q. Well, apparently this report to the
23 police came from Ms. Tetosky or Petosky who is a
24 school counselor on the 7th. Your husband
25 testified that John Doe Number 1 told him the

1 drove John Doe Number 1 to some meetings to and
2 from?

3 A. Yeah, and then Brian started picking
4 him up.

5 Q. Okay. Did you -- why would Brian pick
6 him up?

7 A. To go -- because John Doe Number 1
8 said he was going to pick him up.

9 Q. Okay.

10 A. He said, you know, he was -- I got the
11 impression he must have been picking them all up,
12 but he would come pick Brian up.

13 Q. Pick John Doe Number 1 up?

14 A. I mean, pick John Doe Number 1 up.
15 Brian would come pick John Doe Number 1 up.

16 Q. Is that because John Doe Number 1
17 didn't have a ride?

18 A. No.

19 Q. Okay. Did you ever meet the parents?

20 A. No.

21 Q. Did you know Brian Rhinehart before
22 John Doe Number 1 had joined Troop 292?

23 A. No.

24 Q. Do you know Shelby Culbreth?

25 A. No, but I heard Jane Doe -- I think

Beverly Parker Dickson Hageman

1 Jane Doe said something about, Is he -- isn't he
2 with a Scout group or something?

3 Q. Shelby is a woman.

4 A. A woman. It was with the Scout group
5 and John Doe Number 1 didn't like her for some
6 reason or another. I don't remember.

7 Q. Do you know Ms. Culbreth?

8 A. No.

9 Q. Have you ever met her?

10 A. No.

11 Q. Okay. How about Jackie LaFontaine?
12 Do you know Ms. LaFontaine?

13 A. No.

14 Q. Do you know Roy Cole, the minister at
15 Saint Margaret's Church?

16 A. No.

17 Q. Do you know Scott O'Neill?

18 A. No.

19 Q. Brandon Smith?

20 A. No.

21 Q. Bob Faulks?

22 A. No.

23 Q. Rob Green?

24 A. No. I remember the next few days --
25 the next few days -- John Doe Number 1 was

1 worried, you know, worried -- he kept saying, you
2 know, they sent him a letter he shouldn't come
3 back to Boy Scouts, and he was real upset about
4 that because -- he said, That don't mean I can't
5 come back forever. It just means I can't come
6 back now.

7 But somebody just delivered that at
8 the door. I don't know who it was.

9 Q. When did that happen?

10 A. A few days after I talked with Brian.

11 Q. A few days after you talked with Brian
12 about the alleged abuse?

13 A. Yeah. In between the time I talked to
14 him the first time and the time I talked to Doni.
15 She told me, The SOB did it. They had sent that
16 letter to John Doe Number 1 telling him not to
17 come back to the Boy Scouts, but it didn't have a
18 reason why. It just said not to come back, and
19 they all signed it.

20 Q. Okay. Now, the police report is
21 October 7th. And that's the first day you learned
22 about the alleged abuse, correct?

23 A. Uh-huh.

24 Q. And it's your testimony you think that
25 letter came before or after the police came in the

1 house that day?

2 A. After.

3 Q. After?

4 A. Like the next day or the day after.

5 Q. Okay.

6 A. The church -- and somebody sent --

7 just knocked on the door and handed the papers.

8 They give that to John Doe Number 1 and left. I

9 actually went to the door I believe and got the

10 paper.

11 Q. Why would they say give that to John
12 Doe Number 1 if it was addressed to Mr. Rhinehart?

13 A. I don't know. They just knock --
14 somebody knocked on the door and said, Give this
15 to John Doe Number 1 and it said that he couldn't
16 come back to the Boy Scouts no more.

17 Q. Let's do this.

18 A. And John Doe Number 1 was really upset
19 about it. He just sit around looking at the
20 letter. Of course I don't think he could read it
21 very good because he couldn't read. He just
22 couldn't read. I think he can read a little bit
23 now because he's on Facebook, but it's all
24 misspelled words.

25 (DEFT. EXH. 11, Letter, marked for

Beverly Parker Dickson Hageman

1 that was Jane Doe telling him.

2 Q. Okay.

3 A. And I guess I'm a little prejudiced or
4 something there.

5 Q. Did you doubt John Doe Number 1's
6 allegations about Mr. Rhinehart at first?

7 A. It's not that I doubted it. It's just
8 that -- because, you know, if a child comes to you
9 and tells you something like that, it needs to be
10 taken seriously. I did not doubt it. I just
11 wanted to find out what was going on.

12 Q. Is it your testimony you called Brian
13 Rhinehart that night?

14 A. Uh-huh.

15 Q. If you thought that John Doe Number 1
16 was telling the truth, would you have actually
17 called someone that you thought had sexually
18 abused John Doe Number 1 to talk about it?

19 A. Well, being that we had a relationship
20 outside of that, if it would have been somebody
21 like on the street that I didn't know, like a
22 predator that you hear about on TV, no. But being
23 that I knew and talked to the Rhineharts, yeah.
24 I'd call them and see what they had to say.

25 Q. And what did Brian Rhinehart say to

Beverly Parker Dickson Hageman

1 you that night?

2 A. He said that he knew what was going
3 on. John Doe Number 1 was mad at him.

4 Q. Did he mention the popcorn issue?

5 A. No, not to me.

6 Q. Okay.

7 A. I never knew anything about paying for
8 popcorn because I would have gave John Doe Number
9 1 the money.

10 Q. Okay. Did you ever have any kind of
11 discussion with Mr. Father of John Doe Number 1
12 about the popcorn money issue?

13 A. No, I don't remember that much about
14 the popcorn, but hear something about the popcorn
15 afterwards.

16 Q. Okay. What did you hear about the
17 popcorn afterwards?

18 A. I don't exactly remember what I heard,
19 but there was some issue with the popcorn. They
20 were talking about popcorn. I don't exactly
21 remember what the issue was.

22 Q. Let's do this. Let's walk through
23 this calendar real quick.

24 A. I think I heard Father of John Doe
25 Number 1 talking about popcorn later --

1 time, but I went to work and it was kind of slow
2 at work. It was the day he was arrested or the
3 day before he was arrested.

4 Q. What day was that in relation to
5 the --

6 A. Because I think it -- I don't know
7 what day he was arrested, but it was right after
8 that. He hadn't been arrested, but he was
9 arrested. And I didn't know he was arrested until
10 I called her. It hadn't come on the news yet.
11 And I said, Doni, I said, even though, you know --
12 she didn't believe it and everything. And just --
13 and she said, The son of a bitch did it.

14 Q. Well, all right.

15 A. That's all -- about all she said to
16 me. And she said, I better be glad -- and I said,
17 What? I said, How -- I mean, you know, like, How
18 did you know? She said because John Doe Number 2
19 told her. John Doe Number 2 confessed and told
20 her and that I better be glad that John Doe Number
21 2 -- she really act kind of ugly.

22 I better be glad that John Doe Number
23 2 said so because if it was only John Doe Number 1
24 saying it, nobody would believe that. That's John
25 Doe Number 1's -- I don't know why she said that.

Beverly Parker Dickson Hageman

1 Because of his mental problems.

2 Q. It's fair to say she seemed very upset
3 to you that -- that -- at that point she believed
4 her husband had done something improper?

5 A. She said -- yeah, because he was being
6 arrested.

7 Q. And why do you --

8 A. They had him arrested, her and John
9 Doe Number 2.

10 And the next time I saw her was in
11 court. We all had been to court. And we were all
12 ready to go to court. Me and Father of John Doe
13 Number 1 didn't have to go. We just had to be up
14 there for some reason. I forget. And she was
15 there in court with Brian and John Doe Number 2.
16 It was like family court or something.

17 Q. Let me ask you this.

18 A. We didn't go. I don't know why.

19 Q. Why did you call her that second time?
20 She called you on the 7th, and then I think you
21 said the day that he got arrested -- the day Brian
22 got arrested but before you knew that Brian was
23 being arrested you called her. What did you call
24 her for?

25 A. That day that I called her before --

Beverly Parker Dickson Hageman

1 MR. HENRICKSON: Thank you. I don't
2 have any other questions at this time.
3 Thank you.

4 - - -
5 EXAMINATION
6 - - -

7 BY MR. MEYERS:

8 Q. Ms. Dickson, I have a few. My name is
9 Gregg Meyers. I'm sorry I'm not there in the room
10 with you today, but I appreciate my fellow counsel
11 arranging to let me listen in by phone.

12 When you talked to Doni Rhinehart the
13 first time about the sexual abuse allegations
14 there that night -- as I understand it, you talked
15 to her a little bit. Was that also on the 7th or
16 did she call you back at a later day?

17 A. She called me back on the 7th that
18 night. I'm pretty sure.

19 Q. Okay. And did either Brian or Doni
20 Rhinehart mention to you anything about this
21 popcorn money that Brian Rhinehart has since that
22 night made?

23 MR. FOSTER: Object to the form.

24 MR. HENRICKSON: Same objection.

25 Go ahead and answer if you can.

Beverly Parker Dickson Hageman

1 A. No.

2 BY MR. MEYERS:

3 Q. The first place that shows up in the
4 police reports is on the 10th of October. One of
5 the documents Mr. Foster showed you.

6 A. Yes.

7 Q. Had you heard of that at any time
8 before the 10th of October?

9 A. No. I did not hear -- hear about the
10 popcorn until later I heard something about
11 popcorn, but I don't even remember the popcorn
12 hardly.

13 Q. Yeah, but on the 7th when you talked
14 to both Brian and Doni, neither of them mentioned
15 anything about there being any kind of dispute
16 about popcorn money?

17 A. No, I didn't really talk to them that
18 long.

19 Q. I take it from what you've been
20 describing today, you agree John Doe Number 1 has
21 some pretty significant mental health problems.
22 Would you agree with that?

23 A. Yes, he has very significant health
24 problems, mental.

25 Q. Did you perceive his participation in

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Jane Doe, as guardian for John Doe,)

Plaintiff,)

vs.)

Civil Action No. 2010-CP-42-2349

AFFIDAVIT OF ROB GREEN

Boy Scout Troop 292, Spartanburg, SC;)
Palmetto Council of the Boy Scouts of)
America; St. Margaret's Episcopal)
Church; Shelby Culbreth; Jackie)
LaFontaine; Brandon Smith; Rob Green;)
Roy Cole; Bob Faulks; and Scott)
O'Neill,)

Defendants.)

I, Rob Green, being duly sworn, depose and state that if called as a witness in these proceedings I would testify as follows:

1. I am at least eighteen (18) years of age, of sound mind, capable of making this Affidavit, and fully competent to testify to the matters stated herein.

2. I am presently employed as Scout Executive for the Palmetto Council of the Boy Scouts of America ("Palmetto BSA"), and have been so employed since September 2, 2004.

3. In or about late September or early October 2005, I was contacted by an adult volunteer of Boy Scout Troop 292 ("Troop 292") regarding the proper procedure for excluding a youth member from participation in a Boy Scout troop based on misconduct. The volunteer did not identify the troop member at issue.

4. To the best of my recollection, I advised the volunteer in a general fashion that the Troop Committee should meet to discuss the issue and, if a decision was made to exclude the

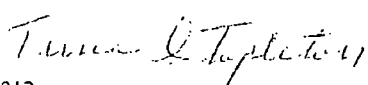
FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 FEB 21 AM 9:18
M. HOE BLACKLEY

Troop member, the decision should be communicated to the parents of the child in writing. My role in the matter was limited to offering the above advice.

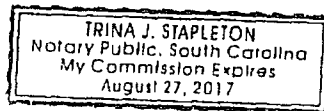
5. At the time I was consulted regarding this matter, I had no personal knowledge or information regarding John Doe whatsoever. I certainly had no knowledge that John Doe was an alleged victim of sexual abuse, by Brian Rhinehart or otherwise. I likewise had no knowledge that John Doe had complained of or reported any such abuse at that time.

FURTHER AFFIANT SAYETH NOT.


Rob Green

SWORN to and subscribed before me 
this 20th day of February, 2012
(I.S.)

Notary Public for South Carolina
My Commission Expires: 8-27-17



FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 FEB 21 AM 9:18
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Jane Doe, as guardian for John Doe,	)	Civil Action No. 2010-CP-42-2349
	)	
Plaintiff,	)	
	)	
vs.	)	<u>AFFIDAVIT OF SHELBY</u>
	)	<u>CULBRETH</u>
Boy Scout Troop 292, Spartanburg, SC;	)	
Palmetto Council of the Boy Scouts of	)	
America; St. Margaret's Episcopal	)	
Church; Shelby Culbreth; Jackie	)	
LaFontaine; Brandon Smith; Rob Green;	)	
Roy Cole; Bob Faulks; and Scott	)	
O'Neill,	)	
	)	
Defendants.	)	

Shelby Culbreth, being duly sworn, depose and state that if called as a witness in these proceedings I would testify as follows:

1. I am at least eighteen (18) years of age, of sound mind, capable of making this Affidavit, and fully competent to testify to the matters stated herein.
2. In 2005, I served as the Chairperson for Boy Scout Troop 292's Troop Committee and as an adult volunteer for the Troop. In that capacity, I was involved in the decision to exclude Plaintiff John Doe from participation in Troop 292 as expressed in the undated correspondence attached hereto as Exhibit A.
3. The decision to exclude John Doe from Troop 292 was based solely upon his misconduct, including John Doe's failure to reimburse Troop 292 for popcorn he admitted to consumed during the Troop's annual fundraising drive. At a scout meeting that occurred just prior to the decision to exclude John Doe, he was also caught inside my car without permission.

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 SPARTANBURG COUNTY
 2012 FEB 21 AM 9:18
 M. HEPELACLEY

4. The decision to exclude John Doe from Troop 292 was made at a meeting that involved me, Brian Rhinehart, Doni Rhinehart and Jackie LaFontaine. To the best of my recollection, this meeting occurred on September 27 or October 4, 2005, after a regularly scheduled Tuesday scout meeting.

5. As of the date of that meeting, I had no knowledge that John Doe was an alleged victim of sexual abuse by Brian Rhinehart. I likewise had no knowledge that John Doe had complained of or reported any such abuse. Had John Doe made such a complaint to me, or had I any reason to suspect such abuse had occurred, I would have immediately contacted law enforcement.

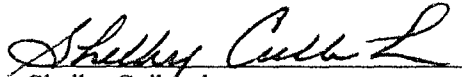
6. I didn't learn of John Doe's allegations of sexual abuse against Brian Rhinehart until I saw reports of his arrest in the news media several weeks after the decision to exclude John Doe from Troop 292 had been made and the letter sent to his father.

7. To the best of my knowledge, we did not inform Brandon Smith, Rev. Roy Cole (or any other representative of St. Margaret's Episcopal Church), Bob Faulks or Scott O'Neill in advance about the decision to exclude John Doe from further participation in Troop 292, nor did we seek any input from these individuals (or St. Margaret's) or otherwise involve them in the decision to exclude John Doe from Troop 292 or to send the letter to John Doe's father.

8. In sending the letter to John Doe's father, our only intent was to inform John Doe's father of the Troop Committee's decision, and we did not expect nor intend to cause any emotional harm to John Doe.

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SPARTANBURG COUNTY
2012 FEB 21 AM 9:18
M. HOPE BLACKLEY

FURTHER AFFIANT SAYETH NOT.


Shelby Culbreth

SWORN to and subscribed before me

this 20th day of February, 2012


(L.S.)
Notary Public for South Carolina

My Commission Expires: October 18, 2014

FILED
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SPARTANBURG COUNTY
2012 FEB 21 AM 9:19
M. HOPE BLACKLEY

Exhibit A

The October 2005 letter by which John Doe was expelled from Troop 292 is in the Record at p. 159

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SPARTANBURG COUNTY
2012 FEB 21 AM 9:19
M. HOPE BLACKLEY

State of South Carolina	)	In The Court of Common Pleas
	)	
County of Spartanburg	)	Case Number 10-CP-42-2349
	)	
Jane Doe, as guardian for John Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Boy Scout Troop 292, Spartanburg, SC,	)	
Palmetto Council of the Boy Scouts of	)	
America, St. Margaret's Episcopal Church,	)	
Shelby Culbreth, Jackie LaFontaine,	)	
Brandon Smith, Rob Green, Roy Cole,	)	
Bob Faulks, and Scott O'Neill,	)	
	)	
Defendants.	)	
_____	)	

State of South Carolina	)	In The Court of Common Pleas
	)	
County of Spartanburg	)	Case Number 10-CP-42-2350
	)	
Jane Doe, as guardian for John Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Doni Rhinehart,	)	
	)	
Defendant.	)	
_____	)	

Affidavit of Counsel

1. My name is Gregg Meyers and it is my signature that appears below. I make this affidavit on my own personal knowledge. I either know the information related to be true or, where indicated, believe it to be true.

2. I submit this affidavit pursuant to SCRCP 56(f), to relate problems with being able to respond to the motions submitted by the defendants.

3. I am counsel for the plaintiff in these actions which seek to recover funds for the John Doe sexual abuse victim. The sexual abuse victim's identity is known to the defense.

4. Motions for summary judgment have been filed by the Defendants. However, responses to discovery have not been provided by the Boy Scouts. That discovery bears on each case, and not having it makes it impossible to fully respond to the motions for summary judgment. Responses are well over due, have been repeatedly promised, and have been represented to have been prepared and await only approval by the Boy Scouts to be provided. However, the responses have not been provided to date.

5. At the moment I am working in Minesota. I will leave May 15 to return to South Carolina for the argument in these actions on May 16. So any discovery produced now will not assist me in responding to the motions.

6. Among the information sought in discovery is information which bears on the contention by defendants, now sought to be exploited in the motions for summary judgment and the accompanying affidavits, that the letter which excluded John Doe from the Boy Scout Troop was motivated both prior in time and by a reason independent of his report of sexual abuse. For example, in discovery we requested minutes of meetings, which are said to have exist but have not been produced, and accounting records which relate to the supposed "real" reason the child was expelled from the troop. Also, accounting information has been sought which will bear on the rationale claimed to be behind the expulsion of John Doe, a dispute about funds for popcorn used as a scout promotion.

7. The timing of the expulsion of John Doe is a factual dispute.

8. If we assume for argument that the decision to exclude John Doe from the troop was made before his report of abuse, a claim which is disputed, it is apparently undisputed that after the child reported sexual abuse, and after the abuse was admitted by the scoutmaster as to one child, the decision to expel John Doe was not reconsidered by the other adults associated with the troop or the sponsoring church. The same cause of action for the expulsion would apply to the decision to continue to exclude him despite his having reported sexual abuse by the scoutmaster.

9. In addition, the plaintiff was recently deposed. That deposition provided more information about the sexual abuse the plaintiff sustained, and a motion to amend the complaint has been prepared for filing to incorporate claims for the sexual abuse itself. The Defendants in each case captioned above failed to follow the Boy Scout's "Two Deep" rule, meaning the Defendants have each failed to provide at all times that two adults would be present with any troop members. In this setting, the Two Deep rule was especially important since each member of this particular scout troop was a developmentally disadvantaged child.

10. Attached to this affidavit as Attachment A is a 1998 version of the "Guide to Safe Scouting." Among the discovery we await is the version of the Guide that applied in 2005, which on information and belief will apply the same Two Deep standard.

11. The Two Deep rule obligation was also imposed on Defendant Doni Rhinehart, as she was an adult associated with the scout troop and held scout events

at her home, but as described by John Doe, she permitted John Doe to be isolated with her then husband during those scouting events (and on other occasions), on each occasion violating the Two Deep rule. This was a "known hazard" that the Scouts had identified "through 90-plus years of experience." Doni Rhinehart ignored that experience.

12. Neither the Plaintiff nor John Doe was aware of the obligation by Doni Rhinehart to comply with the Two Deep rule, nor was the rule disclosed to them during their respective depositions.

13. The scoutmaster who is alleged to have sexually abused John Doe is Brian Rhinehart, Doni Rhinehart's husband in 2005. Brian Rhinehart has admitted to sexually abusing another scout in the troop, through the attached sworn statement that he identified in his deposition as being a document he authored. The document is at Attachment B, and it is dated October 20, 2005. The document has been redacted to conceal the victims names, each of which are known to the defendants. Because the text is faint, we reproduce here the text, grammatical mistakes and typos included. The sworn statement says:

I, Brian Rhinehart, I have no touch [John Doe's] penis. I have touched [victim 1's] penis once in his bedroom, over a year ago. I have told [victim 1] that if he is running around with his boxers on and his penis penis is out I will thump it.

On the one occasion I rubbed his penis, [victim 1] got an erection and no ejaculation.

14. Brian Rhinehart, is presently serving a prison sentence for the sexual abuse of that victim, although he now denies he sexually abused anyone, including the scout to whom he admitted sexually abusing. He entered his guilty plea through

means of an Alford plea. He was deposed at his prison.

15. According to records produced in discovery, John Doe's date of birth was May 3, 1991 and his IQ is about 60.

16. John Doe reported in 2005, when he was 14 years old, that both he and another child had been sexually molested by their scoutmaster. He disclosed the abuse to a school official, who then reported it to police, as reflected in redacted documents at Attachment C.

17. According to two adult witnesses, after John Doe's report of abuse he was removed from the scout troop by means of the letter at Attachment D that was hand delivered to his home after he reported the sexual abuse.

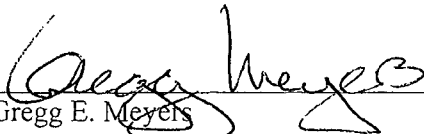
18. Defendants associated with the scout troop claim that removal was based on other considerations. A factual dispute exists as to whether the removal was before or after the report of abuse.

19. John Doe is a developmentally disadvantaged person. As noted, his IQ is about 60. The plaintiff is his guardian, and John Doe agrees he needs a guardian for some purposes.

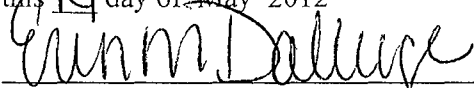
20. John Doe's status as a developmentally disadvantaged person requires a guardian for purposes of this litigation. And his testimony has to be weighed appropriately.

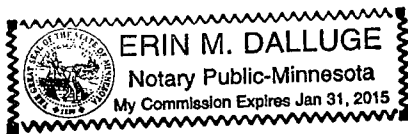
21. Plaintiff requests the court defer the motions for summary judgment until such time as discovery is produced and the court can evaluate the motions to amend the complaints. Plaintiff would be glad to submit information with which the court could then evaluate the motions.

22. Further affiant sayeth not.


Gregg E. Meyers

SWORN to and subscribed before me
this 14 day of May 2012


NOTARY PUBLIC, State of Minnesota
My commission expires: 1/31/2015



Guide to Safe Scouting

FOR UNIT ACTIVITIES



**A Unit Leader's Guide for
Current Policies and Procedures**

Get the Latest Information!

The online version of the *Guide to Safe Scouting* is updated quarterly.

Go to **<http://www.scouting.org/pubs/gss/gssay.html>**

for a list of all changes since this book was printed.



BOY SCOUTS OF AMERICA.



Preface

The purpose of the *Guide to Safe Scouting* is to prepare adult leaders to conduct Scouting activities in a safe and prudent manner. The policies and guidelines have been established because of the real need to protect members from known hazards that have been identified through 90-plus years of experience. Limitations on certain activities should not be viewed as stumbling blocks; rather, policies and guidelines are best described as stepping-stones toward safe and enjoyable adventures.

All volunteers participating in official Scouting activities should become familiar with the *Guide to Safe Scouting*. Unit leaders should be aware of state or local government regulations that supersede Boy Scouts of America policies and guidelines.

In situations not specifically covered in this guide, activity planners should evaluate the risk or potential risk of harm, and respond with action plans based on common sense, community standards, the Boy Scout motto, and safety policies and practices commonly prescribed for the activity by experienced providers and practitioners.

BSA Rules and Policies

Bold type throughout the *Guide to Safe Scouting* denotes BSA rules and policies.



Versions of the Guide

In addition to this printed version, the *Guide to Safe Scouting* is available online at www.scouting.org. Go to the Site Map; it is listed under Activities.

Two versions are available:

- One for reading on-line this version is divided into chapters and includes a search engine.
- Another for reading off-line the entire publication is presented in a single interface to facilitate print-out.

To obtain additional printed copies of this printed book, contact your local council or call 1-800-323-0732 to request an Official Boy Scout Catalog.

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I. Youth Protection and Adult Leadership

Youth Protection in Scouting

How does the BSA prevent child abuse in Scouting?

The Boy Scouts of America has adopted a number of policies aimed at eliminating opportunities for abuse within the Scouting program. These policies focus on leadership selection and on placing barriers to abuse within the program.

Leadership

The Boy Scouts of America takes great pride in the quality of our adult leadership. Being a leader in the BSA is a privilege, not a right. The quality of the program and the safety of our youth members call for high-quality adult leaders. We work closely with our chartered organizations to help recruit the best possible leaders for their units.



The adult application requests background information that should be checked by the unit committee or the chartered organization before accepting an applicant for unit leadership. While no current screening techniques exist that can identify every potential child molester, we can reduce the risk of accepting a child molester by learning all we can about an applicant for a leadership position—his or her experience with children, why he or she wants to be a Scout leader, and what discipline techniques he or she would use.

Barriers to Abuse Within Scouting

The BSA has adopted the following policies to provide additional security for our members. These policies are primarily for the protection of our youth members; however, they also serve to protect our adult leaders from false accusations of abuse.

Two-deep leadership. Two registered adult leaders or one registered leader and a parent of a participant, one of whom must be 21 years of age or older, are required on all trips and outings. The chartered organization is responsible for ensuring that sufficient leadership is provided for all activities.



No one-on-one contact. One-on-one contact between adults and youth members is not permitted. In situations that require personal conferences, such as a Scoutmaster's conference, the meeting is to be conducted in view of other adults and youths.

Note: Bold type denotes rules and policies.

Respect of privacy. Adult leaders must respect the privacy of youth members in situations such as changing clothes and taking showers at camp, and intrude only to the extent that health and safety require. Adults must protect their own privacy in similar situations.

Separate accommodations. When camping, no youth is permitted to sleep in the tent of an adult other than his own parent or guardian. Councils are strongly encouraged to have separate shower and latrine facilities for females. When separate facilities are not available, separate times for male and female use should be scheduled and posted for showers.

Proper preparation for high-adventure activities. Activities with elements of risk should never be undertaken without proper preparation, equipment, clothing, supervision, and safety measures.

No secret organizations. The Boy Scouts of America does not recognize any secret organizations as part of its program. All aspects of the Scouting program are open to observation by parents and leaders.

Appropriate attire. Proper clothing for activities is required. For example, skinny-dipping is not appropriate as part of Scouting.

Constructive discipline. Discipline used in Scouting should be constructive and reflect Scouting's values. Corporal punishment is never permitted.

Hazing prohibited. Physical hazing and initiations are prohibited and may not be included as part of any Scouting activity.

Youth leader training and supervision. Adult leaders must monitor and guide the leadership techniques used by youth leaders and ensure that BSA policies are followed.

How can parents help protect their children?

Parents participate in the protection of their children in a variety of ways. BSA recognizes the need for open lines of communication so that children are encouraged to bring any troubles to their parents for advice and counsel. In addition, parents need to be involved in their sons' Scouting activities. All parents receive important information concerning the Scouting program as part of their sons' membership applications. This information is provided so that

parents can detect any deviations from the BSA's approved program. If any deviations are noted, parents should call these to the attention of the chartered organization or the unit committee. If the problems persist, parents should contact the local council for assistance.

Parents also need to review the booklet, "How to Protect Your Children from Child Abuse and Drug Abuse: A Parent's Guide," inserted in every Boy Scout and Cub Scout handbook. The information in this booklet should be the subject of discussions between Scouts and their parents prior to joining a pack or troop.

Why do most child victims of sexual abuse keep the abuse secret?

A victim of child sexual abuse is under a great deal of pressure to keep the abuse secret. In many cases of child molestation, the molester has threatened to harm the child or a member of the child's family. The molester might have told the child that he would not be believed even if the child did tell. Another common situation is that the molester will tell the child that if the child tells about the abuse, he will get into trouble. The clear message is given to the child that if another person finds out, something bad will happen to the child. This pressure to maintain silence can often be successfully overcome by establishing open communication between children and adults through a proper educational program for children.

What should I do if a child tells me that he has been sexually abused?

How an adult responds to a child when he tries to disclose abuse can influence the outcome of the child's victimization. By maintaining an apparent calm, the adult can help reassure the child that everything is going to be okay. By not criticizing the child, we counteract any statements the molester made to the victim about the child getting into trouble. Reassure the child that you are concerned about what happened to him and that you would like to get him some help. **Allegations by a Scout concerning abuse in the program must be reported to the Scout executive.** Since these reports are required, the child should be told that you have to tell the proper authorities but that you will not tell anyone else. It is important that you not tell anyone other than the Scout executive or the child protective services agency about allegations of abuse—if the allegations cannot be substantiated, you could be sued for defamation of character.

How do I know what my reporting responsibilities are?

Every state, the District of Columbia, and the U.S. territories have different reporting requirements. As part of youth protection training, you will receive reporting instructions for your area and for your council. People are

often concerned about being sued for reporting child abuse. You are not required to know for certain that a child has been abused. All that the law requires is that you have a reasonable suspicion and are reporting in "good faith." When these requirements are met, all states provide immunity from liability for child abuse reporters.

What youth protection educational materials does the BSA have for youth members?

"How to Protect Your Children from Child Abuse: A Parent's Guide" is a tear-out booklet bound in with BSA youth books. It is designed for parents or guardians and young people to use together for youth protection training. The Power Pack Pals comic books, available in English and in Spanish, are for Cub Scout-age boys. They include *Power Pack Pals* (No. 33980)/*Los Superamigos del Pack* (No. 33979), *Power Pack Pals: Be Safe on the Internet* (No. 33981)/*Power Pack Pals: Cómo Estar Seguros en la Internet* (No. 34464), and *Power Pack Pals: Four Rules for Personal Safety* (No. 46-34750)/*Power Pack Pals: 4 Reglas Para Seguridad Personal* (No. 34465).

The BSA has bilingual, age-appropriate videos for all youth age groups to address the problems of sexual abuse. *It Happened to Me/A Mi Me Pasó* (No. AV-09DVD11) should be used annually by Cub Scout packs or dens, but only for Cub Scouts accompanied by a parent or other adult family member. The video for Boy Scouts, *A Time to Tell/Hora de Contarlo* (No. AV-09DVD04), introduces the "three R's" of Youth Protection, and should be viewed by troops annually. *Personal Safety Awareness/Concientización Sobre la Seguridad Personal* (No. AV-09DVD27) is the video for Venturing-age young people.

How can Scout leaders who are not social workers teach children about youth protection?

The BSA recognizes that many of our leaders feel unprepared to talk to children about preventing sexual abuse. For this reason, the BSA has meeting guides for both of the videos produced to be viewed by youths. The guides address everything from scheduling the meeting, contacting the police or social services for assistance, and notifying parents (a sample letter is provided), to questions and answers for discussion after the video has been viewed.

What are the "three R's" of Youth Protection?

The "three R's" of Youth Protection convey a simple message that the BSA wants its youth members to learn:

Recognize situations that place him at risk of being molested, how child molesters operate, and that anyone could be a molester.

Resist unwanted and inappropriate attention.
Resistance will stop most attempts at molestation.



Report attempted or actual molestation to a parent or other trusted adult. This prevents further abuse of himself and helps to protect other children. Let the Scout know he will not be blamed for what occurred.

Reference: How to Protect Your Children from Child Abuse: A Parent's Guide, No. 46-015

Youth Member Behavior Guidelines

The Boy Scouts of America is a values-based youth development organization that helps young people learn positive attributes of character, citizenship, and personal fitness. The BSA has the expectation that all participants in the Scouting program will relate to each other in accord with the principles embodied in the Scout Oath and Law.

One of the developmental tasks of childhood is to learn appropriate behavior. Children are not born with an innate sense of propriety and they need guidance and direction. The example set by positive adult role models is a powerful tool for shaping behavior and a tool that is stressed in Scouting.

Misbehavior by a single youth member in a Scouting unit may constitute a threat to the safety of the individual who misbehaves as well as to the safety of other unit members. Such misbehavior constitutes an unreasonable burden on a Scout unit and cannot be ignored.



Member Responsibilities

All members of the Boy Scouts of America are expected to conduct themselves in accordance with the principles set forth in the Scout Oath and Law. Physical violence, hazing, bullying, theft, verbal insults, and drugs and alcohol have no place in the Scouting program and may result in the revocation of a Scout's membership in the unit.

If confronted by threats of violence or other forms of bullying from other youth members, Scouts should seek help from their unit leaders or parents.

Unit Responsibilities

Adult leaders of Scouting units are responsible for monitoring the behavior of youth members and interceding when necessary. Parents of youth members who misbehave should be informed and asked for assistance in dealing with it.

The BSA does not permit the use of corporal punishment by unit leaders when disciplining youth members.

The unit committee should review repetitive or serious incidents of misbehavior in consultation with the parents of the child to determine a course of corrective action



including possible revocation of the youth's membership in the unit.

If problem behavior persists, units may revoke a Scout's membership in that unit. When a unit revokes a Scout's membership, it should promptly notify the council of the action.

The unit should inform the Scout executive about all incidents that result in a physical injury or involve allegations of sexual misconduct by a youth member with another youth member.

Each Cub Scout den and Webelos Scout den and each chartered Cub Scout pack, Boy Scout troop, Varsity Scout team, and Venturing crew shall have one leader, 21 years of age or older, who shall be registered and serve as the unit or den leader. A unit leader may not serve simultaneously in any other position within the same unit. The head of the chartered organization or chartered organization representative and the local council must approve the registration of the unit or den leader on the appropriate form.

Primary reference: *Rules and Regulations of the Boy Scouts of America*

Leadership Requirements for Trips and Outings

1. **Two-deep leadership:** Two registered adult leaders, or one registered leader and a parent of a participating Scout or other adult, one of whom must be at least 21 years of age or older, are required for all trips or outings. There are a few instances, such as patrol activities, when no adult leadership is required. Coed overnight activities require male and female adult leaders, both of whom must be 21 years of age or older, and one of whom must be a registered member of the BSA.
2. During transportation to and from planned Scout outings,
 - A. Meet for departure at a designated area.
 - B. Prearrange a schedule for periodic checkpoint stops as a group.
 - C. Plan a daily destination point.

A common departure site and a daily destination point are a must. If you cannot provide two adults for each vehicle, the minimum required is one adult and two or more youth members—*never one on one*.

3. **Safety rule of four:** No fewer than four individuals (always with the minimum of two adults) go on any backcountry expedition or campout. If an accident occurs, one person stays with the injured, and two go for help. Additional adult leadership requirements

must reflect an awareness of such factors as size and skill level of the group, anticipated environmental conditions, and overall degree of challenge.

4. Male and female leaders must have separate sleeping facilities. Married couples may share the same quarters if appropriate facilities are available.
5. Male and female youth participants will not share the same sleeping facility.
6. Single-room or dormitory-type accommodations for Scouting units: Adults and youth of the same gender may occupy dormitory or single-room accommodations, provided there is a minimum of two adults and four youth. A minimum of one of the adults is required to be youth-protection trained. Adults must establish separation barriers or privacy zones such as a temporary blanket or sheet walls in order to keep their sleeping area and dressing area separated from the youth area.
7. When staying in tents, no youth will stay in the tent of an adult other than his or her parent or guardian.
8. If separate shower and latrine facilities are not available, separate times for male and female use should be scheduled and posted for showers. The buddy system should be used for latrines by having one person wait outside the entrance, or provide Occupied and Unoccupied signs and/or inside door latches.

Reference: *Tours and Expeditions*, No. 33737

Adult leaders need to respect the privacy of youth members in situations where the youth are changing clothes or taking showers, and intrude only to the extent that health and safety require. Adults also need to protect their own privacy in similar situations.

9. Two-deep adult leadership is required for flying activities. *For basic orientation flights, the adult licensed pilot in control of the aircraft is sufficient for the flight*, while two-deep leadership is maintained on the ground.

Primary References for This Chapter

Scoutmaster Handbook, No. 33009

Tours and Expeditions, No. 33737

How to Protect Your Children from Child Abuse:
A Parent's Guide, No. 46-015

Youth Protection Guidelines: Training for Adult
Venturing Leaders, AV-03V014

Youth Protection: Personal Safety Awareness,
AV-09DVD027

A Time to Tell, AV-09DVD04

It Happened to Me, AV-09DVD11

Health and Safety Guide, No. 34415

CASE# 2005100422	VOLUNTARY STATEMENT		PAGE 1 of 1
STATEMENT OF: James Brian Rhinaker	AGE: 35	DATE: 10-20-05	
ADDRESS: 410 Waterford Pt. Dr. Beaufort Springs, SC			
PHONE: 864/911-172-1	DOB: 11-15-67	SSN: 246 044 053	

I Brian Rhinaker, I have not much [redacted] penis
 I have touched [redacted] penis once in his bedroom
 over a year ago and never told [redacted] that if
 he is running around with his penis around
 his penis penis in out I will thump it.
 On the one occasion I suffered his penis, Brian
 got an erection and no ejaculation.

I have read this statement consisting of 1 pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and
 nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.
 This statement was completed at 11:23 A.M. on the 20th day of October 2005

WITNESS: [Signature] [Signature]
 Signature of person giving voluntary statement

SWORN to before me this _____
 day of _____, 2005

_____, (Seal)
 Notary Public of South Carolina
 My Commission expires: _____

SH104
 SLED 14

Attachment C

The October 7, 2010 police Incident

Report appears in the record beginning at
page 160.

AGENCY I.D.
SC0420000

SUPPLEMENT INCIDENT REPORT

CASE NUMBER

INCIDENT

2005100422

INCIDENT

☒ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 3

VICT./SUBJ. I.D. OVERFLOW	☒ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #	Tetoskey, Martha		#1	#2	#3	J S O U		W F				
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE			
	☐ WARRANT							578 0122					
☐ ARREST	☐ VICTIM NO. _____		VISIBLE INJURY: ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK.		☐ TWO-MAN VEHICLE		☐ DETECTIVE/SPLASHMT. ☐ ALONE		
☐ JAIL	EXPLAIN:						DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK.		☐ ONE-MAN VEHICLE		☐ OTHER ☐ ASSISTED		
☐ SUMMONS	☐ SUBJECT NO. _____		USING ALCOHOL: ☐ NO ☐ YES										
☐			USING DRUGS: ☐ NO ☐ YES ☐ TYPE: ☐ UNK.										

VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #			#1	#2	#3	J S O U						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE			
	☐ WARRANT												
☐ ARREST	☐ VICTIM NO. _____		VISIBLE INJURY: ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK.		☐ TWO-MAN VEHICLE		☐ DETECTIVE/SPLASHMT. ☐ ALONE		
☐ JAIL	EXPLAIN:						DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK.		☐ ONE-MAN VEHICLE		☐ OTHER ☐ ASSISTED		
☐ SUMMONS	☐ SUBJECT NO. _____		USING ALCOHOL: ☐ NO ☐ YES										
☐			USING DRUGS: ☐ NO ☐ YES ☐ TYPE: ☐ UNK.										

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO.		STATE
	☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR MAKE TYPE
	☐ FOUND	☐ BOAT	MODEL	STYLE	COLOR BRAND NAME CALIBER
	☐ TOWED	☐ LICENSE PLATE	NIC NO.	DENOMINATION	ISSUER SECURITIES DATE
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	MISCELLANEOUS		
	☐ VICTIM	☐ ARTICLE			

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO.		STATE
	☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR MAKE TYPE
	☐ FOUND	☐ BOAT	MODEL	STYLE	COLOR BRAND NAME CALIBER
	☐ TOWED	☐ LICENSE PLATE	NIC NO.	DENOMINATION	ISSUER SECURITIES DATE
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	MISCELLANEOUS		
	☐ VICTIM	☐ ARTICLE			

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO.		STATE
	☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR MAKE TYPE
	☐ FOUND	☐ BOAT	MODEL	STYLE	COLOR BRAND NAME CALIBER
	☐ TOWED	☐ LICENSE PLATE	NIC NO.	DENOMINATION	ISSUER SECURITIES DATE
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	MISCELLANEOUS		
	☐ VICTIM	☐ ARTICLE			

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO.		STATE
	☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR MAKE TYPE
	☐ FOUND	☐ BOAT	MODEL	STYLE	COLOR BRAND NAME CALIBER
	☐ TOWED	☐ LICENSE PLATE	NIC NO.	DENOMINATION	ISSUER SECURITIES DATE
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	MISCELLANEOUS		
	☐ VICTIM	☐ ARTICLE			

Documents produced October 2010 - 000456

Record on Appeal 000247

INVESTIGATION

Attachment C

AGENCY I.D.
SC0 420000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

20.05.1.0.0422

NCIC

INC. ENTD.

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☒ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE 1 of 1 PAGES.
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

VICT./SUBJ. I.D. OVERFLOW	☒ COMPLAINTANT	NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT:		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH				
	☒ VICTIM # 2	[REDACTED]	#1	#2	#3	0	S	O	U	W	M	15	03-02-80	N
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY	5'07"	130	Blk	Brn									
	☐ WANTED	ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE						
	☐ WARRANT	[REDACTED]	Boiling Springs	SC	29316	19	[REDACTED]	[REDACTED]						
	☐ ARREST	☒ VICTIM NO. 2	☒ VISIBLE INJURY: ☒ NO ☐ YES	☒ COMPLAINT OF NON-VISIBLE INJURIES: ☒ NO ☐ YES		☒ VICTIM USING ALCOHOL: ☒ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALONE						
	☐ JAIL	EXPLAIN:	☒ NO ☐ YES		DRUGS: ☒ NO ☐ YES TYPE: ☐ UNK		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED							
	☐ SUMMONS	☐ SUBJECT NO. _____	: USING ALCOHOL: ☐ NO ☐ YES											
	☐	USING DRUGS: ☐ NO ☐ YES ☒ TYPE: ☐ UNK												

VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINTANT	NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT:		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH				
	☒ VICTIM # 1	Rhinehart, James Brian	#1	#2	#3	0	S	O	U	W	M	38	11-15-67	N
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY	5'11"	160	Blk	Brn									
	☐ WANTED	ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE						
	☐ WARRANT	420 Waterford Pt. Dr.	Boiling Springs	SC	29316	19	814-1724	same						
	☐ ARREST	☐ VICTIM NO. _____	☐ VISIBLE INJURY: ☐ NO ☐ YES	☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALONE						
	☐ JAIL	EXPLAIN:	☐ NO ☐ YES		DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED							
	☐ SUMMONS	☒ SUBJECT NO. 1	: USING ALCOHOL: ☒ NO ☐ YES											
	☐	USING DRUGS: ☒ NO ☐ YES ☒ TYPE: ☐ UNK												

NARRATIVE	Victim # 2 came to the Sheriff's Office on Oct. 20, 2005 and disclosed that the suspect had fondled his penis on numerous occasions in their residence. The victim also said the suspect made him touch the suspect's penis. The suspect gave a statement admitting to fondling victim #2's penis on one occasion. I presented the case to Judge Hall and he issued two warrants on the suspect for Lewd Act with a Minor.													

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			

VEH./GUN/ETC. 1	STATUS		TYPE		VIN AND/OR LICENSE NO.				BOAT HULL NO. AND/OR REG. NO.			
	☐ STOLEN	☐ VEHICLE										
	☐ RECOVERED	☐ GUN			SERIAL AND/OR OWNER APPLIED NO				STATE			
	☐ FOUND	☐ BOAT			YEAR OF REGISTRATION				YEAR OF EXPIRATION		YEAR	
	☐ TOWED	☐ LICENSE PLATE			MODEL		STYLE		COLOR		MAKE	
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS			NIC NO.		DENOMINATION		ISSUER		SECURITIES DATE	
	☐ VICTIM	☐ ARTICLE			MISCELLANEOUS							

PROPERTY EST.	TYPE (GROUP)										TOTAL VALUE
	STOLEN										
	DAMAGED										
	BURNED										
	RECOVERED										
	SEIZED										

ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☒ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18			
	☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☒ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER			
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☒ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY											
	REPORTING OFFICER(S)				DATE		UNIT NUMBER		APPROVING OFFICER			
	N. Cantrell				10-20-05		1686					

Attachment D

The October 2010 letter by which Troop 292 expelled John Doe appears in the record at page 159.