

**FORM 15
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-CP-23-01213

JAMES EARL TEGELER,

Appellant,

v.

CHARLOTTE COLLIER,
HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST
CHURCH,

Respondents.

RECORD ON APPEAL

DICKSON DAVIS LAW FIRM, LLC

Deborah D. Davis, Esq.
SC Bar No.: 102942
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

RECEIVED

Aug 13 2021

SC Court of Appeals

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Charles E. McDonald & S. Michael Nail
300 North Main Street
P.O Box 2757
Greenville, SC 29602
(864) 241-1813

Clawson and Staubes, LLC
Amy S. Snyder
1000 East North Street
Suite 200
Greenville, SC 29601
(864) 331-8940

Duggan & Hughes, LLC
Daniel R. Hughes
457-B Pennsylvania Avenue
P.O. Box 449
Greer, SC 29652
(864) 334-2500

ATTORNEYS FOR THE RESPONDENTS

INDEX

	Page
<u>I. Orders, Judgments, Decrees, or Decisions</u>	
1. Decision granting Respondent Linda Smith’s motion to dismiss and motion for judgment on the pleadings on August 18, 2020.....	1-3
2. Decision granting Respondent Charlotte Collier’s motion for judgment on the pleadings on August 18, 2020.....	4-6
3. Decision granting Respondent Northgate Baptist Church’s motion to dismiss on August 18, 2020.....	7-9
4. Amended Decision granting Respondents’ Linda Smith and Hannah Elizabeth Collier’s motion to dismiss and motion for judgment on the pleadings on August 20, 2020.....	10-12
5. Order granting a motion for judgment on the pleadings for Respondents Hannah Elizabeth Collier and Linda Smith on September 8, 2020.....	13-25
6. Order granting a motion to for judgment on the pleadings for Respondent Charlotte Collier on September 8, 2020.....	26-37
7. Order granting a motion to dismiss for Respondent Northgate Baptist Church on September 8, 2020.....	38-48
8. Order denying Appellant’s Amended Motion for Reconsideration to Alter or Amend a Judgment as to Respondent Northgate Baptist Church on November 9, 2020.....	49-52
9. Order denying Appellant’s Amended Motion for Reconsideration to Alter or Amend a Judgment as to Respondent Charlotte Collier on November 9, 2020.....	53-56
10. Order denying Appellant’s Amended Motion for Reconsideration to Alter or Amend a Judgment as to Respondents Hannah Elizabeth Collier and Linda Smith on November 10, 2020.....	57-59
<u>II. Pleadings</u>	
11. Summons and Complaint filed by Appellant on February 25, 2020.....	60-117
12. Amended Answer filed by Respondent Charlotte Collier on April 2, 2020.....	118-130
13. Amended Answer filed by Respondents Hannah Elizabeth Collier and Linda Smith on April 27, 2020.....	131-140

III. Transcripts

14. Transcript from Respondents’ motion to dismiss hearing held on August 18, 2020.....	141-199

IV. Other Material or Documents

A. Motions, Memoranda, and Discovery Responses

15. Motion to Dismiss filed by Respondent Northgate Baptist Church on March 25, 2020, and exhibits thereto.....	200-207
16. Motion to Dismiss filed by Respondent Charlotte Collier on April 2, 2020.....	208-209
17. Motion for Judgment on the Pleadings and Motion to Dismiss filed by Respondents Hannah Elizabeth Collier and Linda Smith on April 7, 2020.....	210-211
18. Memorandum in Support of Motion to Dismiss filed by Respondent Northgate Baptist Church on August 13, 2020, and all exhibits thereto.....	212-226
19. Memorandum in Support of Motion to Dismiss filed by Respondent Charlotte Collier on August 14, 2020.....	227-242
20. Memorandum in Support of Motion to Dismiss and Motion for Summary Judgment on the Pleadings filed by Respondents’ Hannah Elizabeth Collier and Linda Smith on August 17, 2020.....	243-252
21. Response to Respondents’ Motion to Dismiss filed by Appellant on August 17, 2020, and exhibits thereto.....	253-351
22. Appellant’s Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment filed on August 28, 2020.....	352-378
23. Response to Appellant’s Motion for Reconsideration to Alter or Amend a Judgment and Motion filed by Respondent Northgate Baptist Church on September 3, 2020, and all exhibits thereto.....	379-383
24. Appellant’s Amended Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment filed on September 14, 2020.....	384-426
25. Response to Appellant’s Amended Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment filed by Respondent Northgate Baptist Church on September 15, 2020 and all exhibits thereto.....	427-432

B. Affidavits

26. Affidavit of Hannah Elizabeth Collier filed by Respondent Hannah Elizabeth Collier on August 17, 2020.....	433-444
27. Affidavit of Josie Allen filed by Appellant on August 28, 2020.....	445-453
28. Affidavit of Anne Danciu filed by Appellant on August 28, 2020.....	454-458
29. Affidavit of Caroline Jenkins filed by Appellant on August 28, 2020.....	459-470
30. Affidavit of Sue Lutz filed by Appellant on August 28, 2020.....	471-476
31. Affidavit of Roy Sabeau filed by Appellant on August 28, 2020.....	477-481
32. Affidavit of James Earl Tegeler filed by Appellant on August 28, 2020.....	482-564

C. Appellate Filings

33. Initial Brief of Appellant filed on April 23, 2021.....	565-619
34. Initial Brief of Respondent Northgate Baptist Church filed on May 21, 2021...	620-640
35. Initial Brief of Respondent Charlotte Collier filed on May 21, 2021.....	641-667
36. Initial Brief of Respondents Hannah Elizabeth Collier and Linda Smith filed on July 8, 2021.....	668-688

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2301213

James Earl Tegeler
 PLAINTIFF(S)

Northgate Baptist Church et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter comes before the Court pursuant to Defendant Linda Smith's Motion to Dismiss 12(b)(6) and 12(c). Defendant's Motion is granted and a formal Order will follow within twenty (20) days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/18/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-08-18 15:51:10 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2301213

James Earl Tegeler
 PLAINTIFF(S)

Northgate Baptist Church et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter comes before the Court pursuant to Defendant Charlotte Collier's Motion to Dismiss 12(c). Defendant's Motion is granted and a formal Order will follow within twenty (20) days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/18/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-08-18 15:52:00 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2301213

James Earl Tegeler
PLAINTIFF(S)

Northgate Baptist Church et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter comes before the Court pursuant to Defendant Northgate Baptist Church's Motion to Dismiss 12(b)(6). Defendant's Motion is granted and a formal Order will follow within twenty (20) days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/18/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-08-18 15:53:30 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2301213

James Earl Tegeler
PLAINTIFF(S)

Northgate Baptist Church et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

The Courts Order of 8/18/2020 is hereby amended to read: This Matter comes before the Court pursuant to Defendant Linda Smith and Hannah Elizabeth Collier's Motion for Judgment on the Pleadings and Motion to Dismiss 12(b)(6) and 12(c). Defendants' Motion is granted and a formal Order will follow within twenty (20) days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/20/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-08-20 13:01:26 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	C.A. NO.: 2020-CP-23-01213
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
vs	)	ORDER GRANTING DEFENDANTS’,
	)	HANNAH E. COLLIER AND LINDA
Charlotte Collier, Hannah Elizabeth	)	SMITH, MOTION TO DISMISS
Collier, Linda Smith and Northgate	)	
Baptist Church,	)	
	)	
Defendants.	)	
	)	

THIS MATTER CAME before the Court on August 18, 2020 at a regularly scheduled term of Non-Jury Motions upon the Motions to Dismiss of all Defendants, including the Motion for Judgment on the Pleadings pursuant to Rule 12(c), *SCRCP* and Motion to Dismiss pursuant to Rule 12(b)(6), *SCRCP* of the Defendants, Hannah E. Collier (“H. Collier”) and Linda Smith (“Smith”). This Order addresses Defendants, Hannah E. Collier and Linda Smith, only.

Present at the hearing were Daniel R. Hughes, Attorney for Hannah E. Collier and Linda Smith; Amy M. Snyder, Attorney for Charlotte Collier; S. Michael Nail, Attorney for Northgate Baptist Church; and, Deborah D. Davis, Attorney for the Plaintiff. After considering the arguments made at the hearing, the pleadings, and the Memoranda of Law, this Court finds that Hannah E. Collier and Linda Smith are entitled to Judgment on the Pleadings pursuant to Rule 12(c), *SCRCP*. Plaintiff’s Complaint does not raise an issue of fact that would entitle him to relief if resolved in his favor.

PLAINTIFF’S ALLEGATIONS

The factual allegations of the Plaintiff’s Complaint setting forth his theory of liability as to his four (4) causes of action for defamation, intentional infliction of emotional distress,

negligent infliction of emotional distress, and civil conspiracy against H. Collier and Smith are as follows:

H. Collier attended and was a member of Northgate Baptist Church during the summer/fall of 2017 – spring of 2018. H. Collier, an eighteen (18) year old, was a member of the Church's worship team led by the Plaintiff, an employee of Northgate Baptist Church. (Pl's Comp. ¶¶ 21, 25). Plaintiff formed a mentor relationship with H. Collier. (Pl's Comp. ¶ 27). On March 12, 2018, H. Collier and her mother, Charlotte Collier, met in private with the head pastor of Northgate Baptist Church, Dr. Barry Jimmerson, on or about March 12, 2018. (Pl's Comp. ¶ 63). H. Collier informed Dr. Jimmerson that she believed Plaintiff's conduct and relationship with her was "inappropriate." (Pl.'s Comp. ¶ 59). In response to Dr. Jimmerson's questions about the relationship, H. Collier denied that the relationship was sexual or romantic. (Pl's Comp. 60-61). H. Collier denied to Dr. Jimmerson that (1)...she had any romantic interest, romantic feelings, romantic aspirations, or any of the above toward Plaintiff; (2) that she did not believe Plaintiff had any romantic interest, romantic feelings, romantic aspirations toward, or any of the above toward H. Collier; and, (3) that she never had any sexual, or intimate relations with Plaintiff. (Pl's Comp. ¶¶ 60-61).

On March 14, 2018, Plaintiff had a meeting with Dr. Jimmerson and Laurel Shaler in which Dr. Jimmerson shared with Plaintiff his previous conversations with H. Collier and Charlotte Collier. (Pl.'s Comp. ¶ 66). Dr. Jimmerson admitted to Plaintiff and Ms. Shaler that he did not believe Plaintiff's mentorship of H. Collier or the text message from H. Collier to Plaintiff supported or warranted the allegation that Plaintiff had inappropriate relations with H. Collier. (Pl's Comp. ¶ 68).

Ms. Shaler alleged that Plaintiff had inappropriate contact with young girls other than H. Collier. (Pl.'s Comp. ¶ 74). Based upon Shaler's interpretation that the Plaintiff had inappropriate contact with young girls, Dr. Jimmerson and a parishioner of the Church also believed Plaintiff had inappropriate contact with young girls in the congregation. (Pl's Comp. ¶ 93). Subsequent to a vote of "no confidence" by the Church, Ms. Shaler asked for Plaintiff's resignation and presented a separation agreement for Plaintiff to sign. (Pl's Comp. ¶ ¶ 95, 97).

On March 12, 2018, Smith, H. Collier's grandmother, told third parties that Plaintiff's relationship with H. Collier was "inappropriate." (Pl's Comp. ¶ 83).

STANDARD OF REVIEW

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Rule 12(c), *SCRCP*. A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). *Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

CONCLUSIONS OF LAW

The gravamen of the Plaintiff's lawsuit against H. Collier and Smith is based upon a March 12, 2018 statement from H. Collier to Dr. Jimmerson and from Smith to unidentified "third parties" that Plaintiff's relationship with H. Collier was "inappropriate" (the "Statement").

The issue before the Court is whether the Statement can be a defamatory statement when made from H. Collier, a church member, to Dr. Jimmerson, the church pastor, when Dr. Jimmerson did not believe the accusations were that he had a sexual relationship with Hannah. Or, in regard to Smith, whether the allegation that the same Statement being made from Smith to unidentified “third-parties” can be defamatory.

Defamation

To recover for defamation, the plaintiff must prove, that there was: (1) a false and defamatory statement made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006).

The allegations of Plaintiff’s Complaint fail to meet the elements of defamation.

Opinion Statement

As an initial matter, the Court must address whether or not the Statement was fact or opinion. An opinion statement cannot be defamatory. Our courts have held that facts are statements that can be proven true or false; by contrast, opinions are matters of belief or ideas that cannot be proven one way or the other. Moreover, because a statement must be false to be defamatory, a statement of opinion cannot form the basis of a defamation claim because it cannot be proven true or false. Specifically, under the First Amendment, there is no such thing as a false idea. *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 198, 838 S.E.2d 698, 713 (Ct. App. 2019).

H. Collier’s and Smith’s statement that they believed the relationship described in the Complaint between an 18 year old and 50+ year old worship leader to be inappropriate is an

opinion. It can be neither true nor false and thus cannot form the basis of a defamation claim. Nevertheless, even if the statement were deemed to be factual, it does not qualify as a defamatory statement.

True Statement

The Statement that Plaintiff had an inappropriate relationship with her was true. The Plaintiff, a 50+ year old male and worship leader, engaged in a relationship with an 18 year old, that is described by the Complaint as one in which he engaged in a relationship that included the following: (1) giving financial gifts and presents to H. Collier and her family (Pl.'s Comp. ¶ 18 and 31); (2) inviting H. Collier and her family to family gatherings and activities (Pl.'s Comp. ¶ 31); (3) discussing with her deeply personal issues regarding her mental illness, self-development, self-esteem, self-perception, anger management, anxiety, separation anxiety, eating disorder, self-inflicting physical harm, coping with a previous sexual assault, and ongoing psychological treatment (Pl.'s Comp. ¶ 38); (4) having others in the Church notice H. Collier being expressive and affectionate toward the Plaintiff. (Pl.'s Comp. ¶ 42, 43); (5) attempting to "redirect" the anger of H. Collier (Pl.'s Comp. ¶ 45); (6) receiving text messages from H. Collier "expressing daughterly affection" toward Plaintiff (Pl.'s Comp. ¶ 64); and, (7) inviting H. Collier to a family birthday party and correcting a violation of Plaintiff's cell phone rules (Pl.'s Comp. ¶ 59).

Based upon the foregoing allegations in the Complaint, the Statement is a true statement, and therefore, not defamatory.

Publication

As to Smith, Plaintiff's allegation against her of defamation fails because it does not identify the "third parties" who heard the Statement. At a minimum, the Plaintiff must plead the identity of the "hearer" of the Statement to meet the elements of a defamation claim.

Defamatory Statement

The Statement does not qualify as a defamatory statement. A defamatory statement is (1) either defamatory *per se* or defamatory *per quod* and (2) actionable *per se* or not actionable *per se*. A defamatory statement *per se* has a defamatory meaning apparent on its face. A defamatory statement *per quod* has a defamatory meaning through referring to facts or circumstances beyond the statement itself. *Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007).

Plaintiff's Complaint concedes that the Statement is not a defamatory statement on its face because he alleges it was misinterpreted by the Church. Therefore, "If the defamatory meaning is not clear unless the hearer knows the facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself to prove a defamatory meaning." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998).

Plaintiff alleges that Dr. Jimmerson, the "hearer" of the Statement from H. Collier, that he told Plaintiff he did not believe he had a sexual relationship with H. Collier. Therefore, if Dr. Jimmerson did not believe the Statement meant that the Plaintiff had a sexual relationship with H. Collier, then Plaintiff cannot prove the statement was defamatory. There are no extrinsic facts the Plaintiff to support a defamatory meaning. Further, by Plaintiff's own admission, H. Collier

denied to Dr. Jimmerson that the relationship was sexual. Moreover, as to Smith, there is no allegation to support a defamatory meaning to any of the unidentified “third-parties.”

Defamatory Statement Not Actionable *Per Se*

In addition to being defamatory *per se* or *per quod*, “[a] separate issue is whether the statement is ‘actionable *per se*’ or not. This issue is one of pleading and proof, and is always a question of law for the court.” *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502. If the defamation is actionable *per se*, the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice and special damages.

Holtzscheiter, 332 S.C. at 510, 506 S.E.2d at 502.

“Slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession.” *Id.* at 511, 506 S.E.2d at 502. “In all other cases-namely, when slander does not fall into the above-named categories-special damages must be established.” *Id.* at 526, 506 S.E.2d at 510 (Toal, J., concurring). *Parrish v. Allison*, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007).

If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice, that is “the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff's reports.” *Holtzscheiter*, 332 S.C. 502, 510, 506 S.E.2d 497, 502.

By Plaintiff's own admission, subsequent to March 12, 2018, the Statement was misinterpreted by the Church to mean that Plaintiff had a sexual relationship with Plaintiff. A

statement's meaning based upon a misinterpretation of the same cannot be actionable per se because it does not directly charge the plaintiff with one of the five characteristics or acts. Since the Statement is not actionable per se, the Plaintiff must prove actual malice. Moreover, as to Smith, there is no allegation to support that the Statement was actionable per se.

Plaintiff fails to present facts that support a finding of actual malice. By Plaintiff's own admission, the Statement was made by a member of the Church, H. Collier, to the head pastor to Dr. Jimmerson, only. The facts pled do not provide evidence of ill will by H. Collier or Smith, a desire to purposely injure the Plaintiff with the Statement, or to publish the Statement with reckless disregard towards Plaintiff.

Qualified Privilege and Good Faith

As an affirmative defense to slander, a defendant may assert that the statement was made under a qualified privilege. If the qualified privilege exists, the claim will fail unless the plaintiff can prove actual malice. *Constant v. Spartanburg Steel Products, Inc.*, 316 S.C. 86, 447 S.E.2d 194, 196 (1994). A qualified privilege is defined as "[a] communication made in good faith on any subject matter in which the person communicating has an interest or duty ... if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable." *Id.* In order to maintain the privilege, "[t]he publisher must not wander beyond the scope of the occasion." *Id.* *Johns v. Amtrust Underwriters, Inc.*, 996 F. Supp. 2d 413, 420 (D.S.C. 2014).

In this case, H. Collier's statement was made in good faith, with proper motives, and to the proper parties after it became clear that Plaintiff's behavior was inappropriate. Therefore, it qualifies as a privileged communication between a member of the Church and the Church's head pastor. It is reasonable that a member of the Church would go to the pastor or other authority

within the Church to report the type of behavior exhibited by the Plaintiff, especially when Plaintiff was in position of authority over H. Collier.

Therefore, because the alleged defamatory statement is privileged, Plaintiff must prove the statement was made with actual malice. As set forth above, Plaintiff fails to plead facts sufficient to meet the standard that the Statement was made with actual malice.

Based upon the foregoing, Plaintiff's cause of Defamation must be dismissed pursuant to Rule 12(c), *SCRCP*.

Intentional Infliction of Emotional Distress

To recover for intentional infliction of emotional distress, the complaining party must establish that (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 and outrageous" so 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 the defendant caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007).

H. Collier made the Statement to Dr. Jimmerson in private. Smith allegedly made the Statement to "third parties." Again, according to Plaintiff, Dr. Jimmerson did not believe that the relationship was sexual. And, there is no allegation that the "third parties" believed the Statement alleged any sexual or romantic relationship.

There are no allegations contained in the Plaintiff's Complaint to meet the standard of proof under this cause of action, i.e., that H. Collier's or Smith's conduct was so extreme and outrageous so as to exceed all bounds of decency and was atrocious and utterly intolerable.

Therefore, Plaintiffs fails to present facts necessary to support that the Statement constitutes conduct that “exceeds all bounds of decency” or was “utterly intolerable.” This cause of action also fails pursuant to Rule 12(c), *SCRCP*.

Civil Conspiracy

The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005); *see also Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 56–57 (2004) (“A civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing special damage.”) (citation omitted). It is essential that the plaintiff prove all of these elements in order to recover. *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938).

The “essential consideration” in civil conspiracy “is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff.” *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986).

“[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987); *accord Cowburn*, 366 S.C. at 49, 619 S.E.2d at 453. *Pye v. Estate of Fox*, 369 S.C. 555, 566–67, 633 S.E.2d 505, 511 (2006).

Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. *Vaught v.*

Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App.1989). *Pye v. Estate of Fox*, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006).

According to the Plaintiff's Complaint, "Defendant(s), and each Defendant individually and collectively as joint and several tortfeasors, have conspired together to injure Plaintiff." (Pl's Comp. ¶ 213). Plaintiff's Complaint then states that "each Defendant individually and collectively as joint and several tortfeasors, have caused Plaintiff damages." (Pl's Comp. ¶ 214). Plaintiff's blanket statements of a civil conspiracy and general damages do not constitute facts sufficient to create such a cause of action. First, Plaintiff's allegations do which Defendants conspired together for the purpose of injuring Plaintiff. Second, Plaintiff's Complaint fails to prove special damages because of the alleged civil conspiracy. Therefore, this cause of action is dismissed pursuant to Rule 12(c), SCRPC.

Negligent Infliction of Emotional Distress

To prove a cause of action for negligent infliction of emotional distress with the following elements, the Plaintiff must prove that (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony. *Kinard*, 286 S.C. at 582–83, 336 S.E.2d at 467.

This cause of action is limited to bystander recovery involving some type of accident, which does not apply to the facts of this case. Therefore, this cause of action is dismissed pursuant to Rule 12(c), SCRPC.

Based upon the foregoing, IT IS HEREBY ORDERED, ADJUGED, and DECREED that the Plaintiff's Complaint against the Defendants, Hannah E. Collier and Linda Smith, be dismissed with prejudice.

IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Dismissal

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-09-08 13:18:43 page 13 of 13

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

James Earl Tegeler,

Plaintiff(s),

vs.

Charlotte Collier, Hannah Elizabeth Collier,
Linda Smith, Northgate Baptist Church,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2020-CP-23-01213

**ORDER DISMISSING CHARLOTTE
COLLIER**

This matter came before the court on August 18, 2020 upon motion of Charlotte Collier pursuant to SCRCP 12(c) for dismissal on the pleadings. It was heard at the same hearing as Motions to Dismiss filed by the Defendants Hannah Collier, Linda Smith and Northgate Baptist Church. For the reasons stated herein, the Defendant Charlotte Collier's motion is granted and this case is dismissed as to Charlotte Collier.

ALLEGATIONS OF THE COMPLAINT

Plaintiff Tegeler, formerly a worship leader at Northgate Baptist Church, sued Charlotte Collier, the mother of then 18-year-old Hannah Collier because of a meeting Mrs. Collier and her daughter had with Pastor Jimmerson the head pastor of Northgate Church on March 12, 2018. Plaintiff alleges in that meeting Mrs. Collier told Pastor Jimmerson that she believed the relationship of James Tegeler, a gentleman in his fifties who was at that time employed by the church, with her eighteen year old daughter was "inappropriate." (Complaint P. 59) The Complaint further alleges that in that meeting, Hanna Collier told Pastor Jimmerson that the relationship was not romantic, and that they had not had sexual or intimate relations. (Complaint P. 60 – 61) Plaintiff alleges that the next day, Plaintiff showed Pastor Jimmerson, and later Ms. Shaler, the chair of the church

personnel committee, a text from Hannah Collier to Plaintiff. (Complaint P. 64) The Complaint states that Shaler perceived from the text shown to her by Plaintiff that the relationship was inappropriate. (Complaint p. 72) Plaintiff alleges that Ms. Shaler started an investigation of him based upon the text he showed her. (Complaint P. 72) Plaintiff alleges that this investigation involved his relationships with other young girls besides the Defendant Hanna Collier. (Complaint P. 74) At the end of the investigation, Northgate asked Plaintiff to resign from his position as worship leader in the church. (Complaint P. 97) Plaintiff has sued the Church for false imprisonment, fraud in the inducement, negligent misrepresentation and negligent hiring. Plaintiff has sued all Defendants for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress and civil conspiracy. The court will address in this order the claims against Charlotte Collier.

LEGAL STANDARD

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c), SCRCP. When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000). However, the court will not admit inferences drawn by the plaintiff from such facts, nor will it admit conclusions of law. Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990). A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor. Sapp v. Ford Motor Co., 386 S.C.

143, 687 S.E.2d 47 (2009).

PLAINTIFF'S CLAIMS

Defamation

Plaintiff has alleged that Charlotte Collier told the Pastor of her church that she believed the relationship between the 50+-year-old worship leader and her 18 year old daughter was inappropriate. This is the alleged defamatory statement-giving rise to the defamation claim. Both Hanna and Charlotte Collier denied in that meeting that the relationship was sexual or romantic in nature. Plaintiff alleges that he had established a mentorship over Hanna Collier that involved “redirecting her behavior” and listening to details regarding her parents’ divorce and family life. Plaintiff alleges that Hanna Collier told him about her mental illnesses, eating disorders and other very personal and sensitive information. Plaintiff alleges that Hanna Collier told him she was under psychiatric treatment. Plaintiff alleges he gave Hanna Collier financial gifts. He alleges he invited Hanna Collier on out of town trips. Plaintiff admits he had a “position of influence” over this 18-year-old girl. Plaintiff alleges that after he had come to believe the “mentorship” of Hanna Collier was unproductive he invited her to a birthday party for his son. He alleges that he was unhappy she used her cell phone at the table in light of the fact that she was “aware of Plaintiff’s rule amongst Plaintiff’s family at mealtimes that no one was permitted to have a cell phone at the table.” (Complaint P. 56) and he attempted “redirected” her behavior even after the “mentorship” had ended.

The question presented is whether the Defendant Charlotte Collier’s characterization of this relationship as “inappropriate” to her Pastor and Plaintiff’s employer is defamatory. The elements of defamation include: (1) a false and defamatory

statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998).

Plaintiff appears to argue that the Defendant Charlotte Collier's statement that she believed the relationship between the 50 something year old worship leader and her 18 year old daughter was "inappropriate" equates to calling it sexual. However the Complaint goes on to plead that the Defendant and her daughter told Pastor Jimmerson clearly the relationship was not sexual or romantic. (Complaint p. 61, 62) Therefore there is no need to resort to the doctrine of innuendo with regard to the alleged defamatory statement.¹

The court must first address whether Charlotte Collier's statement to the Pastor of her church and Plaintiff's employer was a statement of fact or opinion. A statement, which is opinion, cannot be defamatory. Our courts have held that facts are statements that can be proven true or false; by contrast, opinions are matters of belief or ideas that cannot be proven one way or the other. Moreover, because a statement must be false to be defamatory, a statement of opinion cannot form the basis of a defamation claim because it cannot be proven true or false. Specifically, under the First Amendment, there is no such thing as a false idea. Garrard v. Charleston Cty. Sch. Dist., 429 S.C. 170, 198, 838 S.E.2d 698, 713 (Ct. App. 2019).

Charlotte Collier's statement that she believed the non-sexual non-romantic

¹ "Innuendo is extrinsic evidence used to prove a statement's defamatory nature. It includes the aid of inducements, colloquialisms, and explanatory circumstances." Parrish v. Allison, 376 S.C. 308, 325 n.1, 656 S.E.2d 382, 391 n.1 (Ct. App. 2007)

relationship described in the Complaint between her 18 year old daughter and the 50+ year old worship leader to be inappropriate is an opinion. It can be neither true nor false and thus cannot form the basis of a defamation claim.

Additionally the Complaint alleges that the statement that Charlotte Collier considered the relationship between a 50+ year old employee of the church and her 18 year old daughter to be inappropriate was made privately to the Pastor of the church and employer of the Plaintiff. This is the only alleged publication of the alleged defamatory statement by Charlotte Collier. Under the facts as alleged that statement would be subject to qualified privilege, which has been plead as an affirmative defense². Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. Restatement (Second) of Torts § 593 (1977); see Bell v. Bank of Abbeville, 208 S.C. 490, 38 S.E.2d 641 (1946). In Bell, the Court held that in determining whether or not the communication was qualifiedly privileged, regard must be had to the occasion and to the relationship of the parties. Id at 493. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. Id at 494. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the

² Defendant's motion is made pursuant to SCRCP 12 (c) and therefore this court may consider the application of the affirmative defenses contained therein. No response to those affirmative defenses or any other matter contained in the Answer was filed by the Plaintiff.

persons to whom it is addressed. Id.

Plaintiff alleges that his relationship with Hanna Collier was taking place with the full knowledge of the leadership of the Church while the Church employed him. The Complaint alleges Charlotte and Hanna Collier were clear in their discussions with their Pastor and Plaintiff's employer that the relationship was not romantic or sexual. Plaintiff's employer and alleged supervisor of the relationship would be the person with an interest in the subject matter. The statement was opinion, was measured and did not go beyond what would be necessary to express and communicate parental concern. Our Courts have previously found the qualified privilege applies "to situations in which an employee's job performance is properly evaluated." Wright v. Sparrow, 298 S.C. 469, 474, 381 S.E.2d 503, 506 (Ct. App. 1989). Harris v. Tietex Int'l, Ltd., 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016). Based on the facts alleged in the Complaint the defense of qualified privilege plead in the answer would bar the Plaintiff's claim. To hold otherwise would give a parent no recourse under these facts to express her concerns.

Lastly, even if the statement of Mrs. Collier that she considered the relationship between the Plaintiff and her daughter to be inappropriate was fact instead of opinion, the statement was true based upon the Complaint. The Plaintiff's description of the relationship as stated in the Complaint are as follows:

- He is an adult male who has placed himself in a supervisory position over an 18 year old Defendant (Complaint P. 17)
- He was giving the 18 year old Defendant financial gifts (Complaint P. 18)
- Plaintiff alleges the 18 year old Defendant was vulnerable (Complaint P. 23)
- Plaintiff alleges he decided to form a mentoring relationship with an 18 year old female (Complaint P. 27)
- Plaintiff invited the 18 year old to social gatherings and on trips (Complaint P. 31)

- Plaintiff reported on observations, assessments and issues of an 18 year old girl to church staff Complaint (P. 36)
- Plaintiff became a confidant to 18 year old girl for her personal issues and family issues (Complaint P. 38)
- Others noticed the vulnerable 18-year-old Defendant being expressive and affectionate toward the Plaintiff. (Complaint PP. 42 and 43)
- Plaintiff attempted to “redirect” the anger of the 18 year old Defendant in a public setting and the Defendant did not respond well to this. (Complaint P. 45)
- Hannah Collier was sending text messages to the Plaintiff “expressing daughterly affection” toward Plaintiff. (Complaint P. 64)
- After the Plaintiff alleges that the mentorship was not working and was “reduced and limited” (Complaint P. 53) he invited the 18 year old Plaintiff to a family birthday party then corrected her behavior with regard to her cell phone usage at the table.

Plaintiff’s Complaint presumes that the only type of inappropriate relationship is a sexual relationship. To the extent there could be any confusion about this Plaintiff alleges that Hannah Collier specified the relationship was not sexual or romantic. Considering the age discrepancy between Plaintiff and Hannah Collier and that Plaintiff had chosen to place himself in a position of authority over a girl he alleges to be vulnerable and mentally unstable, it is not surprising that a parent would consider this relationship inappropriate, regardless of whether it was sexual in nature.

Outrage

To recover for the intentional infliction of emotional distress, a Plaintiff must establish (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 defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and

(4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. Fleming v. Rose, 338 S.C. 524, 536-37, 526 S.E.2d 732, 739 (Ct. App. 2000).

The court determines, from the materials before it, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. See McSwain v. Shei, 304 S.C. 25, 402 S.E.2d 890 (1991). See also Andrews v. Piedmont Air Lines, 297 S.C. 367, 377 S.E.2d 127 (Ct. App. 1989) (question of whether defendant's conduct may be reasonably regarded as so extreme and outrageous as to allow recovery for outrage is question for court to determine). The majority of cases finding outrageous conduct generally require "hostile or abusive encounters" or "coercive or oppressive conduct." See Gattison v. South Carolina State College, 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995); Wright v. Sparrow, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989).

The Complaint in this case is factually detailed. Here, there is no allegation of any hostile or abusive encounter by Charlotte Collier or any suggestion of coercive or oppressive conduct. There are no facts to establish the conduct of Charlotte Collier was so extreme and outrageous as to constitute intentional infliction of emotional distress. Plaintiff alleges that Charlotte Collier met with the pastor of her church to discuss her concerns regarding the non-sexual nonromantic relationship her 18 year old daughter was involved in with a 50 something year old male church employee. The facts alleged fall short of conduct that exceeds all possible bounds of decency. Further, this action as alleged would not be regarded as atrocious and utterly intolerable in a civilized society. The Plaintiff's detailed and fact specific Complaint fails to state a claim for outrage.

Negligent Infliction of Emotional Distress

In Kinard v. Augusta Sash & Door Co., the South Carolina Supreme Court adopted the cause of action for negligent infliction of emotional distress with the following elements: (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony. Stewart v. State Farm Mut. Auto. Ins. Co., 341 S.C. 143, 154, 533 S.E.2d 597, 603 (Ct. App. 2000) (citing Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985)). The South Carolina Supreme Court has strictly limited this cause of action to the “bystander liability” scenario. Id.

The facts as alleged do not fall within the parameters of Negligent Infliction of Emotional distress.

Civil Conspiracy

The Plaintiff alleges that Charlotte Collier individually and collectively with the other Defendants were joint and several tortfeasors conspiring together to injure the Plaintiff. The Plaintiff does not include any allegations of fact or damages in support of his purported civil conspiracy cause of action that are different from the elements that he attempts to establish for his other purported causes of action. “In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” Hackworth v. Greywood at Hammett, LLC, 385

S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009). “[B]ecause the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.” *Id.*, 385 S.C. at 115, 682 S.E.2d at 874. Otherwise, the parties are just joint tortfeasors. For this reason, the purported cause of action against Charlotte Collier for civil conspiracy must be dismissed.

Dismissal with Prejudice

Plaintiff in this case has filed a 215-paragraph Complaint. His Complaint contains a 115-paragraph statement of facts, which goes into extraordinary detail as to the events surrounding the alleged defamatory statements made by Charlotte Collier. This dismissal is not based on a paucity of pled facts, but instead is granted because under the extremely detailed facts of the Complaint, Plaintiff fails to state a claim for relief Defendant submitted no affidavits in support of her motion. Plaintiff responded to Defendants’ motion to dismiss with a 100-page filing including Exhibits of texts between Plaintiff and Hanna Collier most of which support Defendant Charlotte’s opinion that the relationship between her daughter and Plaintiff is not appropriate. Plaintiff’s filings also contain an affidavit of the Deacon of the Defendant Northgate Baptist Church, texts between Hanna Collier and another church member, Plaintiff’s counsel’s response to Defendants Hannah Collier and Linda Smith’s Rule 11 letter, emails between Charlotte Collier and the Plaintiff and emails and texts between church employees and members and Plaintiff. The Plaintiff cannot convert the Defendant’s motion to one for summary judgment by unilaterally presenting affidavits. Those affidavits are not part of this court’s review as to the sufficiency of the pleadings. However, after reviewing these affidavits in addition to the numerous fact specific

allegations of the Complaint, it is clear that any amendment to this Complaint would be futile. For this reason, the dismissal is with prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that the Plaintiff's Complaint as to Charlotte Collier be dismissed with prejudice.

The Hon. Alex Kinlaw, Jr.
Presiding Judge, 13th Judicial Circuit

September _____, 2020



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Dismissal

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-09-08 13:18:00 page 12 of 12

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2020-CP-2301213
	)	
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charlotte Collier, Hannah Elizabeth	)	
Collier, Linda Smith, and	)	
Northgate Baptist Church,	)	
	)	
Defendants.	)	
	)	

**ORDER GRANTING DEFENDANT NORTHGATE BAPTIST CHURCH'S
MOTION TO DISMISS**

This matter came before the Court on August 18, 2020, at 10:30 a.m., in Greenville County, South Carolina, Thirteenth Judicial Circuit upon each defendants' respective dispositive motions,¹ including Defendant Northgate Baptist Church's (hereinafter "Northgate") Motion to Dismiss ("Motion") pursuant to South Carolina R. Civ. P. 12(b)(6). Northgate filed its Motion on March 25, 2020. Northgate filed its Memorandum in Support of its Motion ("Northgate's Memo") on August 13, 2020. Thereafter, Plaintiff filed his response to Northgate's Memo ("Response") on August 17, 2020. Attorney S. Michael Nail of Ogletree Deakins Nash Smoak & Stewart, P.C. was present representing the interests of Northgate. Attorney Amy M. Snyder was present representing the interests of defendant, Charlotte Collier. Attorney Daniel R. Hughes was present representing the interests of defendants, Hannah Collier and Linda Smith. Attorney Deborah D. Davis was present representing the Plaintiff.

¹ The procedural history and merits of the other defendants' motions are addressed in separate orders.

Having reviewed all of the papers submitted by the parties in connection with the Motion and all arguments made therein, all of the record evidence presented therein, and all of the arguments made by counsel at the hearing, this Court finds that Plaintiff released his claims against Northgate that he attempted to bring against Northgate in this matter and hereby orders, for the reasons stated herein, that Northgate's Motion is GRANTED WITH PREJUDICE.

I. FACTUAL BACKGROUND²

Plaintiff's Complaint asserts claims against Northgate for: false imprisonment; defamation; fraud in the inducement; negligent misrepresentation; negligent hiring, supervision, and retention of employees; intentional infliction of emotional distress; negligent infliction of emotional distress; wrongful termination; and civil conspiracy. However, before Plaintiff's separation from Northgate, he voluntarily entered into a valid and enforceable severance agreement ("Agreement")³ with Northgate wherein he released all claims against Northgate related to his employment or separation from Northgate:

In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company.

See **Exhibit A**, at ¶ 3(A).

² The Court notes that Northgate's Motion is styled as a motion to dismiss. However, the Court also recognizes that Northgate attached the severance agreement referenced in the Complaint (but not attached) in its Motion. To the extent that the Court considers the Agreement, it may treat a motion under SCRCP 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the Rules of Civil Procedure. *Brown v. Leverette*, 291 SC 364, 353 S.E.2d 697 (1987). Plaintiff raised no objection to considering the Agreement and has based his arguments on the Agreement. Indeed, under either standard, Plaintiff's claims against Northgate are dismissed with prejudice.

³ The Agreement was attached as **Exhibit A** to Northgate's Memo.

Solidifying the validity of Plaintiff's release of claims against Northgate, it is undisputed that Plaintiff negotiated the terms of the Agreement, including an increase to the original severance amount which is evident from the face of the Agreement.⁴ Therefore, Plaintiff has released his claims against Northgate by entering into a contract supported by valid consideration through active negotiation.

II. APPLICABLE STANDARDS

A. Motion to Dismiss

A motion to dismiss under Rule 12(b)(6), SCRCP is the usual and proper method of testing the legal sufficiency of the Complaint and is directed to the factual and legal sufficiency of the Complaint. *See Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 567 S.E.2d 251 (S.C. Ct. App. 2002); *Woodell v. Marion Sch. Dist. ONE*, 414 S.E.2d 794 (S.C. 1992). “[A] motion under Rule 12(b)(6) . . . admits the well pleaded facts in the Complaint, but it does not admit the inferences drawn by the Plaintiff from such facts, nor does it admit conclusions of law.” *Carolina Winds Owners’ Ass’n, Inc. v. Joe Harden Builder, Inc.*, 374 S.E.2d 897, 899 (S.C. Ct. App. 1988); *Carrington v. City of Spartanburg*, 322 S.E.2d 28 (S.C. Ct. App. 1984), overruled on other grounds, *McCall v. Batson*, 329 S.E.2d 741 (S.C. 1985).

South Carolina courts apply a “fact pleading” standard, which is more rigorous than the lenient “notice pleading” standard established in federal court. Rule 8(a)(2), SCRCP; *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 541 S.E.2d 269, 271 (S.C. Ct. App. 2000) (distinguishing relevant standard under the SCRCP from “more lenient” standard under federal rules), *aff'd as modified*, 581 S.E.2d 169 (S.C. 2003). The non-moving party may not simply make conclusory assertions

⁴ See **Exhibit A**, at ¶ 1(A) wherein the proposed consideration is doubled from \$2,600.00 to \$5,200.00.

of liability, but must set forth assertions of fact that give rise to relief. *See, e.g., Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 559 S.E.2d 362, 364-65 (S.C. Ct. App. 2001).

For purposes of this motion, “[t]he question for the [C]ourt is whether in the light most favorable to the plaintiff, and with every doubt resolved in [her] behalf, the allegations set forth on the face of the complaint state any valid claim for relief.” *Sloan Constr. Co. v. Southco Grassing, Inc.*, 659 S.E.2d 158, 161 (S.C. 2008) (citing *Plyler v. Burns*, 647 S.E.2d 188, 192 (S.C. 2007)). The Court “should consider only the allegations set forth on the face of the plaintiff’s complaint.” *Plyler*, 647 S.E.2d at 192 (citing *Stiles v. Onorato*, 457 S.E.2d 601, 602 (S.C. 1995)). A 12(b)(6) motion should be granted if the facts alleged and inferences reasonably deducible from the complaint would not “entitle the plaintiff to any relief on any theory of the case.” *Id.*

B. Motion for Summary Judgment

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citing to *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRCP 56(c).

The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The moving party may discharge this responsibility by pointing out to the trial court that there is an absence of evidence to support the nonmoving party’s case. *Id.* It is not necessary for the moving party to “support its motion with affidavits or other similar materials

negating the opponent's claim.” *Id.* (emphasis in original). “Once the moving party carries its initial burden, the opposing party must . . . do more than simply show that there is some metaphysical doubt as to the material facts, but must come forward with specific facts showing that there is a genuine issue for trial.” *Id.* (citing *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986)) (emphasis in original) (internal quotations omitted).

III. ARGUMENTS PRESENTED

Northgate seeks a dismissal with prejudice of all of Plaintiff's claim against Northgate because Plaintiff has previously released all claims against Northgate in exchange for valid monetary consideration through the Agreement.

In response, Plaintiff asserts a variety of arguments, all of which the Court has considered. However, the Court only addresses the arguments that correlate directly to the dispositive issue presented by Northgate.

IV. ANALYSIS

A. The Release Contained in the Agreement is Valid and Plaintiff's Claims Against Northgate are Covered by the Release.

A release is a contract, and releases are governed by same principles of adequacy of consideration that apply to other contracts. *See Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 734, 741 (D.S.C. 2001); *see also Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947) (wrongful death settlement of \$500 enforced) (quoting 53 C. J. Release § 21). No set form of words is necessary to constitute a release. *Gardner v. Columbia Police Dep't*, 216 S.C. 219, 223, 57 S.E.2d 308, 309-10 (1950) (construing terms of release of tortfeasor "of any trouble whatsoever" in consideration of cash payment exonerated tortfeasor from all liability). Further,

words and expressions in releases are given their ordinary meaning unless the context of the instrument indicates that the words are being used in a different sense. *Id.*

In construing the terms of a contract, a court must first look at the language of the contract to determine the intentions of the parties. *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When a contract unambiguously sets forth the contracting parties' intent, a court is bound by that clearly expressed intent without resort to extrinsic evidence. *Id.* “Extrinsic evidence giving the contract a different in meaning from that indicated by its plain terms is inadmissible.” *Id.* at 377-78, 373 S.E.2d at 586.

It is well established that a broad and general release of all claims, which is voluntarily executed in exchange for valid consideration, acts as a bar to any claim covered by the time period of the release. *Virginia Impression Products Corp. v. SCM Corp.*, 448 F.2d 262, 265 (4th Cir. 1971) (a general release indicates that “the parties desire to settle all matters forever . . . not only enumerated specific differences, but claims of every kind or character, known and unknown”) (internal citations omitted); *see also Hause v. AstraZeneca, LP*, 2015 WL 1524409 (D.S.C. 2015); *Scoggins v. Honeywell Int’l, Inc.*, 2012 WL 6102031 (D.S.C. 2012).

Here, the release in the Agreement meets the requirements of South Carolina law: it unambiguously represents a voluntary and bargained-for exchange whereby Plaintiff released Northgate and all of its employees and agents from any liability arising out of Plaintiff’s employment. The plain terms of the Agreement unambiguously reveal Plaintiff’s intent to release all claims against Northgate:

In exchange for the Company’s agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee’s employment with or termination from the Company. . .

See **Exhibit A**, at ¶ 3(A).

Employee further expressly agrees that this Agreement may be treated as a complete defense to any action or proceeding that may be brought by Employee . . . against the Company . . . for relief or damages of any kind arising from Employee's employment or termination from employment with the Company. . .

Exhibit A, at ¶ 3(B).

The intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable. . .

Exhibit A, at ¶ 3(D).

Indeed, all of the allegations against Northgate contained in Plaintiff's Complaint contain allegations relating to his employment with Northgate and/or circumstances surrounding his termination therefrom. Accordingly, all claims related to his employment are covered by the release in the Agreement. As such, these claims were released by Plaintiff when he signed the Agreement and cannot now be the basis of a lawsuit. Northgate is therefore entitled to dismissal of all of Plaintiff's claims against it, with prejudice.

B. Plaintiff was not Under Duress (nor has he met the conditions precedent for asserting the defense) because he Executed the Release Through his own Free Will, and Further Ratified the Agreement by Retaining the Severance Payment.

Nearly two years after he executed the Agreement, Plaintiff's Complaint is riddled with the notion that Northgate forced him to execute the Agreement. However, Plaintiff voluntarily executed the Agreement (even actively increasing the amount of consideration he received from Northgate for his release of claims against Northgate) and retained the monetary benefit thereof without raising the issue of duress until he filed the Complaint. As such, his duress argument fails.

Under South Carolina law, duress has been defined as coercion that puts a person in such fear that he is "bereft" of the quality of mind essential to the making of a contract and the contract was thereby obtained as a result of this state of mind. *In re Nightingale's Estate*, 182 S.C. 527,

189 S.E. 890, 897 (1937); *Cherry v. Shelby Mut. Plate Glass & Cas. Co.*, 191 S.C. 177, 4 S.E.2d 123 (1939) (duress is defined as “a condition of the mind produced by improper external pressure of influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition”). As noted in *Nightingale's Estate*, the fear which makes it impossible for a person to exercise his own free will is not so much to be tested by the means employed to accomplish the act, as by the state of mind produced by the means invoked. *Id.* at 898. Whether duress exists in a particular case is a question of fact to be determined according to the circumstances of each case, such as the age, sex, and capacity of the party influenced. See *Gainey v. Gainey*, 382 S.C. 414, 428–29, 675 S.E.2d 792, 799 (Ct. App. 2009). However, there is no question of fact of duress in this case as Plaintiff clearly negotiated the terms of the severance amount and kept the severance amount and did not challenge the validity of the release for over two years.

As stated *supra*, Plaintiff cannot demonstrate that he had no other alternative but to sign the Agreement. Indeed, his suggestion that he was under duress is deflated by his active negotiation for an increased severance payment in exchange for his release of all claims against Northgate. Additionally, the general rule in South Carolina is that when a party seeks to set aside a release, he must first return any consideration received by him for the release. *Hyman*, 142 F. Supp. 2d at 747–48 (citing *Gray v. Petoseed Co.*, 1997 WL 716454, 129 F.3d 1259 (4th Cir. 1997) (table) (affirming dismissal of fraud because under South Carolina law when a party to a compromise settlement wishes to avoid a valid release and be restored to his original rights, he must restore the other party to his original position by returning or offering to return the consideration received under the compromise); *McCarty v. Kendall Co.*, 242 F.Supp. 495 (W.D.S.C. 1965) (action to avoid a release allegedly induced by fraud dismissed due to plaintiff's

failure to return or tender consideration given for settlement); *Dunaway v. United Ins. Co. of America*, 239 S.C. 407, 123 S.E.2d 353, 354 (1962) (failure to tender or return consideration given for settlement precluded recovery in action for fraudulent inducement of settlement); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 399 S.E.2d 22, 23 (1990) (“it is well settled that one who seeks to avoid the effects of a release must first return or tender consideration paid thereof”).

In *Hyman*, a former automobile dealer insisted upon retaining the benefits which he received under the contract releasing manufacturer from liability, and, at the same time, insisted upon escaping the obligations imposed by the release. *Hyman*, 142 F. Supp. 2d at 748 (D.S.C. 2001). Thus, the court noted that the condition precedent to avoiding the release (the return or tender of consideration for the release), had not been complied with. *Id.* The court took issue with the fact that the dealer knew of the alleged “duress” at the time he signed the release but did not raise the issue for over three years. *Id.* Thus, the court held that the dealer “clearly waived his right to avoid the release on claims of duress and has affirmed the release.” *Id.*

Importantly, the *Hyman* court also recognized that a release which is procured by duress is not void, but merely voidable and is capable of being ratified. *Id.* The person claiming duress must act promptly to repudiate the contract or release, or he will be deemed to have waived his right to do so. *Id.* It is a well-established proposition that a voidable contract may be ratified by a party's failure to act promptly to repudiate the contract. *Id.* (citing *Anselmo v. Manufacturers Life Ins. Co.*, 771 F.2d 417, 420 (8th Cir. 1985) (plaintiff signed a release under threat of losing severance pay, then sued to rescind, claiming duress, and court held for defendant on ground that employee accepted and thereby ratified the contract)). A party may ratify an agreement entered into under duress in a number of different ways: by intentionally accepting benefits under the contract; by remaining silent or acquiescing in the contract for a period of time after he has the

opportunity to avoid it; or by recognizing its validity by acting upon it, performing under it or affirmatively acknowledging it. *Id.* (internal citations omitted). Thus, one seeking to repudiate an agreement allegedly entered into under duress must promptly complain of the circumstances under which the document was signed. *Id.* The *Hyman* court concluded as follows: “The undisputed facts indicate that [the dealer] ratified the release by retaining the benefits of the release for over three years. [The dealer] seeks to have it both ways—to retain the benefits of the buy back privilege and to sue [the manufacturer] —and that is something which this court cannot allow.” *Id.* at 749.

Here, it is undisputed that Plaintiff retained the monetary consideration he received from Northgate in exchange for his agreement to release all claims against Northgate in the Agreement. However, nearly two years later when he filed the Complaint, he then claimed that he was under “duress” when he signed the Agreement. Similar to *Hyman*, Plaintiff has not met the conditions precedent to asserting his new proposition of “duress” and it cannot be used to circumvent the valid and enforceable Agreement.

V. CONCLUSION

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Northgate’s Motion is GRANTED and that Plaintiff’s Complaint is DISMISSED WITH PREJUDICE, thereby ending this case.

This ____ day of September, 2020.

The Honorable Alex Kinlaw, Jr.



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Dismissal

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-09-08 13:17:08 page 11 of 11

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2020-CP-2301213
	)	
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charlotte Collier, Hannah Elizabeth	)	
Collier, Linda Smith, and	)	
Northgate Baptist Church,	)	
	)	
Defendants.	)	
	)	

**ORDER DENYING PLAINTIFF’S MOTION FOR RECONSIDERATION TO ALTER
OR AMEND A JUDGMENT AND MOTION FOR RELIEF FROM JUDGMENT**

I. RELEVANT PROCEDURAL HISTORY

This matter came before the Court on August 18, 2020, at 10:30 a.m., in Greenville County, South Carolina, Thirteenth Judicial Circuit upon each defendants’ respective dispositive motions,¹ including Defendant Northgate Baptist Church’s (hereinafter “Northgate”) Motion to Dismiss (“Motion to Dismiss”) pursuant to South Carolina R. Civ. P. 12(b)(6). Northgate filed its Motion on March 25, 2020. Northgate filed its Memorandum in Support of its Motion to Dismiss (“Northgate’s Memo”) on August 13, 2020. Thereafter, Plaintiff filed his response to Northgate’s Memo on August 17, 2020. Attorney S. Michael Nail of Ogletree Deakins Nash Smoak & Stewart, P.C. was present representing the interests of Northgate. Attorney Amy M. Snyder was present representing the interests of defendant, Charlotte Collier. Attorney Daniel R. Hughes was present

¹ The procedural history and merits of the other defendants’ motions are addressed in separate orders.

representing the interests of defendants, Hannah Collier and Linda Smith. Attorney Deborah D. Davis was present representing the Plaintiff.

On August 18, 2020, the Court issued a Form 4 Order GRANTING Northgate's Motion to Dismiss, *with prejudice*. On August 28, 2020, Plaintiff filed a Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment ("Plaintiff's Motion"). On September 3, 2020, Northgate filed its response to Plaintiff's Motion. On September 8, 2020, the Court issued a written order GRANTING Northgate's Motion to Dismiss, *with prejudice*. On September 14, 2020, Plaintiff filed an Amended Notice and Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment ("Plaintiff's Amended Motion").² On September 15, 2020, Northgate filed its response to Plaintiff's Amended Motion ("Northgate's Response").

II. ORDER

Plaintiff's Motion and Amended Motion assert a variety of arguments, all of which the Court has previously considered or have been waived by Plaintiff because he did not present them at the Hearing or otherwise before the Court rendered judgment granting Northgate's Motion to Dismiss.

Thus, after a thorough review of the content of Plaintiff's Rule 59(E)³ and Rule 60(B) Motions filed with the Court in the above referenced matter, as well as Defendant Northgate's response, the Court finds nothing to support altering or modifying the previous orders entered by the Court in the matter dated August 18, 2020 and September 8, 2020.

² Plaintiff's Motion was filed before the Court's submission of a final order granting Northgate's Motion to Dismiss (September 8, 2020), rendering it premature and based off arguments at the hearing rather than a final order. Because Plaintiff's Amended Motion contains very similar arguments to those arguments contained in Plaintiff's Motion, Northgate's Response only addressed new assertions, which were underlined for the Court's ease of reference.

³ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

IT IS HEREBY ORDERED that Plaintiff's Rule 59(E) and Rule 60(B) motions are hereby DENIED.

This ____ day of November, 2020.

The Honorable Alex Kinlaw, Jr.



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-11-09 15:00:25 page 4 of 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

James Earl Tegeler,

Plaintiff,

vs.

Charlotte Collier, Hannah Elizabeth Collier,
Linda Smith, Northgate Baptist Church,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2020-CP-23-01213

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER THE
DISMISSAL OF ALL CLAIMS AS TO
CHARLOTTE COLLIER**

On September 8, 2020 this Court entered an order granting the Defendant Charlotte Collier's Motion to Dismiss filed April 2, 2020. Subsequent to the hearing but prior to the entry of an Order in this case the Plaintiff prematurely filed a Motion for Reconsideration. The Plaintiff timely filed an amended motion on September 14, 2020 requesting reconsideration pursuant to SCRCP 59(e) and 60(b).

A motion filed under both Rule 59(e) and Rule 60(b) should be analyzed only under Rule 59(e) if it was filed no later than 10 days after entry of the adverse judgment and seeks to correct that judgment. Small v. Hunt, 98 F.3d 789, 797 (4th Cir. 1996); see also Vaughan v. Murray, No. 95-6081, 1995 U.S. App. LEXIS 31288, 1995 WL 649864, at *3 n.3 (4th Cir. Nov. 6, 1995) Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412, 2010 U.S. App. LEXIS 6298, *23, 15 Wage & Hour Cas. 2d (BNA) 1781. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment[,] is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (quoting Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988)). Collins Music Co. v. Igt, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002). Therefore, this Court will rule on this matter pursuant to SCRCP 59(e).

Defendant Charlotte Collier's motion to dismiss was filed and argued as a Motion for Judgment on the Pleadings and heard pursuant to SCRCP 12(c). While the Plaintiff filed multiple exhibits and affidavits in response to that motion, the Defendant did not go beyond the pleadings in her motion and argument. Therefore, the appropriate scope of review in this matter is pursuant to Rule 12 (c) and not Rule 56 as argued by the Plaintiff. "Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted." Falk v. Sadler, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). "On review of the motion, the court may not consider matters outside the pleadings." Id.

Based on a review of the pleadings in this matter, the Court affirms its decision set forth in its Order dismissing this case filed September 8, 2020. While the Plaintiff has submitted affidavits and new information in support of his Motion for Reconsideration, that material was not before this Court on the day of the hearing. Even if the Plaintiff had timely filed this information, it would not be relevant to the review of a Rule 12(c) motion. Plaintiff does not raise any new or persuasive legal arguments as to the sufficiency of the Complaint.

However, as stated in this Court's previous order, the information filed by the Plaintiff does have bearing with regard to this Court's opinion as to whether the Complaint should be amended. Plaintiff has filed lengthy memoranda in support of his position without ever making any mention of how an amendment could cure a defect in the pleadings, or why that amendment would not be futile. Additionally Plaintiff has filed volumes of exhibits and affidavits with exhibits with numerous emails and texts as attachments since the filing of the Motion to Dismiss. Nothing in the volumes of

documents filed has would change or expound upon the allegations in the complaint as they pertain to Charlotte Collier. Even if this information --- most of which consists of irrelevant insults to the character of Ms. Collier and her daughter Hannah --- were true, Plaintiff's Complaint would still fail to state a claim. Plaintiff's Complaint accurately pleads the statement he contends to be defamatory. This statement fails to meet the legal standard for defamation.

Lastly, Plaintiff attempts to raise a new claim in his post hearing motions. He alleges in the course of the August 18, 2020 hearing on these motions, counsel for Charlotte Collier referred to him in her argument before the Court as a predator. I have reviewed the record in this case find this argument to be wholly without merit. Ms. Collier's counsel did not call the Plaintiff a predator and all arguments made by counsel were appropriately within the context of the matters before the Court.

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS HONORABLE COURT that the Plaintiff's Motion for Reconsideration and Amended Motion for Reconsideration be denied.

IT IS SO ORDERED.

The Honorable Alex Kinlaw, Jr.
Presiding Judge, 13th Judicial Circuit

November ____, 2020
Greenville, South Carolina



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-11-09 15:00:48 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	C.A. NO.: 2020-CP-23-01213
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
vs	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO RECONSIDER THE
Charlotte Collier, Hannah Elizabeth	)	DISMISSAL OF ALL CLAIMS AS TO
Collier, Linda Smith and Northgate	)	LINDA SMITH AND HANNAH E.
Baptist Church,	)	COLLIER
	)	
Defendants.	)	
	)	

THIS MATTER CAME before the Court on August 18, 2020 upon the Motion of Linda Smith and Hannah E. Collier, pursuant to Rule 12(c), *SCRCP*, to dismiss Plaintiff's Complaint. By Form 4 Order filed August 18, 2020, and by formal Order filed September 8, 2020, this Court dismissed all claims by the Plaintiff against the Defendants, Hannah E. Collier and Linda Smith. Plaintiff filed a Motion for Reconsideration on August 28, 2020, along with numerous Affidavits and an Amended Motion for Reconsideration on September 14, 2020 pursuant to Rules 59(e) and 60(b), *SCRCP*.

A Rule 59(e) motion is necessary when the trial court overlooks an issue raised and presented, and fails to rule upon it. *See Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993). A Rule 60(b) motion allows the Court to relieve a party from final judgment based upon (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or

it is no longer equitable that the judgment should have prospective application. Rule 60(b), *SCRCP*.

Based upon a thorough review of all of the pleadings filed in this matter, as well as the arguments of counsel made at the hearing on August 18, 2020, the Court denies Plaintiff's Motion to Reconsider pursuant to Rules 59(e) and Rule 60(b), *SCRCP*.

A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). *Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

Plaintiff's Motion to Reconsider pursuant to Rule 59(e), *SCRCP* fails to raise any issues overlooked by the Court that would cause the Court to reconsider its prior ruling to dismiss all of Plaintiff's claims against the Defendants, Hannah E. Collier and Linda Smith, pursuant to Rule 12(c), *SCRCP*. Likewise, Plaintiff's Motion to Reconsider pursuant to Rule 60(b), *SCRCP* fails to present any sufficient reason to relieve him from judgment based upon the criteria of Rule 60(b), *SCRCP*.

Therefore, it is ordered that Plaintiff's Rule 59(e) and Rule 60(b) Motions are hereby DENIED.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE TO FOLLOW]



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al
Case Number: 2020CP2301213
Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2020-11-10 14:51:05 page 3 of 3

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT**

JAMES EARL TEGELER,

COMMON PLEAS CIVIL CASE NO.

Plaintiff(s),

v.

SUMMONS

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST CHURCH,**

Defendant(s).

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted this 25 day of February, 2020.

/s/ Deborah D. Davis, Esq.

Deborah D. Davis, Esq.

SC Bar No.: 102942

Attorney for Plaintiff

Deborah D. Davis, Esq.
Dickson Davis Law Firm, LLC
310 Rutherford Street
Greenville, SC 29609
(864) 729-3424 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

JAMES EARL TEGELER,

COMMON PLEAS CIVIL CASE NO.

Plaintiff(s),

v.

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST CHURCH,**

Defendant(s).

**COMPLAINT
(Jury Trial Demanded)**

COMES NOW, JAMES EARL TEGELER ("Plaintiff"), as the Plaintiff in the above-styled matter files this **COMPLAINT** against the Defendants **CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, LINDA SMITH,** and **NORTHGATE BAPTIST CHURCH** ("Defendant" individually or "Defendants" collectively), showing the Court the following:

JURISDICTION AND VENUE

1. Plaintiff has standing to bring the Plaintiff's claim(s) under provisions of South Carolina law.
2. Jurisdiction is proper in this Court. S.C. Code Ann. § 15-7-20.
3. Venue is proper in this Court. S.C. Code Ann. § 15-7-20.

STATEMENT OF THE PARTIES

4. Plaintiff **JAMES EARL TEGELER** is a natural person and resident of Greenville County.
5. Defendant **CHARLOTTE COLLIER** ("**C. COLLIER**") is a natural person and resident of Greenville County.
6. Defendant **HANNAH ELIZABETH COLLIER** ("**H. COLLIER**") is a natural person and resident of Lugoff County, Spartanburg County, Greenville County, or any of the above.
7. Defendant **LINDA SMITH** ("**SMITH**") is a natural person and resident of Greenville County.
8. Defendant **NORTHGATE BAPTIST CHURCH** is a South Carolina nonprofit corporation organized on April 21, 1951, with its principal place of business in Greenville County, South Carolina, doing business as Northgate Baptist Church ("**CHURCH**") on 633 Summit Drive, Greenville, South Carolina 29609.

STATEMENT OF FACTS

9. At all times material to the allegations herein, each Defendant was an agent, employee, or both of the remaining Defendant(s), performing the acts alleged herein within the course and scope of such agency or employment with the permission, knowledge, and consent of the other Defendant(s). Upon

information and belief, Plaintiff believes that each of Defendant(s) performed the acts alleged herein by acting in concert with each of the other Defendant(s).

10. At the age of fourteen, Plaintiff began in faith-based youth ministry as a camp counselor at the Bible youth camp called Camp Evangel, which is a Christian youth camp founded and operated by Plaintiff's parents, in Pounding Mill, Virginia, that serves less fortunate boys and girls from the Virginia and West Virginia area.
11. Plaintiff received training and has extensive experience as a youth pastor dealing with children and young adults in faith-based ministry and counseling having served as a youth pastor for five years prior his employment with Defendant **CHURCH**.
12. Plaintiff's education, training, and experience as a youth pastor emphasizes redirection of another's action(s) or omission(s) in interpersonal, social, and professional contexts as observed directly by Plaintiff whereby Plaintiff uses Christian tenets to illustrate or analogize the need for redirection.
13. Plaintiff holds a bachelor's degree in music and has over 21 years of experience in directing a choir and being a pianist.
14. Plaintiff was hired by Defendant **CHURCH** as a pianist on or around July 1, 2015, earning approximately \$250.00 per week.
15. On or around June of 2016, Plaintiff took over the entire music program, earning an annual salary as a part-time employee that was approximately \$33,800.00, in the employment of Defendant **CHURCH**.
16. During the time of employment with Defendant **CHURCH**, Plaintiff held the position of Worship Team Leader, Praise Team Leader, Director of Music, and pianist for the congregation.
17. During the time of employment with Defendant **CHURCH**, Plaintiff performed duties including, but not limited to, the following:
 - (1) Plaintiff supervised the Worship Team of singers and Praise Team of band members ("Teams" collectively) that predominantly operated on the stage of the building, or place of worship, for Defendant **CHURCH**;
 - (2) Plaintiff recruited volunteers for these Teams; and,
 - (3) Plaintiff coordinated with sound production operating in the balcony for church functions or activities.
18. During the time of employment with Defendant **CHURCH**, Plaintiff set aside funds in a personal savings account of approximately \$200.00 per month from his annual salary with Defendant **CHURCH** to provide charitable gifts to parishioners and family friends, appreciation gifts to members in the Teams, and gratuitous compensation for intern(s) of the Teams that was not unique to Defendant **C. COLLIER**, Defendant **H. COLLIER**, or Tyler Collier, who was the son of Defendant **C. COLLIER** and brother of Defendant **H. COLLIER**.
19. Defendant **CHURCH**, whether through its employee(s), agent(s), or representative(s), were aware of and approved of Plaintiff's gift giving to parishioners and family friends of the congregation, volunteers

of the Teams, and gratuitous compensation for intern(s) of the Teams during the scope of Plaintiff's employment with Defendant **CHURCH** without any objections raised by Defendant **CHURCH**.

20. On or around June of 2017, Plaintiff met Defendant **C. COLLIER** at a birthday party for another parishioner at Northgate Baptist Church.
21. On or around July 12, 2017, Defendant **H. COLLIER** turned eighteen (18) years old.
22. At all times Plaintiff and Defendant **H. COLLIER** interacted, Defendant **C. COLLIER** had reached age of majority as a legal adult.
23. From on or around June of 2017 through March of 2018, Defendant **H. COLLIER** was identified by parishioners of the congregation as a troubled youth from a broken home.
24. On or around July of 2017, and at the request of Defendant **SMITH**, who is the mother of Defendant **C. COLLIER** and grandmother to Defendant **H. COLLIER**, Plaintiff recruited Defendant **H. COLLIER** to sing in the Worship Team at Defendant **CHURCH**.
25. On or around August 13, 2017, Defendant **H. COLLIER** joined the Worship Team.
26. On or around August 27, 2017, Defendant **C. COLLIER** joined the Worship Team.
27. From on or around August of 2017 through March of 2018, Plaintiff formed a mentor relationship with Defendant **H. COLLIER** at the request of Defendant **H. COLLIER**.
28. From on or around September of 2017 through March of 2018, Plaintiff received consent from Defendant **C. COLLIER** and T. Craig Collier, who is the ex-husband of Defendant **C. COLLIER** and father of Defendant **H. COLLIER** and Tyler Collier, regarding Plaintiff's mentorship role with Defendant **H. COLLIER**.
29. From on or around September of 2017 through March of 2018, Plaintiff maintained open and transparent communications with Defendant **C. COLLIER** and T. Craig Collier regarding Plaintiff's mentorship role with Defendant **H. COLLIER**.
30. From on or around September of 2017 through March of 2018, Plaintiff was acquainted with Defendant **C. COLLIER**'s family including, but not limited to: (1) her daughter and Defendant **H. COLLIER**; and, (2) her son Tyler Collier.
31. From on or around August of 2017 through February of 2018, Defendant **C. COLLIER** expressed appreciation toward Plaintiff, while in the capacity as a mentor for Defendant **H. COLLIER**, for the following, but not limited to, action(s):
 - (1) Plaintiff accepting a mentoring role for her daughter and Defendant **H. COLLIER**;
 - (2) improving family relations between Defendants **C. COLLIER** and **H. COLLIER**;
 - (3) assisting with gift giving for Defendant **C. COLLIER**, Defendant **H. COLLIER**, and Tyler Collier with the consent and authorization of Defendant **C. COLLIER**, **H. COLLIER**, T. Craig Collier, and Tyler Collier;

- (4) inviting Defendant **C. COLLIER**'s family, including Defendant **H. COLLIER** and Tyler Collier, to Plaintiff's family gatherings, church activities and functions, family-friendly social gatherings, trips involving other parishioners from Defendant **CHURCH**, or any of the above; and,
- (5) fostering and encouraging Defendant **H. COLLIER**'s appreciation for music.
32. On or around September of 2017, and on or around November 13, 2017, Plaintiff took proactive measures to establish certain boundaries of appropriate conduct and clearly define Plaintiff's role definitively as a mentor to Defendant **H. COLLIER**.
33. On or around September of 2017, and on or around November 13, 2017, Defendant **H. COLLIER** acknowledged, understood, and consented to Plaintiff's role in the capacity as a mentor according to Plaintiff's boundaries of appropriate conduct.
34. From on or around September of 2017 through March of 2018, Plaintiff placed Dr. Barry Jimmerson ("Jimmerson"), who is the senior pastor and employee of Defendant **CHURCH**, and supervisor to Plaintiff, on notice of Plaintiff's mentor role with Defendant **H. COLLIER**, and Plaintiff maintained ongoing full transparency of his mentorship of Defendant **H. COLLIER** without any objections raised by Defendant **CHURCH**.
35. From on or around September of 2017 through March of 2018, Jimmerson and some other staff members, in the capacity of an employee, agent, representative, or any of the above of Defendant **CHURCH**, approved, authorized, and endorsed Plaintiff's mentorship of Defendant **H. COLLIER** without any objections raised by Defendant **CHURCH**.
36. From on or around September of 2017 through March of 2018, and in the capacity of a mentor of Defendant **H. COLLIER** while employed with Defendant **CHURCH**, Plaintiff continuously reported observations, assessments, and identifiable issues with Defendant **H. COLLIER** upon the request by Jimmerson and other staff members, acting in the capacity of an employee, agent, or representative of Defendant **CHURCH**.
37. On or around November 13, 2017, Defendant **H. COLLIER** acknowledged to Plaintiff that the time Defendant **C. COLLIER**, Defendant **H. COLLIER**, Tyler Collier, or any of the above spent time with Plaintiff's family during family gatherings, family activities, church functions and activities, or any of the above was not a unique experience for Plaintiff or Plaintiff's family.
38. From on or around October of 2017 through March of 2018, Defendant **H. COLLIER** initiated and dominated communications with Plaintiff, while in the capacity as a mentor, concerning the following, but not limited to:
- (1) difficulties in her relationship with her mother and Defendant **C. COLLIER** since her parents' divorce;
 - (2) difficulties in her relationship with her father T. Craig Collier;
 - (3) difficulties dealing with her parents' divorce with the demise of her parents' relationship that may have been partly due to T. Craig Collier committing adultery;

- (4) personal issues regarding her mental illness(s), self-development, self-esteem, self-perception, maturity, anger management, anxiety, separation anxiety or abandonment issues, eating disorder, self-inflicting physical harm, other types of disorder(s), coping with a previous sexual assault, or any of the above;
- (5) ongoing psychological treatment, counseling, or any of the above from a third-party for the abovementioned personal issue(s); and,
- (6) Christian faith in God to overcome these issues as presented by Defendant **H. COLLIER**.

- 39. From on or around October of 2017 through March of 2018, Defendant **C. COLLIER** was aware of, had access to, control over, personally witnessed, or any of the above with respect to Defendant **H. COLLIER** communicating with Plaintiff without any objections raised by Defendant **C. COLLIER**.
- 40. From on or around October of 2017 through March of 2018, Defendant **H. COLLIER** demonstrated being expressive and affectionate toward Plaintiff akin to daughterly affection that was not unique to Plaintiff nor a product of Plaintiff's position of influence during Plaintiff's scope of employment with Defendant **CHURCH**.
- 41. From on or around October of 2017 through March of 2018, Defendant **C. COLLIER** witnessed Defendant **H. COLLIER** being expressive and affectionate toward Plaintiff akin to daughterly affection without raising any objections by Defendant **C. COLLIER**.
- 42. From on or around October of 2017 through March of 2018, Jimmerson and some other staff members, in the capacity of an employee, agent, representative, or any of the above of Defendant **CHURCH**, witnessed Defendant **H. COLLIER** being expressive and affectionate toward Plaintiff akin to daughterly affection without raising any objections by Defendant **CHURCH**.
- 43. From on or around October of 2017 through March of 2018, and while in the capacity as a mentor, Plaintiff redirected Defendant **H. COLLIER**'s behavior repeatedly to conform with the expectations and maturity for an adult of her age in an appropriate manner as is customary within one's education and experience in youth ministry.
- 44. From on or around October of 2017 through March of 2018, Plaintiff observed that Defendant **H. COLLIER** did not respond well to any redirection from anyone with unreasonable demonstrations of anger compared to one similarly situated under the same circumstances.
- 45. From on or around October of 2017 through March of 2018, and while in the capacity as a mentor, Defendant **C. COLLIER** was aware of and consented to Plaintiff's attempts to redirect Defendant **H. COLLIER**'s behavior repeatedly without any objection by Defendant **C. COLLIER**.
- 46. From on or around June of 2017 through March of 2018, Plaintiff never encouraged, solicited, sought, reciprocated, or any of the above a romantic, or intimate, relationship with Defendant **C. COLLIER**.
- 47. Prior to January of 2017, Plaintiff was oblivious to Defendant **C. COLLIER** forming, expressing, soliciting, or any of the above a romantic, or intimate, relationship with Plaintiff.

48. From on or around January of 2017 through February of 2018, Defendant **C. COLLIER** expressed, solicited, sought, or any of the above a romantic, or intimate, interest in a relationship with Plaintiff repeatedly.
49. Defendant **H. COLLIER** was aware of Defendant **C. COLLIER**'s expressions, solicitations, pursuit, or any of the above for a romantic, or intimate, relationship with Plaintiff.
50. Defendant **C. COLLIER**'s expressions, solicitations, pursuit, or any of the above for a romantic, or intimate, relationship with Plaintiff made Plaintiff feel awkward, embarrassed, pressured, and repulsed thus creating a conflict with Plaintiff's mentorship of Defendant **H. COLLIER**.
51. Because Plaintiff repeatedly rejected Defendant **C. COLLIER**'s solicitations for a romantic, or intimate, relationship with Plaintiff, Defendant **C. COLLIER**'s advances toward and communications with Plaintiff ceased abruptly subsequently thereafter.
52. Subsequently thereafter, Plaintiff distanced himself from Defendant **C. COLLIER**'s family, including Defendant **H. COLLIER** and Tyler Collier.
53. Subsequently thereafter, Plaintiff found the mentorship of Defendant **H. COLLIER** non-productive as Defendant **H. COLLIER** would not respond to redirection and, thus, Plaintiff reduced and limited his mentorship of Defendant **H. COLLIER**.
54. On or around March 11, 2018, Plaintiff hosted a birthday party for his son Alexander Tegeler with family and family friends, including an invitation of Defendant **C. COLLIER**'s family including, Defendant **H. COLLIER** and Tyler Collier, that was not unique to Defendant **C. COLLIER**'s family.
55. Defendant **H. COLLIER** demonstrated antisocial behavior at Plaintiff's birthday party for his son, including, but not limited to, Defendant **H. COLLIER** playing on her phone at the table throughout the meal during Plaintiff's birthday party.
56. Both Defendants **C. COLLIER** and **H. COLLIER** were aware of Plaintiff's rule amongst Plaintiff's family at mealtimes that no one was permitted to have a cell phone at the table.
57. Defendant **C. COLLIER** did nothing to redirect Defendant **H. COLLIER**'s behavior.
58. Plaintiff attempted to redirect Defendant **H. COLLIER**'s behavior and politely requested Defendant **H. COLLIER** to put her phone away while at the table during his son's birthday party, but, again, Defendant **H. COLLIER** did not respond well to Plaintiff's redirection.
59. On or around March 12, 2018, in retaliation for Plaintiff rejecting Defendant **C. COLLIER**'s advances and romantic intentions toward Plaintiff, and in retaliation against Plaintiff for Plaintiff's redirection of **H. COLLIER**'s behavior within Plaintiff's capacity as a mentor to Defendant **H. COLLIER**, Defendant **C. COLLIER**, Defendant **H. COLLIER**, or both falsely accused, alleged, reported, or any of the above to Jimmerson, who was acting in the capacity as an employee with the authorization and consent of Defendant **CHURCH**, and as supervisor of Plaintiff, that Plaintiff had inappropriate relations with Defendant **H. COLLIER**.

60. Jimmerson questioned Defendant **H. COLLIER** about the allegations of Plaintiff having inappropriate relations with Defendant **H. COLLIER** as to: (1) whether she had any romantic interest, romantic feelings, romantic aspirations, or any of the above toward Plaintiff; (2) whether she felt, thought, perceived, or any of the above that Plaintiff had any romantic interest, romantic feelings, romantic aspirations toward, or any of the above toward Defendant **H. COLLIER**; and, (3) whether she had any sexual, or intimate, relations with Plaintiff.
61. Defendant **H. COLLIER** denied and disaffirmed negatively all of Jimmerson's questioning about the allegations of Plaintiff having inappropriate relations with Defendant **H. COLLIER** in paragraph 60.
62. Clearly, Jimmerson interpreted the allegations of Plaintiff having inappropriate relations with Defendant **H. COLLIER** as being sexual or romantic in nature arising from Plaintiff's mentorship of Defendant **H. COLLIER**.
63. On or around March 13, 2018, and unbeknownst to Plaintiff that Defendant **C. COLLIER**, Defendant **H. COLLIER**, or both reported Plaintiff to Jimmerson on or around March 12, 2018, Plaintiff reported to Jimmerson and other staff members at a staff meeting for Defendant **CHURCH** that Plaintiff's mentorship role with Defendant **H. COLLIER** deteriorated in a drastically short period of time since on or around December 30, 2017, and ended on or around March 12, 2018.
64. At that meeting, and to demonstrate the demise of Plaintiff's mentorship of Defendant **H. COLLIER**, Plaintiff shared a text message from Defendant **H. COLLIER** to Plaintiff expressing daughterly affection and respect toward Plaintiff as a mentor to Defendant **H. COLLIER** ("Text Message") with Jimmerson and other staff members in the capacity of an employee, agent, representative, or any of the above of Defendant **CHURCH**.
65. At that meeting, no employee, agent, representative, or any of the above of Defendant **CHURCH** raised any objection to the Text Message from Plaintiff to Defendant **H. COLLIER**.
66. On or around March 14, 2018, and in a meeting with Jimmerson and Laurel Shaler ("Shaler"), who were acting in the capacity of an employee, agent, representative, or any of the above within the scope of employment and with the consent and authorization of Defendant **CHURCH**, Jimmerson: conveyed his previous conversation with Defendants **C. COLLIER** and **H. COLLIER** to Plaintiff.
67. Plaintiff, in his shock and disbelief of the allegations against him by Defendant **C. COLLIER**, **H. COLLIER**, or both, shared the Text Message from Defendant **H. COLLIER** to Plaintiff with Jimmerson and Shaler, who was the Chairman of the Personnel Committee with Defendant **CHURCH**.
68. Jimmerson admitted to Plaintiff and Shaler that he did not believe Plaintiff's mentorship of Defendant **H. COLLIER** or the Text Message from Defendant **H. COLLIER** to Plaintiff supported or warranted the allegations that Plaintiff had inappropriate relations with Defendant **H. COLLIER**.
69. Unbeknownst to Plaintiff, Jimmerson, who was acting in the capacity of an employee, agent, representative, or any of the above of Defendant **CHURCH**, has the authority to retain or terminate

employee(s) of Defendant **CHURCH** regardless of any recommendations made by the Personnel Committee of Defendant **CHURCH**.

70. Jimmerson never investigated further into the allegations of Defendant **C. COLLIER**, Defendant **H. COLLIER**, or both that Plaintiff had inappropriate relations with Defendant **H. COLLIER** nor did he further question Plaintiff for a response to said allegation(s).
71. Unbeknownst to Plaintiff, Shaler, within the capacity of Chairman of the Personnel Committee for Defendant **CHURCH**, does not have the authority to terminate employee(s) of Defendant **CHURCH** according to Defendant **CHURCH**'s Articles of Incorporation and Together Everyone Achieves More Ministry Handbook ("TEAM Ministry Handbook").
72. However, Shaler, who was acting in the capacity of an employee, agent, representative, or any of the above of Defendant **CHURCH**, and Chairman of the Personnel Committee, overstepped Jimmerson's authority as Plaintiff's supervisor, overstepped the authority of leadership for Defendant **CHURCH**, perceived the Text Message from Plaintiff to Defendant **H. COLLIER** as Plaintiff having inappropriate relations with Defendant **H. COLLIER**, and proceeded with an unsanctioned and inadequate investigation into Plaintiff accordingly.
73. From on or around March 12, 2018, to on or around April 10, 2018, no employee, agent, or representative of Defendant **CHURCH** exercised due diligence when investigating Plaintiff concerning the allegations of Defendant **C. COLLIER**, Defendant **H. COLLIER**, or both that Plaintiff had inappropriate relations with Defendant **H. COLLIER**.
74. During the scope of employment as an agent or representative of Defendant **CHURCH**, Shaler alleged that Plaintiff had inappropriate contact with young girls because: (1) Plaintiff's Text Message from Defendant **H. COLLIER** to Plaintiff; (2) Plaintiff texted a young girl during a service; and, (3) Plaintiff asked a young girl on a vacation.
75. First, as to allegation one in paragraph 74, Shaler never questioned Plaintiff concerning any allegation(s) against Plaintiff for Plaintiff to respond accordingly in Plaintiff's defense.
76. Second, as to allegation two in paragraph 74, Kelsey Todd, who was a legal adult and reached the age of majority, ran the soundboard in the balcony for the Worship Team during church services with Defendant **CHURCH**.
77. Kelsey Todd was required to communicate with Plaintiff during church services and coordinate sound production for music during church services, of which related to Plaintiff's scope of employment with Defendant **CHURCH**.
78. Third, as to allegation three in paragraph 74, Josie Allen, who was a legal adult and reached the age of majority, and an occasional visitor of Defendant **CHURCH**, was and is a longtime childhood friend of Plaintiff's son Andrew Tegeler.

79. Plaintiff asked numerous parishioners, regardless of age, sex, or background to go on a trip to New York as an extracurricular social activity for parishioners of Defendant **CHURCH** and Plaintiff's family friends.
80. With the consent and authorization of Josie Allen's parents, Josie Allen enjoyed a trip with Plaintiff and Plaintiff's sons Alexander and Andrew Tegeler in New York City.
81. Nonetheless, Shaler reported a distorted portrayal of Plaintiff in her investigation(s), or lack thereof, against Plaintiff to the Personnel Committee in efforts to obtain a unanimous vote of no confidence for Plaintiff's termination by presenting Plaintiff a social pariah, pedophile, child molester, chaser of young women, or any of the above during Plaintiff's scope of employment with Defendant **CHURCH**.
82. On or around March 12, 2018, subsequently thereafter, and while failing to maintain a private and confidential investigation against Plaintiff, Shaler promulgated the baseless accusation that Plaintiff had inappropriate contact with young girls in the congregation to other staff members, parishioners, third parties, or any of the above of Defendant **CHURCH** or unrelated to Defendant **CHURCH**.
83. On or around March 12, 2018, subsequently thereafter, Defendant **SMITH** promulgated to third parties inside and outside the congregation of Defendant **CHURCH** the allegations of Defendant **C. COLLIER**, Defendant **H. COLLIER**, or both that Plaintiff had inappropriate relations with Defendant **H. COLLIER** including, but not limited to, reference alleging Plaintiff's inappropriate behavior at a family-friendly social event at Plaintiff's residence that included parishioners of Defendant **CHURCH** and Plaintiff's family friends.
84. Based on the portrayal of Plaintiff by Defendant **C. COLLIER**, Defendant **H. COLLIER**, Defendant **SMITH**, and Shaler, who was acting in the capacity of an employee, agent, representative, or any of the above of Defendant **CHURCH**, parishioners of Defendant **CHURCH** shunned Plaintiff akin to a social pariah, pedophile, child molester, chaser of young women, or any of the above.
85. On or around April 1, 2018, Plaintiff broke down crying when playing the piano for Easter Sunday service with the ever-increasing projection of shame by parishioners onto Plaintiff undeservedly.
86. On or around April 10, 2018, Plaintiff headed toward the conference room for a normally scheduled staff meeting for Defendant **CHURCH**, which had only one door for ingress or egress.
87. Upon entering the conference room, Plaintiff noticed that only Jimmerson, Shaler, and Warren Peden ("Peden") were present, and Peden is or was a parishioner of Defendant **CHURCH** with no involvement on the Personnel Committee for Defendant **CHURCH**.
88. Jimmerson, Shaler, and Peden were all acting within the scope of employment as an employee, representative, or agent of Defendant **CHURCH** during this meeting.
89. Peden is a man of large stature and intimidating in comparison to Plaintiff's size, height, and build, whose presence at this meeting was to provide and enforce security measures regarding Plaintiff's termination.

90. As Plaintiff walked through the door, the door closed and locked automatically when, customarily, the door to the conference room was never locked or fully shut.
91. At the conference room table, Peden sat closest to the door on the right and to the immediate right of Plaintiff, Jimmerson sat to the immediate left of Plaintiff, and Shaler sat in front of Plaintiff.
92. Once the conference room door was shut, both Jimmerson and Peden began berating and shaming Plaintiff by accusing Plaintiff of having inappropriate contact with young girls within the congregation of Defendant **CHURCH**.
93. Clearly, Jimmerson and Peden interpreted Shaler's accusation of Plaintiff having inappropriate contact with young girls in the congregation of Defendant **CHURCH** as Plaintiff engaging in the behavior of unsolicited touching or physical contact of a sexual nature with young girls in the congregation of Defendant **CHURCH** during an unsuitable time and place or within an unsuitable relationship.
94. Jimmerson, Peden, Shaler, or any of the above were intimidating, loud, rude, berating, condescending, and constantly interrupting Plaintiff preventing Plaintiff any opportunity to respond or defend to these allegations against Plaintiff repeatedly.
95. Shaler informed Plaintiff that the personnel committee rendered a unanimous vote of no confidence to terminate Plaintiff based on Shaler's allegations of Plaintiff having inappropriate contact with young girls in the congregation of Defendant **CHURCH**, including Defendant **H. COLLIER**.
96. While Shaler acknowledged that Defendant **H. COLLIER** was a legal adult, Shaler presented Defendant **CHURCH**'s view of Defendant **H. COLLIER** as a child, minor, or both outright accusing Plaintiff being akin to pedophile and child molester on baseless grounds.
97. Shaler asked for Plaintiff's resignation and presented a separation agreement for Plaintiff to sign immediately.
98. Shaler then asked for Plaintiff's keys and to leave the premises.
99. Plaintiff was blindsided and submerged into a mental state of pure shock, disbelief, and mortification to the point that Plaintiff became emotionally distraught and overcome with tears streaming down his face for being accused of such shameful and baseless allegations undeservedly.
100. Plaintiff conveyed to Shaler that Plaintiff wanted to leave, review the separation agreement, and discuss the separation agreement with Defendant **CHURCH** at another time.
101. Shaler responded that Plaintiff could not leave until Plaintiff signed the separation agreement at that time without giving Plaintiff any opportunity to seek legal counsel to understand and obtain Plaintiff's legal rights under the separation agreement.
102. Then, Shaler added that Plaintiff could have a copy of the separation documents after Plaintiff signed the separation documents at that time.
103. Subsequently thereafter, Jimmerson and Peden threatened Plaintiff that if Plaintiff did not sign the separation agreement at that moment, and without an opportunity to seek legal counsel, then

Defendant **CHURCH** would: (1) present Plaintiff before the congregation; (2) raise the allegations of Defendant **C. COLLIER**, Defendant **H. COLLIER**, or both that Plaintiff had inappropriate relations with Defendant **H. COLLIER**; (3) raise Shaler's allegations that Plaintiff had inappropriate contact with young girls in the congregation of Defendant **CHURCH**; and, (4) allow the congregation to decide whether Plaintiff should remain employed with Defendant **CHURCH** according to the policies and procedures of Defendant **CHURCH**.

104. Plaintiff feared for his safety from Peden because of Peden's intimidating mannerisms during this meeting and when Peden's pupils dilated as large as his eyes looking like a man possessed when expressing anger toward Plaintiff in a way Plaintiff had never witnessed before in him.
105. Plaintiff felt reasonably threatened by Peden to the extent that if Plaintiff tried to leave without signing the separation agreement, then Peden would have used physical force to try and stop Plaintiff.
106. Jimmerson, Shaler, and Peden were unmistakably clear that Plaintiff could not exit the room unless Plaintiff signed the separation agreement at that time.
107. Plaintiff suffered such an emotional affront to Plaintiff's dignity under the circumstances that Plaintiff felt violently ill and mentally incapacitated to make an intelligent decision in his then-existing state of mind.
108. As if walking into a nightmare, Plaintiff felt completely helpless, unable to think or speak for himself, placed into a position without a will of his own, and pressured to resign in this meeting.
109. Therefore, Plaintiff's execution of the separation agreement was coerced, done under duress, and fraudulently induced by Jimmerson, Shaler, and Peden.
110. Once Plaintiff was allowed to leave, Plaintiff sat next to Tina Speakman, who was the Secretary of Defendant **CHURCH** and witnessed Plaintiff under severe emotional distress, duress, and extreme stress after the termination meeting.
111. But for the conduct of Jimmerson, Shaler, or Peden, Plaintiff would never have executed the separation agreement.
112. Consequently, Defendant **CHURCH** terminated Plaintiff on or around April 10, 2018.
113. To explain Plaintiff's termination after on or around April 10, 2018, and within the capacity as acting within the employment, agency, or representation of Defendant **CHURCH**, Peden informed parishioners, the Worship Team, the Praise Team, third parties, or any of the above that Plaintiff "crossed a line that should never have been crossed."
114. In all matters involving Defendant(s), whether acting individually or collectively, Plaintiff acted in a manner to foster community relations in a shared faith devoted to Jesus Christ and Christianity.
115. Since the passing of Plaintiff's spouse in 2013 from pancreatic cancer, Plaintiff has never dated, shown any interest in becoming romantically involved in any manner with anyone, and remains a grieving widower with his sole focus on faith, raising his sons, and music.

116. Plaintiff remains innocent of any allegations raised against Plaintiff by Defendant(s), whether acting individually or collectively, which also formed a basis for Plaintiff's termination from Defendant **CHURCH**.
117. Because of the action(s) or omission(s) of Defendant(s), whether acting individually or collectively, Defendant(s) destroyed Plaintiff's reputation by portraying Plaintiff a social pariah within the congregation of Defendant **CHURCH** akin to negative stereotypes of a child molester, pedophile, an older man pursuing a romantic or sexual interest(s) in a young girls, or any of the above associated with a man in Plaintiff's position in a Christian church.
118. Because of Defendants, whether acting individually or collectively, Defendants destroyed Plaintiff's livelihood in the faith-based ministry and Plaintiff has been unable to find another position with another church similar to his position(s) with Defendant **CHURCH**.
119. Plaintiff has suffered, and continues to suffer, loss of wages based on \$33,800.00 per year for approximately twenty-two (22) months of approximately \$61,966.67 in economic damages that is ongoing.
120. Plaintiff is the sole supporter of his two sons, and, because of the action(s) or omission(s) of Defendant(s), whether acting individually or collectively, Defendant(s) have diminished Plaintiff's ability to provide support to his sons.
121. Because of the action(s) or omission(s) of Defendant(s), whether acting individually or collectively, Plaintiff has suffered, and continues to suffer, emotional distress by making Plaintiff feel worthless, shamed, withdrawn, depressed, unable to focus, unsociable, and beyond devastated.
122. Because of the action(s) or omission(s) of Defendant(s), whether acting individually or collectively, Defendants destroyed Plaintiff's passion for music, Plaintiff lost all desire for music, and Plaintiff did not play the piano for almost two years.
123. On or around April 26, 2018, and subsequently thereafter, Plaintiff received professional counseling due to the emotional distress caused by Defendant(s), whether acting individually or collectively.

FOR A FIRST CAUSE OF ACTION

(FALSE IMPRISONMENT AGAINST DEFENDANT CHURCH)

124. Plaintiff realleges all above paragraphs as if specifically contained herein.
125. At all times Jimmerson, Shaler, and Peden, were acting within the scope of employment or agency of Defendant **CHURCH** as an employee, representative, or agent of Defendant **CHURCH**, and with the knowledge and consent of Defendant **CHURCH** during the termination of Plaintiff on April 10, 2018.
126. Defendant **CHURCH** confined Plaintiff using a physical barrier by locking Plaintiff in the conference room and use of intimidation by Peden to coerce Plaintiff into signing the separation agreement.
127. Defendant **CHURCH** confined Plaintiff against Plaintiff's will.
128. Plaintiff was aware of Defendant **CHURCH** confining Plaintiff.
129. Plaintiff did not consent to staying confined in the conference room.

- 130. Defendant **CHURCH**'s confinement of Plaintiff was performed in an unreasonable manner and for an unreasonable time period.
- 131. Defendant **CHURCH** intentionally confined Plaintiff to shame Plaintiff, intimidate Plaintiff, coerce Plaintiff to resign, sign the separation agreement, or any other factors that may be obtained through discovery.
- 132. Plaintiff knew there were no other reasonable means of escape from the conference room.
- 133. As a proximate result of Defendant **CHURCH**'s conduct, Plaintiff has suffered physical injury, psychological injury, and economic injury.
- 134. Defendant **CHURCH**, whether acting individually, in concert, or through that Defendant's agent(s), was reckless, willful and wanton, and malicious causing further damage, or total destruction, to Plaintiff's personal property, physical health, and mental health.
- 135. The intentional tortious acts of Defendant **CHURCH**'s employee(s), agents(s), or representative(s) were undertaken within the scope employment for Defendant, with the knowledge and consent of Defendant, and in furtherance of Defendant's interest thereby imputing vicarious liability to Defendant under the theory of respondeat superior or agency law consequently.
- 136. Resulting from Defendant **CHURCH**'s conduct, Plaintiff has suffered damages. Plaintiff is entitled to recover actual and punitive damages suffered as a direct and proximate result of Defendant's conduct to be determined at trial.

**FOR A SECOND CAUSE OF ACTION
(DEFAMATION AGAINST ALL DEFENDANTS)**

- 137. Plaintiff realleges all above paragraphs as if specifically contained herein.
- 138. Jimmerson, Shaler, and Peden, while acting in the course of scope and agency, with the knowledge and consent of Defendant **CHURCH**, and with evil motive and actual malice, willfully and wrongfully disparaged Plaintiff and Plaintiff's reputation publicly when accusing Plaintiff of having inappropriate relations, inappropriate contact, or both with young girls to staff members of Defendant **CHURCH**, parishioners of Defendant **CHURCH**, third parties within or outside the congregation of Defendant **CHURCH**, or any of the above.
- 139. Defendant **CHURCH** acted with the intent to injure, disgrace, and defame Plaintiff and in wanton and reckless disregard for the falsity of its utterances.
- 140. Defendant **C. COLLIER**, Defendant **H. COLLIER**, Defendant **SMITH**, or any of the above with evil motive and actual malice, willfully and wrongfully disparaged Plaintiff and Plaintiff's reputation publicly when accusing Plaintiff of having inappropriate relations with Defendant **H. COLLIER** to Plaintiff's employer and supervisor with Defendant **CHURCH**, staff members at Defendant **CHURCH**, parishioners of Defendant **CHURCH**, third parties within or outside the congregation of Defendant **CHURCH**, or any of the above..

141. Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** acted with the intent to injure, disgrace, and defame Plaintiff and in wanton and reckless disregard for the falsity of their utterances.
142. On or around March 14, 2018, through April 10, 2018, and subsequently thereafter, Defendant **CHURCH**, whether acting individually or through its employee(s), agent(s), or representative(s), falsely represented that Plaintiff had inappropriate contact with young girls.
143. Defendant **CHURCH**, whether acting individually or through its employees, agents, or representatives, knew this representation to be false because no employee(s), representative(s), or agent(s) of Defendant **CHURCH** ever conducted an investigation with due diligence or obtained sufficient evidence to support allegations that Plaintiff had inappropriate contact with young girls in the congregation of Defendant **CHURCH** of a sexual nature unsuitable to the time and place, unsuitable to the relationship, or any other factors that may be obtained through discovery.
144. On or around March 12, 2018, and subsequently thereafter, Defendants **C. COLLIER**, **H. COLLIER**, and Defendant **SMITH** falsely represented that Plaintiff had inappropriate relations, or displayed inappropriate behavior, with Defendant **H. COLLIER**.
145. Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** knew this representation to be false because, while acting in the capacity of a mentor for Defendant **H. COLLIER**: (1) Plaintiff, never had any sexual, or intimate, relations with Defendants **C. COLLIER** or **H. COLLIER**; (2) Plaintiff nor Defendant **H. COLLIER** ever had any sexual or romantic aspirations toward one another; (3) Plaintiff never engaged in inappropriate relations or inappropriate contact with Defendant **H. COLLIER**; or, (4) any other factors that may be obtained through discovery.
146. Such disparaging remarks by Defendant(s), whether acting individually or collectively, impugned the reputation of Plaintiff akin to a criminal, pedophile, child molester, social pariah, a man chasing young girls, or any of the above that operated to disregard the rights of Plaintiff with the natural consequence of diminishing Plaintiff's reputation and resulting in damages.
147. The conduct of Defendant(s) constituted slander per se, libel per se, or both against Plaintiff.
148. Defendant(s)' despicable conduct was malicious and carried out in willful and conscious disregard for the truth, reputation of Plaintiff, and the rights of Plaintiff.
149. The intentional tortious acts of Defendant **CHURCH**'s employee(s), agents(s), or representative(s) were undertaken within the scope employment for Defendant, with the knowledge and consent of Defendant, and in furtherance of Defendant's interest thereby imputing vicarious liability to Defendant under the theory of respondeat superior or agency law consequently.
150. Resulting from Defendant(s)' conduct, Plaintiff has suffered damages. Plaintiff is entitled to recover actual and punitive damages suffered as a direct and proximate result of Defendants' conduct to be determined at trial.

FOR A THIRD CAUSE OF ACTION
(FRAUD IN THE INDUCEMENT AGAINST DEFENDANT CHURCH)

151. Plaintiff realleges all above paragraphs as if specifically contained herein.
152. Jimmerson, Shaler, and Peden, while acting in the course of scope and agency, with the knowledge and consent of Defendant **CHURCH**, and with evil motive and actual malice, willfully and wrongfully fraudulently induced Plaintiff to execute a separation agreement based on coercion, false imprisonment, fraudulent misrepresentations, or any other factors that may be obtained through discovery on or around April 10, 2018.
153. Defendant **CHURCH** intentionally perverted the truth to Plaintiff concerning Plaintiff's termination for the purpose of inducing Plaintiff in reliance upon said perversion for Plaintiff to resign, part with Plaintiff's income, surrender Plaintiff's legal right(s), or any of the above.
154. Defendant **CHURCH** made the representation(s) that Plaintiff must sign the separation agreement immediately or be forced to face the allegation(s) against Plaintiff of having inappropriate contact with young girls before the congregation of Defendant **CHURCH** to vote whether Plaintiff should be terminated at a later time.
155. Defendant **CHURCH** knew that Defendant **CHURCH**'s representation(s) of signing the separation agreement under these circumstances were false because: (1) the results of Shaler's investigation against Plaintiff produced no substantial evidence that Plaintiff engaged in inappropriate contact with young girls in the congregation; (2) the policies and procedures of Defendant **CHURCH** did not require Plaintiff to go before the congregation of Defendant Church to vote on the termination of Plaintiff in the capacity as an employee of Defendant **CHURCH**; (3) Shaler lacked the authority to terminate Plaintiff's employment; (4) Plaintiff's termination was fueled by the underlying motivation of Defendant **CHURCH** to reduce salary expenses in support of a fundraising campaign for the beautification of the church building for Defendant **CHURCH**; or, (5) any other factors that may be obtained through discovery.
156. Defendant **CHURCH**'s representation(s) of Plaintiff signing the separation agreement under these circumstances was material to Plaintiff's position to part with something of value to Plaintiff, or affect Plaintiff's legal right(s), because, but for Jimmerson, Shaler, and Peden coercing Plaintiff to sign the separation agreement under duress while falsely imprisoned, Plaintiff would never have executed the separation agreement in his right mind or of his own accord.
157. Defendant **CHURCH** has either knowledge of the false representation(s) or reckless disregard of the truth or falsity of said representation(s) because: (1) Defendant **CHURCH**'s TEAM Ministry Handbook and Articles of Incorporation does not empower the personnel committee to terminate employed personnel; (2) Defendant **CHURCH**'s Articles of Incorporation designated Jimmerson, in his role as the senior pastor, as the supervisor of all paid staff members under Article VII, Section 1; (3) Jimmerson is authorized to retain or terminate any employed personnel regardless of any

recommendation by the Personnel Committee; (4) the procedures for terminating a member of Defendant **CHURCH** under Defendant **CHURCH**'s Articles of Incorporation under Article XI, Sections 3-4 does not apply to the termination of employed personnel, especially when the employed personnel, such as Plaintiff, is not a member of Defendant **CHURCH**; or, (5) any other factors that may be obtained through discovery.

158. Defendant **CHURCH** intended that Plaintiff act upon said representation(s) and sign the separation agreement under coercion, duress, and false imprisonment because Defendant **CHURCH** knew, or should have known, that: (1) Plaintiff was unaware of Defendant **CHURCH**'s TEAM Ministry Handbook, Articles of Incorporation, or the Northgate Baptist Church Policies and Procedures, if in existence; (2) Defendant **CHURCH** knew that no employee would voluntarily go before the congregation of Defendant **CHURCH** to vote for Plaintiff's termination based on such shameful and unsubstantiated allegations that Plaintiff engaged in inappropriate contact with young girls; or, (3) any other factors that may be obtained through discovery.
159. Plaintiff was ignorant of the falsity of said representation(s) because Plaintiff never received Defendant **CHURCH**'s TEAM Ministry Handbook, Articles of Incorporation, or the Northgate Baptist Church Policies and Procedures, if in existence, during the scope of Plaintiff's employment with Defendant **CHURCH**.
160. Plaintiff justifiably relied upon the truth of and had a right to justifiably rely thereon said representation(s) because: (1) Plaintiff received the information verbally for the first-time regarding church policies and procedures of terminating employed personnel from Defendant **CHURCH** as presented by Jimmerson, Shaler, and Peden; (2) Jimmerson, Shaler, and Peden were authoritative employee(s), agent(s), or representative(s) of Defendant **CHURCH**, who were in a superior position to know Defendant **CHURCH**'s policies and procedures; (3) Jimmerson, Shaler, and Peden were authoritative employee(s), agent(s), or representative(s) of Defendant **CHURCH** in leadership and supervisory roles within the employer-employee relationship between Defendant **CHURCH** and Plaintiff; (4) Plaintiff justifiably relied upon said representation(s) to Plaintiff's detriment by executing the separation agreement unwittingly and involuntarily; or, (5) any other factors that may be obtained through discovery.
161. Defendant **CHURCH** made a false representation related to a present or preexisting fact with respect to the actual process for terminating employed personnel and induced Plaintiff to sign the separation agreement under duress, false imprisonment, and severe emotional distress whether during the termination meeting on or around April 10, 2018, or threatening to further shame and humiliate Plaintiff on baseless grounds at a later time before the congregation of Defendant **CHURCH**.
162. Defendant **CHURCH** intended to deceive Plaintiff concerning Defendant **CHURCH**'s false representation related to the present or preexisting fact with respect to the actual process for terminating employed personnel because: (1) Defendant **CHURCH** had an insubstantial basis to

terminate Plaintiff for cause; (2) Defendant **CHURCH** never intended to follow through with the threat of presenting Defendant before the congregation of Defendant **CHURCH** to vote on terminating Plaintiff; or, (3) any other factors that may be obtained through discovery.

163. Plaintiff had a right to rely on the representation made by Defendant **CHURCH** related to the present or preexisting fact with respect to the actual process for terminating employed personnel because the Personnel Committee was responsible for creating, implementing, and maintaining Northgate Baptist Church Policies and Procedures for terminating employed personnel from Defendant **CHURCH**.
164. The intentional tortious acts of Defendant **CHURCH**'s employee(s), agents(s), or representative(s) were undertaken within the scope employment for Defendant, with the knowledge and consent of Defendant, and in furtherance of Defendant's interest thereby imputing vicarious liability to Defendant under the theory of respondeat superior or agency law consequently.
165. Resulting from Defendant **CHURCH**'s representation of the actual process for terminating employed personnel, and inducement for Plaintiff to execute the separation agreement under the circumstances, Plaintiff has suffered damages. Plaintiff is entitled to recover actual and punitive damages suffered as a direct and proximate result of Defendant **CHURCH**'s conduct to be determined at trial.
166. Plaintiff pleads the cause of action for fraud and misrepresentation that is subsumed into this cause of action as a separate cause of action in the alternative as described herein.

FOR A FOURTH CAUSE OF ACTION

(NEGLIGENT MISREPRESENTATION AGAINST DEFENDANT CHURCH)

167. Plaintiff realleges all above paragraphs as if specifically contained herein.
168. Jimmerson, Shaler, and Peden, while acting in the course of scope and agency, with the knowledge and consent of Defendant **CHURCH**, had a duty of care to accurately state the truth regarding Defendants' true policies and procedures for termination of employees, perform adequate due diligence and investigation into any allegations against an employee, allow employees the opportunity to seek legal counsel concerning any employment documentation, or any other factors that may be obtained through discovery as a reasonable employer would do under similar circumstances.
169. Defendant **CHURCH** breached that duty of care by misrepresenting those facts, causing Plaintiff to be scared for Plaintiff's physical safety to sign a separation agreement before being able to leave the premises without being able to consult with legal counsel, and allowing Plaintiff to rely upon incorrectly stated church policies and procedures for termination of employees to sign a separation agreement, causing Plaintiff severe emotional distress that rendered Plaintiff's consent to the separation agreement invalid, or any other factors that may be obtained through discovery.
170. Plaintiff justifiably relied on those misrepresentations to Plaintiff's detriment resulting in Plaintiff's pecuniary loss and other injury or injuries.

171. Defendant **CHURCH** either had, or does have, a significant pecuniary interest in Defendant **CHURCH**'s misrepresentations that was designed to induce Plaintiff into an unfavorable financial situation and other injury or injuries.
172. The unintentional tortious acts of Defendant **CHURCH**'s employee(s), agents(s), or representative(s) were undertaken within the scope employment for Defendant, with the knowledge and consent of Defendant, and in furtherance of Defendant's interest thereby imputing vicarious liability to Defendant under the theory of respondeat superior or agency law consequently.
173. Resulting from the failure of Defendant **CHURCH** to exercise due care to accurately state the truth, Plaintiff has suffered damages. As a direct and proximate result of the negligence by Defendant **CHURCH**, Plaintiff is entitled to recover actual and punitive damages in an amount to be determined at trial.

FOR A FIFTH CAUSE OF ACTION

(NEGLIGENT HIRING, SUPERVISION, & RETENTION OF EMPLOYEES AGAINST DEFENDANT CHURCH)

174. Plaintiff realleges all above paragraphs as if specifically contained herein.
175. Defendant **CHURCH**, owed a duty of care to Plaintiff: (1) to prevent the loss of liberty and mental abuse sustained by Plaintiff; (2) for Defendant **CHURCH**'s employees to abide by church policies and procedures; and, (3) for Defendant **CHURCH**'s employees to act commercially reasonable and in good faith toward Plaintiff within the employer-employee relationship.
176. Defendant **CHURCH** owed a duty of care to Plaintiff under the same or similar circumstances a reasonable, prudent and careful person should have anticipated an injury to Plaintiff or those in a position similar to Plaintiff's position as a result of Defendant **CHURCH**'s conduct.
177. Defendant **CHURCH**'s employee(s), agent(s), representative(s), or any of the above were incompetent, unfit for their positions, or any of the above.
178. Defendant knew, or should have known, through exercise of reasonable diligence that Defendant **CHURCH**'s employee(s), agent(s), representative(s), or any of the above had previously detained and restrained other employees or parishioners in an unreasonable manner, caused injury to parishioners or third parties in similar line(s) of profession, demonstrated non-compliance with church policies or procedures, or any other factors that may be obtained through discovery.
179. Defendant's negligence in hiring, supervising, and retaining Defendant **CHURCH**'s employee(s), agent(s), representative(s), or any of the above proximately caused Plaintiff's injuries.
180. In the alternative, Defendant **CHURCH**'s employee(s), agent(s), or representative(s) were negligent, reckless, willful and wanton in their act(s) or omission(s) causing further damage to Plaintiff as the actual and proximate cause to Plaintiff's physical injury, psychological injury, and economic injury.
181. The intentional or unintentional tortious acts of Defendant **CHURCH**'s employee(s), agent(s), representative(s), or any of the above were undertaken within the scope employment, and with the consent and authorization of Defendant **CHURCH**, by Defendant **CHURCH** in furtherance of

Defendant **CHURCH**'s interest thereby imputing liability to Defendant **CHURCH** under the theory of respondeat superior, agency law, or both consequently in total disregard of Plaintiff's rights.

182. Resulting from the failure of Defendant **CHURCH** to exercise due care regarding Defendant **CHURCH**'s duty of care with respect to Plaintiff, Plaintiff has suffered damages. Plaintiff is entitled to recover actual and punitive damages suffered as a direct and proximate result of Defendant's negligence to be determined at trial.

FOR A SIXTH CAUSE OF ACTION

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS)

183. Plaintiff realleges all above paragraphs as if specifically contained herein.
184. By reason of the employer-employee relationship between Defendant **CHURCH**, whether acting individually or through its employee(s), agent(s), representative(s), or any of the above, and Plaintiff, Defendant **CHURCH** was in a special relationship with Plaintiff having the power to seriously damage Plaintiff's interest, security, physical safety, and mental condition.
185. By reason of the mentor-mentee relationship between Defendant **H. COLLIER** and Plaintiff, Defendant **H. COLLIER** was in a special relationship with Plaintiff having the power to seriously damage Plaintiff's interest, security, physical safety, and mental condition.
186. Defendant(s) committed conduct that was extreme and outrageous.
187. Defendant **CHURCH** mismanaged the situation of Plaintiff's mentorship role with a legal adult into accusing Plaintiff of being akin to a pedophile and engaging in unsolicited touching, or contact, of a sexual nature with young girls, who are perceived as minors, within the congregation.
188. Defendant **CHURCH** acted with the intent to harass and annoy Plaintiff; forcefully detain Plaintiff against Plaintiff's will; refuse Plaintiff's need review the separation agreement at later time without an opportunity to seek legal counsel; threaten extreme shame and mortification to Plaintiff by exposing Plaintiff before the congregation to evaluate baseless accusations; cause the Plaintiff severe, emotional distress on baseless allegations that Plaintiff engaged in inappropriate contact with young girls; or, any other factors that may be obtained through discovery.
189. Defendant **C. COLLIER** reported allegations that Plaintiff had inappropriate relations with Defendant **H. COLLIER** in retaliation for Plaintiff rejecting advances of romantic, or intimate, interest in Plaintiff without sincerity with malice and ill-will to destroy Plaintiff's reputation or any other factors that may be obtained through discovery.
190. Defendant **H. COLLIER** reported allegations that Plaintiff had inappropriate relations with Defendant **H. COLLIER** in retaliation for Plaintiff attempting redirection of Defendant **H. COLLIER**'s behavior without sincerity with malice and ill-will to destroy Plaintiff's reputation or any other factors that may be obtained through discovery.

191. Defendant **SMITH** perpetuated reported allegations that Plaintiff had inappropriate relations with Defendant **H. COLLIER** based on meritless allegations without sincerity with malice and ill-will to destroy Plaintiff's reputation.
192. Defendant(s) intended with substantial certainty to cause Plaintiff to suffer extreme emotional and psychological distress and anguish when: (1) Plaintiff was falsely accused of having unsuitable or unsolicited sexual contact with young girls in the congregation; (2) Plaintiff was wrongfully detained; (3) Plaintiff was coerced to execute the separation agreement under duress; (4) Plaintiff was portrayed and shunned disparagingly as a social pariah, pedophile, child molester, or any of the above; or, (5) or any other factors that may be obtained through discovery.
193. As direct and proximate result of Defendant(s)' conduct, Plaintiff has suffered severe emotional distress.
194. The acts of Defendant(s) were willful, wanton, deliberate, malicious, oppressive and designed to substantially certain to cause Plaintiff economic and personal injury.
195. The intentional tortious acts of Defendant **CHURCH**'s employee(s), agents(s), or representative(s) were undertaken within the scope employment for Defendant, with the knowledge and consent of Defendant, and in furtherance of Defendant's interest thereby imputing vicarious liability to Defendant under the theory of respondeat superior or agency law consequently.
196. Resulting from Defendant(s)' conduct, whether acting individually or collectively, Plaintiff has suffered damages. Plaintiff is entitled to recover actual and punitive damages suffered as a direct and proximate result of Defendant(s)' conduct to be determined at trial.

FOR A SEVENTH CAUSE OF ACTION

(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS)

197. Plaintiff realleges all above paragraphs as if specifically contained herein.
198. Defendant(s), whether acting individually or collectively, were negligent and careless of the probability that Defendant(s)' acts would cause Plaintiff severe emotional and psychological distress and anguish.
199. Defendant(s) acted with reckless disregard for the probability that Defendant(s)' acts would cause Plaintiff severe emotional and psychological distress and anguish.
200. Defendant **CHURCH** recklessly caused Plaintiff emotional distress by wrongfully detaining Plaintiff during Plaintiff's termination meeting, coercing Plaintiff to sign a separation agreement against Plaintiff's will, and accusing Plaintiff of having inappropriate contact with young girls without merit.
201. Defendants **C. COLLIER** and **H. COLLIER** recklessly caused Plaintiff emotional distress by wrongfully defaming Plaintiff to Plaintiff's employer leading to Plaintiff's investigation and termination.
202. Defendant **SMITH** recklessly caused Plaintiff emotional distress by wrongfully defaming Plaintiff to third parties leading to Plaintiff's difficulty finding alternative job opportunities within the community.

203. Defendant(s) knew Plaintiff would be injured and still acted with reckless disregard for the probability that Defendant(s)' acts would cause Plaintiff severe emotional and psychological distress and anguish.
204. The unintentional tortious acts of Defendant **CHURCH**'s employee(s), agent(s), representative(s), or any of the above were undertaken within the scope employment, and with the consent and authorization of Defendant **CHURCH**, by Defendant **CHURCH** in furtherance of Defendant **CHURCH**'s interest thereby imputing liability to Defendant **CHURCH** under the theory of respondeat superior, agency law, or both consequently in total disregard of Plaintiff's rights.
205. As a direct and proximate result of the acts of Defendant(s), Plaintiff suffered severe emotional distress. Plaintiff is entitled to actual and punitive damages to be determined at trial.

FOR AN EIGHTH CAUSE OF ACTION

(WRONGFUL TERMINATION AGAINST DEFENDANT CHURCH)

206. Plaintiff realleges all above paragraphs as if specifically contained herein.
207. As a matter of public policy, and in accordance with constitutional provisions, statutes, judicial decisions, or any of the above, Plaintiff has a right to: (1) employment under the same condition(s) of those faced by other employed personnel; and, (2) enter into a contract voluntarily as a fundamental right to have the freedom to contract of Plaintiff's own volition under the Fourteenth Amendment of the U.S. Constitution and Article I, Section 3 of the South Carolina Constitution.
208. Defendant **CHURCH** terminated Plaintiff on or around April 10, 2018, in violation of public policy that invokes matters in which the public interest because: (1) Defendant **CHURCH**'s employment of Plaintiff from on or around March 12, 2018, to April 10, 2018, was under unreasonably harsh conditions in excess of those faced by other employed personnel rendering an objective intolerability of working conditions to remain in the employment of Defendant **CHURCH** with Defendant **CHURCH** making public allegations of Plaintiff engaging in inappropriate contact with young girls while Defendant was still employed by Defendant **CHURCH**; (2) because Plaintiff did not resign voluntarily despite the allegations against Plaintiff having inappropriate contact with young girls, Defendant **CHURCH** intentionally retaliated by deliberately forcing Plaintiff to resign under coercive and commercially unreasonable means such as duress, false imprisonment, fraud in the inducement, or any other factors that may be obtained through discovery; (3) the parties to the separation agreement did not stand on an equal footing in terms of their bargaining power when Defendant **CHURCH** exercised undue influence in the employer-employee relationship and negated Plaintiff's free will to enter into a contract; or, (4) or any other factors that may be obtained through discovery.
209. At no time prior to April 10, 2018, did Defendant **CHURCH**: (1) ever discipline Plaintiff for any action(s) or omission(s) that warranted Defendant **CHURCH**'s loss of confidence in Plaintiff to perform duties in Plaintiff's position of employment; (2) ever supervise, sequester, or any of the above Plaintiff with other parishioners in the congregation during the scope of employment with Defendant **CHURCH** as

is customary for churches similarly situated responding to allegations of inappropriate contact against an employee, representative, agent, parishioner, or any of the above at that church; (3) discipline Plaintiff for inappropriate relations, or inappropriate contact, with anyone during the scope of employment with Defendant **CHURCH**.

210. As a direct and proximate result of the acts of Defendant **CHURCH**, Plaintiff suffered loss of wages. Plaintiff is entitled to actual and punitive damages to be determined at trial.

**FOR AN NINTH CAUSE OF ACTION
(CIVIL CONSPIRACY AGAINST ALL DEFENDANTS)**

211. Plaintiff realleges all above paragraphs as if specifically contained herein.
212. Defendant(s), and each Defendant individually and collectively as joint and several tortfeasors, consist of two or more persons.
213. Defendant(s), and each Defendant individually and collectively as joint and several tortfeasors, have conspired together to injure Plaintiff.
214. Defendant(s), and each Defendant individually and collectively as joint and several tortfeasors, have caused Plaintiff damages.
215. As a direct and proximate result of the acts of each Defendant, individually and collectively as joint and several tortfeasors, Plaintiff has suffered actual and punitive damages to be determined at trial.

WHEREFORE, the Plaintiff prays that:

- (1) the Court give leave to amend this Complaint as required;
- (2) Plaintiff be awarded actual and punitive damages in an amount to be determined at trial;
- (3) Plaintiff be awarded to pre-judgment and post-judgment interest as allowed by law;
- (4) Plaintiff be awarded all costs of the action;
- (5) Plaintiff be awarded reasonable attorney fees as applicable by statute; and
- (6) Plaintiff have such other and further relief as the Court deems just and proper.

Respectfully submitted, this 25 day of February, 2020.

/s/ Deborah D. Davis, Esq.

Deborah D. Davis, Esq.

SC Bar No.: 102942

Attorney for Plaintiff

EXHIBIT A

**ARTICLES OF
INCORPORATION

OF

NORTHGATE BAPTIST
CHURCH

A SOUTH CAROLINA
NONPROFIT RELIGIOUS
CORPORATION**

Approved September 20, 2006
Amended May 2007
Article VII amended January 28, 2009
Amended October 21, 2015

Preamble

For the more certain preservation and security of the principles of our faith; to the end that this Christian Body may be governed in a manner that will glorify the Lord; for the purpose of sustaining the freedom in Christ of its individual members; and for protecting the freedom of action of this Body, we do declare and establish these Articles of Incorporation.

Article I

Name

The name of this church shall be known as the Northgate Baptist Church, Inc. of Greenville, South Carolina, located at 633 Summit Drive. This church shall be incorporated in accordance with the laws of the State of South Carolina.

Article II

Mission Statement

The mission of Northgate Baptist Church is to glorify God by equipping its members to be actively involved in the ministry of the gospel of Jesus Christ.

Article III

Relationships

The government of this Church is vested in the body of believers who compose it. Insofar as practical, this Church will voluntarily cooperate with and support the Greenville Baptist Association, South Carolina Baptist Convention, and the Southern Baptist Convention for mutual help and benefit so long as such cooperation does not violate the autonomy of the Church. It is understood that these relationships may be discontinued by the method hereinafter provided for the amending of the Articles of Incorporation.

Article IV

Statement of Faith

The Holy Bible in its entirety is the inspired, inerrant Word of God and is the basis for any Statement of Faith. The Church subscribes to the doctrinal statement of "The Baptist Faith and Message" as adopted by the Southern Baptist Convention in 2000. We band ourselves together as a body of baptized believers in Jesus Christ personally committed to sharing the good news of salvation to mankind. The Ordinances of the Church are Baptism and the Lord's Supper.

Article V

Covenant

Having been led by the Spirit of God to receive Jesus Christ as our Lord and Savior, on the public profession of our faith in Him, and having been baptized by immersion in the name of the Father, and of the Son, and of the Holy Spirit; we do now, in the presence of God most honestly and joyfully enter into Covenant with one another as the Body of Christ.

For the Advancement of this Church

We engage, therefore, by the aid of the Holy Spirit, to walk together in Christian love, in knowledge, holiness, and comfort; to make every effort to attend all services of the Church; and to promote the Church's spirituality by sustaining its worship, ordinances, discipline, and doctrines.

As Christian Stewards

To cheerfully tithe and make offerings over and above the tithe as the Holy Spirit directs and to make every effort through evangelistic outreach to share the Gospel throughout the nations.

Alone and at Home

We also engage to maintain regular devotions; to educate our children to the life of Jesus Christ; and to seek the salvation of our kindred and acquaintances.

Before the World

To walk circumspectly in the world, to be just in our dealings, faithful in our engagements, clean in our speech, free from intoxicants, sober, and in all matters to avoid grieving the Holy Spirit who lives in us. We will be joyful and excited in our efforts to advance the Kingdom of our Savior.

Toward One Another

We further engage to watch over one another in discerning love; to remember one another in prayer and to aid each other in sickness and distress; to be slow to take offense, but always ready for reconciliation and mindful of the rules of our Savior to secure it without delay.

When We Move

We moreover engage that when we remove from this place we will, as soon as possible, unite with some other Church, where we can carryout the spirit of this Covenant and the principles of God's Word.

Article VI

Statement on Marriage and Sexuality

We believe that the term "marriage" has only one meaning and that is marriage sanctioned by God which joins one man and one woman in a single, exclusive union, as delineated in Scripture.

We believe that God intends sexual intimacy to only occur between a man and a woman who are married to each other.

We believe that God has commanded that no intimate sexual activity be engaged in outside of a marriage between a man and a woman.

We believe that any form of sexual immorality, such as adultery, fornication, homosexuality, bisexual conduct, bestiality, incest, pornography, or any attempt to change one's biological sex or to otherwise act upon any disagreement with one's biological sex, is sinful and offensive to God.

We believe that in order to preserve the function and integrity of the church as the local Body of Christ, and to provide a biblical role model to the church members and the community, it is imperative that all persons employed by the church in any capacity, or who serve as volunteers, should abide by and agree to this Statement on Marriage and Sexuality and conduct themselves accordingly.

We believe that God offers redemption and restoration to all who confess and forsake their sin, seeking His mercy and forgiveness through Jesus Christ.

We believe that every person must be afforded compassion, love, kindness, respect, and dignity. Hateful and harassing behavior or attitudes directed toward any individual are to be repudiated and are not in accord with scripture nor the doctrines of the church.

Article VII

Professional/Ministerial Church Leadership

Section 1: Overview of Professional Church Staff

The Pastor shall be supervisor of all paid staff members.

Section 2: Election of Ministerial Church Staff

Nomination of the Pastor and other ministerial staff members shall be made by a special committee or by the Personnel Committee. The Church shall consider only one such nomination for each office at a time. The vote shall be taken after at least a one-week notice and the question put by the moderator shall be: "Shall the report of the Committee be received and its recommendation adopted?" If a three-fourths ($\frac{3}{4}$) majority of the members present vote to approve the committee's recommendation, the matter shall be referred to the presenting committee for action. Secret ballots shall be used for electing ministerial staff members.

Section 3: Paid Church Staff Overview and Duties

Refer to Job Description Section of the Church Policies and Procedures Manual

Section 4: Hiring of Non-Ministerial Staff

All non-ministerial staff employees shall be hired and approved by the Personnel committee. All compensation not specifically identified in the church budget, must be approved in advance by the Stewardship Committee.

Section 5: Termination

Refer to Church Policies and Procedures Manual.

Article VIII

General Church Officers and Leadership

Section 1: Church Officers and Leaders Positions

The officers of this Church shall be a Pastor and other vocational leadership as needed, Deacons, Trustees, Clerk, Treasurer, and other officers that shall be required for the work of the Church in any of its departments or organizations. The Church shall elect all of these and they shall be members of proven loyalty and a member of the congregation for one year or greater with the exclusion of the paid staff.

Section 2: Functions of church officers and leadership

Church Clerk - To take minutes of business meetings, report minutes at the following business meetings, and keep all documents current for the church.

Assistant Church Clerk - To assist the church clerk in the performance of taking minutes of business meetings, reporting minutes at the following business meetings, and keeping these documents for the church.

Treasurer/Assistant Treasurer - These persons are to ensure the accountability of daily financial transactions of the church.

Trustees - These persons are elected to serve in the area of legal matters on behalf of the church.

Deacons - In accordance with the practice of the office, as outlined in the New Testament, deacons are to be men who are called to be servant ministers to the body of the church (1 Timothy 3:8-13; Acts 6:1-7).

Article IX

Standing Committees

Section 1: General overview and listing of standing committees

The following are the standing committees of the church: Building, Nominating, Personnel, Stewardship, and Trustees elected by the church with members serving terms designated in the Church Policies and Procedures Manual.

Section 2: Enlistment and election of committee members

The members of the standing committees, with exception of the Nominating Committee, are nominated by the Nominating Committee and voted on by the church body at a business meeting. The Nominating Committee consists of six members, two of which shall be presented annually by the deacons and elected by the Church no later than the end of the church year.

Article X
Meetings/Business Conferences

Section 1: Place

Meetings shall be conducted at Northgate Baptist Church, unless directed otherwise.

Section 2: Regular Business Conferences

The church shall conduct regular business meetings. The Chairman of Deacons shall serve as moderator of the business sessions. In the chair's absence, or upon the chairman's request, the Vice Chairman of Deacons, or someone appointed by the Chairman shall serve as moderator. New business must be presented to the moderator in writing two (2) weeks prior to scheduled meeting.

Section 3: Special Called Business Conferences

Special business conferences may be called by the Pastor, Chairman of Deacons, or with a written request of at least ten percent of the church membership. No matter shall be considered at a called meeting except that for which it was called.

Section 4: Official Notice Required for Special Business Conferences

Church-wide notice must be given two weeks in advance for special meetings.

Section 5: Quorum

Unless otherwise specified, business transactions will require a simple majority of the members present.

Section 6: Rules of Order

The church business meeting shall observe the following order of business: (1) Call to Order (2) Reading of the Minutes (3) Call for Church Letters (4) Staff Reports (5) Cluster Leaders' Reports (6) Program Leaders' Reports (7) Old Business; (8) New Business; and (9) Adjournment.

The current edition of Roberts Rules of Order shall guide the church business meetings, unless otherwise specified in this document.

Article XI Membership

Section 1: Candidacy for Church Membership

Candidates for church membership may present themselves at any worship service by: a) public profession of faith in Jesus Christ as Lord and Savior, believers baptism, and completion of a new member orientation class; b) by transfer of membership from another Southern Baptist Church; c) by statement satisfactory to the church to the effect that they have previously been members of a church of like faith and order, or restoration. After approval by a majority of the members present and voting, they will be received under Watchcare pending completion of a new member orientation class. Upon completion, the pastor may present the member.

Section 2: Responsibilities of Membership

Members shall be expected to be faithful in all duties of the Christian life, to be regular in attendance at the services of the church, to give regularly and systematically to its support and to Kingdom causes, and to share in the organized work.

Section 3: Termination of Membership

The church shall dismiss from its membership

- those who are deceased,
- those who unite with other churches and request in writing a transfer of membership
- those who request in writing that their membership cease,
- those who are found guilty of unchristian like conduct, but only after due process of dealing with such members as hereinafter provided.

Section 4: Discipline of Members

The church may subject to discipline members who persistently refuse to live up to the standards of the Church Covenant (Article V). The church shall at all times abide by the scriptural methods and spirit for handling such matters (Matt 18:15-17; I Cor. 5:12-13). No members shall be dealt with except after efforts of the Deacons and Pastor to bring about reconciliation and except that member has been cited to appear before the church and given opportunity to answer. An exception to the above rule shall be when the member cannot be reached after attempting to communicate by the Secretary of Deacons.

Should any member fail to give satisfaction of the church concerning any charge, or refuse to or neglect to answer a summons to appear before the church; they shall be excluded.

Any person whose membership has been terminated for any condition which had made it necessary for the church to exclude them may, upon request, be restored to membership by a vote of the church upon evidence of their repentance and reformation.

Article XII

Amendments to the Articles of Incorporation/Bylaws

Section 1: General procedures

These Articles of Incorporation shall be considered adopted and in immediate effect when approved by two-thirds of the members present at a church conference. The vote shall be taken after a thirty day notice. Copies of the Articles of Incorporation will be available in the church office during normal business hours.

Section 2: Amendment presentation and vote

These Articles of Incorporation may be amended, altered, or repealed by a two-thirds vote of the members present at any proper business meeting of the church, provided that such proposed change shall be presented publicly in detail and be limited to the proposed changes in writing to the church at least thirty days prior to the vote.

EXHIBIT B

Together Everyone Achieves More

**T.E.A.M.
MINISTRY
HANDBOOK**

Northgate Baptist Church

Greenville, South Carolina

Approved September 20, 2006

Northgate Baptist Church

Our Mission

Follow the Great Commandment

*Love the Lord your God with all your heart and with all your soul
and with all your mind and with all your strength...
and love your neighbor as yourself.
There is no commandment greater than these.
Mark 12:30-31*

Fulfill the Great Commission

*Go and make disciples of all nations, baptizing them in the name of the Father
and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you.
And surely I am with you always, to the very end of the age.
Matthew 28:19-20*

Our Purposes

Worship . . . Fellowship . . . Discipleship . . . Ministry . . . Evangelism

Our Vision

"Loving God . . . Loving People . . . Here, There, Everywhere"

*Dear friends, let us love one another, for love comes from God.
Everyone who loves has been born of God and knows God. Whoever does not love does not know
God, because God is love. This is how God showed his love among us:
He sent his one and only Son into the world that we might live through him.
This is love: not that we loved God, but that he loved us
and sent his Son as an atoning sacrifice for our sins.
Dear friends, since God so loved us, we also ought to love one another.
No one has ever seen God; but if we love one another, God lives in us
and his love is made complete in us...God is love.
Whoever lives in love lives in God, and God in him...
We love because he first loved us.
If anyone says, "I love God," yet hates his brother, he is a liar.
For anyone who does not love his brother, whom he has seen,
cannot love God, whom he has not seen.
And he has given us this command: Whoever loves God must also love his brother.
1 John 4:7-12, 19-21*

OFFICERS

Church Clerk: To take minutes of business meetings, report minutes at the following business meeting, and keep these documents for the church. This person shall work closely with the Ministry Assistant.

Assistant Church Clerk: To assist the church clerk in taking minutes of business meetings, reporting minutes at the following business meeting, and to help ensure these documents are maintained for the church.

Treasurer/Assistant Treasurer: These persons are to ensure the accountability of daily financial transactions of the church and work closely with the Financial Secretary to ensure accountability of church funds.

Trustees: The trustees serve as legal representatives in all transactions related to the church. They hold legal title to the church property; and they sign all documents related to the purchase, sale, mortgaging, or rental of church property after approval by the church in regular business session.

Church officers are elected to one-year terms, and may be re-elected to serve consecutive terms.

Trustees serve rotating three-year terms and are nominated by the deaconate.

STANDING COMMITTEES

Building Nominating Personnel Stewardship

Each standing committee shall consist of six members who serve a three-year term. One-third of the standing committee shall rotate off and be replaced each year. The chairman of each committee will be elected from the committee and shall have served for a year on the committee prior to becoming chair.

CLUSTER LEADERS

Cluster leaders contact the Ministry Team leaders or Committee Chairpersons at least monthly and report to the Leadership Council any actions, questions, needs, concerns, or recommendations.

Cluster leaders communicate to Committee Chairpersons and Ministry Team Leaders any questions, concerns, recommendations, or actions by the Leadership Council that involve that committee or team.

Cluster leaders should engage the various leaders in their cluster to discuss and recommend ways to improve and expand the church's effort in the ministry purpose of that cluster.

MINISTRY TEAMS

Ministry teams represent every ministry, program and activity of the church. Ministry Team leaders are elected for one-year basis and may be reelected to consecutive terms. Ministry Team members are enlisted based on interest, spiritual gifts, abilities, and experience.

Ministry Teams enlist as many members as needed to effectively carry out the assignment of the team. Team members serve one-year terms as long as they are interested in serving in that ministry.

Why Ministry Teams?

The church is the Body of Christ, and individual members belong to one another. Each believer is called to serve God by serving others through the church.

- Each believer has a place in the Body of Christ and a purpose to fill.
- Each believer has one or more spiritual gifts to be used in service.

- Believers depend upon each other in the Body of Christ.
- Together, we are responsible for accomplishing the Great Commission.
- Ministry Teams allow members to be involved in faithful and meaningful service based on their passion.
- Ministry Teams allow members to use their God-given abilities to serve Him.
- Ministry Teams encourage teamwork and strengthen fellowship and relationships.
- Ministry Teams improve planning, coordination, and communication.

Ministry teams are grouped by a common purpose into five clusters: *Administration, Discipleship & Family, Fellowship & Care, Missions, and Worship*

THE LEADERSHIP COUNCIL

Sunday School Director
Men's Ministry Director
WMU Director
WEM Director
Cluster Leaders
Discipleship Director
Stewardship Chairman
FAITH Director
Deacon Chairman
Church Staff

The Leadership Council meets regularly to:

- * Coordinate the work of the various ministries of the church
- * Identify needs, determine priorities, and establish goals for ministry
- * Develop a strategy for ministry and growth
- * Plan and promote a calendar of church ministries, programs and activities
- * Evaluate the ministry and progress of the church

Principles for Effective Church Ministry

Ministry teams should meet as often as needed and fulfill their goals and responsibilities.

Understanding how each member's responsibilities or tasks help the church to accomplish its mission to follow the Great Commandment and fulfill the Great Commission and grow God's kingdom.

Involving everyone on the team in ministry utilizing each one's own unique gifts and abilities.

Striving to maintain love, unity, harmony, and a Christ-like spirit. Loving God and others is the church's primary task. Remember people are more important than projects

Meet regularly and function as a team. Avoid the temptation to act or make decisions alone. Share the burdens and the blessings of ministry with others on the team.

Develop effective communication within the ministry team, with your cluster leader, with the church staff, and the church.

Pray for one another and for every task however great or small. See what God can do when we work with Him rather than by individual initiative and strength.

Prepare and present a clear, concise, and complete report to the church at monthly church conferences. Keep reports of all meetings and ministry actions in the ministry team file in the church office. This helps with communication, coordination, and with consistency during leadership transitions.

Leadership Council Meetings

Program Directors and Ministry Team Leaders will communicate monthly with their Cluster Leader concerning the progress of their work and any needs or concerns. Each Chairman or Program Director documents needs or concerns for the team and reports these to their Cluster Leader prior to each meeting. Cluster Leaders will maintain a notebook of these reports and pass the notebook along to the next Cluster Leader. This will allow for follow up on projects as well as tracking of each team success.

This information will be communicated as necessary with the Leadership Council at their monthly meetings. In some instances, it may be necessary or helpful for Ministry Team Leaders to meet with the Leadership Council to discuss the work of the Team. The filling out of the progress reports will eliminate the need for meetings except in special circumstances. It will be the responsibility of each Cluster Leader to contact their directors for this information prior to the Leadership Meeting. In order for this system to work effectively, the Leadership Meeting will need to be established on a regular basis with minimal rescheduling.

Each Program Council, Committee, and Ministry Team should meet or function at least once during each quarter. This will need to be followed up by the Cluster Leader in order to receive report.

ADMINISTRATION

- Building Committee
- Church Officers
- Counting Team
- Grounds Team
- Nominating Committee
- Personnel Committee
- Stewardship Committee
- Communication Team
- Furnishing/Equipment Team
- Technology Team
- Transportation Team

DISCIPLESHIP and FAMILY

- Children's Ministry Team
- FAITH Evangelism/Outreach
- Family Ministry Team
- Library Ministry Team
- New Members Team
- Prayer Ministry
- Senior Adults Team
 - Joy Club
- Single Adults Team
- Sunday School
- Women's Enrichment Ministry
- Youth Ministry Team
 - Youth Council
 - LIFE

FELLOWSHIP & CARE

- Bereavement Team
- Deacons
- Fellowship/Hospitality Team
- Food Service Team
- Greeters Team
- Recreation Team

MISSIONS

- Benevolence Team
- Community Ministries Team
- Men's Ministries
- Royal Ambassadors
- WMU
 - Mission Friends
 - Girls in Action
 - Youth on Mission
 - Women on Mission

WORSHIP

- Audio Visual Services Team
- Baptism Team - deacons
- Flower Team
- Lord's Supper Team - deacons
- Music Council
- Ushers Team
- Wedding Team
- Children's Worship

AUDIO/VIDEO SERVICES

Purpose: Operate video and audio equipment for church services and programs, make recommendations for purchasing equipment, and keep records of all AV maintenance.

Chairman shall:

1. Operate video and audio equipment for all services and programs as needed or requested.
2. Enlist four to five persons to serve on this committee. Make a schedule for coverage of services among persons on committee.
3. Develop a competency check off of all persons utilizing the equipment. Maintain records of persons who have passed competencies and update on new equipment as necessary.
4. Keep a maintenance record of all AV equipment.
5. Acquire and maintain adequate, secure storage space for all AV equipment. Ensure that all equipment is securely stored at the end of each service.
6. Provide an annual budget request to Stewardship Committee for supplies and equipment.
7. Attend, or send proxy, to all renovation committee meetings.
8. Act as liaison between the AV team and the Worship Cluster Leader.

Committee members shall:

1. Operate video and audio equipment for all services and programs as needed or requested.
2. Pass a periodic competency check off on all AV equipment at least once a year.
3. Investigate and make recommendations for improvements to AV equipment.
4. Make weekly copies of audio and visual tapes for homebound members or others upon request. Make sure tapes are left in church office for disbursement.

BAPTISM TEAM

Purpose: A deacon chairs this committee for the purpose coordinating the service of baptism.

Committee shall:

1. Ensure that all the necessary equipment and facilities are available (refer to Deacon Manual) and ready prior to each baptism service.
2. Notify candidates for baptism two to three weeks in advance of the scheduled baptism, and provide the Pastor with a list of those who will be present.
3. Arrange with the Pastor and candidates for a counseling session on the meaning and procedures of baptism.
4. Assist or provide assistance to the Pastor and candidates during the baptism.
5. Provide for proper clean up following the baptism.
6. Inspect baptism facilities and recommend necessary improvements as needed.
7. Submit annual budget request to the Stewardship Committee.

BENEVOLENCE TEAM

Purpose: Functions as an outreach body externally to the community and internally to the Church family. This committee is responsible for the discretionary use of budgeted funds (or designated benevolent gifts) in assisting individuals and/or families in need of help. This committee is composed of five laypersons with an elected chairperson. It will cooperatively work with the Pastor and church staff in considering and transacting benevolent requests. The types of assistance rendered by the committee are as follows: (1) limited finances; (2) food; (3) medical expenses; (4) clothes, (5) limited transportation; and (6) lodging.

Committee shall:

1. Be responsible for maintaining policies for providing assistance, in excess of \$50 including the amount and frequency of assistance to individuals or families. Ensure that a copy is given to church secretary.
2. Coordinate and provide a copy of policies for assistance to other groups in the church, which provide benevolent actions.
3. Submit an annual budget request to the Stewardship Committee.
4. Maintain individual case reports in the church office and records of all benevolence transactions. Request that other benevolence actions by other groups or individuals be reported in writing to this committee and maintained in the church office as well.
5. Locate church members and community persons who can provide appropriate assistance. Develop, along with the Men's Ministries director, a list of persons with expertise in carpentry, lawn maintenance, home modifications, etc.
6. Survey, determine, and maintain a list of available community agencies, such as the United Way or Central Community Ministries that can assist with benevolence.
7. Investigate individual requests for assistance and administer resources, which may include education, as determined necessary by the committee:
 - a. Give priority consideration to church members
 - b. Non-member applicant(s) must be thoroughly screened:
 - i. By filling out Northgate's form requesting assistance (see attached).
 - ii. By cross-referencing the application with other agencies such as Aid, Salvation Army, SHARE, Greenville Baptist Association, Greenville Rescue Mission, and other area churches. Non-member applicants will be assisted one time only unless there are extenuating circumstances. The Pastor, Church staff, or Benevolence Committee

Chairman are authorized to spend up to \$50.00 in assisting with rent, utilities, medicine, food, and clothing without needing committee intervention. No monies will ever be given to non-member applicants. The Pastor, Church Staff, or committee will see that the funds are sent to the appropriate company, landlord, or institution for which monetary assistance has been requested and approved.

BEREAVEMENT TEAM

Purpose: This committee shall minister to the needs of grieving families within the church in the loss of a member of the church family.

Chairman shall:

1. Form committees of four or five persons each to deliver the meal to the family.
2. Develop and maintain a schedule of who will provide meal to the family. This can occur at the church or the family's home depending on family preference or size.
3. Coordinate the delivery through the family deacon.
4. Provide an annual budget request to Stewardship Committee for supplies and equipment.
5. Act as liaison between the team and the Fellowship and Care Cluster leader.

The church secretary will notify the Chairman of Deacons when a death occurs in the church family. The chairman will contact the member's assigned deacon(s) who will make a visit to the home. This visit is to provide comfort and support for the family, both spiritual and physical.

During this visit, the deacon is to get the information needed by the church Bereavement Committee for meal preparation. The yellow card is to be filled out and delivered to the Bereavement Committee Chairman.

Additionally, the deacon should take a chest of ice, coffee maker, coffee and paper products to the home. The items needed are prepared and stored in the old kitchen clearly marked "Northgate Baptist Bereavement Ministry".

BUILDING COMMITTEE

Purpose: To oversee the maintenance and repairs to church property/building.

Chairman shall:

1. Develop, maintain and enforce policies/procedure manual with elements listed below.
2. Maintain records of repairs, costs, and persons who did repairs.
3. Keep record of all written requests, dates approved, and dates completed.
4. Prepare budget request for the budget for Stewardship Committee approval regarding maintenance of property and administer said budget with input from the committee.
5. Act as liaison between the team and the Administrative Cluster.

Committee shall:

1. Provide and prioritize the general maintenance, repair and care of all church facilities and property based on review of written requests from church members.
2. Develop, and recommend maintenance policies and procedures.
3. Develop and recommend policies regarding the use of space, properties, and equipment.
4. Develop and recommend an insurance plan for buildings and property.
5. Determine needs, acquire property, and arrange, equip, and administer parking space.
6. Assist other church committees in responsibilities relating to church property and space.

7. Continuously evaluate property and buildings to ensure that space is accessible to the disabled and elderly. Several church members may serve as consultants on Code and accessibility.
8. Continuously evaluate the need for signs and maintain existing signs.
9. Continuously evaluate building security and make recommendations.
10. Promote conservation of energy and other natural resources.
11. Evaluate space allocations to determine and recommend better uses of space.
12. Recommend acquisition and maintenance of property for mission purposes.

CHILDREN'S MINISTRY

Purpose: To assist the Minister of Education in planning and coordinating children's programs.

Chairman shall:

1. Form committee that shall consist of one representative from the preschool and children's council, children's worship, and at least two parents.
2. Work with appropriate committees to secure equipment, resources, and personnel for the support of the children's ministry.
3. Submit annual budget request to the Stewardship Committee.

Committee shall:

1. Advise and assist the Minister of Education or Children's Ministry Chairman in planning and coordinating programs and activities, and developing policies. Policies may include, but are not limited to: health issues, behavior expectations, rotational policy for coverage of events, etc.
2. Evaluate the physical, social, emotional and spiritual needs of children and their families. Brainstorm ideas to meet these needs in conjunction with the Family Ministry Team and assist in providing educational opportunities for families each year.
3. Promote the children's ministry in the church and community.
4. Provide appropriate educational training for workers in each of their respective areas. May include but not be limited to CPR, First Aid, Children's Worship, behavior management techniques, etc.

COMMUNICATIONS

Purpose: To organize, distribute, and coordinate both internal and external information exchange.

Chairman shall:

1. Form a committee of four or five persons who have interest and skill in communicating the goals, ideas, and plans for Northgate to the church and the community at large.
2. Maintain, and publish, a notebook of policies and procedures that delineate the time line encouraged for all internal and external communication.
3. Ensure that communication requests are completed in a timely manner.
4. Submit annual budget request to the Stewardship Committee.

Committee shall:

1. Develop policies/procedures that delineate the timeline encouraged for all internal and external communication. For example - an internal communication must be in the hands of the ministry assistant at least two weeks prior to distribution date.
2. Determine who will be responsible for maintaining the church website.
3. Determine who will be responsible for getting newspaper and radio announcements to the appropriate media within a timely manner.
4. Determine who will be responsible for internal publication development.

5. Determine who will be responsible for internal bulletin board development; may include ministries board.
6. Determine who will be responsible for content and changing of the outside sign.
7. Develop with organizational leaders a plan to interpret the church's work to the community at large.
8. Use appropriate media to communicate the church's work to its publics.
9. Increase members' awareness of the values of good church public relations.

COMMUNITY MINISTRIES TEAM

Purpose: Identify needs and ministry opportunities within the community and promote church involvement in those ministries. This committee will work with the Men's Ministries, and Benevolence to promote involvement in existing and new community ministries. This ministry should normally address non-emergency needs.

Chairman shall:

1. Submit a report to Benevolence Committee, that includes to whom and how much funds are disbursed.
2. Submit an annual budget request to the Stewardship Committee.
3. Act as liaison between the committee and the Missions Cluster Leader.

Committee shall:

1. Identify, and investigate needs of individuals, families, and organizations within the community.
2. Identify and maintain a list of existing agencies, ministries, and resources for ministry and inform church of ways to provide support and involvement. Agencies may include United Way, Central Community Ministries, Share, East Park Crisis Center, etc.
3. Identify church member resources (time, skills, interests, etc.), which might be available for ministry assistance. Work in conjunction with Benevolence, and Dot Hancock Ministry.
4. Establish priorities for church involvement in community ministries based on church interests, abilities, and resources.
5. Lead church to establish or adopt specific ministries within the community based on priority of ministry need and church resources. Plan at least one community-based ministry a year for church-wide participation.
6. Work with various organizations (Sunday School classes, mission groups, youth, etc.) to coordinate mission projects and efforts to minimize duplication. Also coordinate planned mission efforts through Cluster Leaders and Church Leadership Council to prevent duplication of efforts.

CONSTITUTION AND BI-LAWS COMMITTEE¹

Purpose: To ensure the constitution and bi-laws of the church are clear, concise, and up-to-date. This committee shall be composed of the chairman of trustees, deacons, and standing committees, with the trustee chairman acting as chairman.

Chairman shall:

1. After approval by church council, present recommendations of committee to the church for approval in accordance with established policies.

Committee shall:

1. Prepare purpose statements and duties for newly created committees.
2. Review requests for changes from existing committees.

¹ Adopted October 24, 2007

3. Annually review the constitution and by-laws to ensure they are current
4. Present recommended changes to church council and congregation for approval.

COUNTERS

Purpose: Count monies of offerings/tithes and prepare deposits weekly.

Chairman shall:

1. Enlist and set up schedule for counters.
2. Be contact person if someone cannot fulfill their scheduled duty and find replacement.
3. Submit an annual budget request to the Stewardship Committee.
4. Act as liaison between the committee and the Administrative Cluster Leader.

Committee shall:

1. Counters for each week should report to the church office on Monday, or in the event of a holiday the first day after Sunday that banks are open.
2. Counters will count monies and prepare deposits of offerings received each week.
3. Counters shall follow standard policies and procedures as outlined by the Stewardship Committee and the Financial Secretary.

DEACONS

Purpose: To be servant ministry leaders of the church and to assist the staff in carrying out the caregiving process of the church. The deaconate may be asked to perform special duties as determined by the bylaws - such as nominating trustees, search committees, or ordinances of the church.

Chairman shall be:

1. The presiding officer of the Deacons.
2. The person who coordinates all Deacon Ministries in conjunction with the pastor.

Responsibilities include:

1. Presiding over the monthly Deacon Leadership Team Meeting.
2. Planning and conducting the monthly general Deacon Meeting.
3. Leading the Deacons in planning, conducting, coordinating, and evaluating Deacons' work and ministries.
4. Guiding the Deacons in identifying needs and developing ministries to meet needs.
5. Ensuring Deacon Ministry Teams provide the ministries desired.
6. Planning and implementing Deacon training.
7. Reporting regularly the progress of Deacon work and ministries to the church.
8. Serving as a representative of the Deacons to other ministries within the church.
9. Presiding over church conferences.
10. Serving as a member of the church Leadership Council
11. Submit an annual budget request to the Stewardship Committee.
12. Act as liaison between the Deacons and the Fellowship and Care Cluster Leader.

Deacons shall:

1. Serve as a Deacon if elected.
2. Attend Deacon Meetings.
3. Attend specially called meetings
4. Attend Church Business meetings.
5. Be faithful in special assignments (Sunday School, Committees, Lord's Supper Service, Prayer Service).

6. Be faithful in Deacon/Care Leader Ministry.
7. Be faithful in giving.
8. Pray for the Church.
9. Pray for and support the Church Staff.

Refer to the Deacon Manual for guidelines concerning instruction for Deacon of the Month and Deacon Care Ministry responsibilities.

FACILITIES USE COMMITTEE²

Purpose: To evaluate present use of facility and make recommendations for assignment of space. This committee shall consist of a chairman elected by the church, the Sunday School Director, and a representative from the building committee, trustees, deacons, and stewardship committee.

Chairman shall:

- Keep all records related to facility space.
- Submit planning packet and budget request to stewardship committee
- Act as liaison between the committee and administrative cluster

Committee shall:

- Review use of all space within facility to ensure use is consistent with overall church plan.
- Provide necessary space for new classes and ministries.
- Make renovation recommendations to building committee and Long Range Planning Committee as necessary.

FAMILY MINISTRY TEAM

Purpose: Promote family life education and ministry; help conduct special projects for family enrichment, marriage enrichment, parenting enrichment, events, or seminars. The committee should represent a cross section of families in the church (married without children, married with children, single parent, empty nest, blended family, etc.).

Chairman shall:

1. Form a committee of five or six persons representing the groups listed above.
2. Serve as coordinator of projects listed below.
3. Submit an annual budget request to the Stewardship Committee.
4. Act as liaison between the team and the Discipleship and Family Cluster.

Committee shall:

1. Utilize the survey data of the community and data gathered from the FAITH teams; identify the physical, social, spiritual, and emotional needs of families in the church and community.
2. Develop and maintain priorities and goals for ministry to families.
3. Recommend an overall family enrichment strategy to carry out above goals to the church.
4. Plan and direct various family enrichment events such as Fall and Spring Festivals, seminars, etc; coordinate with Fellowship and Food Service Ministries.
5. In conjunction with team ministries to singles adults, senior adults, intergenerational groups, children's ministry, preschool groups, and other special groups as needed, plan at least one special event per year for each.
6. Recommend to the church ways to make church programs and activities more "family friendly."

² Adopted 5/28/08

FAITH EVANGELISM/OUTREACH TEAM

Purpose: FAITH is an ongoing, comprehensive evangelism and ministry strategy and process, which functions through our existing Sunday School. FAITH equips and mobilizes Sunday School classes to accomplish these ministries:

1. Personal evangelism/soul winning.
2. Follow-up care and ministry to new believers.
3. Reclaiming absentees.
4. Ministry to regular attendees.

Director shall:

1. Lead the FAITH effort to include coordinating Faith Team Training for Church members and FAITH Team Visitation, and assist the Pastor in this process as requested.
2. Demonstrate the FAITH process as an example to follow.
3. Keep records of those visited and coordinate follow-up.
4. Submit an annual budget request to the Stewardship Committee.

Committee shall:

1. Enlist and equip laypersons to become effective witnesses for Christ.
2. Assist the pastor to develop and present to the congregation an aggressive and ongoing program of evangelism and outreach through the Sunday School.
3. Commit to a sixteen-week study of learning the FAITH process, praying for guidance and the leading of the Holy Spirit on a daily basis.
4. Work with the Sunday School leaders and classes to establish and maintain an up-to-date file of names of persons who may be prospects for salvation and church membership.

FELLOWSHIP & HOSPITALITY TEAM

Purpose: To plan, promote and provide for church-wide social events to strengthen fellowship within the church.

Chairman shall:

1. Form a committee of persons who are willing, available, and able to assist with the tasks associated with Fellowship.
2. Coordinate schedule of church social events with the church secretary and Leadership Council.
3. Submit annual budget request to the Stewardship Committee.

Committee shall:

1. Plan and coordinate church-wide social events that may include the following: receptions, banquets, after church fellowships, picnics, etc. Duties include, but are not limited to set-up, enlistment of volunteers, decorations and clean up.
2. Coordinate with other church ministry teams (i.e. Flowers, Food service, Family Enrichment, Wedding, etc.)
3. Perform tasks that are required to complete Fellowship activities.

FLOWERS TEAM

Purpose: To coordinate flowers, displays and decorations for worship and special services.

Committee shall:

1. Recommend and maintain policies/procedures for acquiring, arranging, and disposing of flowers for services.
2. Coordinate flowers, displays, and decorations for special services and holidays (i.e. Easter lilies, Christmas poinsettias).
3. Develop, recommend and maintain policies related to providing flowers for sick and bereaved members.
4. Maintain annual calendar of persons who will provide flowers for worship each Sunday.
5. Secure a rose for the altar upon the birth of a baby to a family in the congregation.
6. Organize and maintain equipment and supplies in the Flower Room to include containers for flowers, wedding, equipment, and seasonal decorations.
7. Replace candles as needed on the Communion Table.
8. Submit an annual budget request to the Stewardship Committee.

FOOD SERVICE TEAM

Purpose: To establish policies for the operation and use of the kitchen facilities. Supervise and coordinate the serving of meals for Family Night Suppers, and special events, and, supervise clean up for all meals and events.

Chairman shall:

1. Enlist, train, and coordinate teams utilized in serving and clean up for Family Night Suppers and other events.
2. Serve as liaison between cook and Leadership Council.
3. Supervise or appoint a proxy to supervise clean up staff at each event.
4. In conjunction with the cook, will recommend the purchase of equipment for the kitchen and dish room.
5. Submit annual budget request to the Stewardship Committee.

Committee shall:

1. Work with cook in planning, preparation and serving Family Night Suppers and other special church gatherings and functions.
2. Find own replacement if unable to keep scheduled assignment.
3. Maintain inventory of necessary paper products, equipment, and supplies for kitchen and dish room on a weekly basis.
4. Prepare homebound or to-go meals for delivery on an as-needed-basis.
5. Assist with clean up to expedite the turn around of the facility.
6. Find persons and prepare schedule for persons to receive monies on Family Night Supper. Assist the Leadership Council in determining methods to secure reservations for Family Night Suppers.
7. Assist the Fellowship/Hospitality Team with special events such as covered dish meals, or special events.
8. Develop policies and procedures for kitchen usage and clean up, equipment, and supply usage for church activities. Include usage policies for persons who are not church members or events that are not church sponsored.

FURNISHING/EQUIPMENT TEAM

Purpose: To be responsible for the purchasing of new furnishings/equipment and maintaining an inventory of furnishings/equipment.

Committee shall:

1. Review written requests for purchases and investigate pricing for the items requested.
2. Develop and maintain a manual of equipment vendors that the Church has purchased from. Include a maintenance record for all equipment purchased. This shall include office equipment, kitchen equipment, etc.

Greeters Team

Purpose: Greet all members, visitors, and guests and provide bulletins on Sunday mornings.

Chairman shall:

1. Enlist and train volunteers to be greeters at each entrance for Sunday School each Sunday.
2. Coordinate and set up schedule for greeters.

Committee shall:

1. Arrive at church, ready to begin thirty minutes prior to the beginning of each service on assigned Sunday.
2. Greet each arrival in a cheerful, friendly voice (by name if possible) and distribute a bulletin.
3. Assist the Deacon of the Month as needed to open doors, carry objects, help with umbrellas, etc.

GROUNDS COMMITTEE

Purpose: Oversee and participate in improvement and maintenance of church grounds.

Chairman shall:

1. Form a committee of four or five persons who are willing, available, and able to participate in the improvement of grounds surrounding the church.
2. Submit budget request to the Stewardship Committee on a yearly basis.
3. Act as liaison between the committee and the Administrative Cluster Leader.

Committee shall:

1. Hire, evaluate and supervise the lawn maintenance of the church grounds.
2. Provide maintenance for the flowerbeds surrounding the church. This will include weeding of beds, removal, and replacement of debris, mulching, etc.
3. Host a "Grounds Improvement Day" at least twice a year.

LIBRARY MINISTRY TEAM

Purpose: The Library Ministry Director and volunteers will develop and maintain a library of various media and services and make them available to church members and organizations.

Chairman shall:

1. Determine needs for space, equipment, and resources and present requests to appropriate ministry teams.
2. Enlist and schedule persons to staff the library.
3. Submit budget request to the Stewardship Committee.

Committee shall:

1. Determine the general subject matter of books and other media to be placed in the library.
2. Screen all media that are presented to the library.
3. Study and recommend means for obtaining books and other media for the library.
4. Determine hours when the media library should be open.
5. Utilize the computer system to maintain an inventory of all audio-visual equipment, accessories, and supplies.
6. Utilize the computer system to maintain a check out system for all audio-visual equipment, books, supplies, and accessories.
7. Encourage members or groups to donate memorial books or other media to the Media Library.
8. Promote use of the Media Library.

LONG RANGE PLANNING COMMITTEE³

Purpose: To make plans for continual increase in spreading the Gospel and increased ministry opportunities for Northgate Baptist Church and include plans for organized growth. This committee shall be composed of a chairman, two members at-large, Deacon Chairman, Sunday School Director, one trustee, and stewardship chairman.

Chairman shall:

1. Act as liaison between the committee and the leadership council.
2. Lead committee to prepare a five-year plan for ministry and present recommendations to the church.

Committee shall:

1. Study the church's long-range needs and opportunities.
2. Establish and begin to implement plans designed to meet these needs.

MEN'S MINISTRIES

Purpose: The Men's Ministries Organization seeks to...

- Motivate men to become involved in missions and ministry.
- Equip men to utilize their interests gifts, and abilities in meaningful ministry.
- Nurture men in their relationship with God, family, and one another.

Chairman shall:

1. Organize men into the following teams:
 - * Team Builders - monthly study group on missions' education and male issues.
 - * Prayer Teams - several groups meet weekly for prayer.
 - * ACTion Teams - variety of teams based on skill, interest, vocation, and need.
 - * Evangelism Teams - Training and involvement in evangelism projects.
 - * E-Teams - weekly accountability groups meet to encourage one another.
 - * Career Support Teams - weekly outreach ministry for people in job transition.
 - * Recovery Ministry Teams - support groups for men dealing with addictions, divorce, grief, etc.
2. Coordinate the mission teams.
3. Be liaison between the Men's ministries and the Leadership Council. The Men's Council is formed of the Men's Ministries Director and Ministry Team Leaders.
4. Submit an annual budget request to the Stewardship Committee.

³ Adopted August 27, 2008

Committee shall:

1. Identify needs and interests of men.
2. Develop ministry teams.
3. Seek to involve men in ministry.
4. Coordinate various men's ministries.

Each committee shall develop own mission statement, goals and objectives for each calendar year.

MUSIC COUNCIL

Purpose: To ensure that the Music Ministry is meeting the church's needs in worship and in ministry. The Music Council will consist of the directors/representatives of each musical group within in the church (i.e. Children's Choir, Youth Choir, Adult Choir, Handbells, etc.) and at large members representing a cross section of the church.

Minister of Music shall:

1. Coordinate the work of the various musical groups.
2. Prepare and present an annual budget request to the Stewardship Committee.
3. Act as liaison between the Music Council and the Worship Cluster Leader.

Committee shall:

1. Assist the Minister of Music in planning and promoting the Music Program Ministries of the church.
2. Evaluate needs for music, equipment, resources, and facilities and make recommendations to the appropriate ministry teams.

NEW MEMBER ENCOURAGERS

Purpose: To help assimilate new members into the life and ministry of the church.

Chairman shall:

1. Enlist and train adults to serve as "encouragers" to new members. Develop and maintain a notebook to distribute to the encouragers to fully delineate their responsibilities to each new member. (*Reference Body Life Journey Workshop and New Member Policy*).
2. Develop system to assign an "encourager" to a new member.
3. Coordinate an ongoing process for new members orientation to provide information to include:
 - A. The mission and history of the Northgate Baptist Church.
 - B. Review of basic Baptist beliefs.
 - C. Explanation of Baptist polity.
 - D. Overview of the organizations, programs, and ministries of the church.
4. Submit annual budget request to the Stewardship Committee.
5. Act as liaison between the team and the Discipleship and Family Cluster Leader.

Committee shall:

1. Assist new members in completing a Spiritual Gifts Inventory and Ministry Profile to help them find their place of service in the church.
2. Develop a strategy for recognizing new members and helping them get to know other members.
3. Develop a New Member Packet to be distributed through the new member's encourager.

NOMINATING COMMITTEE

Purpose: The nominating committee shall nominate all church officers and committee members as deemed necessary to carry out the work of the church.

Chairman shall:

1. Coordinate meetings of the nominating committee.
2. Present recommendations to the church body for approval.
3. Submit an annual budget request to the Stewardship Committee.
4. Act as liaison between the committee and the Administrative Cluster Leader.

Efforts should be made to help every active church member find a meaningful place of service in the church where they can utilize their strengths and interests.

Committee shall:

1. Select, interview, and enlist church program organizational leaders, church emphasis program leaders, ministry clusters leaders, ministry team leaders, and general officers.
2. Distribute the most capable leadership among the most pressing needs of the church.
3. Assist in discovering and enlisting persons to fill leadership positions.
4. Devise methods, in conjunction with new members committee, of discovering potential leaders and the gifts and abilities of church members to facilitate enlistment of leadership based on their interests and gifts for ministry.

PERSONNEL COMMITTEE

Purpose: To meet the church's needs related to employed personnel administration.

Chairman shall:

1. Call meetings as deemed necessary.
2. Maintain current job descriptions based on the need of the church body. Ensure that copy is filed in the church office.
3. Serve as liaison between the Personnel Committee and the Administrative Cluster Leader.
4. Serve as liaison between the church body and the Personnel Committee.
5. Serve as liaison between the paid staff positions and the Personnel Committee.
6. Submit budget request to the Stewardship Committee.

Committee shall:

1. Survey the need for additional church staff positions.
2. Develop, maintain, and prepare yearly evaluations of all employed personnel.
3. Develop and maintain current job descriptions based on the needs of the church body.
4. Develop and maintain an organizational chain of command for the church's employed personnel.
5. Recruit, interview, and recommend to the church new personnel.
6. Recommend salaries and benefits for employed personnel.
7. Develop, and maintain policies/procedures for employed administrative personnel.

PRAYER MINISTRY TEAM

Purpose: To promote the ministry of prayer throughout the various organizations, groups, and ministries of the church.

Committee shall:

1. Develop and implement a system of intercessory prayer ministry that will allow multiple involvement by members.
2. Develop and implement a process, in conjunction with the Communication Team, for informing members of needs and prayer requests.
3. Provide opportunities for members to develop and grow in their own personal prayer life.
4. Search for and develop ways for individuals/church to coordinate with other individuals, churches, and organizations to pray for the needs of the community and beyond.

RECREATION TEAM

Purpose: To provide opportunities for all church members and community members to participate in recreational activities with the overall goal being physical, emotional, and spiritual wellness. The Recreation Council shall consist of the Church Recreation Director and captains of the various recreation ministry groups (basketball, sports, crafts, fitness, outdoor activities, etc.).

Chairman shall:

1. Coordinate all recreation activities with the church calendar in the church office.
2. Submit an annual budget request to the Stewardship Committee.
3. Enlist and recommend to the Nominating Committee recreation coaches and leaders.
4. Provide for proper maintenance, and adequate and secure storage of recreation equipment.
5. Act as liaison between the team and the Fellowship and Care Cluster Leader.

Committee shall:

1. Lead in developing a total program of recreation activities to meet the needs and interests of various ages and groups within the church and community.
2. Maintain a list of potential leaders for various recreation activities.
3. Develop and maintain policies and procedures for use of recreation facilities and equipment.
4. Promote involvement in recreation activities.
5. Provide recognition for individuals and teams for accomplishments in activities programs.
6. Make recommendations in writing to the Stewardship Committee for securing additional equipment as needed.
7. Provide for proper supervision, security, and safety for use of gym.
8. Assist organizational leaders in coordinating all recreation activities and events.
9. Plan and conduct church-wide recreation events not sponsored by a church organization.

ROYAL AMBASSADORS (RAs)

Purpose: To provide an organization where Christian men mentor boys (grades 1-5) in developing Christ-like character and participating in mission education, mission action, and mission support.

Leaders shall:

1. Provide lesson plan for each weekly meeting.
2. Be liaison between the RAs and Missions Cluster Leader.
3. Provide coordination of activities between RAs, church, and parents.
4. Prepare and submit an annual budget request to the Stewardship Committee.

Organization shall:

1. Assist chairman in preparing and teaching the weekly lesson plan.
2. Provide physical, spiritual, emotional support to boys enrolled in the RA program.
3. Assist in recruiting other mentors as needed to adequately supervise RA activities, such as - Camp McCall in summer, RA Racers, Campouts, service projects, etc.

SAFETY, SECURITY, AND EMERGENCY RESPONSE TEAM⁴

Purpose: To plan for the safety of, and provide guidelines for emergency services for persons on church property.

Chairman shall:

1. Form a committee of persons who are willing, and qualified to help plan for the safety and physical well-being of the congregation.

Committee shall:

1. Arrange for infant CPR and first aid courses for nursery workers.
2. Verify that background checks have been conducted per church policy.
3. Develop plans to protect preschool and children areas from unauthorized visitors.
4. Prepare procedure for response to any church emergency to include individual sickness, fire, bomb threats, etc.
5. Establish policy for activating security system and securing facility when not in use.
6. Verify that facility meets all safety, fire, and security codes.
7. Verify that unused portions of facility are secure during worship services.
8. Inform trustees of any potential liability.

SENIOR ADULT TEAM

Purpose: To plan and coordinate fellowship activities for seniors which includes the "JOY CLUB" Activities, special events, trips, and educational opportunities.

Chairman shall:

1. Enlist a committee of four to six persons who will assist in planning activities for the senior adults.
2. Act as liaison between the Senior Adult Team and the Discipleship and Family Cluster Leader.
3. Coordinate and place on calendar activities sponsored by the senior adults.
4. Submit an annual budget request to the Stewardship Committee.

Committee shall:

1. Utilize the survey data of the community and data gathered from FAITH team, identify the physical, social, spiritual, and emotional needs of senior adults in the church and community.
2. Assist in planning activities that may include but are not limited to: monthly JOY Club fellowship meal, special activities, trips, seminars, concerts, Senior Adult Day, etc.

⁴ Adopted January 28, 2009

SINGLE ADULT TEAM

Purpose: To identify and meet the needs of single persons in the church and community through activities, events, education, etc.

Chairman shall:

1. Enlist a committee of four to six persons who will assist in planning activities for the single adults
2. Act as liaison between the Single Adult Team and the Discipleship and Family Cluster Leader,
3. Coordinate and place on calendar activities sponsored by the single adults.
4. Submit an annual budget request to the Stewardship Committee.

Committee shall:

1. Utilize the survey data of the community and data gathered from FAITH team, identify the physical, social, spiritual, and emotional needs of single adults in the church and community.
2. Assist in planning activities that may include but are not limited to: Single Adult Day, Quarterly lunch outings, Special events, etc.

STEWARDSHIP COMMITTEE

Purpose: To provide financial guidance through budget preparation and management in accordance with the Biblical principles of stewardship.

Chairman shall:

1. Coordinate meetings of the committee on an as needed basis.
2. Maintain minutes of the meetings.
3. Be liaison between financial secretary and stewardship committee, staff and congregation.

Committee shall:

1. Provide Stewardship Education - Utilize a variety of materials, programs, and resources to teach and promote Biblical stewardship.
2. Provide Mission Support - Lead the church to understand and live by its mission in relation to the church, the community, and throughout the world.
3. Provide Budget Development - Develop, promote, and administer a Ministry Action Budget to be adopted by the church.
4. Provide Responsible Accounting Procedures - Develop and oversee sound procedures for receiving, counting, depositing, disbursing, recording, reporting, and auditing church funds.

SUNDAY SCHOOL

Purpose: Sunday School is the foundational strategy in a local church for leading people to faith in the Lord Jesus Christ and for building Great Commission Christians through Bible study groups that engage people in evangelism, discipleship, fellowship, ministry and worship.

Sunday school is the church organized to...

- Reach people for Jesus Christ through FAITH Journey.
- Disciple believers through weekly life-changing Bible study.
- Assimilate new believers and church members into the fellowship of the church.
- Care for the needs of members and non-members (prospects).

The Sunday School Council works with the Pastor and staff to...

- Develop the organizational structure (classes and departments).
- Enlist and train leadership (in conjunction with the Nominating Committee).
- Select and secure appropriate curriculum and Bible study resources to meet the needs of each small group.
- Seek to provide adequate space and resources to accomplish the purpose of the Sunday School.
- Prepare an annual budget request for the Stewardship Committee.

Director of Sunday School (SS) shall:

1. Order, receive, and distribute the materials needed for teaching prior to the beginning of each quarter.
2. Enlist and assist in training, under the direction of the Minister of Education, teachers for all Sunday school areas on a yearly or as needed basis.
3. Provide spiritual and emotional support to teachers. This may include remembrances in daily prayer, special "thank you" events, Sunday morning coffee breaks, etc.
4. Train; coordinate the Care Organization of SS with Deacons and FAITH team.
5. Maintain list of all SS officers: Care Leaders, Secretaries, Outreach Leaders, etc.
6. Provide a list of substitute teachers to be utilized as necessary.
7. Submit an annual budget request to the Stewardship Committee.

Committee shall:

1. Hold SS officers and teachers accountable for their duties.
2. Acquire substitute if absent. Make sure substitute has materials needed to prepare and teach class.

TECHNOLOGY TEAM

Purpose: Oversee maintenance of equipment; advise on use and purchase of equipment, and training of others on equipment.

Chairman shall:

1. Develop a committee of three or four persons who are willing, available, and able to participate on the technology team.
2. Develop and preserve a maintenance notebook that will include dates of repair, cost, vendors and repairmen.
3. Submit an annual budget request to the Stewardship Committee.
4. Serve as liaison between the team and the Administrative Cluster Leader.

Committee shall:

1. Provide assistance and advice on the use and purchase of equipment.
2. Oversee maintenance and upgrade of equipment as needed.
3. Recommend to the church purchase or replacement of technology resources that will enhance the church's efforts to pursue its mission.
4. Provide training to persons who will be the main users of equipment.
5. Be available to answer questions about performance or lack thereof on the equipment.
6. Assist with the audio/visual equipment for Worship services.

USHERS

Purpose: To enable worship service to flow smoothly by assisting members and visitors with seating, providing pastor with visitor information, receiving and forwarding offerings, and preparing the sanctuary for worship.

Chairman shall:

1. Enlist a number of persons who are willing to participate as ushers.
2. Develop and distribute a schedule for service.
3. Provide those who are serving a copy of the policies and procedures for ushers, dress code and responsibilities that need to be carried out at each service.
4. Be available to substitute when needed.
5. Submit an annual budget request to the Stewardship Committee
6. Act as liaison between the ushers and the Worship Cluster Leader.

Committee shall:

1. Arrive early for worship services (thirty minutes prior to starting time is usual).
2. Ensure that all appropriate doors are opened and lights are turned on.
3. Check restrooms to make certain they are properly cleaned and stocked with adequate paper supplies.
4. If necessary, sweep or clean entranceways.
5. If necessary, pick up trash on pews or floors and straighten hymnal rack materials.
6. Ensure bulletins, offering plates, guest cards, and other materials are ready and available.
7. Be clear on the order of worship and responsibilities for each service.
8. Greet people as they arrive with a smile and a warm word of welcome. Introduce yourself.
9. Assist people with information, materials, and seating as needed.
10. At conclusion of a service open doors and assist people as needed for departing.
11. Assist with the formal welcome of guests.
12. Assist in gathering the offering.
13. Assist in maintaining various elements in the worship service.
14. Assist in emergency situations.

TRANSPORTATION AND USE TEAM

Purpose: Oversee regular care of church owned vehicles, obtain list of qualified drivers, and monitor use of vehicles.

Chairman shall:

1. Develop a committee of three or four persons who are willing, available and able to participate on the vehicle maintenance.
2. Maintain a record of maintenance for each vehicle that includes repairs, dates of repairs, cost, and who provided the repair service.
3. Submit an annual budget request to the Stewardship Committee.
4. Act as liaison between the team and Administrative Cluster Leader.

Committee shall:

1. Provide for the regular care and maintenance of all church owned vehicles.
2. Recommend to the church guidelines concerning the use of church vehicles. These guidelines should be posted in each vehicle, filed in the church office, and provided for each group leader and driver using a vehicle.
3. Maintain a list of qualified drivers for all church owned vehicles, and see that they are properly insured and trained. Keep a current copy of this information in the church office as well.

WEDDING TEAM

Purpose: To ensure that all weddings at Northgate are in accordance with the church wedding policies and procedures.

Chairman shall:

1. Be point of contact concerning engagement of the wedding team.
2. Submit an annual budget request to the Stewardship Committee.
3. Act as liaison between the team and the Worship Cluster Leader.

Committee shall:

1. Coordinate weddings at Northgate, working with Pastor and Staff.
2. Develop and maintain policies regarding weddings held at the church.
3. Assist couples in planning and conducting their wedding.
4. Recommend purchase, repair, or replacement of wedding equipment as needed.

WOMEN'S ENRICHMENT TEAM

Purpose: To provide opportunities for the women of Northgate and the community to grow and develop intimate, loving relationships with Christ and with each other.

Chairman shall:

1. Enlist a committee of four to six persons who will assist in planning activities for women.
2. Act as liaison between the Women's Enrichment Ministry and the Discipleship and Family Cluster Leader.
3. Coordinate and place on calendar activities sponsored by the Women's Enrichment Team.
4. Submit an annual budget request to the Stewardship Committee.
5. Act as liaison between the team and the Discipleship and Family Cluster Leader.

Committee shall:

1. Utilize the survey data of the community and data gathered from FAITH team, identify the physical, social, spiritual, and emotional needs of women in the church and community.
2. Assist in planning activities that may include but are not limited to: Bible Study, luncheons, Birthday Parties, Christmas Tea, retreats, etc.

WOMEN'S MISSIONARY UNION

Purpose: To involve women and girls of the church in mission education, mission action, and mission support.

Organization

Mission Friends	Coed-preschool children
Girls in Action (GAs)	Girls- grades 1-5
Youth on Mission	Coed-grades 6-12
Women on Mission	All women

Committee shall:

- Lead the church to learn about mission opportunities locally and around the world as well as the efforts of the Southern Baptists to address needs.
- Teach missions through various age-related groups.
- Engage church members in mission action and personal witnessing.
- Lead the church to support missions through prayer.

- Work with the Stewardship Committee to plan and promote special mission offerings annually such as the Annie Armstrong Offering for NAMB, Hx4 Offering for SC Baptist Institutions, Janie Chapman Offering for SC Missions, and Lottie Moon Offering for International Missions.
- Lead the church to conduct special missions studies in connection with special mission offerings.
- Provide opportunities for missionaries to educate the church on God's work in the mission field.
- Lead the church in "hands on " mission activities.
- Encourage all women to participate in associational and state conferences.
- Submit an annual budget request to the Stewardship Committee.

YOUTH MINISTRY TEAM

Purpose: To assist the youth of the church and community to:

Honor God with their lives (worship).

Connect to other Christians (fellowship).

Grow to become more like Jesus Christ (discipleship).

Serve others in Jesus' name (missions).

Share their faith in life and word (evangelism).

Committee shall:

1. Provide ongoing groups and opportunities for youth to develop a basic understanding of Christian doctrine and Baptist distinctive, the meaning of church membership, Christian lifestyle and ethics; and to develop basic disciplines such as Bible study, prayer, worship, witnessing, etc.
2. Help youth to learn and care for one another through A-Teams, small groups of four or five youth and an adult guide. These teams meet weekly for accountability, affirmation, application and action.
3. Encourage youth to serve and share through XCLAIM music and creative ministries team. Youth XCLAIM their love for God and faith in Christ through music, drama, puppets, creative movement, sticks, and handbells in worship at Northgate, other churches, and in mission settings.
4. Encourage and help youth to grow through retreats, camps and rallies, mission projects and trips, conferences, and through leadership experiences such as SALT (Student Action Leadership Team), Youth Sunday, etc.
5. Attempts to reach students on their campus through Released Time Bible Study.
6. Involve youth in associational, state, and convention-wide youth discipleship events as well as activities and events with other church youth groups.
7. The Minister of Youth and the Youth Leadership Team will determine ministry goals, curriculum, calendar and annual budget requests. An annual budget request will be submitted to the Stewardship Committee.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2020-CP-23-01213

James Earl Tegeler,

Plaintiff,

vs.

Charlotte Collier, Hannah Elizabeth Collier,
Linda Smith, Northgate Baptist Church,

Defendant.

**AMENDED ANSWER
(Jury Trial Demanded)**

To: Deborah D. Davis, Esq., Attorney for James Earl Tegeler

The Defendant, Charlotte Collier, answering the Complaint of the Plaintiff, above named, and responding to the allegations as follows:

1. Each and every allegation of the Complaint which is not specifically admitted, qualified or explained is denied and strict proof is demanded thereof.
2. The Defendant admits the allegations contained in paragraph 1 - 8 of the Complaint.
3. The Defendant denies the allegations contained in paragraph 9 of the Complaint.
4. The Defendant lacks sufficient information to respond to the allegations contained in paragraphs 10 – 15 of the Plaintiff's Complaint and therefore denies the same.
5. Upon information and belief, the Defendant admits the allegations contained in paragraph 16 and 17 of the Complaint.

6. The Defendant lacks information to respond as to allegations contained in paragraph 18 of the Complaint regarding gifts and denies the same and specifically denies that the Defendant was ever an intern at the church or received charity from the Plaintiff.

7. The Defendant lacks sufficient information to respond to the allegations contained in paragraph 19 of the Plaintiff's Complaint and therefore denies the same.

8. The Defendant admits the allegations contained in paragraph 20 of the Complaint and would add that the party was for her mother Defendant Linda Smith.

9. The Defendant admits the allegations contained in paragraph 21 of the Complaint.

10. The Defendant denies the allegations contained in paragraphs 22 - 24 of the Complaint.

11. The Defendant admits the allegations contained in paragraph 25 of the Complaint.

12. The Defendant denies the allegations contained in paragraph 26 - 29 of the Complaint.

13. The Defendant admits the allegations contained in paragraph 30 of the Complaint.

14. The Defendant denies the allegations contained in paragraph 31 - 33 of the Complaint.

15. The Defendant lacks sufficient information to respond to the allegations contained in paragraphs 34 - 38 of the Plaintiff's Complaint and therefore denies the same.

16. The Defendant denies the allegations contained in paragraph 39 - 41 of the Complaint.

17. The Defendant lacks sufficient information to respond to the allegations contained in paragraphs 42 - 44 of the Plaintiff's Complaint and therefore denies the same. The Defendant specifically denies that it was in any way appropriate or acceptable for Plaintiff to be "redirecting" her daughter's behavior as he was neither parent or mentor.

18. The Defendant denies the allegations contained in paragraph 45 of the Complaint.

19. The Defendant admits the allegations contained in paragraph 46 of the Complaint.

20. The Defendant denies the allegations contained in paragraphs 47 - 52 of the Complaint since she did not know the Plaintiff in January of 2017 and has never at any time had interest in forming, expressing, soliciting or involving herself in any way in a romantic or intimate relationship with Plaintiff nor has she ever expressed such interest to any person including Plaintiff. There would be nothing alleged in paragraph 47 for the Plaintiff to be oblivious to.

21. The Defendant denies the allegations contained in paragraph 53 of the Complaint.

22. The Defendant admits so much of the allegations contained in paragraph 54 of the Complaint as allege that the Plaintiff hosted a birthday party for his son who was a friend of the Collier family. The Defendant has no idea what the rest of paragraph 54 means and therefore denies the same.

23. The Defendant denies the allegations contained in paragraphs 55 - 56 of the Complaint.

24. The Defendant admits so much of the allegations contained in paragraph 57 as allege she did not "redirect" her daughter during the lunch because there was no behavior to redirect. The Defendant denies any allegations contained in paragraph 57 inconsistent therewith.

25. The Defendant denies the allegations contained in paragraph 58 of the Complaint.

26. The Defendant admits so much of the allegations contained in paragraph 59 that allege that it was her opinion that the relationship between Plaintiff, a man in his 50's and her 18-year-old daughter was inappropriate and expressed concern regarding the same with the preacher at her church who employed the Plaintiff, that employment being the source of the Plaintiff's relationship with her daughter. This conversation occurred when she met with the church to explain that she and her daughter were going to take a break from their church for a while. This was after the Defendant and her daughter had repeatedly requested the Plaintiff not contact them and the Defendant continued to do so. This Defendant was asked if that break was a result of Plaintiff's actions toward her daughter and she responded that it was. The Defendant denies the remaining allegations contained in paragraph 59 of the Complaint.

27. The Defendant lacks sufficient information to respond to the allegations contained in paragraphs 60 of the Plaintiff's Complaint and therefore denies the same.

28. The Defendant lacks sufficient information to respond to the allegations contained in paragraphs 61 of the Plaintiff's Complaint and therefore denies the same.

However, this Defendant would note that her daughter had no romantic interest in the Plaintiff and that her daughter had never had any sexual or intimate relations with the Plaintiff. Upon information and belief the Defendant H. Collier believed the attention being paid to her by the Plaintiff and the things he said to her and the way he treated her was inappropriate. The Defendant cannot speak as to what the Plaintiff thought.

29. The Defendant lacks sufficient information to respond to the allegations contained in paragraphs 62- 115 of the Plaintiff's Complaint and therefore denies the same.

30. The Defendant lacks sufficient information to respond to the allegations contained in paragraph 116 since she has no knowledge as to what if any allegations were raised by others and therefore denies the same.

31. The Defendant lacks sufficient information to respond to the allegations contained in paragraphs 117 - 123 of the Plaintiff's Complaint and therefore denies the same.

32. In response to paragraph 124 the Defendant craves reference to its responses previously plead.

33. The allegations contained in paragraphs 125 – 136 pertain to another Defendant. To the extent any of these allegations pertain to this Defendant the Defendant denies the same.

34. In response to paragraph 137 the Defendant craves reference to its responses previously plead.

35. The allegations contained in paragraphs 138 – 139 pertain to another Defendant. To the extent any of these allegations pertain to this Defendant the Defendant denies the same.

36. The Defendant denies the allegations contained in paragraphs 140 - 141 of the Complaint.

37. The allegations contained in paragraphs 142 – 143 pertain to another Defendant. To the extent any of these allegations pertain to this Defendant the Defendant denies the same.

38. The Defendant denies the allegations contained in paragraphs 144 - 148 of the Complaint.

39. The allegations contained in paragraph 149 pertain to another Defendant. To the extent any of these allegations pertain to this Defendant the Defendant denies the same.

40. The Defendant denies the allegations contained in paragraph 150 of the Complaint.

41. In response to paragraph 151 the Defendant craves reference to its responses previously plead.

42. The allegations contained in paragraphs 152 - 166 pertain to another Defendant. To the extent any of these allegations pertain to this Defendant the Defendant denies the same.

43. In response to paragraph 167 the Defendant craves reference to its responses previously plead.

44. The allegations contained in paragraphs 168 - 173 pertain to another Defendant. To the extent any of these allegations pertain to this Defendant the Defendant denies the same.

45. In response to paragraph 174 the Defendant craves reference to its responses previously plead.

46. The allegations contained in paragraphs 175 - 182 pertain to another Defendant. To the extent any of these allegations pertain to this Defendant the Defendant denies the same.

47. In response to paragraph 183 the Defendant craves reference to its responses previously plead.

48. The Defendant lacks sufficient information to respond to the allegations contained in paragraph 184 of the Plaintiff's Complaint and therefore denies the same.

49. The Defendant denies the allegations contained in paragraphs 185 - 186 of the Complaint.

50. The Defendant lacks sufficient information to respond to the allegations contained in paragraphs 187 - 188 of the Plaintiff's Complaint and therefore denies the same.

51. The Defendant denies the allegations contained in paragraphs 189 - 196 of the Complaint.

52. In response to paragraph 197 the Defendant craves reference to its responses previously plead.

53. The Defendant denies the allegations contained in paragraphs 198 - 199 of the Complaint.

54. The Defendant lacks sufficient information to respond to the allegations contained in paragraph 200 of the Plaintiff's Complaint and therefore denies the same.

55. The Defendant denies the allegations contained in paragraph 201 - 205 of the Complaint.

56. In response to paragraph 206 the Defendant craves reference to its responses previously plead.

57. The allegations contained in paragraphs 207 - 210 pertain to another Defendant. To the extent any of these allegations pertain to this Defendant the Defendant denies the same.

58. In response to paragraph 211 the Defendant craves reference to its responses previously plead.

59. The Defendant denies the allegations contained in paragraph 212 - 215 of the Complaint.

FOR A FIRST DEFENSE

60. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

61. Defendant has not had an opportunity to conduct a thorough investigation or to engage in sufficient discovery regarding the circumstances of the Plaintiff's allegations. Accordingly, Defendant reserves the right to amend this Answer to assert additional defenses as may arise during the discovery process.

FOR A SECOND DEFENSE

62. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

63. All or a portion of Plaintiff's damages claimed in this case were not proximately caused by the incident, and this defense of lack of proximate cause is pled as a complete and total defense to all claims.

FOR A THIRD DEFENSE

64. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

65. To the extent that the Complaint seeks punitive or exemplary damages, it violates the right of the Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A FOURTH DEFENSE

66. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

67. To the extent that the Complaint seeks punitive or exemplary damages, it violates the Defendant's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A FIFTH DEFENSE

68. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

69. The Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A SIXTH DEFENSE

70. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

71. That the Plaintiff has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of the Plaintiff.

FOR A SEVENTH DEFENSE

72. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

73. To the extent punitive damages are claimed, the Defendant reserves the right to demand a bifurcated jury trial pursuant to S.C. Code Ann. §15-32-200 et. seq. and that said damages, if any, are limited as provided in said act.

FOR AN EIGHTH DEFENSE

74. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

75. Plaintiff's alleged injuries were directly and proximately caused by a party other than this Defendant, who cannot be held liable for the negligence of others.

FOR A NINTH DEFENSE

76. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

77. The statements alleged as defamatory in the Complaint are true.

FOR A TENTH DEFENSE

78. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

79. Plaintiff cannot establish that any of the statements made by defendant in were made with malicious intent.

FOR AN ELEVENTH DEFENSE

80. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

81. Defendant and the other participant in the conversation alleged in the complaint were engaged in communication for the common interest protecting the Defendant Hanna Collier and preserving the relationship of the Colliers with their church. All statements made by this Defendant were honestly made in order to protect that interest. The statements alleged as defamatory by Plaintiff were covered by a qualified privilege. The scope of the privilege was not exceeded and there was no actual malice.

FOR A TWEFTH DEFENSE

82. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

83. The statements alleged by Plaintiff as defamatory are not considered defamatory *per se*.

FOR A THIRTEENTH DEFENSE

84. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

85. The statements made by the Plaintiff are protected by absolute privilege.

FOR A FOURTEENTH DEFENSE

86. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

87. The statements made by the Plaintiff subject to this action are opinion and thus not defamatory.

FOR A FIFTEENTH DEFENSE

88. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

89. Plaintiff cannot establish any special damages in this case.

FOR A SIXTEENTH DEFENSE

90. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

91. The Defendant's statements are protected by the family duty privilege.

FOR A SEVENTEENTH DEFENSE

92. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

93. The Defendant's statements are protected by the public duty privilege.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays for a trial by jury and that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

CLAWSON and STAUBES, LLC

/s/ Amy M. Snyder
Amy M. Snyder
Bar No.: 7968
1000 E North Street, Suite 200
Greenville, South Carolina 29601-3106
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: asnyder@clawsonandstaubes.com
Attorney for Charlotte Collier

April 2, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	C.A. NO.: 2020-CP-23-01213
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
vs	)	AMENDED ANSWER OF DEFENDANTS'
	)	HANNAH ELIZABETH COLLIER AND
Charlotte Collier, Hannah Elizabeth	)	LINDA SMITH
Collier, Linda Smith and Northgate	)	
Baptist Church,	)	
	)	
Defendants.	)	
	)	

TO: PLAINTIFF NAMED ABOVE:

The above-named Defendants, Hannah Elizabeth Collier and Linda Smith (hereinafter "Defendants"), while reserving all rights afforded under any pending or concurrently filed motions contained herein, would respond to the Complaint of the Plaintiff by respectfully stating as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Defendants deny each and every allegation contained in Plaintiff's Complaint where not hereinafter specifically admitted, modified, controverted, or explained.
2. As to the allegations of Paragraphs 1, 2 and 3 of the Complaint, said allegations make legal conclusions to which a response is not required from this Defendant. To the extent a response is required, said allegations are denied.
3. As to the allegations of Paragraphs 4, 5, 6, 7 and 8 of the Complaint, Defendants admit, upon information and belief, with the exception that there is no Lugoff County in South Carolina.
4. Defendants deny the allegations of Paragraph 9 of the Complaint.

5. Defendants lack sufficient information to admit or deny the allegations contained in Paragraphs 10, 11, 12, 13, 14, and 15, and therefore, said allegations are denied.

6. Defendants admit the allegations of Paragraphs 16 and 17, upon information and belief.

7. Defendants lack sufficient information as to whether Plaintiff set aside funds in a personal savings account. Defendants deny the remaining allegations of Paragraph 18.

8. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 19, and therefore, said allegations are denied.

9. Defendants admit the allegations of Paragraph 20, upon information and belief.

10. Defendants admit the allegations of Paragraphs 21 and 22.

11. Defendants deny the allegations of Paragraphs 23 and 24.

12. Defendants lack sufficient information to admit or deny the allegations contained in Paragraphs 25 and 26, and therefore, said allegations are denied.

13. Defendants deny the allegations of Paragraphs 27, 28 and 29.

14. Defendants admit the allegations of Paragraph 30, upon information and belief, with the exception that Charlotte Collier's son's name is Timothy "Ty" Craig Collier, Jr.

15. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 31, and therefore, said allegations are denied.

16. Defendants deny the allegations of Paragraphs 32 and 33.

17. Defendants lack sufficient information to admit or deny the allegations contained in Paragraphs 34, 35, 36, and 37, and therefore, said allegations are denied.

18. Defendants deny the allegations of Paragraph 38.

19. Defendants lack sufficient information to admit or deny the allegations contained in Paragraphs 39, 40, 41, and 42, and therefore, deny the same.

20. Defendants deny the allegations of Paragraphs 43 and 44.

21. Defendants lack sufficient information to admit or deny the allegations contained in Paragraphs 45, 46, 47 and 48, and therefore, said allegations are denied.

22. Defendants deny the allegations of Paragraphs 49, 50, 51, 52 and 53.

23. As to the allegations of Paragraph 54, Defendants admit Plaintiff hosted a birthday party and that he invited Hannah to the party. The remaining allegations are denied.

24. Defendants deny the allegations of Paragraphs 55, 56, 57, 58 and 59. In further response to the allegations of Paragraph 59, Defendants further submit that Defendant Hannah confirmed to Jimmerson, Plaintiff's employer and leader of the church, that she believed Plaintiff's conduct and relationship with her was inappropriate, which was the reason she would taking a break from church.

25. The allegations of Paragraphs 60 and 61 are denied.

26. Defendants lack sufficient information to admit or deny the allegations contained in Paragraphs 62 through 123, and therefore, said allegations are denied.

27. In response to Paragraph 124, said paragraph is an incorporation paragraph to which a response is not required. To the extent a response is required, the allegation is denied.

28. As to the allegations contained in Paragraphs 125 through 136, said allegations pertain to another Defendant. To the extent a response is required, said allegations are denied.

29. In response to Paragraph 137, said paragraph is an incorporation paragraph to which a response is not required. To the extent a response is required, the allegation is denied.

30. As to the allegations contained in Paragraphs 138 and 139, said allegations pertain to another Defendant. To the extent a response is required said allegations are denied.

31. Defendants deny the allegations of Paragraphs 140 and 141.

32. As to the allegations contained in Paragraphs 142 and 143, said allegations pertain to another Defendant. To the extent a response is required said allegations are denied.

33. Defendants deny the allegations of Paragraphs 144 through 148.

34. As to the allegations contained in Paragraph 149, said allegations pertain to another Defendant. To the extent a response is required said allegations are denied.

35. Defendants deny the allegations of Paragraph 150.

36. In response to Paragraph 151, said paragraph is an incorporation paragraph to which a response is not required. To the extent a response is required, the allegation is denied.

37. As to the allegations contained in Paragraphs 152 through 166, said allegations pertain to another Defendant. To the extent a response is required said allegations are denied.

38. In response to Paragraph 167, said paragraph is an incorporation paragraph to which a response is not required. To the extent a response is required, the allegation is denied.

39. As to the allegations contained in Paragraphs 168 through 173, said allegations pertain to another Defendant. To the extent a response is required said allegations are denied.

40. In response to Paragraph 174, said paragraph is an incorporation paragraph to which a response is not required. To the extent a response is required, the allegation is denied.

41. As to the allegations contained in Paragraphs 175 through 182, said allegations pertain to another Defendant. To the extent a response is required said allegations are denied.

42. In response to Paragraph 183, said paragraph is an incorporation paragraph to which a response is not required. To the extent a response is required, the allegation is denied.

43. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 184, and therefore, said allegations are denied.

44. Defendants deny the allegations of Paragraphs 185 and 186.

45. As to the allegations contained in Paragraphs 187 and 188, said allegations pertain to a different Defendant. To the extent a response is required, said allegations are denied.

46. Defendants deny the allegations of Paragraphs 189 through 196.

47. In response to Paragraph 197, said paragraph is an incorporation paragraph to which a response is not required. To the extent a response is required, the allegation is denied.

48. Defendants deny the allegations of Paragraphs 198 and 199.

49. As to the allegations contained in Paragraph 200, said allegations pertain to a different Defendant. To the extent a response is required, said allegations are denied.

50. Defendants deny the allegations of Paragraph 201 through 205.

51. In response to Paragraph 206, said paragraph is an incorporation paragraph to which a response is not required. To the extent a response is required, the allegation is denied.

52. As to the allegations contained in Paragraphs 207 through 210, said allegations pertain to a different Defendant. To the extent a response is required, said allegations are denied.

53. In response to Paragraph 211, said paragraph is an incorporation paragraph to which a response is not required. To the extent a response is required, the allegation is denied.

54. Defendants deny the allegations of Paragraph 212 through 215.

FOR A SECOND DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

55. All allegations of the First Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

56. Pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*, Defendants assert that the Plaintiff has failed to state facts sufficient to constitute a cause of action under the laws of South Carolina and the United States of America.

57. Defendants reserve the right to amend and supplement its Answer to the allegations and add any other defenses as they become known through discovery or investigation.

FOR A THIRD DEFENSE

(Truth)

58. All allegations of the First Defense and Second Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

59. The truth of the alleged defamatory statements is pled as a complete defense and bar to Plaintiff's claims for defamation.

FOR A FOURTH DEFENSE

(Lack of Harm to Reputation)

60. All allegations of the First Defense, Second Defense and Third Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

61. Plaintiff cannot prove any harm to his reputation.

FOR A FIFTH DEFENSE

(Publication)

62. All allegations of the First Defense, Second Defense, Third Defense and Fourth Defense are incorporated herein and made a part hereof by reference where not inconsistent with

this defense.

63. Plaintiff is responsible, in part or in whole, for the publication of the alleged defamatory statement.

FOR A SIXTH DEFENSE
(Nature of alleged Defamatory Statement)

64. All allegations of the First Defense, Second Defense, Third Defense, Fourth Defense and Fifth Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

65. The alleged defamatory statement is not defamatory per se and Plaintiff cannot prove the existence of any special harm.

FOR A SEVENTH DEFENSE
(Privilege)

66. All allegations of the First Defense, Second Defense, Third Defense, Fourth Defense, Fifth Defense and Sixth Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

67. The alleged defamatory statement was a privileged communication that was either (1) absolute or (2) qualified, and this defense is pled as complete defense and bar to Plaintiff's defamation claim.

FOR A EIGHTH DEFENSE
(No Malice)

68. All allegations of the First Defense, Second Defense, Third Defense, Fourth Defense, Fifth Defense, Sixth Defense and Seventh Defense incorporated herein and made a part hereof by reference where not inconsistent with this defense.

69. Defendants did not, at any time, act with malice towards the Plaintiff.

FOR AN NINTH DEFENSE
(Waiver, Laches, Release, Estoppel, Unclean Hands)

70. All allegations of the First Defense, Second Defense, Third Defense, Fourth Defense, Fifth Defense, Sixth Defense, Seventh Defense and Eighth Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

71. Plaintiff's claim is barred, in whole or in part, by the doctrines of the estoppel, waiver, release, laches, estoppel, and unclean hands.

FOR A TENTH DEFENSE
(Failure to Mitigate Damages)

72. All allegations of the First Defense, Second Defense, Third Defense, Fourth Defense, Fifth Defense, Sixth Defense, Seventh Defense, Eighth Defense and Ninth Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

73. Defendants allege that Plaintiff has failed to mitigate his damages in the manner provided for by law. Such failure to mitigate is thus pled as a complete defense and bar to his claim.

74. Defendants request that the Court dismiss the Plaintiff's prayer for damages in its entirety or, in the alternative and in the event that it is determined that the Plaintiff is entitled to a judgment against Defendants, said judgment be reduced by an appropriate amount for the Plaintiff's failure to mitigate his damages.

FOR A ELEVENTH DEFENSE
(Punitive Damages)

75. All allegations of the First Defense, Second Defense, Third Defense, Fourth Defense, Fifth Defense, Sixth Defense, Seventh Defense, Eighth Defense, Ninth Defense and

Tenth Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

76. The Plaintiff is not entitled to punitive damages and he fails to state facts sufficient to support a prayer for punitive damages.

77. To the extent any of Plaintiff's claims are characterized or construed as claims for punitive damages, such claims are barred unless compensatory or general damages are awarded, and it is established by clear and convincing evidence that any act or omission by Defendants were the result of willful and malicious or intentionally fraudulent conduct or that Defendants acted with a knowing and reckless indifference toward and disregard of the rights of Plaintiff.

78. Furthermore, to the extent punitive damages are claimed, the Defendant reserves the right to demand a bifurcated jury trial pursuant to S.C. Code Ann. §15-32-200 *et seq.* and that said damages, if any, are limited as provided for therein.

FOR A TWELTH DEFENSE
(Sanctions)

79. All allegations of the First Defense, Second Defense, Third Defense, Fourth Defense, Fifth Defense, Sixth Defense, Seventh Defense, Eighth Defense, Ninth Defense, Tenth Defense and Eleventh Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

80. Defendants reserve the right to request Sanctions pursuant to S.C. Code §15-36-10 *et seq.* and/or Rule 11, *SCRCP*.

81. Defendants reserve the right to amend this Answer to assert additional defenses as they may arise during discovery and Defendants' investigation of the allegations of Plaintiff's Complaint.

WHEREFORE, Defendants, having fully answered the Complaint of Plaintiff, prays as follows:

1. That this Court dismiss Plaintiff's Complaint with prejudice;
2. That this Court award Defendants all expenses incurred by Defendants necessary to protect its interest in defending this claim; and,
3. For such and other further relief as this Court may deem just and equitable.

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes

DANIEL R. HUGHES (SC Bar #72547)

457-B Pennsylvania Avenue

P. O. Box 449

Greer, SC 29652-0449

Telephone: (864) 334-2500

Facsimile: (864) 879-0149

ATTORNEYS FOR DEFENDANTS

Dated: April 27, 2020
Greer, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2020-CP-23-01213

JAMES EARL TEGELER,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

NORTHGATE BAPTIST CHURCH,
CHARLOTTE COLLIER, HANNAH
ELIZABETH COLLIER, AND
LINDA SMITH,
DEFENDANTS.

August 18, 2020
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

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

DEBORAH DICKSON DAVIS, ESQ.
Attorney for the Plaintiff

STEVEN M. NAIL, ESQ.
Attorney for Defendant Northgate Baptist Church

AMY M. SNYDER, ESQ.
Attorney for Defendant Charlotte Collier

DANIEL R. HUGHES, ESQ.
Attorney for Defendant Hannah Collier and Linda Smith

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: This is in the interest of the -- James Earl --

Is that Tegeler?

MR. JAMES TEGELER: Yes, sir.

THE COURT: Tegeler, did I pronounce that correctly? (WHEREUPON, there was no response.)

THE COURT: James -- James Earl Tegeler v. North -- Northgate Baptist Church, Defendant, and others. Case number 2020-CP-23-1213.

I've got three motions before the Court. One is a motion by the Northgate Baptist Church to dismiss. The other one is by Defendant Charlotte Collier, a motion to dismiss. And then a motion for judgment on the pleadings.

And I'll tell you, Counsel, I've just identified Ms. Davis. So Ms. Davis is one of the Plaintiff's Counsel.

And I'm assuming, sir, that you are Mr. Tegeler?

MR. JAMES TEGELER: Yes, sir.

THE COURT: Okay. And who I got on this side? I probably would know you if you didn't have your mask on. But tell me who you are.

MR. NAIL: It's Michael Nail. I represent Northgate Baptist Church.

THE COURT: All right. Mr. Nail. And -- and just

1 like nail, N-A-I-L?

2 MR. NAIL: N-A-I-L.

3 THE COURT: N-A-I-L.

4 All right. And then?

5 MR. HUGHES: May it please the Court.

6 Daniel Hughes. I'm here on behalf of Hannah Collier.
7 She's on the far right.

8 THE COURT: Ms. Collier, how are you?

9 MS. HANNAH COLLIER: Good.

10 How are you?

11 THE COURT: Good, good.

12 MR. HUGHES: And this is Linda Smith. I represent
13 both of them.

14 THE COURT: All right. Yes, ma'am.

15 MS. SNYDER: Amy Snyder here, Your Honor. And I am
16 here on behalf of Charlotte Collier. She's the one in the
17 polka dot top at the end of that row.

18 THE COURT: I should have recognized you, Ms. Snyder.
19 I've seen you over the years.

20 Okay. I don't really have a preference in terms of
21 who goes first. But what I'd really like for someone to
22 do is just kind of give me a little brief synopsis of the
23 case, even though I've read the pleadings. And just kind
24 of tell me where you are. Okay.

25 All right. Go ahead. Do you want to do it,

1 Ms. Davis? Who wants to do it?

2 MS. SNYDER: Michael, you are the moving party --

3 THE COURT: Yeah. Go ahead.

4 MR. NAIL: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 MR. NAIL: I appreciate the -- being able to take off
7 the mask very briefly.

8 THE COURT: Yes, sir.

9 MR. NAIL: May it please the Court.

10 Good morning.

11 Again, my name is Michael Nail. I practice law at
12 Ogletree Deakins right here down the street. My firm
13 represents Northgate Baptist Church.

14 Your Honor, for the purposes of -- of our motion, I
15 hope to be very brief. I've been wrong before, but I --
16 but I think I can keep this -- this brief, Your Honor.

17 Northgate Baptist Church is a small not-for-profit,
18 obviously, church on Summit Drive. Week in and week out,
19 they have approximately a little under 200 members that
20 attend the church.

21 Mr. Tegeler was a worship leader at Northgate. And,
22 eventually, Northgate and its pastor, Dr. Barry Jimmerson,
23 learned of an inappropriate relationship that Mr. Tegeler
24 was having with Hannah Collier, an 18-year-old college
25 student at the time. And they investigated it and,

1 frankly, Your Honor, could have terminated Mr. Tegeler,
2 but gave him the opportunity to resign. They met with him
3 on the topic. And he executed a severance agreement
4 wherein he released any and all claims against Northgate
5 Baptist Church related to his employment and his
6 termination.

7 In that meeting, he was offered severance of \$2,600.
8 He, actually, negotiated that up to double that to \$5,200,
9 cashed the check, and has not raised the issue since until
10 we received this complaint nearly two years after he
11 signed the severance.

12 Your Honor, the severance agreement was attached to
13 our motion to dismiss and the memorandum. It contains
14 very clear release language.

15 And -- and, also, Your Honor, there's been a
16 notion -- or allegation of duress, that he was forced or
17 induced to sign this agreement during that meeting. I
18 think the fact that he negotiated that to an increased
19 amount makes that argument fall flat, quite frankly, Your
20 Honor. And, also, he hasn't met the conditions precedent
21 to -- to raising that argument.

22 In a case that we cited in our brief, the Hyman v.
23 Ford Motor Company case, it is a United States district
24 court case in the Charleston division. But it cites to
25 the relevant South Carolina law on this topic. If you're

1 going to raise this issue, this issue of duress, then you
2 have to return the consideration that you've received for
3 that release. He hasn't done so.

4 And, also, he never raised the issue of duress
5 timely, which is, also, a condition precedent to raising
6 that issue. So even if there was duress in this case,
7 he's ratified that agreement through his actions and his
8 failure to return that consideration.

9 So for purposes of our motion, Your Honor, that's my
10 position at this time. But I respectfully request an
11 opportunity to respond to any of Plaintiff's arguments as
12 well.

13 THE COURT: All right. Ms. Davis.

14 MS. DAVIS: Excuse me, Your Honor. I'll get my mask
15 away from my hearing aids.

16 THE COURT: All right.

17 MS. DAVIS: Okay. So, Your Honor, this involves the
18 employment of my client with Northgate Baptist Church.
19 Essentially, this is defamation from -- you've got Linda
20 Smith, who's the grandmother, Charlotte Collier, who's the
21 daughter, Hannah Collier, who's the granddaughter. So
22 you've got three generations involved in the defamation.

23 Both Hannah Collier and Charlotte Collier then
24 reported my client to Mr. Jimmerson with Northgate Baptist
25 Church, who is my client's supervisor. At that point in

1 time -- so what happened with -- there was -- my client
2 had a birthday party for his son on March 11th. At that
3 time, Hannah Collier had complained of throwing up at the
4 table during a meal and then, simultaneously, was playing
5 on her phone and texting. So my client disputes the
6 allegation that he told Hannah to go throw up if that made
7 her feel better. So that's -- we dispute that.

8 In addition, my client's comment was, if you feel
9 good enough to text, then you should feel good enough to
10 talk to us, instead of being on the phone. This is a
11 common issue now with the younger generation of bringing
12 phones to the table.

13 This event then precipitated in an e-mail from
14 Charlotte Collier on the 12th to my client with several
15 accusations impinging my client's reputation regarding the
16 mentorship between my client and Hannah Collier.

17 THE COURT: On the 12th of what -- what month?

18 MS. DAVIS: So -- I'm sorry?

19 THE COURT: You said on the 12th. The 12th of --

20 MS. DAVIS: Yes, on the 12th.

21 So we've got the birthday party on the 11th. We've
22 got the e-mail --

23 THE COURT: Which -- which month are we talking
24 about?

25 MS. DAVIS: I'm sorry. March.

1 So this is March 11th. Then March 12th is the
2 beginning -- this is the beginning of reporting that --

3 THE COURT: Give me -- give me the year that --

4 MS. DAVIS: I'm sorry. 2017.

5 THE COURT: Okay. Go ahead.

6 MS. DAVIS: So the 11th, birthday party, March 11,
7 2017. March 12th, we begin with the e-mail to my client
8 from Hannah [sic] Collier with several accusations. My
9 client in kind then responded, specifically, to Craig
10 Collier, who is Charlotte's ex-husband -- Charlotte
11 Collier's ex-husband and Hannah Collier's father.

12 So my client responded just to Charlotte Collier and
13 Craig Collier. And in that e-mail, he says, I don't think
14 my relationship with Hannah was inappropriate, disputing
15 that fact. What we have is my client had what you call a
16 mentor relationship. We're not talking about I'm a mentor
17 in a business context or employment context. This is a
18 church.

19 My client has previous training as a youth minister.
20 He was a youth minister. He's got the training for
21 dealing with, you know, young adults, teenagers, so forth.
22 One of the aspects of that training is what we call
23 mirroring so that the -- the young adult feels accepted.
24 So you mirror the activity or behavior of that young adult
25 in your response. They feel accepted. That's one aspect

1 of the training.

2 When we talk about mentorship, we're talking about
3 spiritual mentorship and growth. And we're talking about
4 my client's faith in God in the Christian sense at a
5 church by demonstration and love of faith with Hannah
6 Collier. So that is the context here.

7 In that context, it was very clear at the very
8 beginning of the mentorship in about September of 2017
9 through, really, around January of 2017 -- excuse me, 2018
10 and, you know, not so much February, March in 2018. That
11 is the period of the mentorship that we're talking about
12 that was consented to by Charlotte Collier.

13 She was aware of the behavior, witnessed the
14 behavior. She personally had the -- saw text messages
15 from my client. So we have here in certain aspects of
16 defamation the false statement.

17 The other aspect is that Hannah Collier reciprocated.
18 This was consensual. She's saying, you're my father. My
19 client is my father -- is a surrogate father figure. She
20 admits to that. I want to be your little girl. I want to
21 be your daughter. Please treat me like I'm one. I love
22 your family.

23 So she is consenting to this surrogate father
24 position of my client. She really had an issue. She
25 didn't hang up the phone. She doesn't have to be around

1 my client. That's her choice.

2 In the very beginning in September of 2017, there are
3 text messages back and forth where my client, clearly,
4 sets the tone that there is nothing romantic. There is
5 nothing sexual. There is nothing going on in that
6 respect. And if this makes you uncomfortable, then,
7 please, let me know and we don't have to hang out.

8 Not only that, he tells her at the very beginning, I
9 place my trust in you. Because one word from you could
10 ruin me. And I've built up my faith in the ministry that
11 I care more about that. So if you've got a problem, you
12 need to let me know this. So that's where these --
13 inappropriate relationship is a false statement.

14 And by contrast, also, Defendant Collier -- Charlotte
15 Collier is aware of this. She tried to date my client in
16 January -- in about January, February of 2018. She's
17 hitting on my client. She's pursuing my client. She
18 wants to date my client by asking him out for one-on-one.

19 So she knows this. My client did not reciprocate.
20 My client did not want to date her. We have witness
21 testimony to the fact that she was pursuing my client.

22 So here we have a socially inappropriate and awkward
23 18-year-old of legal age that consents to a relationship
24 acting especially in an inappropriate manner in public at
25 a restaurant where she's a guest of my client and making

1 inappropriate statements at a table at a meal about
2 vomiting. So we have -- so she knows this is false. So
3 here we have -- and in addition -- so we've got false
4 statements.

5 And then Defendant Linda Smith is then making
6 statements to members in the community, which we provided
7 affidavits to that effect, of the reckless disregard, the
8 truth and falsity of the statement. Linda Smith was not
9 privy to the things she was accusing my client of, to the
10 consensual relationship between Hannah Collier and my
11 client. And she's just perpetuating it, even after she
12 received the cease and desist notice from my client.

13 So in that respect, we have the false statements. We
14 have the reckless disregard. Those are the key aspects
15 there.

16 The privilege communication -- well, the factual
17 dispute will be was that lost? Was this unnecessary
18 defamation? Did you exceed the scope? And that's
19 something that discovery will show.

20 And the final aspect is this is slander per se that
21 is actionable. Because when you make a defamatory
22 statement about a person's unfitness in their business or
23 profession, including, like, lack of impropriety such as
24 having an inappropriate relationship between my client and
25 Hannah Collier, that is attacking my client's unfitness --

1 fitness in his profession or business. And that falls
2 under a crime of moral turpitude.

3 And when you have a crime of moral turpitude, the
4 analysis is not whether the statement was clear on its
5 face or defamation per -- you know, slander. That's not
6 the analysis. Because the very accusation of having an
7 inappropriate -- inappropriate relationship toward my
8 client is the damage as a crime of moral turpitude.

9 So there we have defamation. From that, we've got
10 intentional infliction of emotional distress, negligent in
11 the alternative, negligent infliction of emotional
12 distress, and civil conspiracy.

13 Quickly, on civil conspiracy, that's something that
14 will show in discovery as well. But we've got Hannah
15 Collier and Charlotte Collier talking with Linda Smith,
16 who's perpetuating this inappropriate relationship,
17 activities, or behavior in the community. We've got the
18 harm of my client intentionally done in joint
19 participation.

20 In addition, we've got Hannah Collier and Charlotte
21 Collier reporting my client to the church and these
22 actions with Laurel Shaler, who is the head of the
23 personnel committee who supposedly was responsible for the
24 investigation. The issue with that, Your Honor, is that
25 my client was only approached on March 14 of 2018 prior to

1 his termination not to contact the Collier family.

2 Here in that timeline on March 12th, my client then
3 responds to Hannah [sic] Collier. Following that, on
4 March 14th, prior to when Laurel Shaler and Barry
5 Jimmerson with Northgate Baptist Church approached him, he
6 had what I would call a goodbye e-mail.

7 THE COURT: Let me ask you this, you -- you're going
8 to, at some point, get to this release; right?

9 MS. DAVIS: I'm sorry.

10 THE COURT: This release that your client signed --

11 MS. DAVIS: Yeah.

12 THE COURT: -- you're going to get to that at some
13 point?

14 MS. DAVIS: Yeah.

15 THE COURT: Okay.

16 MS. DAVIS: So -- and with respect to the release,
17 Your Honor, so that kind of gives an explanation. As far
18 as the release goes, the next part was Defendant Northgate
19 Baptist Church.

20 So now, we have the termination agreement on 4/10 of
21 2000 and -- of April 10th, 2018. At this meeting, my
22 client is blind sided. So here he goes into what he
23 thinks is a staff meeting. Other than talking with Laurel
24 Shaler and Barry Jimmerson on March 14th of 2018 where my
25 client shows a text message showing that Hannah Collier

1 thinks my client is like a father figure and wants to be
2 his surrogate daughter. And Barry Jimmerson says, I don't
3 think that's appropriate. But Laurel Shaler is like,
4 Well, I do think it's inappropriate.

5 So my client -- the church never asked my client for
6 any other information to defend himself, to talk about the
7 situation. That never happened.

8 So on March 10th -- I'm sorry. On April 10th of
9 2018, my client walks in and he is under a
10 verage [phonetic] of harassment, hostile shaming from
11 Barry Jimmerson, who's his supervisor, and Warren Peden,
12 who has nothing to do with the personnel committee, has
13 nothing to do with being on, you know, anything --
14 relation -- he's just there. It's like a security aspect.
15 He's a large man. My client was scared of him.

16 These two men are yelling at my client saying, I
17 can't believe you did this. I can't believe this. I
18 mean, he's getting shamed and yelled at. My client is
19 sitting there shocked. Then Laurel Shaler says, We are
20 accusing you of inappropriate contact with young girls in
21 the congregation.

22 They listed Kelsey Todd, who was a legal adult in the
23 sound production that my client was responsible for
24 managing within the scope of his representation -- scope
25 of his employment. Well, that's moot.

1 Then they, also, talk about -- the other example
2 Laurel Shaler brings up is -- is my client was asking
3 young girls to go on a trip to New York. That was, also,
4 moot. I've explained that in my response.

5 But the other example was the church then, even
6 though they were aware of the mentor relationship, aware
7 of Hannah Collier's background coming from a broken home,
8 being emotionally unstable, as we have testimony from
9 witnesses, even though that was all -- now, Laurel Shaler
10 is saying that the relationship is inappropriate since the
11 beginning. So, now, my client is shocked.

12 And then that is during the time at which whatever
13 negotiation -- or it's, actually, 2,000 went to 4,000 --
14 about 40 -- about twice, a little over. However, at that
15 point, my client is, like, do I have to sign this now?

16 THE COURT: All right. Counsel, you -- you -- I'm
17 sure -- you realize that you're not the only case I've got
18 today; right?

19 MS. DAVIS: Okay. Sorry.

20 So in any case --

21 THE COURT: So I -- you know, I want to listen to
22 you. But I just want you to realize that we do have a
23 time constraint.

24 MS. DAVIS: Yes, Your Honor.

25 THE COURT: All right. And I want to hear from all

1 the lawyers that have got two other motions. So --

2 MS. DAVIS: Yeah.

3 THE COURT: And I read the pleadings. So I -- I know
4 what it's about.

5 So go ahead.

6 MS. DAVIS: So to wrap up, Your Honor, my client then
7 is threatened by Barry Jimmerson that if you don't sign
8 this now -- Laurel Shaler says he can't leave the premises
9 until he signs this contract. My client -- Barry
10 Jimmerson then tells my client, If you don't sign the
11 contract, we'll put you before the congregation. And the
12 congregation can vote whether you're -- against the
13 charge, whether you should be terminated for having
14 inappropriate contact with young girls in the
15 congregation. That only applies to members, not
16 employees, according to the articles of incorporation.
17 And the employee -- the team ministry handbook, which I've
18 explained, that does not apply in this context.

19 That is when my client broke down and started crying.
20 That is when his will was oppressed. This is when the
21 duress happened. At this point, he is not of sound mind.
22 He believes that he is being accused of touching young
23 girls, inappropriate contact. So this sends him over the
24 edge. Visibly, you can see his -- visibly emotional
25 state.

1 So here we have the duress, being overpowered. We,
2 also, have fraud and inducement. Because the threat of
3 putting him before the congregation is not the process for
4 the articles of incorporation or the handbook.

5 In addition to that, we, also, have
6 false imprisonment because he was not allowed to leave.

7 THE COURT: Let -- let me ask a question. I'm
8 assuming that when he met with Mr. Jamerson [sic] and the
9 other person that he, obviously, did not have legal
10 counsel at that time?

11 MS. DAVIS: Correct. He had no --

12 THE COURT: So he got you -- so he got you later on;
13 is that correct?

14 MS. DAVIS: Yes.

15 THE COURT: He hired you?

16 MS. DAVIS: That's correct.

17 THE COURT: All right. Here's my question, and I'll
18 be glad to hear everything you want to tell me. But
19 Counsel made a very interesting point when he -- when he
20 stood and talked about, at least, one of the allegations
21 in the complaint about duress.

22 My question to you is, if, in fact, that's how he
23 felt and he returned the money to the church and said,
24 listen, I thought I was -- I thought I was under duress
25 when I -- when you gave me this money. Here's your money

1 back, bam.

2 Did he do that, or did he keep the money?

3 MS. DAVIS: No. He has not done that. Because we're
4 claiming that is part of his damages. So we are claiming
5 that's part of his damages.

6 But as far as the release goes, Your Honor, the -- we
7 find that that section -- section three primarily is -- it
8 is ambiguous -- I'm sorry, it is ambiguous. We do think
9 it's ambiguous. You've got -- we're releasing all these
10 kinds of claims.

11 And then -- but within that, it's unenforceable. And
12 it's against public policy. Because you can't disclaim --
13 you can't release from -- the maker of the release cannot
14 disclaim its own negligence, its own gross negligence, or
15 intentional tort. That's against public policy.

16 THE COURT: Well, let me ask you this, I just looked
17 at -- in the release, it says that he's releasing any and
18 all claims as it relates to Northgate Baptist Church. Any
19 and all claims.

20 MS. DAVIS: So there's -- the other section, Your
21 Honor, says where this -- this release does not apply to
22 causes of action that arise after the execution of this
23 agreement. We do have defamatory statements that were
24 made by Warren Peden before the choir after my client was
25 terminated on 4/11 of 2018, saying my client was

1 terminated for having an inappropriate relationship with
2 one of the teenagers.

3 We, also, have another instance where Barry Jimmerson
4 then released the details of my client's termination --

5 THE COURT: And all this occurred --

6 MS. DAVIS: -- to another member --

7 THE COURT: -- after April 10th --

8 MS. DAVIS: That was after April 10th of 2018.

9 THE COURT: And that's --

10 MS. DAVIS: The other --

11 THE COURT: Go ahead.

12 MS. DAVIS: Yeah. So the other aspect as well is
13 when a cause of action accrues is what matters. And it
14 doesn't accrue until you have a [inaudible]. So the
15 accrual of the causes of action don't become awry until
16 they occur.

17 So our argument, Your Honor, is that these rights
18 didn't accrue until after the signing of the contract.
19 Not only that, the signing of the contract and the manner
20 of it is part of the tortious conduct. So you can't
21 disclaim something without reasonable opportunity while
22 the tortious conduct is happening.

23 In addition to the release, Your Honor, we discussed
24 duress. Duress then ties in some of the other causes of
25 action like false imprisonment, fraud, inducement, so

1 forth.

2 We, also, address that the ambiguity, the
3 unenforceability of certain causes of action. And part of
4 that is when you release -- if you intend to release those
5 causes of action, it needs to be explicitly clear, which
6 it is not, with respect to those individual torts. And
7 when you look at Section 3B, that is not the case.

8 You have to be very clear that you are disclaiming
9 those individual causes of action, negligence, gross
10 negligence, intentional torts. So that is not very clear.
11 We have a laundry list in that of all different kinds --
12 some of it doesn't apply to my client --

13 THE COURT: Let me ask you something, I'm looking at
14 your complaint. Every -- everything that -- that I'm
15 reading in your complaint alleges conduct from October of
16 2017 through March of 2018. You just told me a minute ago
17 that a lot of this conduct occurred after April 10th. I'm
18 looking at your complaint. I don't see any allegation --

19 MS. DAVIS: It's towards the end, Your Honor.

20 THE COURT: I'm just -- I'm -- I mean, the period of
21 time that you're -- the period of time that I'm looking
22 at --

23 MS. DAVIS: It should be chronologically towards the
24 end, Your Honor. Because I do mention Warren Peden
25 announcing termination to the choir.

1 THE COURT: All right. Go ahead. Move it along so I
2 can hear Counsel's response.

3 MS. DAVIS: So, at that point, I think, Your Honor,
4 I've covered a lot of the main -- intentional infliction
5 of emotional distress. That's something in discovery.
6 But my client did go to counseling after this incident,
7 sleeplessness. He experienced bodily manifest --
8 manifestation to this outrageous contact -- contact -- I
9 mean, outrageous conduct.

10 Negligent intentional infliction of emotional
11 distress. I do -- in my response, I do outline that this
12 is a new cause of action. There is a premise outside of
13 the bystander recovery theory. And I explained that.
14 That is not the only factor for negligent infliction of
15 emotional distress. We have a precedent that
16 foreseeability is a limiting aspect.

17 And so the analysis is very similar to intentional
18 infliction of emotional distress, despite typical
19 negligent -- negligence elements.

20 Thank you, Your Honor.

21 MR. NAIL: Thank you, Your Honor.

22 In response to the -- the duress argument, duress
23 is -- is, basically, defined as coercing someone into
24 doing something that's not of their free will. I think
25 the fact that he negotiated that agreement to double what

1 he was offered entirely deflates that.

2 But if that wasn't enough, Plaintiff's motion,
3 actually, attached an exhibit H, which are text messages
4 between the Plaintiff and Warren Peden, the member that
5 Ms. Davis referenced as the large man who was present in
6 this meeting. And Mr. Tegeler, actually, references the
7 meeting the day before.

8 THE COURT: Is that attached to your memorandum?

9 MR. NAIL: It's in Ms. Davis' memorandum, Your Honor.
10 It's exhibit H.

11 THE COURT: Okay.

12 MR. NAIL: And Mr. Tegeler, the Plaintiff, actually,
13 refers to that meeting the day before and says, Warren, we
14 agreed yesterday that no details would be given out. He
15 goes on to say, I'm keeping my end of the deal and not
16 disclosing anything we agreed on yesterday.

17 So, clearly, even after that -- this meeting that
18 was, apparently, such a shock and -- and caused such
19 disbelief to Mr. Tegeler, he was talking about it the day
20 after with one of the accusers. This duress argument
21 entirely falls flat for that argument.

22 But even if duress was a valid argument, he hasn't
23 met the conditions precedent, as I stated earlier, by
24 returning the money and raising the issue timely. He
25 waited until nearly two years after the agreement was

1 signed to raise the issue for the first time in the
2 complaint.

3 Also, responding to Ms. Davis' argument about
4 releasing future claims, of course, you can't do that.
5 You cannot release future claims. But the only one that
6 she mentioned was a claim that happened after his
7 termination was defamation on behalf of Warren Peden, who
8 is a member of the church, not an agent of the church.

9 So the church -- they have released all claims
10 against the church that arise out of his employment and
11 relate to the termination on the clear face and language
12 of the agreement.

13 And, lastly, Your Honor, taking the arguments of
14 Plaintiff's Counsel, Ms. Davis, at face value to -- to
15 their reasonable interpretation, it would, basically,
16 invalidate almost every severance agreement, every
17 settlement agreement that has this similar language in the
18 state. I don't think that would be a -- a proper result.

19 This was a -- a valid and enforceable agreement with
20 valid consideration. And we -- we believe it's
21 enforceable and should result in the dismissal of the
22 claims against Northgate.

23 THE COURT: Okay. Ms. Davis, anything shortly in
24 reply to that before we go to the next motion?

25 MS. DAVIS: Yes, Your Honor.

1 As far as the causes of action accrued there from
2 when injury and damages are complete, that's when the
3 right becomes -- that's when the Plaintiff has a right.
4 So I, actually, do explain the causes of action and when
5 the right, actually, accrues does fall after the
6 termination agreement. So that is incorrect. The -- the
7 wrongful termination as well could soon be accrued after
8 the event. So I do want to address that.

9 As far as Warren Peden goes, Laurel Shaler, who's the
10 head of the personnel committee, before that choir
11 practice came to the room and said my client won't be
12 teaching anymore. Warren Peden then stands up and makes a
13 statement. So here we have Warren Peden was, also, part
14 of the termination.

15 So I don't agree that Warren Peden wasn't an agent.
16 He was part of the termination. And he speaks after
17 Laurel Shaler with apparent authority. In addition -- and
18 I do explain that in more detail in my response.

19 In addition to the scope of the release, just because
20 my client said something about confidentiality, there
21 isn't in the release something about the church
22 maintaining confidentiality. That was agreed upon in the
23 actual separation agreement. The confidentiality
24 provision relates only to my client being confidential,
25 not the church. So that's separate in addition to the

1 contract and termination.

2 Just because my client agreed to confidentiality does
3 not mean that there was a meeting of the minds with
4 respect to the release and the language therein.

5 Thank you, Your Honor.

6 THE COURT: Okay. What's the -- the next motion?
7 (WHEREUPON, there was no response.)

8 THE COURT: Ms. Collier? Who's representing
9 Ms. Collier?

10 MS. SNYDER: Charlotte Collier, Your Honor, or Hannah
11 Collier?

12 THE COURT: It looks like Defendant -- is it
13 Charlotte Collier?

14 MS. SNYDER: That's me.

15 THE COURT: That's the next one.

16 MS. SNYDER: Okay. Your Honor, since I'm -- I'm left
17 off the table, I'm going to come up to this podium and
18 move it back a little bit from these nice ladies.

19 Is that --

20 THE COURT: That's -- that's fine.

21 MS. SNYDER: Okay. I've got -- I've got to put my
22 notes down.

23 THE COURT: Okay.

24 MS. SNYDER: Your Honor, may it please the Court.
25 I'm Amy Snyder.

1 THE COURT: Yes, ma'am.

2 MS. SNYDER: I represent Charlotte Collier. She is
3 she mother of Hannah Collier. Charlotte's over there in
4 the polka dot shirt. Hannah is the young girl that is
5 being discussed in all of this over there in the white
6 sweater.

7 Ms. Collier had been a member of Northgate Baptist
8 Church all of her life. I don't want to dig too deeply
9 into the facts because this is a motion to dismiss that
10 I've made on the pleadings of the complaint, Your Honor.
11 And -- and we have a motion to dismiss as a procedural
12 remedy because it can end cases that should have never
13 been brought. And that's where we are today. We are here
14 being forced to defend a case that has never been
15 brought -- that shouldn't have been brought.

16 In the complaint, what the Plaintiff alleges is that
17 he -- he placed himself in a supervisory position over an
18 18-year-old girl unrelated to him, unrelated to his job.
19 Because he's the worship minister. He's -- you know, he
20 is not the youth pastor.

21 He's giving her financial gifts. That's in paragraph
22 18. He alleges the 18-year-old was vulnerable. That's in
23 paragraph 23. He alleges he decided to form a mentorship
24 relationship with an 18-year-old girl. That's in
25 paragraph 27. Plaintiff invited the 18-year-old to social

1 gatherings and on trips. That's in paragraph 31.

2 Plaintiff reported on observations, assessments, and
3 issues regarding an 18-year-old girl to church staff.
4 That's in paragraph 36. Plaintiff became a confidant to
5 an 18-year-old girl for her personal issues and family
6 issues. That's in paragraph 38. Others noticed the
7 vulnerable 18-year-old Defendant being expressive and
8 affectionate toward the Plaintiff. That's in paragraphs
9 42 and 43 of the complaint.

10 Plaintiff attempted to redirect the anger of an
11 18-year-old Defendant in a public setting. And the
12 Defendant did not respond well to this. That's in
13 paragraph 45. After, the Plaintiff alleges that the
14 membership -- the mentorship was not working and was
15 reduced and limited in paragraph 53. He invited the girl
16 to a family birthday party and then corrected her behavior
17 with regard to her cell phone usage at the table.

18 This is what the complaint alleges. Every bit of
19 that is the definition of an inappropriate relationship
20 with a grown man and a young girl. And I represent this
21 young girl's mother. And she's legitimately concerned
22 about that.

23 If -- if Ms. Collier had come to my office before
24 these events occurred and told me this tale that's set
25 forth in the complaint, I would have said, this is what

1 you need to do, you need to go to the church. And you
2 need to make sure what you tell the church is factually
3 accurate. And -- because she has a right to defend and
4 look after her daughter whether she's 17 or 19. It
5 doesn't matter. This idea that she's 18 and suddenly
6 she's not her mother's daughter any more and she's not a
7 young girl.

8 So what the complaint alleges that Ms. Collier did
9 was go to the church and speak to the pastor, Pastor
10 Jimmerson. That is the only person Ms. Collier spoke to.
11 And Ms. Collier and Hannah both at that meeting said she
12 felt that they were going to leave the church because she
13 felt the relationship between her daughter and this older
14 man was inappropriate, but not sexual or romantic. The
15 complaint alleges that.

16 The complaint is clear that there were no allegations
17 that they were having a sexual relationship. She just
18 didn't feel that the -- the relationship, as outlined in
19 the complaint, was appropriate. And she's that -- this
20 girl's mother. And then she asked this gentleman not to
21 have any contact with his mother [sic] anymore.

22 There's a million reasons why this doesn't fit the
23 legal definition of defamation. For -- for starters, it's
24 not a defamatory statement to say the relationship is
25 inappropriate. That -- that's an opinion statement by its

1 nature.

2 Defamation has to be facts. It has to be something
3 that can be true or false, not an opinion. And -- and
4 whether the relationship that is outlined in the complaint
5 is appropriate or inappropriate is an opinion. It's not a
6 case where innuendo is involved. Because the parties were
7 completely clear that the relationship was not sexual.
8 It's a part -- it is certainly -- if it were a -- deemed
9 to be a factual statement, it would be true. The
10 relationship is inappropriate.

11 And then you've got the issue of qualified privilege.
12 You have got a mother and a young woman going to talk to a
13 pastor at their church about a family situation within the
14 church that concerns them. They don't go off into all
15 this that -- that Ms. Dickson [sic] went into. The
16 complaint alleges one defamatory statement. And that is,
17 I believe the relationship was inappropriate, but not
18 sexual.

19 Then it is published to one person, the pastor of the
20 church. And -- and that relationship itself for purposes
21 of the church's involvement, the church is his employer,
22 it is their church makes that a qualified privilege. So
23 there isn't any defamation in this case.

24 And I read all this stuff that Ms. Dickson has put
25 in. And this all sounds more like the Harper Valley PTA

1 than the Northgate Baptist Church. But, in reality,
2 there's a legal framework that a defamation suit has to
3 meet. This is not a place to come and vent because you're
4 unhappy and spew your dirty laundry everywhere.

5 It is very concerning to me that these people have
6 filed public documents accusing this young girl of being
7 mentally ill and -- and going through the relationship of
8 her parents. It is vindictive and it is wrong. And,
9 apparently, it's going to continue because we got 50 more
10 pages of it yesterday afternoon with -- with all of these
11 affidavits and these text messages, which any person can
12 go online in Greenville County and click on and see.

13 And in the end, what keeps these things from
14 happening is the fact that this complaint has to state a
15 legal claim. It's not enough that he's upset about this.
16 It's got to fall within the legal parameters of
17 defamation. And on the terms of the complaint itself, it
18 does not.

19 With regard to outrage, that's a question of law.
20 And it's got to be so extreme that no reasonable person
21 could possibly bear it. And for a mother to go to a
22 minister and express concerns that the relationship is
23 inappropriate between one of his employees and her young
24 daughter is not outrage. And if it doesn't meet that
25 test, it isn't going to meet that test for intentional

1 infliction.

2 With regard to the conspiracy claims, apparently, the
3 basis of that seems to be all these people knew each other
4 and talked to each other. That's not a basis for civil
5 conspiracy. She -- he's got to prove damages beyond the
6 causes of action he has pled against these individuals.
7 He's got to prove that there -- the conspiracy is
8 something different than the causes of action. And -- and
9 that's not pled, or proven, or even a correct statement of
10 law.

11 It -- it really all comes back to the defamation.
12 And in this instance, there is not a defamatory statement.
13 It's not factual -- the statement's not factual. The
14 statement is true. The statement is privileged. And this
15 needs to stop today. She's talking about doing discovery.
16 But -- but if she can't state a claim, we don't get to
17 discovery.

18 She said something about an e-mail from my client to
19 her -- to her client saying, Please, don't contact my
20 daughter anymore. There would be no publication of a
21 private e-mail. And that's not really listed as the basis
22 of defamation in the complaint.

23 What's really important here and what I -- I hope we
24 can focus on is not who texted who, and who did this, and
25 who did that, and who wanted to date who, but what is

1 actionable under South Carolina law. And -- and this
2 tawdry tale that they have -- have cooked up isn't
3 actionable under the terms that they have pled in their
4 complaint.

5 In fact, the complaint supports in every way the fact
6 that this was an inappropriate relationship between an
7 older man and a young girl. And if a mother can't go to
8 a -- her minister in -- in extremely limited terms and
9 say, I feel this is inappropriate and -- and we're going
10 to leave the church and I think you need to know, then
11 that's -- that's not the kind of world any of us live in.
12 That's not the law of this state. She wants us to think
13 it is. She wants us to think you can be sued for that
14 behavior.

15 But, in fact, that is the exact course Ms. Collier
16 should have taken. Her -- her statements were measured.
17 They did not go beyond the existing circumstances. They
18 were limited to who she gave them to. She has no other
19 choice in this instance.

20 And -- and I heard Ms. Dickson say that, apparently,
21 there were accusations regarding other girls. So what
22 happens if she doesn't go to the church and she doesn't
23 say this is happening to my daughter and something happens
24 with somebody else's daughter? As a parent, that idea is
25 appalling to me. The law of defamation does not prohibit

1 what happened here. This is not an actionable set of
2 facts.

3 Thank you.

4 THE COURT: All right. Ms. Davis.

5 MS. DAVIS: Yes, Your Honor.

6 Your Honor --

7 THE COURT: Specifically -- specifically, make -- the
8 defamatory statement that is alleged in the complaint, I
9 want you to elaborate a little bit about that.

10 MS. DAVIS: Okay. Yes, Your Honor.

11 So here we have the -- Charlotte Collier and Hannah
12 Collier went to not just a church minister, but my
13 client's supervisor and employer to report my client
14 having an inappropriate relationship with Hannah Collier.
15 Okay. In this instance, they are accusing my client of
16 lacking impropriety with respect to working with the
17 church. That in itself the very capstone -- you don't get
18 into -- you know, first of all, truth is an affirmative
19 defense, not -- not -- it's an affirmative defense raised.
20 But there is a lot of -- there's a factual dispute as to
21 what -- you know, what is an inappropriate relationship.

22 However, the accusation of such when Charlotte
23 Collier comes in this Court with unclean hands, tried to
24 pursue a romantic relationship with my client. And then
25 because -- and then not only that, the birthday party that

1 he's accused of is -- did not happen. There's a factual
2 dispute of telling Hannah Collier to go throw up. My
3 client denies that.

4 In addition, Charlotte Collier made and published
5 statements of other accusations in -- you know, my client.
6 And that was published to Craig Collier, the father. In
7 addition, in the memorandum by Ms. Snyder, she admits that
8 Jimmerson -- Barry Jimmerson came to their home and spoke
9 to the family. That, I understand, also, included Linda
10 Smith, if I'm not mistaken. So this is being published in
11 front of other people, multiple people to Craig Collier,
12 Linda Smith, and so forth.

13 So in that instance, here, we have -- I do think that
14 Charlotte Collier is coming with unclean hands making a
15 statement of my client lacking propriety and -- and is
16 unfit in his profession, which is actual slander per se
17 for accusing someone of a crime of moral turpitude with
18 her daughter. So I disagree to that effect. I do believe
19 that this is a false statement when [inaudible].

20 And to that -- in addition, this -- you know, I did
21 address that these gifts that they're talking about, these
22 were done with the consent of Charlotte Collier. There
23 are -- discovery will show that there are text messages
24 going back and forth about Christmas presents. There --
25 the memorandum addresses \$500 given to Hannah Collier.

1 That was for the entire family for presents at Christmas.
2 That was for Tyler Collier. That was for Charlotte
3 Collier, Hannah Collier. These gifts were asked with
4 consent, do you want --

5 THE COURT: Do they, specifically, indicate that the
6 gifts were for the entire family? Did that --

7 MS. DAVIS: For the entire family.

8 THE COURT: That's -- that's what you say, or that's
9 what he said? I mean, the gifts --

10 MS. DAVIS: The gifts, they're -- the gifts are -- I
11 mean, the nature of the gifts were discussed with consent.
12 And Hannah Collier was the one responsible for getting
13 them.

14 So that is disputed --

15 THE COURT: Why -- why wouldn't he just give them
16 to -- if he knew he was giving them to other members of
17 the family, why give it to Hannah? Why not just give them
18 to everybody? Everybody -- everybody he was giving a
19 Christmas gift to, why didn't you just give it to them?
20 Why did she have to be the distributor for the Christmas
21 gifts? I'm just asking a simple question.

22 MS. DAVIS: I mean, you know, I think that was what
23 was agreed upon. I mean, that was so that she --

24 THE COURT: She could what?

25 MS. DAVIS: You know, I mean, he could give them -- I

1 mean, that's -- in this instance, I mean, this wasn't like
2 I'm giving you a cash gift. This is money for Christmas
3 so you feel like you have a Christmas, you have something,
4 you know, to have and spend so you don't feel left out at
5 Christmas --

6 THE COURT: But she has a family. Why would she feel
7 left out? She has -- she has her own family.

8 MS. DAVIS: Your Honor --

9 THE COURT: Well, I -- you know, he -- he can talk to
10 you and you can talk to me. I'm just -- I'm just trying
11 to -- to understand a couple of things. I mean, she has a
12 family, why --

13 MS. DAVIS: She -- she complained about not having
14 any money for Christmas, Hannah Collier.

15 (WHEREUPON, the Plaintiff and Ms. Davis had an
16 off-the-record discussion.)

17 MR. JAMES TEGELER: She -- she said, I don't have
18 money to buy y'all gifts and I feel funny.

19 MS. DAVIS: Yes.

20 MR. JAMES TEGELER: And as a mentor, she, also, was
21 an intern --

22 THE COURT: All right. Hold on --

23 MS. DAVIS: That's --

24 THE COURT: Hold on one second. He's -- he's
25 talking. I've got --

1 MR. JAMES TEGELER: I --

2 THE COURT: Hold on. Hold on. I've got the court
3 reporter here. She needs to know who's talking.

4 So, sir, I -- you've got a lawyer. So we're trying
5 to hear it from your lawyer. But, certainly, if you want
6 to tell your lawyer something.

7 But let the record reflect that -- that the Plaintiff
8 did indicate -- had a conversation with his -- with his
9 attorney.

10 I'm -- I just asked the question because it was a
11 very simple question. Because I'm looking at the
12 allegations in the complaint and I'm -- and I'm trying to
13 piggy back upon what Ms. Snyder just -- the paragraphs
14 that she referenced. And I'm looking at them. And I just
15 wanted to ask that question.

16 So -- so that's why I asked about the gifts.
17 Because, I mean, obviously, she has a family. So he felt
18 it was his responsibility to give the family \$500.

19 Is that what I'm hearing?

20 MS. DAVIS: Your Honor, yes. I mean, he felt that
21 because he was hosting the event and because Hannah
22 Collier was complaining about, you know, we can't provide
23 gifts for the family, we don't have money for gifts for
24 ourselves. That -- the money was for so they could buy
25 gifts for --

1 THE COURT: Where did the money come from?

2 MS. DAVIS: Excuse me?

3 THE COURT: Where did the money come from, the \$500?

4 MS. DAVIS: My client.

5 THE COURT: His -- his money?

6 MS. DAVIS: His money.

7 THE COURT: His personal funds?

8 MS. DAVIS: His personal.

9 THE COURT: Okay.

10 MS. DAVIS: Now, in addition to that, my client,
11 also, saves \$200 every month for gifts, birthday gifts,
12 Christmas gifts. That's not unique to this family. He
13 does that for all the members for birthdays, holidays, so
14 forth. So his gift giving is something that the church is
15 aware about, knows. So this isn't special treatment in
16 this instance, no.

17 In addition to that, Your Honor, I think -- with
18 respect -- I've already addressed some of the other
19 aspects, you know. The constant reference of Hannah
20 Collier as a young girl, she's a legal adult. And I think
21 that needs to be addressed that she has the right to enter
22 into consensual relationships, which she does and
23 maintains that.

24 Hannah Collier was socially inappropriate and
25 socially awkward, not just in this instance with his

1 son -- my client's son's birthday party, but throughout
2 this entire -- she's very condescending towards members of
3 the team when at practice. So my client wasn't just
4 redirecting one time. This was a redirection in a polite
5 manner over time.

6 I think that's primarily what -- an opinion, Your
7 Honor, I've already addressed. That is still actionable.

8 THE COURT: Okay. Anything else before we go to the
9 next --

10 Ms. Snyder.

11 MS. SNYDER: Just very briefly.

12 THE COURT: Yes, ma'am.

13 MS. SNYDER: Unclean hands, that's an equitable
14 defense and that doesn't have anything to do with this.
15 Whether she's texting -- it appears to be like she --
16 we're all being sued because she had bad table manners and
17 socially awkward mannerisms, all of which is not
18 actionable. But that -- that's what I'm hearing. And,
19 actually, the more they talk, the less appropriate this
20 relationship seems to be.

21 I don't have anything else.

22 THE COURT: Okay. Ms. Smith, who's representing --
23 that's you?

24 MR. HUGHES: Yes, sir.

25 May it please the Court.

1 THE COURT: Yes.

2 MR. HUGHES: Daniel Hughes. I'm here on behalf of
3 Hannah Collier and Linda Smith, who's the grandmother.

4 THE COURT: And Linda Smith is?

5 MR. HUGHES: Right here.

6 THE COURT: In the pink. Got you.

7 MR. HUGHES: Judge, for the purpose of the motion and
8 for this entire case, the interest of Hannah Collier,
9 Linda Smith, and -- and Charlotte Collier align. So I'm
10 going to -- I'm not going to go through every argument
11 made by Ms. Snyder in the interest of time. But I do want
12 to flesh out a few things.

13 THE COURT: Yes, sir.

14 MR. HUGHES: I think it's very important and I want
15 to reiterate something that Ms. Snyder told you twice when
16 she was arguing that this case should have never been
17 brought. In all due respect to Ms. Davis, this case
18 should have never been brought. I've been dealing with
19 this issue since 2018.

20 Craig Collier is -- he works for the South Carolina
21 Law Enforcement Division. He knows -- a friend of his is
22 in law enforcement who I know. He referred Charlotte and
23 Hannah to me to address a demand letter that was sent by
24 Ms. Davis to them, based on these same accusations of
25 defamation.

1 And in my response to Ms. Davis back in 2018, I laid
2 out exactly why this was not defamation. And nothing has
3 changed over the course of two years as to why this is not
4 defamation, which Ms. Snyder did an excellent job
5 explaining to you why it does not meet the elements of
6 defamation under South Carolina law. This case needs to
7 stop now. And you've got the authority, as a matter of
8 law, to make it stop.

9 Now, I have filed an affidavit yesterday from Hannah
10 Collier. And I think -- for the purposes of showing the
11 truth of this alleged defamatory statement of an
12 inappropriate relationship, I think it's important for the
13 Court to see the nature of some of the text messages
14 between this Plaintiff and worship minister at a church in
15 his mid 50s to a high school student.

16 And attached to this affidavit which has been made
17 part of the record -- and if you'll just bear with me, I'm
18 just going to read through these --

19 THE COURT: Go ahead.

20 MR. HUGHES: -- because it's important.

21 Hey, princess -- this is from Mr. Tegeler to Hannah
22 Collier. Hey, princess, while I'm falling asleep, I was
23 thinking of you and how thankful I am to have you in my
24 life. You are seriously the best friend and family member
25 anyone could ask for, especially for the way you take up

1 for those you love. Like tonight, you were so upset for
2 your brother. By the way, I ordered him a Fitbit. You
3 truly do watch out for others more than you do yourself.
4 You've made this one of the best years of my life. That's
5 right, you. I love you so much. I can't wait for our
6 first family Christmas together. You're a sweetie pie and
7 a cutie pie all mixed into one amazing person. I'm so
8 proud to have you in my life. And I can't get enough of
9 you. I'll snap you in the a.m. That's Snapchat.

10 I love you sweet, awesome, ninja, princess daughter.
11 Good morning. I love you. Here's a story for you, once
12 there was a beautiful princess who had a beautiful heart
13 and a beautiful soul. And whenever she smiled, her face
14 lit up and her eyes twinkled like a twinkling [inaudible]
15 star on a crisp, clear winter night. Everyone she came in
16 contact with could feel her love, and warmth, and
17 kindness. I loved her very much and knew I didn't want to
18 live without her. So I adopted her into my life and into
19 my family. And I always want her to stay there. I
20 promise that I will never leave her. And she will always
21 be my princess. I love you, baby girl. Sweet dreams.

22 I love you longer -- even longer than that. So last
23 Christmas, I never imagined in my wildest dreams that such
24 a cute, sweet, vibrant, thoughtful, caring and smart young
25 lady would be in my life and in my heart. And to get to

1 have a family Christmas with her and her family is so much
2 more than I could ever ask for. God is good. You've got
3 to know if you look at me with those bright sparkling blue
4 eyes and ask for something, I'll give it to you. Probably
5 shouldn't have told you that, but it's too late now.

6 Merry Christmas Eve, princess, the first of many.

7 I hope I'm not dreaming because I'd be devastated.
8 So if I happen to pinch your arm lightly, it's to make
9 sure you're real. And, of course, every time I look in
10 the mirror and see my black eye you gave me for pitching
11 you, then I'll know for sure. A little humor on a Sunday
12 morning. But, hey, it's Christmas Eve. I love you,
13 princess.

14 Here's your first 2018 wake up note. Without a
15 doubt, the best thing to happen to me in 2017 was you by a
16 long shot. I'm looking forward to this year and many more
17 years with you in my life. There have been times when I
18 wished I could have watched you grow up. You were so
19 cute. It would have been lots of fun. But God has a
20 perfect plan. And he wanted you in my life now. And I'll
21 take that with my whole heart.

22 And, by the way, you're just as cute now as you were
23 then, so there. Anyhow, I'm so excited to see you.
24 Thanks for calling me tonight. Praying for safety. I
25 love you, sweet baby girl. Thank you for being my

1 princess. Happy New Year. I can't wait to see what this
2 year brings. My heart feels so safe with you holding it.
3 Thank you for being so sweet to me, for loving me, and for
4 making me feel so special. I will always take care of
5 you, my princess.

6 That's a small sampling, Judge. Imagine being Craig
7 Collier or Charlotte Collier and looking at these texts.
8 What is the only reaction -- the best reaction you could
9 have is that's inappropriate.

10 So the issue for this Court today is to decide how
11 can a conversation between Charlotte Collier and Hannah
12 Collier to the pastor of Northgate Baptist Church that
13 this relationship was inappropriate, how can that be
14 considered defamatory? And it's not. It's true.

15 And the overarching theme of our arguments today is
16 this is a true statement. And it's a small sampling of
17 why it's true. And there are numerous other defenses to
18 defamation, primarily being one of qualified privilege.

19 The qualified privilege protects the statements made
20 from Hannah Collier and Charlotte Collier to
21 Dr. Jimmerson. They had a right to confide in him about
22 what they viewed as an inappropriate relationship. And
23 that's a -- that's a privileged statement that they're
24 able to make to a minister.

25 Now, as Ms. Snyder says, this is a case that we're

1 asking to dismiss based upon the allegations of the
2 Plaintiff's complaint. The Plaintiff's complaint admits
3 that he -- that Dr. Jimmerson went away from that meeting
4 and he did not believe it was a sexual relationship. In
5 fact, the Plaintiff's complaint says that Hannah Collier
6 denied that it was ever sexual. And he believed based on
7 a subsequent conversation that he had with the Plaintiff
8 that the Plaintiff knew Dr. Jimmerson knew that it wasn't
9 a sexual relationship.

10 So there's no basis now to conclude, Your Honor, that
11 he was -- that they -- that the church believed it was a
12 sexual relationship. The only thing relayed from my
13 clients to the pastor of the church was the fact that it
14 was an inappropriate relationship, which is true. And on
15 that basis, on truth and qualified privilege, this -- this
16 complaint should be dismissed as -- the defamation
17 complaint should be dismissed as a matter of law.

18 There are other causes of action in this case. One
19 for intentional infliction of emotional distress, none of
20 which the Plaintiff has met its burden of proving in this
21 case.

22 Intentional infliction of emotional distress involves
23 the intentional or reckless inflicting of severe emotional
24 distress, or substantially certain that such distress
25 would result from their conduct. Conduct was extreme and

1 outrageous so to exceed all bounds of decency. Atrocious
2 and utterly intolerable -- intolerable in a civilized
3 community and a cause of damages resulting therefrom.

4 This is a simple, private conversation, again,
5 between Hannah Collier, Charlotte Collier, and the pastor
6 of Northgate Baptist Church. There was nothing utterly
7 intolerable about the conversation that they had with this
8 pastor. Based upon -- and this is relying upon facts that
9 all the parties can agree upon.

10 And, again, as Ms. Snyder stated out regarding the
11 claim of civil conspiracy, you can't plead a civil
12 conspiracy claim by making simple conclusory remarks that
13 two or more people got together and conspired to damage a
14 party. That's all the Plaintiff's complaint does in this
15 case is that he alleges that two -- that the two or more
16 people conspired to -- to damage him. And that does not
17 meet the elements to prove a civil conspiracy that can get
18 past a -- a motion to dismiss pursuant to Rule 12(b)(6) or
19 Rule 12(c).

20 Now, the last cause of action, negligent infliction
21 of emotional distress doesn't apply to the facts of this
22 case at all. It's merely limited to bystander liability.
23 I'm not sure what Ms. Davis is referring to as some sort
24 of new way of viewing this cause of action as related --
25 as relying -- as allowing something to -- to litigate

1 negligent infliction of emotional distress where there's
2 no accident or bystander liability. I have not seen that.
3 I'd be interested to see that case.

4 But more than that, Your Honor, negligence requires a
5 duty being owed from one party to another. And Hannah
6 Collier didn't -- or Linda Smith did not owe a duty to
7 this Plaintiff.

8 Judge, I'm going to -- the last thing I'm going to
9 touch on, Linda Smith. Her case, same basis for the
10 motion. And if you look at the Plaintiff's complaint,
11 now, the only thing that she -- that he alleges in his
12 complaint was that on or around March 12th, 2018, or
13 subsequently thereafter, Defendant Smith promulgated to
14 third parties inside and outside the congregation of
15 defendant church the allegations of Charlotte and Hannah
16 of an inappropriate relationship.

17 Well, we've already covered why that's not
18 defamatory. More than that, Your Honor, we don't have the
19 name of the person that alleged that this statement was
20 made to, when it was, how it was made, what exactly was
21 said. None of that is part of the Plaintiff's complaint.
22 And, therefore, the cause of action for defamation against
23 Linda Smith, the grandmother of Hannah Collier, should,
24 also, be dismissed as a matter of law.

25 THE COURT: All right. Ms. Davis.

1 MS. DAVIS: Thank you, Your Honor.

2 So in response, Your Honor, is that these text
3 messages went both ways. So the emphasis that these text
4 messages are one sided from my client after the boundaries
5 had been set at the very, very beginning that this is not
6 sexually related.

7 And not only that, he said, If this makes you
8 uncomfortable, we don't need to hang out. So at any
9 point, if you've got a problem, you stop. She never
10 stopped. This went on for about seven months. And Hannah
11 Collier could have stopped at any point in time, but
12 didn't.

13 So this was a reciprocated relationship. This -- the
14 context of this matters. The context of this is like a
15 surrogate father-daughter relationship where Hannah
16 Collier asked my client, call me your little girl, call me
17 your princess. And I provided that text message.

18 There's also -- opposing Counsel received a plethora
19 of text messages for the demand letter. And in that, it
20 shows a constant back and forth between both of -- my
21 client and Hannah Collier. So, again, I think Hannah
22 Collier is coming to this in bad faith on a false
23 statement when she's a legal adult engaging in a
24 consensual relationship, had every opportunity to cease it
25 at any point in time, but didn't. She wanted to be part

1 of that.

2 So I -- there is a factual dispute as to the premises
3 of the inappropriate relationship when this is a
4 consensual one when this is a surrogate father figure.
5 She admits to looking at him like a father figure. So the
6 misconstruction of my client saying that this is -- Hannah
7 Collier asked him to do that.

8 In addition to that, the -- she's not -- Hannah
9 Collier is not a high school student. She's a college --
10 she's in college. She's legal age. So I think that needs
11 to be corrected.

12 And then as well as -- okay. Neither of them -- even
13 though -- even though Hannah Collier is claiming that the
14 inappropriate relationship was not sexual or romantic,
15 when she made the statement -- and I've already discussed
16 this, the slander per se actionable because of accusing
17 someone of a crime of moral turpitude.

18 The effect on the listener is the objective standard
19 by which we evaluate the statement, not what they or
20 Hannah Collier believes it means. That's -- it's a
21 reasonable person standard from an objective point of view
22 to the effect on the listener. And Barry Jimmerson, upon
23 hearing inappropriate relationship, goes into a question
24 mode about a sexual relationship or a romantic
25 relationship between the two.

1 So the effect on the listener, even by Barry
2 Jimmerson, is that it means that, which would be a crime
3 of moral turpitude of inappropriate behavior by my client
4 when employed with the church. That's an admission right
5 there of the effect of that statement to think it's a
6 sexual nature from that statement alone. So that's a
7 dispute.

8 In addition, notice pleading requires putting them
9 on -- putting the Defendant on notice. You're allowed to
10 plead inconsistent causes of action. Because depending on
11 discovery, one cause of action may not suffice where I
12 would then need to amend the complaint and drop it, if the
13 facts do not support it. We're not at that stage, Your
14 Honor.

15 In addition, the affidavits -- we have provided
16 affidavits regarding the defamatory statements by Linda
17 Smith to Sue Lutz, who is still a member of Northgate
18 Baptist Church, and then Roy Sabean, who had -- who was a
19 former deacon, who left the church over this incident. He
20 was no longer there when Linda Smith contacted him.

21 And the affidavits are clear about the slander per se
22 regarding a crime of moral turpitude toward my client.
23 Linda Smith -- not only that, especially in the affidavit
24 with Sue Lutz, the complaints and accusation track
25 Charlotte Collier's e-mail to my client. There's a

1 similarity there, the very reasonable basis, not only
2 that -- so Linda Smith is perpetuating what her daughter's
3 telling her.

4 She didn't personally observe these text messages.
5 She didn't personally know or had a reason to know and
6 inspect that her granddaughter engaged in this
7 relationship consensually. She -- you know, you can't
8 have where my client was inappropriate. If my client's
9 inappropriate, so is Hannah Collier. Two wrongs don't
10 make a right, you know. You can't sit there -- so there's
11 a factual dispute as to inappropriateness as a truth,
12 whether it's true or false.

13 So in this basis brought on bad faith -- one,
14 expressing an opinion that's still actionable because of
15 the factual allegations of the relationship existing
16 between Hannah and my client support the basis for false
17 statement to punish my client, to retaliate against my
18 client. And Linda Smith not personally observed some of
19 these aspects and just spewing to two witnesses regarding
20 this incident.

21 And then there's, also, the question, was she present
22 at the family meeting with Barry Jimmerson when Hannah
23 Collier and Charlotte Collier reported my client to the
24 church.

25 Thank you, Your Honor.

1 THE COURT: Anything else from anybody?

2 Go ahead.

3 MR. HUGHES: Judge, briefly.

4 THE COURT: Yes, sir.

5 MR. HUGHES: The substance for that -- I'll -- to the
6 exact paragraph in the complaint. This can't be over --
7 overstated in this case, the conversation we're talking
8 about -- defamatory statement of Hannah Collier and
9 Charlotte Collier with Barry Jimmerson. And according to
10 the Plaintiff's complaint, he questioned her -- this is
11 paragraph 60 -- about the allegations of having an
12 inappropriate relationship as to whether involving a
13 sexual relationship. And the next allegation is that she
14 denied it. Okay.

15 So that's important in the context of -- of
16 examining -- if you get -- let's say you get past the --
17 the truth defense. Let's go to what's defamatory. I
18 mean, there's two types of defamation, defamation per se
19 or defamation per quod. Okay.

20 Defamation per se is defamatory on its face, like if
21 I said, you are a thief. Okay. That's defamatory on its
22 face. This -- this statement would have to be analyzed
23 under defamation per quod, which is what -- you have to
24 rely upon extrinsic facts to interpret the meaning to be
25 defamatory; right? In this case, the person -- the hearer

1 of the information, Dr. Jimmerson, already concluded based
2 on the Plaintiff's own admission that the state -- that it
3 was not a sexual relationship.

4 Later, the complaint goes on to say that subsequent
5 to this personnel meeting they had at the church, then the
6 church interpreted it to mean it was sexual in nature.
7 That's not my client's fault. They didn't get -- they
8 didn't tell the personnel committee that. They told
9 Dr. Jimmerson. And what the church did with that
10 information doesn't have any bearing on what my client
11 said to Dr. Jimmerson in a private meeting, which was --
12 which was privileged.

13 Based on the Plaintiff's own allegations, Judge, this
14 is not the defamatory statement. It does not qualify.
15 And that's if you get past the matter of whether it was
16 true or not. And it was true, based on this inappropriate
17 relationship.

18 Thank you.

19 THE COURT: All right. Anything else from anyone?

20 MS. SNYDER: Your Honor.

21 THE COURT: Yes, Ms. Snyder.

22 MS. SNYDER: If this is allowed to go forward, then a
23 parent has no ability to protect their child against
24 somebody they consider to be in a predatory relationship.
25 Otherwise, they think they're going to be sued. That --

1 that's not what the law envisions. That's not what the
2 law says. And the complaint doesn't meet the standards to
3 plead the causes of action alleged.

4 Thank you.

5 THE COURT: All right. Anything from anyone on
6 either side? No?

7 MS. DAVIS: Yes, Your Honor.

8 Just kind of going back to opposing Counsel on this
9 is that -- very quickly, there is a factual dispute on
10 whether inappropriate relationship is true or not, as I've
11 already discussed. And just to clarify, the law analyzing
12 the statement of inappropriate relationship is incorrect
13 as to per se versus per quod.

14 Because when you accuse someone of being a -- lack of
15 impropriety, being unfit for a business to his person, or
16 whatnot, there isn't a per quod per se clear on the
17 language analysis. The very accusation itself is
18 damaging. So that -- the analysis is different.

19 Again, like I stated, it's the effect on the
20 listener. It is not what they think. It's not what they
21 think is true. It's the effect of someone listening.
22 Anybody who hears the statement that my client had an
23 inappropriate relationship with a legal adult -- that is
24 not a predatory relationship when you're dealing with a
25 legal adult and would be entirely impugning his

1 relationship.

2 Nobody would walk away from that statement without
3 thinking -- questioning or generalizing my client's
4 reputation. That's what it means. No one hearing that
5 statement would think it was a positive statement, would
6 think it was a good statement. It is by nature for
7 attacking someone, the crime of moral turpitude that
8 across the board my client lacked inproprietary in the
9 scope -- in the employment. They don't -- Hannah Collier
10 and Charlotte Collier didn't go to a minister, they went
11 to my client's supervisor at his place of employment.

12 So having said that, there is a dispute on that. We
13 do dispute predatory relationship. That is a -- that in
14 itself is, also, vindicative when you look at the
15 correspondences in context between Hannah Collier, also,
16 engaging in this relationship with my client over a period
17 of time, very clearly over months with every opportunity
18 to stop it, very clearly states multiple times seeing my
19 client as a father figure.

20 Thank you, Your Honor.

21 THE COURT: Anything else?

22 (WHEREUPON, there was no response.)

23 THE COURT: All right. The -- the Court had before
24 it three -- three motions. And, certainly, I want to put
25 on the record that I had the opportunity to read all of

1 the pleadings that was filed with the Court previously.
2 And I, also, had the opportunity to listen to the
3 arguments of Counsel on both sides, I would say very
4 robust arguments of Counsel on both sides.

5 And the Court, also, had the opportunity to look at
6 the standard that the Court applies in -- in a 12(b)(6)
7 motion and the supporting case law. As it relates to the
8 first motion before the Court that the Court heard, which
9 was Northgate Baptist Church's motion to dismiss, the
10 Court, also, examined the -- the release that was signed
11 by Mr. Tegeler, the Plaintiff.

12 But based upon the arguments set forth by Counsel for
13 the Northbate -- Northgate Baptist Church, the Court is
14 inclined to grant the motion to dismiss. The Court adopts
15 the arguments set forth by Counsel for the Defendant.

16 And I would direct Counsel for the Defendant to
17 prepare the appropriate order setting forth the support
18 and the cases that were cited by Counsel in his argument.
19 And I would like you to send that to me by way of
20 e-filing. Send a copy to opposing Counsel before you send
21 it to me.

22 As it relates to the second motion, Defendant
23 Charlotte Collier's motion to dismiss, the Court in
24 utilizing the standards set forth in 12(b)(6) motions is
25 inclined to, also, grant the Defendant's motion to

1 dismiss.

2 The Court will instruct Counsel for the Defendant to
3 prepare the appropriate order. And send a copy to
4 opposing Counsel before sending it to -- sending it by way
5 of e-filing to me. The Court adopts the arguments set
6 forth in Counsel's argument.

7 And the last motion before the Court, the motion for
8 judgment on pleadings, the Court, also, would grant the
9 motion in that regard as well.

10 And I would ask Counsel to prepare the appropriate
11 order with the argument presented to the Court. And
12 submit a copy of that order to opposing Counsel for their
13 review.

14 I will give 20 days to get that to me by way of
15 e-filing. Make sure you send a copy to the opposing side.

16 All right. Anything further?

17 MR. HUGHES: No, sir, Judge.

18 Thank you.

19 THE COURT: All right. You all have a good day.

20 *****END OF TRANSCRIPT OF RECORD*****
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of August, 2020.

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

September 19, 2020

Hollie M. Jenkins, Court Reporter

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2020-CP-2301213
	)	
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charlotte Collier, Hannah Elizabeth	)	
Collier, Linda Smith, and	)	
Northgate Baptist Church,	)	
	)	
Defendants.	)	
	)	

MOTION TO DISMISS

COMES NOW Defendant, Northgate Baptist Church (hereinafter “Northgate”), pursuant to South Carolina R. Civ. P. 12(b)(6), and moves for an Order dismissing Plaintiff’s claims against Northgate, with *prejudice*. Prior to Plaintiff’s separation from Northgate, he voluntarily entered into a valid and enforceable severance agreement (“Agreement”)¹ with Northgate wherein he released all claims against Northgate, including the claims he now asserts against Northgate. Plaintiff negotiated the terms of the Agreement including seeking an increase to the original severance amount which is evident from the face of the Agreement. Therefore, Plaintiff has released his claims against Northgate by entering into a contract² supported by valid consideration

¹ The Agreement is attached as **Exhibit A**. While the Agreement was referenced in multiple paragraphs of the Complaint, it was not attached. However, the Court may treat a motion under SCRCP 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the Rules of Civil Procedure. *Brown v. Leverette*, 291 SC 364, 353 S.E.2d 697 (1987).

² A release is a contract. *See Hyman v. Ford Motor Co.*, 142 F.Supp. 2d 734, 741 (D.S.C. 2001). In construing the terms of a contract, a court must first look at the language of the contract to determine the intentions of the parties. *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm’n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When a contract

through active negotiation. Accordingly, Plaintiff's claims as against Northgate must be dismissed.

WHEREFORE, for the reasons stated herein and in the forthcoming Memorandum in Support of this Motion, Northgate prays this Court will grant its Motion to Dismiss, dismiss Plaintiff's causes of action against it, with *prejudice*, and grant such other relief as the Court deems just and proper.

Dated this 25th day of March, 2020.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: s/Chuck McDonald

Charles E. McDonald, III (SC Bar # 9612)
S. Michael Nail (SC Bar # 101818)
300 North Main Street
Post Office Box 2757
Greenville, South Carolina 29602
Telephone: (864) 271-1300
Facsimile: (864) 235-8806
chuck.mcdonald@ogletree.com
michael.nail@ogletree.com

***Attorneys for Defendant,
Northgate Baptist Church***

42174528.1

unambiguously sets forth the contracting parties' intent, a court is bound by that clearly expressed intent without resort to extrinsic evidence. *Id.* "Extrinsic evidence giving the contract a different in meaning from that indicated by its plain terms is inadmissible." *Id.* at 377-78, 373 S.E.2d at 586.

James Earl Tegeler vs. Charlotte Collier, et al.
C.A. No. 2020-CP-2301213

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

SEPARATION AGREEMENT AND RELEASE OF CLAIMS

THIS AGREEMENT is made and entered into by and between **James Tegeler** and **Northgate Baptist Church**.

THE PARTIES acknowledge the following:

"EMPLOYEE" refers to James Tegeler.

"COMPANY" refers to Northgate Baptist Church, as well as any parent, affiliated or related companies, subsidiaries, or divisions, and the officers, directors, employees and agents of them.

EMPLOYEE and the Company agree that effective as of the date Employee signs this Agreement, Employee shall be considered to have resigned from his position with the Company, and this Agreement will become effective as set forth below.

THEREFORE, in consideration of the mutual agreements and promises set forth within this Agreement, the receipt and sufficiency of which are hereby acknowledged and, provided that Employee properly executes and returns it to counsel for the Company and does not revoke it as set forth below, Employee and the Company agree as follows:

1. Consideration

A. In consideration of Employee's agreements and promises set forth below, the Company will pay Employee receipt and sufficiency of which

B. As additional value, in consideration of the Company's agreements and promises, the Company agrees to release Employee from any claims which it has or might have against him, including but not limited to any claims for attorneys' fees and costs.

2. Legal Obligations

The parties agree that the Company has no prior legal obligations to make the payment or promises described in paragraph 1 which are exchanged for the agreements and promises of Employee herein.

3. Release of Claims and Covenant Not to Sue

A. In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company.

This includes, but is not limited to, a release of any and all rights arising under any state or federal constitution, statute, law, rule, regulation, or common law principle of tort, contract, or equity.

In further consideration of the foregoing, receipt of which is hereby acknowledged, Employee, for himself and his current or future spouse or children, heirs, executors, administrators, grantees, and successors forever discharges Company, and its predecessors, insurers, indemnitors, purchasers, successors and assigns, from all manner of actions, causes of action, suits, debts, accounts, judgments, claims and demands whatsoever, in law and/or in equity arising out of or in any way related to Employee's hiring, employment, wages, commissions, bonuses, benefits, compensation, request for or to return from leave of absence, demotion, resignation,

discharge, termination, severance or termination benefits, and/or terms and conditions of employment; any and all causes of action for harassment, retaliation, breach of contract, breach of implied contract, tortious interference with contract, wrongful transfer or demotion, wrongful termination, fraud, negligence, libel or slander, intentional or negligent infliction of emotional distress, breach of confidentiality, invasion of privacy, or any other rights, claims, or causes of action arising under any state or federal constitution, statute, law, rule, regulation, or common law principle of tort, contract, or equity.

This specifically includes, but is not limited to, a release of any and all rights, claims, and causes of action of any sort arising under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621, et seq.; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; the South Carolina statute prohibiting workers' compensation retaliation, S.C. Code Ann. § 41-1-80; the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10, et seq.; National Labor Relations Act, 29 U.S.C. §151, et seq.; Civil Rights Act of 1866, 42 U.S.C. § 1981; Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.; the South Carolina wage payment statute, S.C. Code Ann. §41-10-10, et seq.; and the South Carolina Workers' Compensation statutes, §42-1-10, et seq., §44-30-10, et seq., of the South Carolina Code, Vocational Rehabilitation Act of 1973; 29 U.S.C. §790 et seq., or any other legal theory or cause of action, regardless of type, character or form, he may have; any and all causes of action, whether in law and/or in equity, for any expense, reinstatement, loss, mental or physical injury, costs, attorneys' fees, mental anguish, pain and suffering, medical bills or costs, physical or mental impairment, damage to reputation, loss of enjoyment of life, loss of consortium, lost earnings or profits, lost wages or commissions, lost bonuses, lost seniority or retirement benefits, other lost employment benefits including, but not limited to, vacation, or holiday pay and long or short term disability, or any other damage (whether actual, compensatory, punitive, treble or otherwise) suffered or which may be suffered by Employee due to any event which occurred prior to the date of this Separation Agreement and Release. Additionally without waiving any prospective or retrospective rights under the Fair Labor Standards Act ("FLSA"), Employee agrees and acknowledges that he has received from the Company all rights and benefits, if any, due or potentially due to him pursuant to the FLSA.

- B. Employee further expressly agrees that this Agreement may be treated as a complete defense to any action or proceeding that may be brought by Employee, or in Employee's behalf, against the Company (as well as any related companies or subsidiaries and the directors, officers, employees, insurers, and agents of them) for relief or damages of any kind arising from Employee's employment or termination from employment with the Company.
- C. Employee acknowledges that this agreement and release is intended to bar claims under the Age Discrimination In Employment Act.
- D. The intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable. However, it is understood that Employee is not releasing or waiving any rights or claims which may arise after this Agreement is executed, any claims for the sole purpose of enforcing Employee's rights under this Agreement, or any claims which by law cannot be waived. Additionally, nothing in this Agreement shall be interpreted or applied in a manner that affects or limits Employee's ability to challenge this Agreement's

compliance with notice and time-period requirements of the Age Discrimination in Employment Act. Employee also is not releasing the right to file or prosecute a charge with any appropriate administrative agency. However, Employee specifically agrees that the consideration provided to him in this Agreement represents full and complete satisfaction of any monetary relief or award that could be sought or awarded to him in any administrative action (including any proceedings before the U.S. Equal Employment Opportunity Commission or any comparable state or local agency) arising from events related to his employment with the Company or the termination thereof. Employee promises not to seek any damages or personal relief and hereby waives any rights to such relief.

4. Re-Employment Rights Waived

Employee agrees to waive any rights to reinstatement or reemployment with the Company. Employee agrees, warrants and promises that he will never apply for or, in any way, seek a job or any type of employment with Company at any time in the future. In the event Employee applies for or otherwise seeks employment with Company, Employee agrees that Company may, in its sole, total and only judgment, refuse to hire or otherwise refuse to give Employee a job or employment. The parties specifically intend that this Paragraph 4 survive and apply to acts beyond the date of this Separation Agreement and Release.

5. Tax Liability

The parties agree that Employee is responsible for any and all federal or state tax liability (including, but not limited to, taxes, fines, penalties, and interest) which could arise as a result of the aforementioned monetary payment.

6. Performance

Employee understands and agrees that the Company's obligation to perform under this Agreement is conditioned upon Employee's agreements and promises to the Company as set forth herein. In the event that a court of competent jurisdiction determines that Employee has breached any such agreements or promises, or caused any such agreements or promises to be breached, the Company's obligations to perform under this Agreement shall automatically terminate, and the Company shall have no further obligation to Employee. In addition, the Company may seek injunctive relief to enforce the provisions of this Agreement and may recover reasonable costs and attorneys' fees incurred as a result of such breach.

7. Successors and Assigns

This Agreement shall inure to and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

8. Governing Law

This Agreement shall be construed in accordance with the laws of the State of South Carolina and applicable federal law.

9. No Admission of Wrongdoing

Employee understands that the Company does not in any way admit any liability or wrongdoing regarding employee's employment and/or separation from the Company.

10. Confidentiality

Employee agrees not to disclose the terms and conditions of this Agreement to anyone except: (a) his attorneys; (b) his spouse; (c) his accountant/tax preparer; or (d) as required by law. Employee shall not disclose any terms or conditions to any employee of the Company.

11. Entire Agreement; Modification

This Agreement constitutes the entire understanding of the parties, and no representation, promise, or inducement not included herein shall be binding upon the parties. Employee affirms that the only consideration for the signing of this Agreement is the terms set forth above and that no other promises or assurances of any kind have been made to Employee by the Company or any other entity or person as an inducement for Employee to sign this Agreement. This Agreement may not be changed orally, but only by an agreement in writing signed by the parties or their respective heirs, legal representatives, successors, and assigns.

12. Partial Invalidity

The parties agree that the provisions of this Agreement shall be deemed severable and that the invalidity or unenforceability of any portion or any provision shall not affect the validity or enforceability of the other portions or provisions. Such provisions shall be appropriately limited and given effect to the extent that they may be enforceable.

13. Harassment

Employee acknowledges that he has not complained of or made any allegation of harassment, including sexual harassment, during his employment with the Company and that the severance being paid herein is not to compensate for any alleged harassment claim.

14. Medicare

Employee affirms, covenants, and warrants that he has made no claim for illness or injury against, nor is he aware of any facts supporting any claim against, Northgate Baptist under which Northgate Baptist could be liable for medical expenses incurred by him before or after the execution of this Agreement. Furthermore, he is aware of no medical expenses that Medicare has paid and for which Northgate Baptist is or could be liable now or in the future. Employee affirms that, to the best of his knowledge, no liens of any governmental entities, including those for Medicare, exist.

15. Acknowledgement

EMPLOYEE AFFIRMS THAT:

- A. HE HAS CAREFULLY READ THIS ENTIRE AGREEMENT AND RELEASE OF CLAIMS.**
- B. HE POSSESSES SUFFICIENT EDUCATION AND/OR EXPERIENCE TO FULLY UNDERSTAND THE EXTENT AND IMPACT OF THIS AGREEMENT.**
- C. HE UNDERSTANDS THAT HE HAS THE RIGHT TO CONSULT WITH AN ATTORNEY ABOUT THIS AGREEMENT AND CERTIFIES THAT THE COMPANY HAS URGED AND DOES URGE HIM TO DO SO.**
- D. HE IS FULLY COMPETENT TO EXECUTE THIS AGREEMENT AND RELEASE OF CLAIMS AND THAT HE DOES SO VOLUNTARILY AND WITHOUT ANY COERCION, UNDUE INFLUENCE, THREAT, OR INTIMIDATION OF ANY KIND OR TYPE.**

As to Employee:

4.10.18 James Tegeler

Date James Tegeler

Witness

4/10/18 Don Haden

Date

Witness

For the Company:

Northgate Baptist Church

4/10/18 me

Date

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

James Earl Tegeler,

Plaintiff,

vs.

Charlotte Collier, Hannah Elizabeth Collier,
Linda Smith, Northgate Baptist Church,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2020-CP-23-01213

**NOTICE OF MOTION AND MOTION TO
DISMISS**

The Defendant, Charlotte Collier, through the undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas at the Greenville County Courthouse, for an Order dismissing the above captioned case. This Motion will be based on the pleadings in this case, on S.C.R.C.P. 12(c), and on such law as is appropriate, and is made on the following grounds:

1. The statements allegedly made by the Defendant were not defamatory.
2. The statements allegedly made by the Defendant are subject to qualified privilege.
3. The statements allegedly made by the Defendant are true, and in fact are alleged to be true by the Plaintiff his support of his claim.
4. The statement by the Defendant is protected as opinion.
5. The claims as alleged to do not rise to the level of outrage.
6. The Complaint fails to state a claim for civil conspiracy.
7. There exists no duty from the Defendant to the Plaintiff.

This motion is based upon the pleadings filed in this matter, the South Carolina

Rules of Civil Procedure and any such memorandum as may be filed hereafter.

Respectfully submitted,

CLAWSON and STAUBES, LLC

s/Amy M. Snyder

Amy M. Snyder

Bar No.: 7968

1000 E North Street, Suite 200

Greenville, South Carolina 29601-3106

Phone: (864) 331-8940

Fax: (864) 232-2921

Email: asnyder@clawsonandstaubes.com

Attorney for Charlotte Collier

April 2, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	C.A. NO.: 2020-CP-23-01213
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
vs	)	NOTICE OF MOTION AND MOTION FOR
	)	JUDGMENT ON THE PLEADINGS AND
Charlotte Collier, Hannah Elizabeth	)	MOTION TO DISMISS
Collier, Linda Smith and Northgate	)	
Baptist Church,	)	
	)	
Defendants.	)	
	)	

TO: DEBORAH D. DAVIS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that Hannah Elizabeth Collier and Linda Smith (“Defendants”) will move before the Court of Common Pleas, in Greenville County, at a time and place to be designated by the Court, but no sooner than 10 days after the service hereof for for an Order dismissing all causes of actions against the Defendants pursuant to Rule 12(c), *SCRCP*, or Rule 12(b)(6), *SCRCP*, based upon the following:

- a. The alleged defamatory statement is not defamatory;
- b. The alleged defamatory statement is true;
- c. The alleged defamatory statement is subject to absolute or qualified privilege;
- d. That the Plaintiff cannot prove any special harm in this case;
- e. That the alleged defamatory statement was not made with any actual malice towards the Plaintiff.
- f. That the Complaint fails to state a claim for civil conspiracy;
- g. That the Complaint fails to state a claim for negligent infliction of emotional distress;

This motion will be supported by the pleadings, any legal memorandum that may be filed, and upon such law as may apply, as well as the entire record herein.

I hereby certify that this Motion is meritorious and not intended merely for delay

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes

DANIEL R. HUGHES (SC Bar #72547)

457-B Pennsylvania Avenue

P. O. Box 449

Greer, SC 29652-0449

Telephone: (864) 334-2500

Facsimile: (864) 879-0149

ATTORNEYS FOR DEFENDANTS

Dated: April 27, 2020

Greer, South Carolina

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2020-CP-2301213
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charlotte Collier, Hannah Elizabeth	)	
Collier, Linda Smith, and	)	
Northgate Baptist Church,	)	
	)	
Defendants.	)	
	)	

**DEFENDANT NORTHGATE BAPTIST CHURCH'S MEMORANDUM IN SUPPORT
OF ITS MOTION TO DISMISS**

COMES NOW Defendant, Northgate Baptist Church (hereinafter "Northgate"), pursuant to South Carolina R. Civ. P. 12(b)(6), and files this Memorandum in Support of its Motion to Dismiss. In short, Plaintiff's claims against Northgate are barred because Plaintiff previously released any claims against Northgate related to his employment with Northgate, or the termination of that employment, for good and valuable consideration. Thus, as explained herein, Plaintiff's claims against Northgate should be dismissed with *prejudice*.¹

I. PLAINTIFF VOLUNTARILY RELEASED HIS CLAIMS AGAINST NORTHGATE

Plaintiff's Complaint asserts claims against Northgate for: false imprisonment; defamation; fraud in the inducement; negligent misrepresentation; negligent hiring, supervision, and retention

¹ Northgate notes that the other defendants have filed motions to dismiss to include the assertion that Plaintiff has failed to properly state a cause of action for conspiracy. For purposes of Northgate's Motion, the sufficiency of Plaintiff's pleading for conspiracy is irrelevant because Plaintiff waived all claims against Northgate. However, Northgate also asserts that Plaintiff does not properly state a claim for conspiracy against Northgate and incorporates the other defendants' arguments herein if not inconsistent with Northgate's position.

of employees; intentional infliction of emotional distress; negligent infliction of emotional distress; wrongful termination; and civil conspiracy. However, the aspects of the claims against Northgate are wholly irrelevant for purposes of this Motion, because before Plaintiff's separation from Northgate, he voluntarily entered into a valid and enforceable severance agreement ("Agreement")² with Northgate wherein he released all claims against Northgate related to his employment or separation from Northgate:

In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company.

See **Exhibit A**, at ¶ 3(A).

Solidifying the validity of Plaintiff's release of claims against Northgate, Plaintiff *negotiated* the terms of the Agreement, including an increase to the original severance amount which is evident from the face of the Agreement.³ Therefore, Plaintiff has released his claims against Northgate by entering into a contract supported by valid consideration through active negotiation.

Accordingly, Plaintiff's claims against Northgate must be dismissed.

² The Agreement is attached as **Exhibit A**. While the Agreement was referenced in multiple paragraphs of the Complaint, it was not attached. Further, Northgate inadvertently attached a redacted version of the Agreement in its Motion. However, the correct, unredacted version is attached hereto. The Court may treat a motion under SCRCP 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the Rules of Civil Procedure. *Brown v. Leverette*, 291 SC 364, 353 S.E.2d 697 (1987).

³ See **Exhibit A**, at ¶ 1(A) wherein the proposed consideration is doubled from \$2,600.00 to \$5,200.00.

II. APPLICABLE STANDARDS

A motion to dismiss under Rule 12(b)(6), SCRCP is the usual and proper method of testing the legal sufficiency of the Complaint and is directed to the factual and legal sufficiency of the Complaint. *See Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 567 S.E.2d 251 (S.C. Ct. App. 2002); *Woodell v. Marion Sch. Dist. ONE*, 414 S.E.2d 794 (S.C. 1992). “[A] motion under Rule 12(b)(6) . . . admits the well pleaded facts in the Complaint, but it does not admit the inferences drawn by the Plaintiff from such facts, nor does it admit conclusions of law.” *Carolina Winds Owners’ Ass’n, Inc. v. Joe Harden Builder, Inc.*, 374 S.E.2d 897, 899 (S.C. Ct. App. 1988); *Carrington v. City of Spartanburg*, 322 S.E.2d 28 (S.C. Ct. App. 1984), overruled on other grounds, *McCall v. Batson*, 329 S.E.2d 741 (S.C. 1985).

South Carolina courts apply a “fact pleading” standard, which is more rigorous than the lenient “notice pleading” standard established in federal court. Rule 8(a)(2), SCRCP; *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 541 S.E.2d 269, 271 (S.C. Ct. App. 2000) (distinguishing relevant standard under the SCRCP from “more lenient” standard under federal rules), *aff’d as modified*, 581 S.E.2d 169 (S.C. 2003). The non-moving party may not simply make conclusory assertions of liability, but must set forth assertions of fact that give rise to relief. *See, e.g., Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 559 S.E.2d 362, 364-65 (S.C. Ct. App. 2001).

For purposes of this motion, “[t]he question for the [C]ourt is whether in the light most favorable to the plaintiff, and with every doubt resolved in [her] behalf, the allegations set forth on the face of the complaint state any valid claim for relief.” *Sloan Constr. Co. v. Southco Grassing, Inc.*, 659 S.E.2d 158, 161 (S.C. 2008) (citing *Plyler v. Burns*, 647 S.E.2d 188, 192 (S.C. 2007)). The Court “should consider only the allegations set forth on the face of the plaintiff’s complaint.” *Plyler*, 647 S.E.2d at 192 (citing *Stiles v. Onorato*, 457 S.E.2d 601, 602 (S.C. 1995)). A 12(b)(6)

motion should be granted if the facts alleged and inferences reasonably deducible from the complaint would not “entitle the plaintiff to any relief on any theory of the case.” *Id.*

III. LEGAL ARGUMENT

All of Plaintiff’s claim against Northgate must be dismissed because Plaintiff has previously released all claims against Northgate in exchange for valid monetary consideration.

A. The Release is Valid and Plaintiff’s Claims Against Northgate are Covered by the Release.

A release is a contract, and releases are governed by same principles of adequacy of consideration that apply to other contracts. *See Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 734, 741 (D.S.C. 2001); *see also Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947) (wrongful death settlement of \$500 enforced) (quoting 53 C. J. Release § 21). No set form of words is necessary to constitute a release. *Gardner v. Columbia Police Dep’t*, 216 S.C. 219, 223, 57 S.E.2d 308, 309-10 (1950) (construing terms of release of tortfeasor “of any trouble whatsoever” in consideration of cash payment exonerated tortfeasor from all liability). Further, words and expressions in releases are given their ordinary meaning unless the context of the instrument indicates that the words are being used in a different sense. *Id.*

In construing the terms of a contract, a court must first look at the language of the contract to determine the intentions of the parties. *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm’n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When a contract unambiguously sets forth the contracting parties’ intent, a court is bound by that clearly expressed intent without resort to extrinsic evidence. *Id.* “Extrinsic evidence giving the contract a different in meaning from that indicated by its plain terms is inadmissible.” *Id.* at 377-78, 373 S.E.2d at 586.

It is well established that a broad and general release of all claims, which is voluntarily executed in exchange for valid consideration, acts as a bar to any claim covered by the time period of the release. *Virginia Impression Products Corp. v. SCM Corp.*, 448 F.2d 262, 265 (4th Cir. 1971) (a general release indicates that “the parties desire to settle all matters forever . . . not only enumerated specific differences, but claims of every kind or character, known and unknown”) (internal citations omitted); *see also Hause v. AstraZeneca, LP*, 2015 WL 1524409 (D.S.C. 2015); *Scoggins v. Honeywell Int’l, Inc.*, 2012 WL 6102031 (D.S.C. 2012).

Here, the release in the Agreement meets the requirements of South Carolina law: it unambiguously represents a voluntary and bargained-for exchange whereby Plaintiff released Northgate and all of its employees and agents from any liability arising out of Plaintiff’s employment. The plain terms of the Agreement unambiguously reveal Plaintiff’s intent to release all claims against Northgate:

Employee further expressly agrees that this Agreement may be treated as a complete defense to any action or proceeding that may be brought by Employee . . . against the Company . . . for relief or damages of any kind arising from Employee’s employment or termination from employment with the Company. . .

Exhibit A, at ¶ 3(B).

The intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable . . .

Exhibit A, at ¶ 3(D).

Indeed, all of the allegations against Northgate contained in Plaintiff’s Complaint contain allegations relating to his past employment with Northgate. Accordingly, all claims related to his employment were covered by the release in the Agreement. As such, these claims were released by Plaintiff when he signed the Agreement and cannot now be the basis of a lawsuit. Northgate is therefore entitled to dismissal of all of Plaintiff’s claims against it, with prejudice.

B. Plaintiff was not Under Duress as he Executed the Release Through his own Free Will, and Further Ratified the Agreement by Retaining the Severance Payment.

Plaintiff clearly knows that his claims against Northgate are legally barred, so in an apparent attempt to circumvent the validity of the Agreement nearly two years after he executed it, Plaintiff's Complaint is riddled with the improper notion that Northgate forced him to execute the Agreement. However, it is inescapable that Plaintiff voluntarily executed the Agreement (even actively increasing the amount of consideration he received from Northgate for his release of claims against Northgate) and retained the monetary benefit thereof without raising the issue of duress until he filed the Complaint. As such, his newly-asserted argument to circumvent the release contained in the Agreement falls flat.

Under South Carolina law, duress has been defined as coercion that puts a person in such fear that he is "bereft" of the quality of mind essential to the making of a contract and the contract was thereby obtained as a result of this state of mind. *In re Nightingale's Estate*, 182 S.C. 527, 189 S.E. 890, 897 (1937); *Cherry v. Shelby Mut. Plate Glass & Cas. Co.*, 191 S.C. 177, 4 S.E.2d 123 (1939) (duress is defined as "a condition of the mind produced by improper external pressure of influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition"). As noted in *Nightingale's Estate*, the fear which makes it impossible for a person to exercise his own free will is not so much to be tested by the means employed to accomplish the act, as by the state of mind produced by the means invoked. *Id.* at 898. Whether duress exists in a particular case is a question of fact to be determined according to the circumstances of each case, such as the age, sex, and capacity of the party influenced. See *Gainey v. Gainey*, 382 S.C. 414, 428–29, 675 S.E.2d 792, 799 (Ct. App. 2009). However, there is no question of fact of duress in this case as Plaintiff clearly negotiated the terms of the severance

amount and kept the severance amount and did not challenge the validity of the release for over two years.

As stated *supra*, Plaintiff cannot demonstrate that he had no other alternative but to sign the Agreement. Indeed, his suggestion that he was under duress is entirely deflated by his active negotiation for an increased severance payment in exchange for his release of all claims against Northgate. Additionally, the general rule in South Carolina is that when a party seeks to set aside a release, he must first return any consideration received by him for the release. *Hyman*, 142 F. Supp. 2d at 747–48 (citing *Gray v. Petoseed Co.*, 1997 WL 716454, 129 F.3d 1259 (4th Cir. 1997) (table) (affirming dismissal of fraud because under South Carolina law when a party to a compromise settlement wishes to avoid a valid release and be restored to his original rights, he must restore the other party to his original position by returning or offering to return the consideration received under the compromise); *McCarty v. Kendall Co.*, 242 F.Supp. 495 (W.D.S.C. 1965) (action to avoid a release allegedly induced by fraud dismissed due to plaintiff's failure to return or tender consideration given for settlement); *Dunaway v. United Ins. Co. of America*, 239 S.C. 407, 123 S.E.2d 353, 354 (1962) (failure to tender or return consideration given for settlement precluded recovery in action for fraudulent inducement of settlement); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 399 S.E.2d 22, 23 (1990) (“it is well settled that one who seeks to avoid the effects of a release must first return or tender consideration paid thereof”).

In *Hyman*, a former automobile dealer insisted upon retaining the benefits which he received under the contract releasing manufacturer from liability, and, at the same time, insisted upon escaping the obligations imposed by the release. *Hyman*, 142 F. Supp. 2d at 748 (D.S.C. 2001). Thus, the court noted that the condition precedent to avoiding the release (the return or tender of consideration for the release), had not been complied with. *Id.* The court took issue with

the fact that the dealer knew of the alleged “duress” at the time he signed the release but did not raise the issue for over three years. *Id.* Thus, the court held that the dealer “clearly waived his right to avoid the release on claims of duress and has affirmed the release.” *Id.*

Importantly, the *Hyman* court also recognized that a release which is procured by duress is not void, but merely voidable and is capable of being ratified. *Id.* The person claiming duress must act promptly to repudiate the contract or release, or he will be deemed to have waived his right to do so. *Id.* It is a well-established proposition that a voidable contract may be ratified by a party's failure to act promptly to repudiate the contract. *Id.* (citing *Anselmo v. Manufacturers Life Ins. Co.*, 771 F.2d 417, 420 (8th Cir. 1985) (plaintiff signed a release under threat of losing severance pay, then sued to rescind, claiming duress, and court held for defendant on ground that employee accepted and thereby ratified the contract)). A party may ratify an agreement entered into under duress in a number of different ways: by intentionally accepting benefits under the contract; by remaining silent or acquiescing in the contract for a period of time after he has the opportunity to avoid it; or by recognizing its validity by acting upon it, performing under it or affirmatively acknowledging it. *Id.* (internal citations omitted). Thus, one seeking to repudiate an agreement allegedly entered into under duress must promptly complain of the circumstances under which the document was signed. *Id.* The *Hyman* court concluded as follows: “The undisputed facts indicate that [the dealer] ratified the release by retaining the benefits of the release for over three years. [The dealer] seeks to have it both ways—to retain the benefits of the buy back privilege and to sue [the manufacturer] —and that is something which this court cannot allow.” *Id.* at 749.

Here, Plaintiff has retained the monetary consideration he obtained in exchange for his agreement to release all claims against Northgate in the Agreement. However, nearly two years later when he filed the Complaint, he attempted to claim that he was under “duress” when he signed

the Agreement. Similar to *Hyman*, Plaintiff has not met the conditions precedent to asserting his new proposition of “duress” and it cannot be used to circumvent the valid and enforceable Agreement. Thus, Plaintiff’s claims should be dismissed in their entirety.

IV. CONCLUSION

As a result, and for the foregoing reasons, Plaintiff’s claims against Northgate should be dismissed as a matter of law. Accordingly, Northgate respectfully requests that the Court GRANT its motion to dismiss and dismiss Plaintiffs’ claims against Northgate with *prejudice*.

Dated this 13th day of August, 2020.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: s/ S. Michael Nail

Charles E. McDonald, III (SC Bar # 9612)
S. Michael Nail (SC Bar # 101818)
300 North Main Street
Post Office Box 2757
Greenville, South Carolina 29602
Telephone: (864) 271-1300
Facsimile: (864) 235-8806
chuck.mcdonald@ogletree.com
michael.nail@ogletree.com

***Attorneys for Defendant,
Northgate Baptist Church***

James Earl Tegeler vs. Charlotte Collier, et al.
C.A. No. 2020-CP-2301213

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

SEPARATION AGREEMENT AND RELEASE OF CLAIMS

THIS AGREEMENT is made and entered into by and between **James Tegeler** and **Northgate Baptist Church**.

THE PARTIES acknowledge the following:

"EMPLOYEE" refers to James Tegeler.

"COMPANY" refers to Northgate Baptist Church, as well as any parent, affiliated or related companies, subsidiaries, or divisions, and the officers, directors, employees and agents of them.

EMPLOYEE and the Company agree that effective as of the date Employee signs this Agreement, Employee shall be considered to have resigned from his position with the Company, and this Agreement will become effective as set forth below.

THEREFORE, in consideration of the mutual agreements and promises set forth within this Agreement, the receipt and sufficiency of which are hereby acknowledged and, provided that Employee properly executes and returns it to counsel for the Company and does not revoke it as set forth below, Employee and the Company agree as follows:

1. Consideration

A. In consideration of Employee's agreements and promises set forth below, the Company will pay Employee ~~two thousand six hundred and 00/100 dollars (\$2,600.00)~~, the receipt and sufficiency of which are hereby acknowledged. *five thousand two hundred and 00/100*

B. As additional valuable and sufficient consideration to support Employee's agreements and promises, the Company agrees to release Employee from any claims which it has or might have against him, including but not limited to any claims for attorneys' fees and costs. *#520*

2. Legal Obligations

The parties agree that the Company has no prior legal obligations to make the payment or promises described in paragraph 1 which are exchanged for the agreements and promises of Employee herein.

3. Release of Claims and Covenant Not to Sue

A. In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company.

This includes, but is not limited to, a release of any and all rights arising under any state or federal constitution, statute, law, rule, regulation, or common law principle of tort, contract, or equity.

In further consideration of the foregoing, receipt of which is hereby acknowledged, Employee, for himself and his current or future spouse or children, heirs, executors, administrators, grantees, and successors forever discharges Company, and its predecessors, insurers, indemnitors, purchasers, successors and assigns, from all manner of actions, causes of action, suits, debts, accounts, judgments, claims and demands whatsoever, in law and/or in equity arising out of or in any way related to Employee's hiring, employment, wages, commissions, bonuses, benefits, compensation, request for or to return from leave of absence, demotion, resignation,

discharge, termination, severance or termination benefits, and/or terms and conditions of employment; any and all causes of action for harassment, retaliation, breach of contract, breach of implied contract, tortious interference with contract, wrongful transfer or demotion, wrongful termination, fraud, negligence, libel or slander, intentional or negligent infliction of emotional distress, breach of confidentiality, invasion of privacy, or any other rights, claims, or causes of action arising under any state or federal constitution, statute, law, rule, regulation, or common law principle of tort, contract, or equity.

This specifically includes, but is not limited to, a release of any and all rights, claims, and causes of action of any sort arising under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621, et seq.; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; the South Carolina statute prohibiting workers' compensation retaliation, S.C. Code Ann. § 41-1-80; the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10, et seq.; National Labor Relations Act, 29 U.S.C. §151, et seq.; Civil Rights Act of 1866, 42 U.S.C. § 1981; Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.; the South Carolina wage payment statute, S.C. Code Ann. §41-10-10, et seq.; and the South Carolina Workers' Compensation statutes, §42-1-10, et seq., §44-30-10, et seq., of the South Carolina Code, Vocational Rehabilitation Act of 1973; 29 U.S.C. §790 et seq., or any other legal theory or cause of action, regardless of type, character or form, he may have; any and all causes of action, whether in law and/or in equity, for any expense, reinstatement, loss, mental or physical injury, costs, attorneys' fees, mental anguish, pain and suffering, medical bills or costs, physical or mental impairment, damage to reputation, loss of enjoyment of life, loss of consortium, lost earnings or profits, lost wages or commissions, lost bonuses, lost seniority or retirement benefits, other lost employment benefits including, but not limited to, vacation, or holiday pay and long or short term disability, or any other damage (whether actual, compensatory, punitive, treble or otherwise) suffered or which may be suffered by Employee due to any event which occurred prior to the date of this Separation Agreement and Release. Additionally without waiving any prospective or retrospective rights under the Fair Labor Standards Act ("FLSA"), Employee agrees and acknowledges that he has received from the Company all rights and benefits, if any, due or potentially due to him pursuant to the FLSA.

- B. Employee further expressly agrees that this Agreement may be treated as a complete defense to any action or proceeding that may be brought by Employee, or in Employee's behalf, against the Company (as well as any related companies or subsidiaries and the directors, officers, employees, insurers, and agents of them) for relief or damages of any kind arising from Employee's employment or termination from employment with the Company.
- C. Employee acknowledges that this agreement and release is intended to bar claims under the Age Discrimination In Employment Act.
- D. The intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable. However, it is understood that Employee is not releasing or waiving any rights or claims which may arise after this Agreement is executed, any claims for the sole purpose of enforcing Employee's rights under this Agreement, or any claims which by law cannot be waived. Additionally, nothing in this Agreement shall be interpreted or applied in a manner that affects or limits Employee's ability to challenge this Agreement's

compliance with notice and time-period requirements of the Age Discrimination in Employment Act. Employee also is not releasing the right to file or prosecute a charge with any appropriate administrative agency. However, Employee specifically agrees that the consideration provided to him in this Agreement represents full and complete satisfaction of any monetary relief or award that could be sought or awarded to him in any administrative action (including any proceedings before the U.S. Equal Employment Opportunity Commission or any comparable state or local agency) arising from events related to his employment with the Company or the termination thereof. Employee promises not to seek any damages or personal relief and hereby waives any rights to such relief.

4. Re-Employment Rights Waived

Employee agrees to waive any rights to reinstatement or reemployment with the Company. Employee agrees, warrants and promises that he will never apply for or, in any way, seek a job or any type of employment with Company at any time in the future. In the event Employee applies for or otherwise seeks employment with Company, Employee agrees that Company may, in its sole, total and only judgment, refuse to hire or otherwise refuse to give Employee a job or employment. The parties specifically intend that this Paragraph 4 survive and apply to acts beyond the date of this Separation Agreement and Release.

5. Tax Liability

The parties agree that Employee is responsible for any and all federal or state tax liability (including, but not limited to, taxes, fines, penalties, and interest) which could arise as a result of the aforementioned monetary payment.

6. Performance

Employee understands and agrees that the Company's obligation to perform under this Agreement is conditioned upon Employee's agreements and promises to the Company as set forth herein. In the event that a court of competent jurisdiction determines that Employee has breached any such agreements or promises, or caused any such agreements or promises to be breached, the Company's obligations to perform under this Agreement shall automatically terminate, and the Company shall have no further obligation to Employee. In addition, the Company may seek injunctive relief to enforce the provisions of this Agreement and may recover reasonable costs and attorneys' fees incurred as a result of such breach.

7. Successors and Assigns

This Agreement shall inure to and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

8. Governing Law

This Agreement shall be construed in accordance with the laws of the State of South Carolina and applicable federal law.

9. No Admission of Wrongdoing

Employee understands that the Company does not in any way admit any liability or wrongdoing regarding employee's employment and/or separation from the Company.

10. Confidentiality

Employee agrees not to disclose the terms and conditions of this Agreement to anyone except: (a) his attorneys; (b) his spouse; (c) his accountant/tax preparer; or (d) as required by law. Employee shall not disclose any terms or conditions to any employee of the Company.

11. Entire Agreement; Modification

This Agreement constitutes the entire understanding of the parties, and no representation, promise, or inducement not included herein shall be binding upon the parties. Employee affirms that the only consideration for the signing of this Agreement is the terms set forth above and that no other promises or assurances of any kind have been made to Employee by the Company or any other entity or person as an inducement for Employee to sign this Agreement. This Agreement may not be changed orally, but only by an agreement in writing signed by the parties or their respective heirs, legal representatives, successors, and assigns.

12. Partial Invalidity

The parties agree that the provisions of this Agreement shall be deemed severable and that the invalidity or unenforceability of any portion or any provision shall not affect the validity or enforceability of the other portions or provisions. Such provisions shall be appropriately limited and given effect to the extent that they may be enforceable.

13. Harassment

Employee acknowledges that he has not complained of or made any allegation of harassment, including sexual harassment, during his employment with the Company and that the severance being paid herein is not to compensate for any alleged harassment claim.

14. Medicare

Employee affirms, covenants, and warrants that he has made no claim for illness or injury against, nor is he aware of any facts supporting any claim against, Northgate Baptist under which Northgate Baptist could be liable for medical expenses incurred by him before or after the execution of this Agreement. Furthermore, he is aware of no medical expenses that Medicare has paid and for which Northgate Baptist is or could be liable now or in the future. Employee affirms that, to the best of his knowledge, no liens of any governmental entities, including those for Medicare, exist.

15. Acknowledgement

EMPLOYEE AFFIRMS THAT:

- A. HE HAS CAREFULLY READ THIS ENTIRE AGREEMENT AND RELEASE OF CLAIMS.**
- B. HE POSSESSES SUFFICIENT EDUCATION AND/OR EXPERIENCE TO FULLY UNDERSTAND THE EXTENT AND IMPACT OF THIS AGREEMENT.**
- C. HE UNDERSTANDS THAT HE HAS THE RIGHT TO CONSULT WITH AN ATTORNEY ABOUT THIS AGREEMENT AND CERTIFIES THAT THE COMPANY HAS URGED AND DOES URGE HIM TO DO SO.**
- D. HE IS FULLY COMPETENT TO EXECUTE THIS AGREEMENT AND RELEASE OF CLAIMS AND THAT HE DOES SO VOLUNTARILY AND WITHOUT ANY COERCION, UNDUE INFLUENCE, THREAT, OR INTIMIDATION OF ANY KIND OR TYPE.**

As to Employee:

4.10.18 James Tegeler
Date James Tegeler

Witness

4/10/18 Don Folsom
Date

Witness

For the Company:

Northgate Baptist Church

4/10/18 in [Signature]
Date By:

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

James Earl Tegeler,
Plaintiff,

vs.

Charlotte Collier, Hannah Elizabeth Collier,
Linda Smith, Northgate Baptist Church,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2020-CP-23-01213

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

The Defendant, Charlotte Collier, pursuant to South Carolina Rules of Civil Procedure 12(c) and the facts and pleadings of this case, moves before the Presiding Judge of the Court of Common Pleas at the Greenville County Courthouse, for an Order dismissing the above captioned case as it relates to Charlotte Collier.

I. INTRODUCTION

This case arises out of Plaintiff's employment with Northgate Baptist Church, in which he was hired on or around July 1, 2015. On or around June of 2017, Plaintiff, a 54-year-old man, met Defendant Charlotte Collier and her daughter, Defendant Hannah Collier, at a party. Shortly thereafter, Plaintiff recruited Charlotte Collier's daughter to sing with the Worship Team. From on or around August of 2017 through March of 2018, Plaintiff alleges he began a mentor-type relationship with Charlotte Collier's daughter; however, there was never a mentorship. Instead, Charlotte Collier witnessed expressive and affectionate behavior between the Plaintiff and her daughter, which included an exorbitant amount of communication via text messaging and Snapchat. Plaintiff told Charlotte Collier's daughter that he saw her like a daughter and he wanted her to call him

dad. The Plaintiff often expressed his affection by way of gifts. In November of 2017, the Plaintiff gave Charlotte Collier's daughter \$500 for Christmas shopping. That Christmas, the Plaintiff also gave Charlotte Collier's daughter the same gift the Plaintiff gave his own sons, which were dogs tags that said to call him dad. In addition, Plaintiff purchased and gave Charlotte Collier's daughter an apple watch. When Charlotte Collier started to question the relationship between her daughter and the Plaintiff, the Plaintiff would put her mind at ease by reassuring that he sees her daughter as his own daughter. At this time, Charlotte Collier thought the Plaintiff was a steady figure in her daughter's life and therefore allowed this to continue.

In January of 2018, the Plaintiff took Charlotte Collier and her daughter with him and his family to the Biltmore. After this trip, the Plaintiff became outwardly clingy and more demanding. He began to get upset with the amount of time Charlotte Collier's daughter was spending with other people at school. The Plaintiff became more proprietorial in his actions. For example, the Plaintiff insisted on sending flowers to Charlotte Collier's daughter's dorm room on Valentine's Day. When Charlotte Collier's daughter objected to this, the Plaintiff maintained he wanted to do this because he saw her as one of his daughters. This same Valentine's Day, another platonic male friend of Charlotte Collier's daughter bought flowers for her. Charlotte Collier's daughter thereafter posted a picture of the flowers on Facebook. The Plaintiff was outraged by the fact that Charlotte Collier's daughter allowed another male to buy her flowers, and responded by texting Charlotte Collier's daughter in the middle of the church service. After the church service, the Plaintiff and Charlotte Collier's daughter got in an argument, wherein the Plaintiff yelled at her daughter then proceeded to cry. Charlotte Collier witnessed this

disagreement in the church and took her daughter home. Charlotte Collier and her daughter discussed the possessive nature of the Plaintiff's relationship with her and they decided it was best for her daughter to distance herself from the Plaintiff. This attempt of distancing did not work. The Plaintiff was increasingly demanding of Charlotte Collier's daughter's time and attention.

On February 18, 2018, the Plaintiff attended a party Charlotte Collier had for her son's birthday. The Plaintiff was invited to this gathering prior to the Valentine's Day incident. Unbeknownst to the Plaintiff, Charlotte Collier's daughter decided to bring some of her college friends, including her male friend who purchased her flowers on Valentine's Day. The Plaintiff was agitated and alarmed by this and later yelled at Charlotte Collier's daughter in the parking lot, emphasizing his detestation to her treating him differently than her college friends. At this incident he told Charlotte Collier's daughter that he was not coming back to their house for cake after the party, but then decided to come and externally manifested his distaste and aversion before leaving. After this, Charlotte Collier and her daughter further discussed the need for distance from the Plaintiff. Charlotte Collier's daughter's attempts to separate herself from the Plaintiff included delaying her responses to him and actively avoiding going to his house alone for church related meetings. However, it appeared that the more Charlotte Collier's daughter attempted to withdraw herself from the Plaintiff, the more possessive the Plaintiff became. At one meeting at the Plaintiff's house, Charlotte Collier's daughter brought her roommate with her, but as history has shown, the Plaintiff was not happy with her decision to bring another person as a buffer.

In March of 2018, Charlotte Collier and her daughter attended the Plaintiff's son's

birthday lunch at Olive Garden. Charlotte Collier's daughter did not feel well and had anxiety during lunch, in large part because of her diagnosed anxious eating disorder. The Plaintiff repeatedly asked Charlotte Collier's daughter why she was ignoring him and why she was ruining his day. The Plaintiff then told Charlotte Collier's daughter to go throw up and come back, stating that maybe then she would be her normal self. After this episode, Charlotte Collier, her husband, and her daughter agreed that they needed to end whatever this unhealthy relationship was between the daughter and the Plaintiff. In attempts to end this relationship, Charlotte Collier sent an email to the Plaintiff requesting he no longer be contact with her daughter. The Plaintiff sent two emails in response, the first of which was fine, but the second email was aggressive. In addition, the Plaintiff attempted to circumvent the Colliers by emailing them from different email addresses after discovering that Charlotte Collier blocked his email address.

The compilation of the inappropriate instances, as described above, led Charlotte Collier's daughter to believe she needed to spend some time away from the Church. Charlotte Collier's daughter discussed this feeling with the pastor, and when the pastor asked the daughter what was wrong, it appeared he already knew this had to do with seemingly inappropriate relationship between her and the Plaintiff. After his discussion with the daughter, the pastor went to the Collier's house to discuss the situation with the family. Charlotte Collier told the pastor the relationship was not sexual in nature, but was also not appropriate. This was Charlotte Collier's last involvement with the situation at hand. After this conversation, the pastor, alone, went to the personnel committee. The pastor's and the personnel committee's decision is what ultimately led to the Plaintiff being let go. The Plaintiff signed a separation agreement from his position at Northgate

Baptist Church on April 10, 2018.

Charlotte Collier only spoke her husband, her daughter, and her mother, Defendant Linda Smith, about the circumstances. She was told not to discuss this with anyone or even mention the Plaintiff's name, all of which she obliged.

Plaintiff's Complaint alleges various causes of action against Defendant Charlotte Collier, including defamation, intentional infliction of emotional distress, negligent infliction of emotional distress and civil conspiracy. Defendant Charlotte Collier argues that (a) the statements allegedly made by the Defendant were not defamatory; (b) the statements allegedly made by the Defendant are subject to qualified privilege; (c) the statements allegedly made by the Defendant are true, and in fact are alleged to be true by the Plaintiff his support of his claim, (d) the statement by the Defendant is protected as opinion; (e) the claims as alleged to do not rise to the level of outrage; (f) the Complaint fails to state a claim for civil conspiracy; and (g) there exists no duty from the Defendant to the Plaintiff.

II. STANDARD OF REVIEW

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c), SCRCP. When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000). However, the court will not admit inferences drawn by the plaintiff from such facts, nor will it admit conclusions of law. Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990). A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle

the plaintiff to judgment if resolved in plaintiff's favor. Sapp v. Ford Motor Co., 386 S.C. 143, 687 S.E.2d 47 (2009).

III. ARUGMENT

1. The statements allegedly made by the Defendant were not defamatory.

Defendant Charlotte Collier moves this Court for an Order entering judgment in her favor on all claims based on the pleadings and Complaint of Plaintiff, pursuant to SCRCRCP Rule 12(c), on the ground that the statements allegedly made by her were not defamatory in nature. The Plaintiff's Complaint alleged that Charlotte Collier used evil motive and actual malice to willfully and wrongfully disparage the Plaintiff and the Plaintiff's reputation publicly when she accused the Plaintiff of having inappropriate relations with her daughter. The Plaintiff alleges that Charlotte Collier's defamatory statements were made to the Plaintiff's employer or supervisor, also known as the pastor, and to staff members and parishioners of the church. Plaintiff alleges that Charlotte Collier intended to injury disgrace and defame the Plaintiff with disregard of the falsity of her statements, while being knowledgeable of the false nature of the statements.

The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998). The elements will be discussed in more detail below.

However, the overarching issue here is whether there is, on the Complaint (and the pleadings under Rule 12(c)), any genuine question of a material fact as to the truth of

the Plaintiff's statement. Where there is no genuine issue of material fact, it is appropriate for the court to decide the truth of an alleged defamation. See WeSav Fin. Corp. v. Lingefelt, supra, 316 S.C. at 445, 450 S.E.2d at 582; Midland Mut. Life Ins. Co. v. Harrell, 331 S.C. 394, 398, 503 S.E.2d 189, 191 (Ct. App. 1998); and A Fisherman's Best, Inc. v. Recreational Fishing All., 310 F.3d 183, 196 (4th Cir. 2002). There is no genuine issue of material fact as to the fact that there was a relationship between the Plaintiff and Charlotte Collier's daughter. In addition, there is no genuine issue of material fact as to the fact that the said relationship was inappropriate. Consequently, the Plaintiff's purported cause of action against Charlotte Collier for defamation must be dismissed.

In the Complaint Plaintiff, a man twenty years Hanna Collier's senior, alleges as follows:

- He is an adult male who has placed himself in a supervisory position over an 18 year old Defendant (P. 17)
- He was giving the 18 year old Defendant financial gifts (P. 18)
- Plaintiff alleges the 18 year old Defendant was vulnerable (P. 23)
- Plaintiff alleges he decided to form a mentoring relationship with an 18 year old female (P. 27)
- Plaintiff invited the 18 year old to social gatherings and on trips (P. 31)
- Plaintiff reported on observations, assessments and issues of an 18 year old girl to church staff (P. 36)
- Plaintiff became a confidant to 18 year old girl for her personal issues and family issues (P. 38)
- Others noticed the vulnerable 18 year old Defendant being expressive and affectionate toward the Plaintiff. (PP. 42 and 43)
- Plaintiff attempted to "redirect" the anger of the 18 year old Defendant in a public setting and the Defendant did not respond well to this. (P. 45)

- After the Plaintiff alleges that the mentorship was not working and was “reduced and limited” (P. 53) he invited the 18 year old Plaintiff to a family birthday party then corrected her behavior with regard to her cell phone usage at the table.

The alleged defamatory statement in this case is the statement by the Defendant Charlotte Collier that she considered the relationship between the Plaintiff, a 50 year old man, and her 18 year old daughter defined by the Plaintiff in the Complaint to be “inappropriate.” That statement is not defamatory.

2. The statements allegedly made by the Defendant are subject to qualified privilege.

Defendant Charlotte Collier moves this Court for an Order entering judgment in her favor on all claims based on the pleadings and Complaint of Plaintiff, pursuant to SCRCP Rule 12(c), on the ground that Plaintiff has failed to allege that the statements made by her were not subject to a qualified privilege. Charlotte Collier, on the other hand, argues that (1) her statement was protected by a qualified privilege and (2) she did not exceed the scope of that qualified privilege.

Our Supreme Court addressed a similar issue in Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514 S.E.2d 126 (1999). In Swinton Creek Nursery, the Court stated that in a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege. Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. Restatement (Second) of Torts § 593 (1977); see Bell v. Bank of Abbeville, 208 S.C. 490, 38 S.E.2d 641 (1946). In Bell, this Court held that in determining whether or not the communication was qualifiedly privileged, regard must be had to the occasion and to

the relationship of the parties. Id at 493. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. Id at 494. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed. Id. **Our Courts have previously found the qualified privilege applies "to situations in which an employee's job performance is properly evaluated."** Wright v. Sparrow, 298 S.C. 469, 474, 381 S.E.2d 503, 506 (Ct. App. 1989). Harris v. Tietex Int'l, Ltd., 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016)

Here, Charlotte Collier, as mother of a daughter concerned about an inappropriate relationship, who spoke only to the preacher at her church had a qualified privilege, if not the most qualified privilege, to make such a statement. Further, any and all statements that were made were made for the purpose of protecting her daughter and in attempts to putting a halt to the inappropriateness to the relationship and related to the Plaintiff's job performance. Charlotte Collier had a direct interest safeguarding and defending her daughter. Further, Charlotte Collier discussed the circumstances at hand with her husband, her mother, and her daughter, all of whom are privileged and interested parties. Charlotte Collier also discussed the ill-suited relationship with the pastor, in order to protect her daughter. Therefore, this cause of action of defamation should be dismissed because of the pure nature of a mother and daughter qualified privilege relationship.

3. The statements allegedly made by the Defendant are true, and in fact are alleged to be true by the Plaintiff in support of his claim.

Defendant Charlotte Collier moves this Court for an Order entering judgment in her favor on all claims based on the pleadings and Complaint of Plaintiff, pursuant to SCRCRCP Rule 12(c), on the ground that Plaintiff has failed to allege that the statements made by her are untrue.

“To recover for defamation under South Carolina law, a Plaintiff must show: ‘(1) a false and defamatory statement was made; . . .’ Seaton v. City of N. Charleston, No. 2:10-CV-03186-DCN, 2012 WL 6186158, at *3 (D.S.C. Dec. 12, 2012); see also Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). “The truth of the matter is a complete defense to an action based on defamation.” WeSav Fin. Corp. v. Lingefelt, 316 S.C. 442, 445, 450 S.E.2d 580, 582 (1994), citing Ross v. Columbia Newspaper, Inc., 266 S.C. 75, 221 S.E.2d 770 (1976). Here, the Plaintiff must prove that the statements regarding the inappropriateness of the relationship between the Plaintiff and her daughter were false. The Plaintiff is unable to do this. The allegations of the Complaint noted supra on their face allege an inappropriate relationship. Further, in the Plaintiff’s Complaint, the Plaintiff stated that he repeatedly redirected Charlotte Collier’s daughter’s behavior to be more appropriate in manner. (Plaintiff’s Complaint Line 43). In that statement, the Plaintiff alleges that some aspect of the relationship was inappropriate. Subsequently, because the Plaintiff agrees with Charlotte Collier that the relationship was inappropriate, the Plaintiff cannot then state that Charlotte Collier’s statements as to the inappropriateness were false.

4. *The statement by the Defendant is protected as opinion.*

Defendant Charlotte Collier moves this Court for an Order entering judgment in her favor on all claims based on the pleadings and Complaint of Plaintiff, pursuant to SCRCP Rule 12(c), on the ground that Plaintiff has failed to allege that her alleged statements were anything other than an opinion.

In general, facts are statements that can be proven true or false; by contrast, opinions are matters of belief or ideas that cannot be proven one way or the other. Moreover, because a statement must be false to be defamatory, a statement of opinion cannot form the basis of a defamation claim because it cannot be proven true or false. Specifically, under the First Amendment, there is no such thing as a false idea. Garrard v. Charleston Cty. Sch. Dist., 429 S.C. 170, 198, 838 S.E.2d 698, 713 (Ct. App. 2019).

Here, Charlotte Collier's statement, belief, and opinion that the relationship between her daughter and the Plaintiff was inappropriate is just that, her opinion. There is no hard and fast rule of what is or is not appropriate. Rather, appropriateness and inappropriateness itself is a sliding scale that comes from people's differing opinions. What Charlotte Collier believes to be inappropriate may be different than what the Plaintiff or any other person or party may believe to be inappropriate. In Charlotte Collier's opinion, the Plaintiff had an inappropriate relationship with her daughter. Because this was her opinion, she is not subject to a claim of defamation.

5. *The claims as alleged to do not rise to the level of outrage.*

Defendant Charlotte Collier moves this Court for an Order entering judgment in her favor on all claims based on the pleadings and Complaint of Plaintiff, pursuant to SCRCP

Rule 12(c), on the ground that Plaintiff has failed to allege that these claims rose to a level of outrage. If the Plaintiff intends to assert that Charlotte Collier is liable for intentional infliction of emotional distress, there must be some level of outrage.

When the South Carolina Supreme Court first recognized the tort of intentional infliction of emotional distress, it stated that it intended to adopt the rule of liability stated in § 46 of the *Restatement (Second) of Torts* relating to intentional infliction of emotional distress: § 46. *Outrageous Conduct Causing Severe Emotional Distress*. This Rule states that one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981).

To recover for the intentional infliction of emotional distress, a plaintiff must establish (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 defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. Fleming v. Rose, 338 S.C. 524, 536-37, 526 S.E.2d 732, 739 (Ct. App. 2000).

The court determines, from the materials before it, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. See McSwain v. Shei, 304 S.C. 25, 402 S.E.2d 890 (1991). See also Andrews

v. Piedmont Air Lines, 297 S.C. 367, 377 S.E.2d 127 (Ct. App. 1989) (question of whether defendant's conduct may be reasonably regarded as so extreme and outrageous as to allow recovery for outrage is question for court to determine). The majority of cases finding outrageous conduct generally require "hostile or abusive encounters" or "coercive or oppressive conduct." See Gattison v. South Carolina State College, 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995); Wright v. Sparrow, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989).

Here, there is no evidence of any hostile or abusive encounter by Charlotte Collier or any suggestion of coercive or oppressive conduct. There are no facts to establish the conduct of Charlotte Collier was so extreme and outrageous as to constitute intentional infliction of emotional distress. Instead, Charlotte Collier did as any good mother would do in a civilized society, and noted the inappropriateness of the relationship and did what she could to protect her child. The facts alleged fall short of conduct that exceeds all possible bounds of decency. Further, there is no action which might be regarded as atrocious and utterly intolerable in a civilized society.

6. *The Complaint fails to state a claim for civil conspiracy.*

Defendant Charlotte Collier moves this Court for an Order entering judgment in her favor on all claims based on the pleadings and Complaint of Plaintiff, pursuant to SCRCP Rule 12(c), on the ground that Plaintiff has failed to state a claim for civil conspiracy.

The Plaintiff simply stated that Charlotte Collier individually and collectively with the other Defendants were joint and several tortfeasors conspiring together to injure the Plaintiff. The Plaintiff does not include any allegations of fact or damages in support of his purported civil conspiracy cause of action that are different from the elements that he

attempts to establish for his other purported causes of action. “In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009). “[B]ecause the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.” Id., 385 S.C. at 115, 682 S.E.2d at 874. For this reason also, the purported cause of action against Charlotte Collier for civil conspiracy must be dismissed.

7. There exists no duty from the Defendant to the Plaintiff.

Defendant Charlotte Collier moves this Court for an Order entering judgment in her favor on all claims based on the pleadings and Complaint of Plaintiff, pursuant to SCRCF Rule 12(c), on the ground that Plaintiff has failed to allege that she owed a duty to him.

In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant’s breach was the actual and proximate cause of the plaintiff’s injury, and (4) the plaintiff suffered an injury or damages. Steinke v. S.C. Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999); Shipes v. Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 238 S.E.2d 167 (1977). The court must determine, as a matter of law, whether the law recognizes a particular duty. Id. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law. Steinke 336 S.C. at 387, 520 S.E.2d at 149; Ellis v. Niles, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996).

Likewise, in the case at hand, there is no scenario in which Charlotte Collier owed the Plaintiff a duty. Further, in addition to there being no duty owed, under South Carolina law, the Plaintiff does not meet the standards to be able to recover for negligent infliction of emotional distress.

In Kinard v. Augusta Sash & Door Co., the South Carolina Supreme Court adopted the cause of action for negligent infliction of emotional distress with the following elements: (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony. Stewart v. State Farm Mut. Auto. Ins. Co., 341 S.C. 143, 154, 533 S.E.2d 597, 603 (Ct. App. 2000) (citing Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985)). The South Carolina Supreme Court has strictly limited this cause of action to the “bystander liability” scenario. Id.

The Plaintiff in this case cannot meet any of the elements of this cause of action and this is far from the “bystander liability” scenario. Accordingly, any cause of action the Plaintiff may imply for negligent infliction of emotional distress must be dismissed.

IV. CONCLUSION

Defendant Charlotte Collier’s Motion for Judgement on the Pleadings should be granted. The allegations of the Complaint in this matter are not sufficient to assert and state any causes of action or claims.

WHEREFORE, the Defendant, Charlotte Collier, respectfully requests that the

Court grant all aspects of this Motion for Judgement on the Pleadings, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

CLAWSON and STAUBES, LLC

s/ Amy M. Snyder
Shelby Herbkersman (104153)
Amy M. Snyder (7968)
1000 E North Street, Suite 200
Greenville, South Carolina 29601-3106
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: asnyder@clawsonandstaubes.com
sherbkersman@clawsonandstaubes.com
Attorney for Charlotte Collier

August 14, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	C.A. NO.: 2020-CP-23-01213
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
vs	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANTS, HANNAH COLLIER AND
Charlotte Collier, Hannah Elizabeth	)	LINDA SMITH, MOTION TO DISMISS
Collier, Linda Smith and Northgate	)	AND MOTION FOR JUDGMENT ON THE
Baptist Church,	)	PLEADINGS
	)	
Defendants.	)	
	)	

This Memorandum is submitted in support of Defendants', Hannah Collier ("H. Collier") and Linda Smith ("Smith"), Motions to Dismiss and for Judgment on the Pleadings. The basis for these motions is that the alleged defamatory statement of H. Collier that Plaintiff's relationship with her was "inappropriate" is not actionable as a defamatory statement. Plaintiff also fails to identify facts necessary to support its remaining causes of action for civil conspiracy and for intentional infliction of emotional distress against H. Collier and Smith. Plaintiff's cause of action for negligent infliction of emotional distress against H. Collier and Smith fails because it does not apply to the facts of this case.

STATEMENT OF THE CASE

For these Motions, the relevant facts are as follows:

H. Collier attended and was a member of Northgate Baptist Church during the fall of 2017 – spring of 2018. H. Collier, a high-school senior at the time, was a member of the Church's worship team led by the Plaintiff, an employee of Northgate Baptist Church. Plaintiff took a special interest in H. Collier. Due to Plaintiff's increasingly bizarre and inappropriate behavior towards H. Collier, some of which is set forth in the affidavit of H. Collier to be made a

part of the record herein, H. Collier and her mother, Charlotte Collier, met in private with the head pastor of Northgate Baptist Church, Dr. Barry Jimmerson, on or about March 12, 2018. H. Collier informed Dr. Jimmerson that she believed Plaintiff's conduct and relationship with her was "inappropriate," and as a result, she would be taking a break from attending the Church.

The gravamen of the Plaintiff's lawsuit against H. Collier, Smith and Charlotte Collier is a cause of action for defamation based upon the March 12, 2018 statement that Plaintiff's relationship with her was "inappropriate" (the "Statement").

According to the Plaintiff's Complaint, despite not being present at the March 12, 2018 meeting, H. Collier, Charlotte Collier, or both told Dr. Jimmerson that the Plaintiff had "inappropriate relations" with H. Collier (Pl's Comp. ¶ 59), which Plaintiff alleges was later misinterpreted by the Church to mean that he had an inappropriate sexual relationship with H. Collier. Nevertheless, according to the Plaintiff's Complaint, H. Collier denied to Dr. Jimmerson that (1)...she had any romantic interest, romantic feelings, romantic aspirations, or any of the above toward Plaintiff; (2) that she did not believe Plaintiff had any romantic interest, romantic feelings, romantic aspirations toward, or any of the above toward H. Collier; and, (3) that she never had any sexual, or intimate relations with Plaintiff. (Pl's Comp. ¶ 60-61). Furthermore, according to Plaintiff's Complaint, "Jimmerson admitted to Plaintiff and Shaler that he did not believe Plaintiff's mentorship of Defendant H. Collier or the text message from Defendant H. Collier to Plaintiff supported or warranted the allegation that Plaintiff had inappropriate relations with Defendant H. Collier (Pl's Comp. ¶ 68).

H. Collier never told Dr. Jimmerson that the relationship was sexual. In fact, H. Collier told Dr. Jimmerson that she did not want Plaintiff to get in trouble or fired. She merely said the

relationship was inappropriate, which is a true statement. (Aff. of H. Collier, filed Aug. 17, 2020).

As a result of the foregoing, there is no factual dispute that H. Collier ever told or even insinuated to Dr. Jimmerson that Plaintiff had an inappropriate sexual relationship with H. Collier and there is no factual dispute that Jimmerson ever believed the nature of the relationship was sexual. Plaintiff alleges that the Church subsequently misinterpreted the Statement, and failed to properly investigate the Statement, which led to his termination.

Plaintiff also alleges that Smith, H. Collier's grandmother, is liable for defamation because she "promulgated to third parties inside and outside of the congregation" of Northgate Baptist Church that Plaintiff had "inappropriate relations." (Pl's Comp. ¶83). Plaintiff's Complaint fails to identify the actual statement(s) made by Smith or any of the alleged third parties.

ARGUMENT

Defamation

To recover for defamation, the plaintiff must prove, that there was: (1) a false and defamatory statement made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006).

The allegations of Plaintiff's Complaint fail to meet the elements of defamation.

True Statement

H. Collier's statement to Dr. Jimmerson that Plaintiff had an inappropriate relationship with her was true. Attached hereto, as an Exhibit to the Affidavit of H. Collier, are some

examples of the inappropriate text messages from the Plaintiff, an adult in his mid to late 40s, to H. Collier, an 18 year old student and member of the Plaintiff's worship team. Clearly, the relationship was inappropriate. Therefore, the statement is true and not actionable.

Defamatory Statement

The Statement does not qualify as a defamatory statement. A defamatory statement is (1) either defamatory *per se* or defamatory *per quod* and (2) actionable *per se* or not actionable *per se*. A defamatory statement *per se* has a defamatory meaning apparent on its face. A defamatory statement *per quod* has a defamatory meaning through referring to facts or circumstances beyond the statement itself. *Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007).

Plaintiff's Complaint concedes that the Statement is not a defamatory statement on its face because he alleges it was misinterpreted by the Church. Therefore, "If the defamatory meaning is not clear unless the hearer knows the facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself to prove a defamatory meaning." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998).

Plaintiff alleges that Dr. Jimmerson, the "hearer" of the Statement from H. Collier, that he told Plaintiff he did not believe he had a sexual relationship with H. Collier. Therefore, if Dr. Jimmerson did not believe the Statement meant that the Plaintiff had a sexual relationship with H. Collier, then Plaintiff cannot prove the statement was defamatory. There are no extrinsic facts the Plaintiff to support a defamatory meaning. Further, by Plaintiff's own admission, H. Collier denied to Dr. Jimmerson that the relationship was sexual.

Defamatory Statement Not Actionable *Per Se*

In addition to being defamatory *per se* or *per quod*, “[a] separate issue is whether the statement is ‘actionable *per se*’ or not. This issue is one of pleading and proof, and is always a question of law for the court.” *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502. If the defamation is actionable *per se*, the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice and special damages. *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502.

“Slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession.” *Id.* at 511, 506 S.E.2d at 502. “In all other cases-namely, when slander does not fall into the above-named categories-special damages must be established.” *Id.* at 526, 506 S.E.2d at 510 (Toal, J., concurring). *Parrish v. Allison*, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007).

If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice, that is “the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff's reports.” *Holtzscheiter*, 332 S.C. 502, 510, 506 S.E.2d 497, 502.

By Plaintiff's own admission, subsequent to March 12, 2018, the Statement was misinterpreted by the Church to mean that Plaintiff had a sexual relationship with Plaintiff. A statement's meaning based upon a misinterpretation of the same cannot be actionable *per se*

because it does not directly charge the plaintiff with one of the five characteristics or acts. Since the Statement is not actionable per se, the Plaintiff must prove actual malice.

Plaintiff fails to present facts that support a finding of actual malice. By Plaintiff's own admission, the Statement was made by a member of the Church, H. Collier, to the head pastor to Dr. Jimmerson, only. The facts pled do not provide evidence of ill will by H. Collier, a desire to purposely injure the Plaintiff with the Statement, or to publish the Statement with reckless disregard towards Plaintiff.

Qualified Privilege and Good Faith

As an affirmative defense to slander, a defendant may assert that the statement was made under a qualified privilege. If the qualified privilege exists, the claim will fail unless the plaintiff can prove actual malice. *Constant v. Spartanburg Steel Products, Inc.*, 316 S.C. 86, 447 S.E.2d 194, 196 (1994). A qualified privilege is defined as "[a] communication made in good faith on any subject matter in which the person communicating has an interest or duty ... if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable." *Id.* In order to maintain the privilege, "[t]he publisher must not wander beyond the scope of the occasion." *Id.* *Johns v. Amtrust Underwriters, Inc.*, 996 F. Supp. 2d 413, 420 (D.S.C. 2014).

In this case, H. Collier's statement was made in good faith, with proper motives, and to the proper parties after it became clear that Plaintiff's behavior was inappropriate. Therefore, it qualifies as a privileged communication between a member of the Church and the Church's head pastor. It is reasonable that a member of the Church would go to the pastor or other authority within the Church to report the type of behavior exhibited by the Plaintiff, especially when Plaintiff was in position of authority over H. Collier.

Therefore, because the alleged defamatory statement is privileged, Plaintiff must prove the statement was made with actual malice. As set forth above, Plaintiff fails to plead facts sufficient to meet the standard that the Statement was made with actual malice.

Based upon the foregoing, Plaintiff's cause of Defamation must be dismissed pursuant to Rule 12(b)(6) or Rule 12(c), *SCRCP*.

Intentional Infliction of Emotional Distress

To recover for intentional infliction of emotional distress, the complaining party must establish that (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 and outrageous" so 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 the defendant caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007).

H. Collier made the Statement to Dr. Jimmerson in private and advised Dr. Jimmerson that she did not want Plaintiff to get in trouble. Again, according to Plaintiff, Dr. Jimmerson did not believe that the relationship was sexual. Therefore, Plaintiffs fails to present facts necessary to support that the Statement constitutes conduct that "exceeds all bounds of decency" or was "utterly intolerable." This cause of action also fails pursuant to Rule 12(b)(6) or Rule 12(c), *SCRCP*.

Civil Conspiracy

The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special

damages. *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005); see also *Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 56–57 (2004) (“A civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing special damage.”) (citation omitted). It is essential that the plaintiff prove all of these elements in order to recover. *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938).

The “essential consideration” in civil conspiracy “is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff.” *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986).

“[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987); accord *Cowburn*, 366 S.C. at 49, 619 S.E.2d at 453. *Pye v. Estate of Fox*, 369 S.C. 555, 566–67, 633 S.E.2d 505, 511 (2006).

Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91 (Ct.App.1989). *Pye v. Estate of Fox*, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006).

According to the Plaintiff’s Complaint, “Defendant(s), and each Defendant individually and collectively as joint and several tortfeasors, have conspired together to injure Plaintiff.” (Pl’s Comp. ¶ 213). Plaintiff’s Complaint then states that “each Defendant individually and collectively as joint and several tortfeasors, have caused Plaintiff damages.” (Pl’s Comp. ¶ 214).

Plaintiff's blanket statements of a civil conspiracy and general damages do not constitute facts sufficient to create such a cause of action. First, Plaintiff's allegations do which Defendants conspired together for the purpose of injuring Plaintiff. Second, Plaintiff's Complaint fails to prove special damages because of the alleged civil conspiracy. Therefore, this cause of action must be dismissed pursuant to Rule 12(b)(6) or Rule 12(c).

Negligent Infliction of Emotional Distress

To prove a cause of action for negligent infliction of emotional distress with the following elements, the Plaintiff must prove that (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

Kinard, 286 S.C. at 582–83, 336 S.E.2d at 467.

This cause of action is limited to bystander recovery involving some type of accident, which does not apply to the facts of this case. Therefore, this cause of action must be dismissed pursuant to Rule 12(b)(6) or Rule 12(c), *SCRCP*.

CONCLUSION

For the foregoing reasons, Defendants Hannah Collier and Linda Smith respectfully request that the Court grant their Motions for Judgment on the Pleadings and Motion to Dismiss.

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes

DANIEL R. HUGHES (SC Bar #72547)

457-B Pennsylvania Avenue

P. O. Box 449

Greer, SC 29652-0449

Telephone: (864) 334-2500

Facsimile: (864) 879-0149

ATTORNEYS FOR DEFENDANTS

Dated: August 17, 2020
Greer, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JAMES EARL TEGELER,

Plaintiff(s),

v.

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST CHURCH,**

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2020CP2301213

COMMON PLEAS CIVIL CASE NO.

**PLAINTIFF'S RESPONSE TO DEFENDANT
NORTHGATE BAPTIST CHURCH'S MOTION TO
DISMISS AND MEMORANDUM IN SUPPORT OF
ITS MOTION TO DISMISS, DEFENDANT
CHARLOTTE COLLIER'S MOTION TO DISMISS,
DEFENDANTS HANNAH ELIZABETH COLLIER
AND LINDA SMITH'S MOTION FOR JUDGMENT
ON THE PLEADINGS AND MOTION TO DISMISS**

PLEASE TAKE NOTICE that Plaintiff seeks to respond to Defendant **NORTHGATE BAPTIST CHURCH's** Motion to Dismiss filed on March 25, 2020, Defendant **CHARLOTTE COLLIER's** Motion to Dismiss filed on April 2, 2020, Defendants **HANNAH COLLIER** and **LINDA SMITH's** Motion for Judgment on the Pleadings and Motion to Dismiss filed on April 27, 2020, and Defendant **NORTHGATE BAPTIST CHURCH's** Memorandum in Support of its Motion to Dismiss filed on August 14, 2020. All previous filings, including exhibits, by Plaintiff in this action are hereby incorporated in this response. Plaintiff shows the following:

PROCEDURAL HISTORY

Plaintiff filed a Summons and Complaint on February 25, 2020. Plaintiff filed an Affidavit of Service for Defendant **LINDA SMITH** on March 4, 2020. Plaintiff filed an Acceptance of Service for Defendant **NORTHGATE BAPTIST CHURCH** on March 10, 2020. Plaintiff filed an Affidavit of Service for Defendant **HANNAH ELIZABETH COLLIER** on March 10, 2020, and March 12, 2020. Defendant **NORTHGATE BAPTIST CHURCH** filed a Motion to Dismiss on March 25, 2020. Defendant **CHARLOTTE COLLIER** filed an Answer to Complaint on March 30, 2020. Defendants **HANNAH ELIZABETH COLLIER** and **LINDA SMITH** filed an Answer on March 30, 2020. Defendant **CHARLOTTE COLLIER** filed an Amended Answer and Motion to Dismiss on April 2, 2020. Plaintiff filed an Order of Protection on April 9, 2020, due to health reasons for Plaintiff's counsel. Defendants **HANNAH ELIZABETH COLLIER** and **LINDA SMITH** filed a Notice of Motion and Motion for Judgment on the Pleadings and Motion to Dismiss as well as an Amended Answer on April 27, 2020. Defendant **NORTHGATE BAPTIST CHURCH** filed a Memorandum in Support of its Motion to Dismiss on August 14, 2020. Plaintiff filed a Response to Defendant **NORTHGATE BAPTIST CHURCH's** Motion to Dismiss filed on March 25, 2020, Defendant **CHARLOTTE COLLIER's** Motion to Dismiss filed on April 2, 2020, Defendants **HANNAH COLLIER** and **LINDA SMITH's** Motion for Judgment on the Pleadings and Motion to Dismiss filed on April 27, 2020, and Defendant **NORTHGATE BAPTIST CHURCH's** Memorandum in Support of its Motion to Dismiss filed on August 14, 2020. Defendant **CHARLOTTE COLLIER** filed a Memorandum in Support of Motion to Dismiss on August 17, 2020. A hearing before the Court is scheduled on August 18, 2020, concerning Defendant **NORTHGATE BAPTIST CHURCH's** Motion to Dismiss filed on March 25, 2020,

Defendant **CHARLOTTE COLLIER**'s Motion to Dismiss filed on April 2, 2020, Defendants **HANNAH COLLIER** and **LINDA SMITH**'s Motion for Judgment on the Pleadings and Motion to Dismiss filed on April 27, 2020, and Defendant **NORTHGATE BAPTIST CHURCH**'s Memorandum in Support of its Motion to Dismiss.

FACTUAL BACKGROUND

This action primarily concerns the defamation of Plaintiff and other cause(s) of action arising therefrom by Defendants with respect to Defendant **NORTHGATE BAPTIST CHURCH** ("Church") terminating Plaintiff's employment on or around April 10, 2018. Plaintiff has over 21 years of experience in directing a choir and being a pianist. Plaintiff was hired by the Church as a pianist on or around July 1, 2015, earning approximately \$250.00 per week. On or around June of 2016, the Church asked Plaintiff to take over the music program, earning an annual salary that was approximately \$33,800.00. During his employment with the Church, Plaintiff held the position of Worship Leader, Director of Music (including leadership of the Praise Team), and pianist for the congregation. Both the Worship Team and the Praise Team were small, intimate groups of singers and band performers respectively. Plaintiff was terminated from the Church on or around April 10, 2018, under the pretext of having inappropriate contact with young girl(s) in the congregation in efforts to cut costs for the Church's multi-million-dollar fundraising campaign to renovate the church aesthetically. In this action, context matters. Mr. Tegeler is a devout Christian who fosters a shared community within the Christian community and helps others in greater need through the spirit of shared faith and worship. Additionally, Mr. Tegeler has extensive experience and training in Christian youth ministry and counseling having been a camp counselor for his parents' Christian youth camp, receiving training as a youth pastor in college, and serving as a youth minister for approximately five (5) years prior to working for the Church. Additionally, Plaintiff has received the proper training for establishing boundaries with children, young adults, and adults. Moreover, Plaintiff is a grieving widower after having lost his wife, Mrs. Teresa Tegeler, of around twenty (20) years in 2013. Plaintiff is the sole supporter of his two sons Alexander and Andrew Tegeler, who are actively involved in Plaintiff's life as a family and socially with others. Plaintiff is well-known by members of the Christian community having no interest in dating with his sole focus on his faith in God, raising his sons, and sharing the spirit of faith with fellow Christians.

On or around June of 2017, Plaintiff met Defendant **CHARLOTTE COLLIER** ("C. Collier") at a birthday party for another parishioner at the Church. C. Collier is the daughter of Defendant **LINDA SMITH** ("Smith"), and ex-wife of Craig T. Collier. Mr. Craig T. Collier is a long-time law enforcement officer in South Carolina. C. Collier and Mr. Craig T. Collier had two children from their marriage, Defendant **HANNAH ELIZABETH COLLIER** ("H. Collier") and Tyler Collier. On or around July of 2017, and at the request of Smith, who is also the grandmother of H. Collier, Plaintiff recruited H. Collier to sing in the Worship Team. On or around August 13, 2017, H. Collier began singing on the Worship Team with the Church under Plaintiff's direction. During Plaintiff's interactions with H. Collier while employed with the Church, H. Collier was a legal adult over the age of eighteen (18) years old and attended college in upstate South Carolina. On or around September of 2017, H. Collier solicited Plaintiff for a mentor in music and the Christian faith, of which Plaintiff maintained transparency of said mentorship with his supervisor Dr. Barry Jimmerson ("Pastor Jimmerson") at the Church

without objections from C. Collier and the Church. In September of 2017, Plaintiff set clear expectations and boundaries with H. Collier up front that provided the context for and applied to the duration of Plaintiff's mentorship of H. Collier. See Exhibit A. H. Collier fully appreciated, understood, and consented to Plaintiff's expectations and boundaries during Plaintiff's mentorship of H. Collier. Within the Church community, H. Collier was known as an emotionally unstable individual who demonstrated immaturity for her age and experienced difficulty coming from divided home due to her parents' divorce under the circumstances. See Exhibit B. H. Collier admitted to Plaintiff as to receiving professional treatment for her mental illness, mental health, or any of the above during Plaintiff's mentorship of H. Collier. Plaintiff's mentorship role with H. Collier utilized Plaintiff's experience providing faith-based assistance to help H. Collier's spiritual growth and development separately. During the time of Plaintiff's mentorship of H. Collier, Plaintiff invited Defendants C. Collier, H. Collier, and Tyler Collier on family outings with Plaintiff's family and friends, attend family-friendly events for parishioners of the Church and friends, or any of the above. Defendant C. Collier then began indicating an interest in Plaintiff for more than just friendship when soliciting Plaintiff to go on date(s) with her on or around January of 2018 and subsequently thereafter. Each time, Plaintiff rejected Defendant C. Collier's advances toward Plaintiff of a romantic, sexual, intimate, or physical nature. At no time did Plaintiff ever reciprocate or express any interest in Defendants C. Collier of a romantic, sexual, intimate, or physical nature. See Exhibit B. Subsequently thereafter, Plaintiff limited his interactions with Defendants Smith, C. Collier, and H. Collier outside of his scope of employment with the Church. On or around January of 2018, Defendant Church began a million plus dollar campaign for aesthetic renovations.

On or around March 11, 2018, Plaintiff invited Defendants C. Collier and H. Collier, including Defendant C. Collier's son Tyler Collier, along with Plaintiff's other family members and friends to the birthday party of Plaintiff's son Alexander at Olive Garden. Both Defendants C. Collier and H. Collier knew of Plaintiff's house rules in his family that no cell phones were permitted at the dinner table. During that event, Defendant H. Collier rudely complained of being ill in a socially awkward manner (i.e., announcing of wanting to vomit at the dinner table) while continually being engaged in the use of a cell phone (i.e., texting) at the table throughout the meal time and birthday celebrations without engaging in any social interaction(s). Defendant C. Collier failed to redirect Defendant H. Collier's socially inappropriate behavior. Plaintiff politely redirected Defendant H. Collier's behavior. Defendant H. Collier did not respond well to Plaintiff's redirection displaying immaturity by a disproportionately outburst of anger in a socially inappropriate manner. The following day on or around March 11, 2018, and unbeknownst to Plaintiff, Defendants C. Collier and H. Collier reported Plaintiff to Defendant Church. H. Collier reported to Pastor Jimmerson at the Church and accused Plaintiff of having an inappropriate relationship with Defendant H. Collier. As admitted by Pastor Jimmerson with the Church to Plaintiff, Defendant H. Collier specifically accused Plaintiff of having an inappropriate relationship with her to Pastor Jimmerson. Then, Pastor Jimmerson specifically asked Defendant H. Collier whether she felt that Plaintiff had any romantic or sexual feelings, or had sexual relations, with her. Dr. Jimmerson specifically asked Hannah Collier whether she felt any romantic or sexual feelings toward Plaintiff or had any sexual, or intimate, relations with Plaintiff.

Defendant H. Collier replied no to both queries. However, after the nature of said questioning following Defendant H. Collier's accusation, Defendant H. Collier admitted to Carolina Jenkins and by way of opposing counsel that she did not want Plaintiff to get into trouble after-the-fact. See Exhibit C. On or around March 12, 2018, Defendant C. Collier corresponded with Plaintiff terminating Plaintiff's mentorship with Defendant H. Collier and represented herself as acting on the behalf of Defendant H. Collier. See Exhibit D.

On or around March 13, 2018, Plaintiff informed Pastor Jimmerson and other staff with Defendant Church that Plaintiff's mentorship of Defendant H. Collier was terminated along with a text message correspondence between Plaintiff and H. Collier. Exhibit E. On or around March 14, 2018, Pastor Jimmerson and Laurel Shaler, who was head of the Personnel Committee with the Church, approached Plaintiff. Pastor Jimmerson with Defendant Church conveyed the nature of the conversation between him and Defendants C. Collier and H. Collier. Plaintiff was shocked and distraught upon the discovery of being accused of having an inappropriate relationship with Defendant H. Collier by Defendants C. Collier and H. Collier. Plaintiff shared the same text message to refute such allegations, of which Pastor Jimmerson did not convey any concern to Plaintiff concerning Defendants C. Collier and H. Collier admitting that Plaintiff's mentorship of H. Collier was not inappropriate. See Exhibit C. Despite Pastor Jimmerson being Plaintiff's supervisor having the authority to terminate Plaintiff, Ms. Shaler disagreed with Pastor Jimmerson and accused Plaintiff of being inappropriate with Defendant H. Collier. On or around April 10, Pastor Jimmerson, Ms. Shaler, and Mr. Warren Peden, who was a parishioner of Defendant Church but not related to Plaintiff's supervision or personnel committee with Defendant Church, terminated Plaintiff.

On or around April 10, 2018, Plaintiff arrived for a staff meeting to Pastor Jimmerson's office to find only Pastor Jimmerson, Ms. Shaler, and Mr. Warren Peden. Upon entering the room, the door was shut and locked, which is highly unusual because the door typically remains open. Pastor Jimmerson was seated to Plaintiff's left, and Ms. Shaler was seated directly opposite to Plaintiff. Mr. Peden was seated to Plaintiff's right and closest to the shut door in the way of egress from the room. Immediately upon entering the room, Pastor Jimmerson and Mr. Peden unleashed their wrath and launched into a verbal barrage of shaming and yelling at Plaintiff. Ms. Shaler accused Plaintiff of having inappropriate contact with young girls in the Church, of which Plaintiff understood that Plaintiff was being accused of forcing nonconsensual physical touching onto young girls in the Church. Ms. Shaler only provided the explanation for inappropriate contact with the Church concerning Defendant H. Collier and Kelsey Todd. Ms. Shaler accused Plaintiff of inappropriate contact for: (1) texting Kelsey Todd, who ran the sound board during worship services in the balcony along with Plaintiff; (2) asking young girl(s) to go on a trip to New York City; and, (3) mentoring Defendant H. Collier because the mentorship relationship was inappropriate from the beginning. Plaintiff was blindsided, floored, shocked, in disbelief, and in a nightmarish state that anyone could be so cruel to accuse Plaintiff of nonconsensual physical touching of young girls. Plaintiff's interactions with Kelsey Todd were within the scope of employment with Defendant Church. Plaintiff's visit to New York was with his sons and Josie Allen, and Plaintiff had the consent and authorization of Ms. Allen's parents for Ms. Allen to go to New York City with Plaintiff's family. Ms.

Allen is a long-time family friend and close to Plaintiff's son Andrew. Despite Pastor Jimmerson admitting that nothing romantic, sexual, or physical interaction occurred between Plaintiff and Defendant H. Collier, Plaintiff was being accused of forcing nonconsensual physical touching onto Defendant H. Collier. Ms. Shaler, Pastor Jimmerson, or any of the above kept reiterating Defendant Church's view of Defendant H. Collier as a child, or a minor, instead of as a legal adult in the eyes of the Church. Ms. Shaler then commented on parishioners who would leave the Church if Plaintiff was not terminated.

Ms. Shaler presented Plaintiff with the Separation Agreement and Release of Claims ("Agreement"). Plaintiff expressed a desire to leave and postpone making any decisions. Plaintiff became so visibly emotionally distraught crying and was not of sound mind upon signing the Agreement. For Plaintiff, demonstrating the emotional response of crying publicly or in an employment setting is highly uncharacteristic and abnormal for Plaintiff. See Exhibit B. Ms. Shaler informed Plaintiff that Plaintiff could not leave the premises until Plaintiff signed the Agreement. Mr. Peden is a large man, who can easily overpower Plaintiff being of smaller stature. Plaintiff felt scared for Plaintiff's safety and threatened by Mr. Peden that any attempts to leave the room would result in Mr. Peden preventing the same. Ms. Shaler prevented Plaintiff from obtaining independent legal counsel to review the Agreement at another time. Pastor Jimmerson then threatened Plaintiff that if Plaintiff did not sign the Agreement, then Plaintiff would be brought before the congregation of the Church for the congregation to vote on the issue of whether Plaintiff should be terminated for being accused of having inappropriate contact with young girls in the Church. Plaintiff was never afforded an opportunity to defend himself or hardly speak over the interruption and interjections by Pastor Jimmerson and Mr. Peden. Only until Plaintiff signed the Agreement, was Plaintiff allowed to leave. Tina Speakman, who was the secretary for the Church and grandmother to Ms. Allen, observed Plaintiff's emotional state after Plaintiff's termination to be severe emotional distress that was abnormal and highly uncharacteristic for Plaintiff.

Because of the actions of Defendants, whether individually or collectively, Plaintiff was unable to obtain another similar position in another church involving the church's music program until the spring of 2020, of which Plaintiff's performance is done under supervision because of the damage done to Plaintiff's reputation in the interim. Plaintiff suffered lost wages from working at defendant Church. Plaintiff's means of worship through music was corrupted by baseless allegations and Plaintiff's emotional distress resulted in Plaintiff seeking counseling and not playing the piano for approximately a year. Emotionally, Plaintiff was devastated by the actions of Defendants.

STANDARD OF REVIEW

A 12(b)(6) motion to Plaintiff's complaint is a drastic remedy. A 12(b)(6) motion to dismiss may not survive "if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). Pleadings are construed liberally "to do substantial justice to all parties." S.C.R.C.P. 8(f); see *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 38, 530 S.E.2d 369, 373 (2000). Moreover, "[t]he allegations of a complaint are to be liberally construed in favor of the pleader." *Stroud v. Riddle*, 260 S.C. 99, 102-103, 194 S.E.2d 235, 237 (1973). A complaint is sufficient if the complaint raises an issue of fact that would entitle Plaintiff to judgment if

the fact is resolved in favor of Plaintiff by stating any cause of action or Plaintiff is entitled to any relief whatsoever. *Russell v. Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). Should the Court find any deficiencies in Plaintiff's Complaint, Plaintiff should be entitled to amend the complaint to cure any noted deficiencies rather than face a dismissal with prejudice as a harsh and drastic remedy under the circumstances. *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006).

Second, Rule 12(c) of the South Carolina Rules of Civil Procedure provide that:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. S.C.R.P. Rule 12(c).

The court must deny a motion for summary judgment on the pleadings as a matter of law when the evidence and reasonable inferences therefrom shows a genuine disputed issue exists regarding any material fact for each essential element in the claim. *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 628, 799 S.E.2d 318, 322 (Ct. App. 2017). The court must draw reasonable inferences from the evidence in favor of the non-moving party. *Id.* A summary judgment on the pleadings is, often, premature before preliminary discovery in litigation begins because the motion typically involves a variety of pleadings, including preliminary discovery, and other forms of admissible evidence together with affidavits. *See Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009).

LEGAL ARGUMENT

Defendants' motion to dismiss and Defendants Smith and H. Collier's motion for summary judgment on the pleadings should be denied because Plaintiff presents a genuine fact of dispute in addition to additional items to be presented in discovery as well as witness affidavits. Plaintiff's Summons and Complaint included the following causes of action: (1) false imprisonment against Defendant **NORTHGATE BAPTIST CHURCH**; (2) defamation against all defendants; (3) fraud in the inducement against Defendant **NORTHGATE BAPTIST CHURCH**; (4) negligent misrepresentation against Defendant **NORTHGATE BAPTIST CHURCH**; (5) negligent hiring, supervision, and retention of employees against Defendant **NORTHGATE BAPTIST CHURCH**; (6) intentional infliction of emotional distress against all defendants; (7) negligent infliction of emotional distress against all defendants; (8) wrongful termination against Defendant **NORTHGATE BAPTIST CHURCH**; and, (9) civil conspiracy against all defendants. First, the causes of action are concise incorporating the facts as alleged throughout Plaintiff's Complaint as grounds for relief, stating the grounds that the Plaintiff is entitled to for relief, and requesting the prayer for relief accordingly. S.C.R.C.P. 8(a). Furthermore, Plaintiff may allege inconsistent causes of action provided that the facts as alleged support the causes of actions. S.C.R.C.P. 8(e). Plaintiff has alleged a factual basis to support each cause of action with the ultimate facts that "the evidence upon the trial will prove." *Stroud*, 260 S.C. at 103. Plaintiff has provided fair notice to the Defendants and to the court in the manner of pleading the ultimate facts as alleged to support each cause of action. *See Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). Moreover, Rule 54 of the South Carolina

Rules of Civil Procedure provide that “every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.” Therefore, the omission of the exact prayer for relief under a cause of action is not fatal to render that cause of action as insufficiently pled. *Battery Homeowners Ass’n v. Lincoln Fin. Res.*, 309 S.C. 247, 251, 422 S.E.2d 93, 95-96 (1992).

I. PLAINTIFF’S CAUSES OF ACTION AGAINST DEFENDANT NORTHGATE BAPTIST CHURCH SHOULD SURVIVE A MOTION TO DISMISS

The legal analysis for applicable cause(s) of action pivots from the facts giving rise to a cause of action—not the subject matter itself—as to when the cause of action accrued. *Johnson v. Carolina Life Ins. Co.*, 200 S.C. 308, 311, 20 S.E.2d 713, 714 (1942). Because injury precedes damages, a cause of action accrues giving a right to a claim when a plaintiff suffers manifested damages. Of particular importance with respect to contract interpretation and enforceability of the Agreement is when a cause of action accrues. See S.C. Code Ann. § 15-3-20(A), 15-3-530, 15-3-550. For example, a cause of action for false imprisonment accrues from when a plaintiff is restrained until the culmination for damages when a plaintiff suffers from humiliation, indignity, and mental suffering.¹ For fraud in the inducement, this cause of action does not accrue until Plaintiff’s discovery of the fraudulent statement(s) or representation(s) responsible for a plaintiff’s justifiable reliance upon the same concerning pre-existing facts unrelated to the formation of the Agreement as a means of inducing a plaintiff to sign said Agreement.² Aside from false imprisonment and defamation, a cause of action for tortious

¹ False imprisonment is an intentional tort whereby the tortfeasor deprives a person of liberty, such as being confined to a room, by preventing that person from being able to leave without justification or with that person’s consent. *Wallace v. Kato*, 549 U.S. 384, 388-89, 127 S. Ct. 1091, 1095 (2007); *Gist v. Berkeley Cty. Sheriff’s Dep’t*, 336 S.C. 611, 615, 521 S.E.2d 163, 165 (Ct. App. 1999); *Jones v. Winn-Dixie Greenville*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995); *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 229, 317 S.E.2d 748, 754 (Ct. App. 1984). A plaintiff must prove the elements of false imprisonment: “(1) the defendant restrained him; (2) the restraint was intentional; and (3) the restraint was unlawful.” *Jones*, 318 S.C. at 175; *Andrews v. Piedmont Air Lines*, 297 S.C. 367, 371-72, 377 S.E.2d 127, 130 (Ct. App. 1989). The element of restraint may occur “by words alone, or by acts alone or by both, and by merely operating on the will of the individual, or by personal violence, or by both.” *Jones*, 318 S.C. at 175 (citing *Gathers*, 282 S.C. at 230-31); *Auto Owners Ins. Co. v. Pers. Touch Med Spa, LLC*, 763 F. Supp. 2d 769, 780 (D.S.C. 2011) (distinguishing false imprisonment as a tort that does not require bodily injury). A person’s confinement by restraint is not limited to that person being within a certain area. *Gathers*, 282 S.C. at 230-31. Outside the scope of legal analysis for probable cause in shoplifting, the restraint of a person is unlawful by inducing the reasonable apprehension of force, whether by threats or physical force, along with the capability to exercise coercion over that person. *Westbrook v. Hutchison*, 195 S.C. 101, 109-10, 10 S.E.2d 145, 148 (1940). When a person is overpowered, and submits involuntarily, to “to an apprehension of force reasonably to be understood from the conduct of the Defendant . . . the basic injury is the depreciation of the Plaintiff’s liberty.” *Zimbelman v. Savage*, 745 F. Supp. 2d 664, 683 (D.S.C. 2010). The tort of false imprisonment directly and proximately causes general damages such as humiliation, indignity, and mental suffering, which are imputed by law, while specific damages relate to monetary loss flowing therefrom. *Berberich v. Jack*, 392 S.C. 278, 293 n.3, 709 S.E.2d 607, 615 (2011); *Zimbelman*, 745 F. Supp. 2d at 683; *Westbrook*, 195 S.C. at 113-14.

² For a cause of action for fraud in the inducement, a plaintiff must prove all the elements of fraud and: “(1) that the alleged fraudfeasor made a false representation relating to a present or preexisting fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to reply on the representation made to him.” *Darby v. Waterboggan of Myrtle Beach, Inc.*, 288 S.C. 579, 584, 344 S.E.2d 153, 155 (Ct. App. 1986). Plaintiff must prove a cause of action for constructive fraud by showing of clear and convincing evidence the following: (1) defendant’s representation of fact; (2) the falsity of that representation; (3) materiality of that representation; (4) defendant’s knowledge of the falsity of that representation or the reckless disregard for the truth or falsity of that representation; (5) intent that Plaintiff act upon that representation; (6) the listener’s ignorance to the falsity of that representation; (7) listener’s reliance upon the truth of that representation; (8) the listener’s right to rely upon that representation; and, (9) the listener’s consequent and proximate injury resulting therefrom. *Richland Cty. v. Carolina Chloride, Inc.*, 382 S.C. 634, 645, 677 S.E.2d 892, 898 (Ct.

conduct accrues when a plaintiff knew, or should have known, an injury occurred. S.C. Code Ann. §§ 15-3-530, 15-3-535; *Lyles v. Roach*, 30 S.C. 291, 295, 9 S.E. 334, 335 (1889). For tortious conduct relevant in this action, the cause(s) of action depend upon the unification of an injury that has been sustained and damages flowing therefrom. See *Johnson*, 200 S.C. at 311 (“[I]t is the facts that give rise to the cause of action . . .”). In negligence cause(s) of action generally speaking, Plaintiff must show “(1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages.” *Moore v. Weinberg*, 383 S.C. 583, 588-89, 681 S.E.2d 875, 878 (2009). For a negligence cause of action, this cause of action “accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party (discovery rule).” *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). Negligent misrepresentation follows the same accrual as fraud and misrepresentation, including fraud in the inducement.³ Negligent hiring, supervision, and retention of accrues when the employer's, or a principal's, knowledge or foreseeability of an employee's ultimate harm to another under the circumstances for the complained of misconduct of an employee, or agent directly acting on behalf of the employer or principal.⁴

App. 2008). Actual fraud includes the additional element of the intent to deceive. *Id.* For constructive fraud, a confidential or fiduciary relationship must exist between the parties rather than operating at arm's length to form the listener's right to rely upon the representation. *Id.* For fraud in the inducement, “the representation must relate to a present or pre-existing fact rather than a statement of future events or an unfulfilled promise . . . unless unfulfilled promises which were made by a party who never intended to fulfill the promise and only made it to induce the performance of another party.” *Brown v. Stewart*, 348 S.C. 33, 41-42, 557 S.E.2d 676, 680 (Ct. App. 2001). Meaning, fraud in the inducement does not apply to the formation of a contract or the four corners of the contract—the cause of action relates to conveying a false statement from before or during contract formation separate to the actual contract for the purpose of inducing plaintiff to enter into the contract or a false statement prior to forming the contract. *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 180, 375 S.E.2d 331, 333 (Ct. App. 1988); *Smyth v. Fleischmann*, 214 S.C. 263, 272-73, 52 S.E.2d 199, 204 (1949) (explaining “inducements [that are] made to another for the purpose of leading the latter to enter into a contract which there was no intention to fulfill, but which was intended to be used to the defendant's profit and to the plaintiff's injury . . . by way of a fraudulent scheme to bring about the making of a contract”).

³ The difference between fraud and misrepresentation and negligent misrepresentation is that fraud is intentionally conveying a false statement whereas negligent misrepresentation is “predicated upon a negligently made false statement where a party suffers either injury or loss as a consequence of relying upon the misrepresentation.” *Gruber v. Santee Frozen Foods, Inc.*, 309 S.C. 13, 20, 419 S.E.2d 795, 799 (Ct. App. 1992). For a negligent misrepresentation cause of action, Plaintiff must prove: “(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.” *Ama Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 873-74 (Ct. App. 1992). By contrast, “if the defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful en[qu]iry, the law places on him a duty of care with respect to representations made to plaintiff.” *Id.* at 223. Submitting “[p]roof that the statement was made in the course of the defendant's business, profession, or employment is sufficient to show he has a pecuniary interest in making it, although he receives no consideration for it.” *Id.* The duty of care is the duty to exercise care that a reasonable person would take under the circumstances. *Id.* If the defendant disclaims accuracy, then the defendant assumes no liability. *Id.* Plaintiff must show a reliance upon the misrepresentation in a reasonable manner that does not include “casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence.” *Id.*

⁴ The employer's is directly liable for employer's own negligence hiring, supervising, training, and retaining employee(s). *Doe v. Bishop of Charleston*, 407 S.C. 128, 139-40, 754 S.E.2d 494, 500 (2014); *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330-31 (2008). This cause of action tracks the traditional elements of negligence:

Concerning Defendant Church, Plaintiff's factual allegations concern facts prior to and after Plaintiff signed the Agreement. As a preliminary matter, and regarding factual allegations before the Agreement, the formation of the Agreement between Plaintiff and Defendant Church is invalid and unenforceable due to duress, lack of assent, and mental incapacity⁵ related to the cause(s) of action for false imprisonment, fraud in the inducement, negligent misrepresentation, negligent hiring, supervision, and retention, and wrongful termination. Of Plaintiff's cause(s) of action against Defendant Church, the only cause(s) of action related to factual allegations specifically to prior or at the time of the Agreement are potentially wrongful termination at this time until further discovery will reveal additional grounds such as whether Ms. Shaler exceeded a qualified privilege publishing defamatory statements to the personnel committed accusing Plaintiff of inappropriate contact with young girls in the congregation of Defendant Church. Plaintiff alleged facts arising from false imprisonment, fraud in the inducement, and negligent misrepresentation based on facts discovered after the Agreement related to threats made by Pastor Jimmerson to Plaintiff that Defendant Church would place Plaintiff in front of the congregation and charge Plaintiff with inappropriate contact with young girls in the congregation.

"(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately resulting from the breach of duty." *Comer v. Tandy Corp.*, 295 S.C. 133, 135, 367 S.E.2d 436, 436-37 (Ct. App. 1988). An employer, or principal, may be liable for negligent supervision when: "(1) his employee intentionally harms another when he is on the employer's premises, is on premises he is privileged to enter only as employee, or is using the employer's chattel; (2) the employer knows or has reason to know he has the ability to control the employee; and (3) the employer knows or has reason to know of the necessity and opportunity to exercise such control." *Doe v. Bishop of Charleston*, 407 S.C. at 139-40. When an employer knew, or should have known, that the employment of a specific person caused "an undue risk of harm to the public . . . [then] the employer was itself negligent in hiring, supervising, or training the employee" *James*, 377 S.C. at 631. By contrast, the employer was negligent entrusting employee(s) "with a tool that created an unreasonable risk of harm to the public." *Id.*

The analysis turns upon: (1) the employer's knowledge of harm to third parties because of the employer's hiring practices; and, (2) whether the employer could have reasonably anticipated that any possible harm could come to a person or property as a result of the employer's hiring practices. *Comer*, 295 S.C. at 135. The elements of knowledge and foreseeability include factors such as: (1) the employee's history in the nature and number of prior acts of wrongdoing; (2) the employer's knowledge of the employee's "propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties;" and, (3) the similarity between the ultimate harm caused and the employee's prior acts. *Doe v. ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450-51 (Ct. App. 2005). However, if the nexus between the employee's prior acts and the ultimate harm is sufficient, then a single isolated incident of prior misconduct that the employer knew, or should have known, may establish a cause of action for a negligent retention claim. *Doe v. ATC, Inc.*, 367 S.C. 199, 207, 624 S.E.2d 447, 451 (Ct. App. 2005). When assuming internal standards of care to third parties during the employee's scope of employment, the employer assumes a duty to third parties when the employee "to control their employee while acting outside the scope of his employment so as to prevent him from intentionally harming others once they knew or should have known of the necessity to control him." *Brockington v. Pee Dee Mental Health Ctr.*, 315 S.C. 214, 218, 433 S.E.2d 16, 18 (Ct. App. 1993). By contrast, an employer will owe a third party a duty of care arising from a contract between the employer and the third party as to supervising the actions of an agent undertaking the capacity to act for the principal instead of in an individual capacity. *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 302, 468 S.E.2d 292, 299 (1996). Damages are traditional for negligence claims. *Doe by Doe v. Greenville Hosp. Sys.*, 323 S.C. 33, 38-39, 448 S.E.2d 564, 567 (Ct. App. 1994).

⁵ Mental incapacity is when a party to the contract "an incapacity to understand, at the time of the execution of a contract, the nature of the act done and the effect thereof . . . [that] render[s] a person incapable of executing a valid and binding contract [and voids that contract]." *In re Nightingale's Estate*, 182 S.C. 527, 541-42, 189 S.E. 890, 895-96 (1937). Mental incapacity is not limited to physical infirmity or a mere infirmity of mind. *Id.* Under the totality of the circumstances, mental incapacity refers to "such insanity or mental weakness or unsoundness as amounts to an incapacity or occasions an inability to understand or co[m]prehend the subject of the contract or act and its nature and probable consequences." *Id.* Therefore, the analysis is whether the party to a contract is of sound mind and body at the time of contract formation that renders the contract voidable.

For factual allegations after the Agreement, Plaintiff is not barred from cause(s) of action arising after Plaintiff signed the Agreement. Here, pursuant to the Agreement under Section 3.D., Plaintiff never “release[ed] or waiv[ed] any rights or claims which may arise *after this Agreement is executed*, any claims for the sole purpose of enforcing [Plaintiff’s] rights under this Agreement, or any claims which by law cannot be waived.” Exhibit A, Defendant Northgate Baptist Church’s Motion to Dismiss (emphasis added). Plaintiff alleged facts arising from defamatory statements made on or around April 11, 2018, and subsequently thereafter to third persons by Pastor Jimmerson and Mr. Peden, both of whom were acting as employees, agents, or both on behalf of Defendant Church with respect to the cause(s) of action for: (1) defamation; (2) negligent misrepresentation; (3) negligent hiring, supervision, and retention of employees; (4) wrongful termination; (5) intentional infliction of emotional distress; (6) negligent infliction of emotional distress; and, (7) civil conspiracy. The causes of action for wrongful termination, defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and civil conspiracy will be discussed in the below section. However, because Defendant Church does not address these causes of action, the analysis of those causes of action will focus on the other Defendants. For the purposes of this legal analysis, defamation accrues from a plaintiff’s discovery of the defamatory statement being published to third parties in a manner to affect a plaintiff’s reputation being disparaged subsequently thereafter. However, depending on the nature of the defamatory statement, the defamatory statement becomes actionable when a plaintiff’s reputation is negatively impacted, and the plaintiff suffers mental anguish therefrom. For both intentional inflection of emotional distress and negligent infliction of emotional distress, the accrual begins at the plaintiff’s manifestation of severe emotional distress from the outrageous conduct of defendant’s conduct. The accrual of civil conspiracy occurs upon the plaintiff’s discovery of joint participants operating together to injure or cause damages to the plaintiff.

a. PLAINTIFF’S CAUSE OF ACTION FOR WRONGFUL TERMINATION ARISES FROM DEFENDANT NORTHGATE BAPTIST CHURCH’S HOSTILE WORK ENVIRONMENT DURING PLAINTIFF’S TERMINATION

The wrongful termination accrues from when the termination of an employee is against public policy concerning a plaintiff’s supervisor, and other employee(s) or agent(s) of the employer, create a hostile work environment whether said hostile work environment occurs over time or specific to a particular incident. Public policy is against creating an intimidating, hostile, or abusive work environment based on offensive conduct such as epithets or name calling, intimidation, ridicule or mockery, and, insults or put-downs. *See Harris v. Forklift Sys.*, 510 U.S. 17, 21-23, 114 S. Ct. 367, 370-71 (1993). For purposes of South Carolina law, an employee includes “an agent, servant, employee, or officer.” S.C. Code Ann. § 33-56-170(2). The elements for wrongful termination include that the termination of the employee falls under the public policy exception when: (1) the employer requires the employee’s violation of public policy or the law; or, (2) the employer’s reason to terminate the employee is a violation of public policy or criminal law. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 637 (2011) (establishing novel area of law that does not limit this exception to violations of criminal law exclusively). Alternatively, an employee may recover from a constructive discharge if the employer deliberately made the working conditions intolerable so the employee would quit. *Graves v.*

Horry-Georgetown Tech. Coll., 391 S.C. 1, 9, 704 S.E.2d 350, 355 (Ct. App. 2010). The employer's action was deliberate, motivated by an unlawful bias of sex or age, and the working conditions were intolerable under an objective reasonable person standard. *Id.* Employers are strictly liable for "harassment that culminates in a tangible employment action" such as termination of employment. *Id.* By contrast, employers are vicariously liable to victimized employees "for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee." *Burlington Indus. v. Ellerth*, 524 U.S. 742, 765, 118 S. Ct. 2257, 2270 (1998). The employer bears the burden of raising affirmative defenses to a hostile work environment, including "exercised reasonable care to prevent and correct promptly any sexually harassing behavior . . ." *Id.* When a remedy exists at statute, a plaintiff must exhaust administrative remedies before filing a lawsuit. *Brown v. James*, 389 S.C. 41, 54-55, 697 S.E.2d 604, 611-12 (Ct. App. 2010).

Plaintiff exhausted administrative remedies prior to commencing this action, and Plaintiff is not required to take prompt action concerning a hostile work environment because the element of notice is part of the Defendant's affirmative defense for rebutting a hostile work environment. Exhibit F. Moreover, the cause of action for wrongful termination in the complaint includes all previous allegations supporting a hostile work environment the day of Plaintiff's termination from Defendant Church. Defendant Church discriminated against Plaintiff concerning his marital status and age as a single man who is older with respect to Defendant H. Collier when accusing Plaintiff of chasing young women in the congregation. Defendant Church's termination surrounding the formation of the Agreement was utterly intolerable from a reasonable person standard under the circumstances. Because, Defendant Church's employees, agents, or both, including Pastor Jimmerson as Plaintiff's supervisor, deliberately made the working conditions intolerable to induce Plaintiff to quit on the day of Plaintiff's termination. Pastor Jimmerson and Mr. Peden railroaded Plaintiff by slurring and humiliating Plaintiff when both yelled at Plaintiff, exhibiting erratic body language whilst yelling, and constantly interrupting Plaintiff to insult and put-down Plaintiff. While "inappropriate contact" may be a buzz phrase that imbues a distinct clinical meaning within the psychological field, the phrase's true meaning is lost on the layman listener when the phrase could be reasonably believed to refer to actual physical contact with another person. Even Pastor Jimmerson and Mr. Peden's uncharacteristic behavior of demonstrating such aggressive and threatening behavior reflects that they also had a reasonable belief of Ms. Shaler accusing Plaintiff of inappropriate (i.e., nonconsensual) and actual, physical contact with young girls in the congregation. Ms. Shaler refers inappropriate contact with young girls in the congregation as texting a band member on the Praise Team during service and asking "young women" to go on a trip to New York—as if Plaintiff is arranging a trip with just Plaintiff and a young woman as if a romantic get-away. Then, Ms. Shaler just quips a quick comment that Plaintiff's mentorship of Defendant H. Collier for approximately seven (7) months was inappropriate since the conception of the mentorship, of which Defendant Church's employees, agents, or any of the above with no further explanation. Thus, Plaintiff perceives Ms. Shaler accusing Plaintiff of having inappropriate contact with Defendant H. Collier as if Defendant was accused of physically touching her without her consent—even though Defendant H. Collier repudiated such an accusation on or around March 12, 2018.

While Ms. Shaler never defined the phrase inappropriate contact, such an accusation is undoubtedly accusing Plaintiff of misconduct, impropriety of behavior related to Plaintiff's employment with Defendant Church, the appearance of such accusation also being criminal in nature, and Plaintiff committing a crime of moral turpitude upon any listener as the cause for terminating Plaintiff. Because Plaintiff is innocent of such charges, and none of the allegations from any of the witnesses claimed physical contact of a sexual or intimate nature, Plaintiff was subjected to a truly horrendous situation that would render any person intimidated, humiliated, shocked, threatened, and out of one's mind to process the actual events occurring and unfolding. Plaintiff visibly demonstrated his severe distress when crying in the termination meeting, which is highly uncharacteristic for Plaintiff, and after the meeting when Plaintiff was visibly shaking in his mental anguish and suffering before Tina Speakman. The audacity to claim that an innocent man would be in his right mind after being accused of essentially molesting young girls in a church is appalling—even the most logical person would be overwhelmed emotionally in the face of such an accusation. Because Defendant Church used the for cause basis of inappropriate contact with young girls in the congregation to terminate Plaintiff, and the circumstances surrounding the termination, Defendant Church wrongfully terminated Plaintiff.

For reasons previously discussed, Plaintiff's cause of action for wrongful termination against Defendant Church should survive the Defendant Church's 12(b)(6) Motion to Dismiss accordingly and Section 3 of the Agreement rendered unenforceable and invalid.

b. THE SEPARATION AGREEMENT AND RELEASE OF CLAIMS IS SUBJECT TO AMBIGUITY WITH RESPECT TO COVENANT NOT TO EXECUTE, COVENANT NOT TO SUE, AND RELEASE(S)

Section 3 of the Agreement is relevant concerning ambiguity between a Covenant Not To Execute, a Covenant Not to Sue, and a release. These three types of provision(s) are essentially different types of contracts. A Covenant Not To Execute is not a Covenant Not to Sue, release, or satisfaction. *Poston v. Barnes*, 294 S.C. 261, 263-64, 363 S.E.2d 888, 889-90 (1987). A Covenant Not To Sue is not a Covenant Not to Execute, release, or satisfaction. *Id.* Both a Covenant Not to Execute and a Covenant Not To Sue do not operate to release other joint tortfeasors. *Id.* Normally executed when reaching a settlement after filing a lawsuit, "[a] Covenant Not To Execute is a promise not to enforce a right of action or execute a judgment when one had such a right at the time of entering into the agreement." *Id.* By contrast, and normally executed when reaching a settlement before filing a lawsuit, a Covenant Not To Sue is also "a promise not to enforce a right of action . . . when one had such a right at the time of entering into the agreement." *Id.* More importantly, the legal designation of a settlement agreement as a Covenant Not To Execute or Proceed, or any label, is merely a façade as to the operation of the provision(s) and "not a binding determinant of its true nature." *Id.* at 265. A release is a contractor discharging a duty owed to the maker of the release. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 492, 649 S.E.2d 494, 498 (Ct. App. 2007). Unless otherwise agreed upon, or "the plaintiff had received full compensation amounting to a satisfaction, the release of one tortfeasor did not release others who wrongfully contributed to the plaintiff's injuries." *Andrade v. Johnson*, 345 S.C. 216, 223, 546 S.E.2d 665, 668 (Ct. App. 2001).

The general expectation with either a Covenant Not To Execute or a Covenant Not To Sue is that the parties “are free to devise a settlement agreement in any manner that does not contravene public policy or the law.” *Poston*, 294 S.C. at 263-64. Hence, because of the pervasiveness of these covenants, “settlement agreements must be carefully scrutinized in order to determine their efficiency and impact upon the integrity of the judicial process.” *Id.* Whether a contract is a release or a Covenant Not To Sue, “[t]he intention of the parties in executing the instrument is of paramount importance . . . and where there is any reasonable basis for a court to determine that the document is a covenant rather than a release it will do so. *Ayers v. Pastime Amusement Co.*, 259 F. Supp. 358, 362 (D.S.C. 1966). A Covenant Not To Execute, a Covenant Not To Sue, and a release are all governed by general contract law. *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 183 (2013); *Wade v. Berkeley Cty.*, 339 S.C. 495, 502-03, 529 S.E.2d 734, 737-38 (Ct. App. 1999). And, normal contract defenses are also still applicable. See *Aldridge v. Watts Mill*, 131 S.C. 222, 231-32, 127 S.E. 213, 216-17 (1925). “Like any contract, a release given without consideration is void. However, when the consideration for a release is something of value, the release is still subject to being voided by fraud, coercion[,] undue influence[, lack of mental capacity, or any of the above.]” *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 741 (D.S.C. 2001); *Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947).

Exculpatory contracts such as release contracts are disfavored by the law warranting judicial review of common sense and good faith in scrutinizing the construction of the contract to avoid an absurd result and reach a more reasonable, fair, and just construction to prevail. *Fisher v. Stevens*, 355 S.C. 290, 295, 584 S.E.2d 149, 152 (Ct. App. 2003). However, exculpatory contracts construed to exempt a party from that party’s own negligence will be prohibited in the absence of explicit, clear language indicating doing so was the parties’ consent. *S.C. Elec. & Gas Co. v. Combustion Eng’g, Inc.*, 283 S.C. 182, 191, 322 S.E.2d 453, 458 (Ct. App. 1984). Moreover, overly broad exculpatory clauses contravene public policy, especially when exempting one party from any liability from that party’s negligence. *Fisher*, 355 S.C. at 297. Exculpatory contracts such as waivers and releases intended to exempt one party from liability for gross negligence, reckless conduct, willful or wanton conduct, or, intentional acts is overly broad, unenforceable, and against public policy unless the in the absence of explicit, clear language indicating doing so was the parties’ consent. *McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 248-52, 612 S.E.2d 462, 465-67 (Ct. App. 2005).

Whether the construction of the contract between the parties is ambiguous as matter of contractual interpretation is a question of law. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Ultimately the Court must “ascertain and give legal effect to the parties’ intentions as determined by the contract language.” *Id.* The Court will give plain, unambiguous language the ordinary meaning intended when reading the contract as a whole document. *Id.* When a contract is ambiguous, the Court will allow extrinsic, parol evidence “to ascertain the true meaning and intent of the parties.” *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997). A contract is ambiguous when it is construed with more than one meaning, the meaning is unclear, the meaning is obscure through indefiniteness of expression, or having a double

meaning. *Ecclesiastes Prod. Ministries*, 374 S.C. at 499-500; *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968). The courts construe ambiguity strictly against the drafter of the contract in favor of the non-drafter. *Ecclesiastes Prod. Ministries*, 374 S.C. at 499-500.

The Agreement is still governed by contract law and contract defenses just like any other contract. The very manner in which Defendant Church overpowered Plaintiff's will at the time of Plaintiff signing the Agreement, in addition to non-enforceable provision(s) contrary to public policy, negates the operation of Defendant's Covenant Not To Sue and release. While false imprisonment, fraud in the inducement, and negligent misrepresentation occurred during the time of forming the contract, these cause(s) of action dovetail into the analysis for duress, lack of assent, and mental incapacity and accrued after the Agreement with ongoing injury and damages. The legal designation of the Agreement as a release and Covenant not to sue is not dispositive for the operation of the provision(s) as a release or a covenant not to sue. The legal analysis for the construction of the same depends upon whether the provision(s) are a release, a Covenant Not To Sue, or both. The language of Section 3.A. in the Agreement is ambiguous because the provision does not distinguish clearly between a release and a Covenant Not To Sue requiring the Court to render a decision as a matter of law regarding the construction of the Agreement. A Covenant Not To Sue may operate in effect as a release, and Defendant Church's arguments focus exclusively on Section 3.A. as a release. Additionally, when construed with Section 3.A. and 3.D., the construction of the Agreement is susceptible to more than one interpretation and unclear for examples such as: (1) whether the Agreement is a release or a Covenant Not To Sue; (2) whether the claims released in Section 3.A. are invalid when Section 3.D. provides that the Agreement does not apply to Plaintiff's claims that cannot be waived by operation of law; (3) whether the release in the Agreement applies to Plaintiff's cause(s) of action because Plaintiff cannot waive a claim when the claim has not fully consummated yet at the time of signing the Agreement as one could reasonably construe Section 3.D., even for circumstances surrounding the formation of the Agreement. Section 3.D. clearly states that Plaintiff does not release or waive any rights or claims that may arise after the execution of the Agreement. Such language is problematic for Defendant Church because the actual formation of the Agreement occurs simultaneously with a factual basis and ongoing injury that occurs during, after, or both of the formation of the Agreement. Meaning, Plaintiff cannot waive cause(s) of action while those cause(s) of action are occurring at the same time for Defendant Church to neatly sweep Plaintiff's rights under the rug using unenforceable provision(s) to shield Defendant Church from liability for its negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct—even at the very moment of forming the Agreement.

As Defendant Church is the drafter of the Agreement, the release and Covenant Not To Sue should be construed strictly against Defendant Church in favor of Plaintiff to produce a more fair and just result than the absurdity Defendant Church is presenting in its legal analysis misconstruing its own Agreement. The language of the Agreement does not operate to bar Plaintiff's claims related to or surrounding the formation of the Agreement as a contract under the circumstances. Defendant's exculpatory provision(s) in the Covenant Not To Sue and release are: (1) overly broad in the scope of claims released; and, (2) unenforceable as a matter of

public policy because the Agreement is absent of explicit, clear language indicating the parties' consent to release negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct. Section 3.A. is a laundry list of potential claims, of which some would not apply to the circumstances or are in violation of public policy. In Section 3.D., the language stating "[t]he intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable" does not clearly and explicitly indicate a meeting of the minds for both parties to release specifically cause(s) of action for negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct. The language is unclear and ambiguous to that exact construction, which is not specifically stated, and thereby negates Plaintiff's intentions for purposes of assenting to said provision. The phrase "any and all claims" does not translate to a specific release of claim(s) for negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct for purposes of the parties intent and whether a meeting of the minds exist. The blatant ambiguity and contradiction in Section 3.D. of the agreement is that, on the one hand the language seeks "to fully and finally resolve all claims and possible claims" between the parties while, on the other hand, the provision claims that Plaintiff's doesn't release claims arising after the execution of the Agreement—including possible claims. Plaintiff cannot waive a cause of action when the right has not even accrued yet because the analysis focuses—not on the language of the Agreement—but the circumstances surrounding the Agreement happening at the same time during the formation of the Agreement that is the very subject matter giving rise to the factual basis for Plaintiff's cause(s) of action and negates Plaintiff's free will to execute a contract.

For reasons previously discussed, Defendant Church's release, or Covenant Not To Sue, in the Agreement should be found unenforceable and invalid both as a matter of law or in violation of public policy.

c. THE SEPARATION AGREEMENT AND RELEASE OF CLAIMS IS INVALID AND UNENFORCEABLE BECAUSE DEFENDANT NORTHGATE BAPTIST CHURCH PLACED PLAINTIFF UNDER DURESS IN THE TOTALITY OF THE CIRCUMSTANCES

Duress avoids an unenforceable contract. *Whitlock v. Creswell*, 190 S.C. 314, 335-36, 2 S.E.2d 838, 847 (1939). To prove that the other party procured the contract through duress, one has to prove: "(1) coercion; (2) putting a person in such fear that he is bereft of the quality of mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind." *Holler v. Holler*, 364 S.C. 256, 267, 612 S.E.2d 469, 475 (Ct. App. 2005). Under the totality of the circumstances, the wrongful conduct such as wrongful act(s), unlawful act(s), or threat(s) by another coerced the other party by preventing that party from exercising will in kind. *Id.* at 266-67. The byproduct of the coercion invokes fear that paralyzes one's free will—not the means used to accomplish the wrongful conduct. *Id.* at 267-68. When the party in a superior position of bargaining strength dominates the weaker party, such as the employer toward the employee in an employer-employee relationship, the stronger party dictates the terms of the contract in such a pervasive manner as to displace the weaker party's will. *Id.* Freedom of will is essential to the validity of a contract because the deprivation of one's free will and oppression of one's person by threats regarding the safety or liberty of one's person, loved ones, or property negates the meeting of the minds required for a valid

contract. *Id.*; *Whitlock*, 190 S.C. at 335-36. A meeting of the minds is required to form a contract that objectively manifests an intent by the parties to enter into a contract. *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989). Mutual assent “is not based on secret purpose or intention on the part of one of the parties, stored away in [only one party’s] mind[,] and not brought to the attention of the other party . . .” *Id.* Duress often occurs concomitantly with other tort(s) such as unlawful imprisonment or means that amount to or induce coercion over the will of another negating free will. *Whitlock*, 190 S.C. at 333. As a result, one is coerced to uneven bargaining with a disproportionate exchange of values. *Holler*, 364 S.C. at 266-67. Duress also focuses on certain subjective individual characteristics of the influenced party such as: age; sex, capacity of the influenced party; education and business experience of influenced party; level of negotiations of the terms during the contract; clarity of the agreement; amount of time influenced party had for deliberations before signing the contract; whether the influenced party read the contract and considered its terms before signing the contract; whether the influenced party was represented by counsel, or had a reasonable opportunity to seek and consult with legal counsel; whether the contract exceeded the benefits for the influenced party in an uneven bargaining position; and, whether the influenced party was induced by improper conduct of the other party to enter into the contract. *See id.*

As previously discussed, Defendant Church intentionally restrained Plaintiff in a manner that was unlawful without Plaintiff’s consent when Defendant Church would not permit Plaintiff to leave the room during his termination. Plaintiff was coerced to sign the Agreement before leaving the premises for Defendant Church as directed by Ms. Shaler. Plaintiff was intimidated by Pastor Jimmerson and Mr. Peden yelling at him from both sides of the table to his right and his left. Plaintiff was especially scared of Mr. Peden because Mr. Peden was physically animated in his aggression toward Plaintiff, overshadowed Plaintiff in size, and seated in the path of egress from the room. While acting with actual or apparent authority for Defendant Church, Mr. Peden had no official role at Plaintiff’s termination meeting other than to provide security because he is not on the personnel committee or a supervisor of Plaintiff. Thus, Defendant Church’s employees or agents induced in Plaintiff a reasonable apprehension of force, whether by threats or physical force, and Defendant Church had the capability to exercise coercion over that person when Ms. Shaler directed Plaintiff to remain in the room with Mr. Peden there to ensure Plaintiff remain in the room until the Agreement was signed. Plaintiff suffered humiliation, indignity, and mental suffering as well as special damages such as loss of wages. Therefore, Defendant Church overpowered Plaintiff to submitted to Plaintiff’s apprehension of force that a reasonable person would understand by Defendant Church’s conduct under the circumstances. The false imprisonment of Plaintiff also indicates that Defendant Church coerced Plaintiff with threats, intimidation, and harassment to the level of negating Plaintiff’s free will to enter into a contract under duress.

As previously discussed, Pastor Jimmerson Defendant Church committed fraud in the inducement for Plaintiff to execute the contract based on the threat to place Plaintiff before the congregation, charge Plaintiff with inappropriate contact with young girls publicly in the congregation, and obtain a vote of confidence or no

confidence concerning whether Plaintiff should be terminated as an employee according to the policies and procedures of Defendant Church.

Within an employer-employee relationship, Pastor Jimmerson intentionally deceived and made a false statement to Plaintiff for Plaintiff to act upon therefrom when Pastor Jimmerson threatened Plaintiff that, if Plaintiff refused to sign the Agreement, then Pastor Jimmerson would place Plaintiff before the congregation. Defendant Church never provided Plaintiff with any employment documentation on policies and procedures or an employee handbook during the time of Plaintiff's employment with Defendant Church. On or around March of 2019, Plaintiff discovered the Articles of Incorporation and TEAM Ministry Handbook after-the-fact of Plaintiff's termination, which were in effect long before Plaintiff was hired by Defendant Church. Section 1 of Article XI in the Articles of Incorporation define members as persons coming to Defendant Church as a place of worship, completing a membership class, and obtaining approval by a majority of the members present. Section 1 of Article XI in the Articles of Incorporation provide that membership with Defendant Church will be terminated for "those who are found guilty of unchristian like conduct, but only after due process of dealing with such members as hereinafter provided." Exhibit A, Defendant Northgate Baptist Church's Motion to Dismiss. Section 4 of Article XI provides for the discipline process for members that require the involvement of the Deacons and the Pastor for reconciliation first. If reconciliation fails, then the member is summoned to appear before the congregation concerning any charge and given an opportunity to answer. *Id.*

Therefore, the policies and procedures for placing a member in front of the congregation regarding a member's misconduct, and whether that person's membership should be terminated, for Defendant Church applies to members coming to Defendant Church as a place of worship to practice the Christian faith—not to employees.⁶ Plaintiff was just an employee—not an official member—of Defendant Church. These documents suffice as pre-existing fact(s) unrelated to the formation of a contract. Alternatively, and with respect to placing Plaintiff in front of the congregation, Pastor Jimmerson used these documents to make an unfulfilled promise that he never intended to do for the sole purpose of inducing Plaintiff to sign the Agreement. Plaintiff relied upon Pastor Jimmerson's false statement and misrepresentation that was material to inducing Plaintiff to sign the Agreement because public condemnation for accusations of forcing nonconsensual physical touching onto young girls in the Church would have been unthinkable and unbearable for Plaintiff as an innocent man. Pastor Jimmerson either knew these documents did not apply to employees or recklessly used these documents to coerce Plaintiff with the ulterior motive of inducing Plaintiff to sign the Agreement for the pecuniary gain of

⁶ Public policy states that an express or implied contract of employment may arise from the handbook unless specifically displayed in a conspicuous manner. S.C. Code Ann. § 41-1-110. While employers are typically an at-will employer who may terminate any employee with or without cause in South Carolina, an employee handbook may alter the terms of an employee's at-will status and a contract may arise allowing for a cause of action for wrongful discharge. *Grant v. Mount Vernon Mills, Inc.*, 370 S.C. 138, 146-47, 634 S.E.2d 15, 20 (Ct. App. 2006). Whether the handbook establishes an enforceable promise and contract depends upon three factors: "(1) the handbook provision(s) and procedure(s) in question apply to the employee, (2) the handbook sets out procedures binding on the employer, and (3) the handbook does not contain a conspicuous and appropriate disclaimer." *Id.* Whether the handbook outlines procedures binding an employer, the dispositive issue is "whether the employee is covered by the policy provision in question." *Id.* If the answer is no, then the handbook does not form the basis of an employment contract. *Id.*

Defendant Church. Plaintiff's termination essentially was approximately the amount Defendant Church needed to recover financially for Defendant Church's fundraising campaign. The same analysis applies to Plaintiff's cause of action for negligent misrepresentation in the event such misrepresentation was negligent.

Defendant Church is directly responsible for the negligent supervision, training, and retention of Pastor Jimmerson, Ms. Shaler, and Mr. Peden as employees, agents, or both of Defendant Church. As head of the personnel committee, Ms. Shaler's knowledge is imputed to Defendant Church. Ms. Shaler was part of the complained of wrongs and observed the behavior of Pastor Jimmerson and Mr. Peden without promptly correcting their behavior at Plaintiff's termination. Failure to prevent said misconduct by Ms. Shaler, Pastor Jimmerson, and Mr. Peden is a breach of duty to Plaintiff that caused an undue risk to Plaintiff and consequently Plaintiff's injury such as severe emotional distress, pain and suffering, and loss of wages. Moreover, Defendant Church is also liable for the misconduct of Pastor Jimmerson because Defendant Church had a duty of care arising from the Articles of Incorporation and the TEAM Ministry Handbook to adhere to the policies and procedures as outlined with employees. The document is silent as to the authority of the personnel committee to fire an employee, but the documents clearly state that Pastor Jimmerson is Plaintiff's supervisor and not Ms. Shaler. Defendant Church's failure to supervise Ms. Shaler, Pastor Jimmerson, and Mr. Peden, when acting as an employee or agent of Defendant Church, renders Defendant Church liable for their misconduct because Defendant Church assumed the duty of care regarding employment practices internally.

For reasons previously discussed, Plaintiff's cause(s) of action against Defendant Church should survive the Defendant Church's 12(b)(6) Motion to Dismiss accordingly and Section 3 of the Agreement rendered unenforceable and invalid.

II. PLAINTIFF'S CAUSE OF ACTION FOR DEFAMATION AGAINST ALL DEFENDANTS SHOULD SURVIVE A MOTION TO DISMISS AND A MOTION FOR JUDGMENT ON THE PLEADINGS

Defamation degrades a plaintiff's reputation in the eyes of that person's peers, the community, or the public. *See Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 508-13, 506 S.E.2d 497, 501-03 (1998). A plaintiff must prove the elements of defamation: "(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Id.* at 518 (Toal, A.J., concurring). A plaintiff may recover for damage to a plaintiff's reputation "as the result of the [Defendant's] communication to others of a false message about the plaintiff." *Id.* at 508. Additionally, the plaintiff must show that the defamatory statement was false when published to a third party, and the speaker either knew the defamatory "statement was false or had serious reservations about its truth." *Id.* at 512-13. If the statement or insinuation is not clear unless the listener has knowledge of facts or circumstances not included in the statement, then the statement is defamatory per quod and Plaintiff must show extrinsic facts proving the defamatory meaning. *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 560, 698 S.E.2d 845, 852 (Ct. App. 2010). Actual malice refers to defendant acting with ill-will towards plaintiff of recklessly, wantonly, or both being consciously indifferent toward plaintiff's rights. *Padgett v. Sun News*, 278 S.C. 26, 32, 292 S.E.2d 30, 34 (1982). General damages for defamation "include injury to reputation, mental suffering, hurt

feelings, emotional distress, and similar types of injuries which are not capable of definite money valuation.” *Erickson v. Jones St. Publr., LLC*, 368 S.C. 444, 465 n.6, 629 S.E.2d 653, 664 (2006). Special damages for defamation “are tangible losses or injuries to the plaintiff’s property, business, occupation, or profession in which it is possible to identify a specific amount of money as damages.” *Id.*

The publication of defamatory matter is subject to a qualified privilege provided that “(1) the matter is published upon an occasion that makes it conditionally privileged[; and,] (2) the privilege is not abused.” *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). The occasion, the relationship of the parties, and the commonality of interest in the subject matter of the communication between the speaker and the listener set the parameters for rendering the publication conditionally privileged. *Id.* However, said publication by the speaker must be made honestly, in good faith to protect the commonality of interests, or confidentiality, and is limited in scope by going no further than the speaker’s interests or duties require. Factors to determine whether the qualified privilege was exceeded or abused include: (1) whether the speaker acting with malice; (2) whether the speaker published the statement in good faith; (3) whether the speaker limited the scope of the statement; and, (4) whether the speaker published the statement to the proper parties. *Id.* at 485. A principal may be held vicariously liable for an agent’s defamatory statements whether the agent acted within the scope of the agent’s employment or apparent authority. *Murray v. Holnam, Inc.*, 344 S.C. 129, 139-41, 542 S.E.2d 743, 748-49 (Ct. App. 2001) (“Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business.”); *Moshtaghi v. Citadel*, 314 S.C. 316, 324, 443 S.E.2d 915, 920 (Ct. App. 1994) (discussing that the qualified privilege for the employer-employee relationship may be lost when manner of its exercise results in unnecessary defamation). However, a qualified privilege is merely an affirmative defense. *McBride*, 389 S.C. at 562.

When “defamation is actionable per se, then under common law principles the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages.” *Id.* at 508-13. Spoken defamation published to a third party is slander. *See id.* By contrast, libel is “written defamation or one accomplished by actions or conduct.” *Id.* at 508-13. Defamation per se is when the “[t]he defamatory meaning of a message or statement [is] obvious on the face of the statement.” *Id.* Slander per se that is actionable per se and presumes malice is related to charging a plaintiff with the following characteristics in the “commission of a crime of moral turpitude . . . [or] unfitness in one’s business or profession.” *Id.* at 510-11. A crime of moral turpitude is an accusation based on “an act of baseness, vileness, or depravity in private and social duties that a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man” *Smith v. Smith*, 194 S.C. 247, 251, 9 S.E.2d 584, 586 (1940). Slander per se is actionable when the speaker publishes “any words which falsely or maliciously charge the commission of a crime, or which distinctly assume or imply one has committed a crime, or which raise a strong suspicion in the minds of hearers or readers, that one has committed a crime.” *Lesesne v. Willingham*, 83 F. Supp. 918, 921 (D.S.C. 1949). The effect of such a charge on the listener, who is a third-party, involving an accusation for a crime of moral turpitude is the proper legal analysis rather than whether the meaning of the statement is understood “positively and directly by words of clear and unmistakable meaning or only indirectly and by means of innuendo.” *Id.* A slanderous

statement inferring a plaintiff's impropriety or lack of integrity when performing plaintiff's job is actionable per se as plaintiff being unfit for plaintiff's profession. *Moshtaghil*, 314 S.C. at 316; *Woodward v. S.C. Farm Bureau Ins. Co.*, 277 S.C. 29, 31, 282 S.E.2d 599, 600 (1981). Alternatively, libel per se is actionable when such statements involve written or printed words that degrade a person in efforts to reduce the reputation of that person amongst friends, acquaintances, or the public. *Id.* at 508-13. Libel per se is actionable when publication such statements to third parties are made with the purpose to disgrace and ridicule a person thereby rendering that person odious or contemptible in such a manner that hurts the reputation of that person. *Id.*

Defendants C. Collier and H. Collier intentionally committed slander per se when falsely reporting Plaintiff to Pastor Jimmerson with Defendant Church as Plaintiff having an inappropriate relationship with Defendant H. Collier. Plaintiff's interactions with H. Collier, C. Collier, and Tyler Collier were usually in a group setting whether amongst Plaintiff's family, Plaintiff's friends, parishioners of the Church, or any of the above. Moreover, Plaintiff's sons were close in age to Defendant H. Collier, including friends and significant other(s) of Plaintiff's sons who often also spent time with Plaintiff's family. Defendant C. Collier had personally observed Plaintiff's interactions with Defendant H. Collier, including text messages between Plaintiff and Defendant H. Collier, without any objections during Plaintiff's mentorship of H. Collier until on or around March 11, 2018, based on meritless grounds. See Exhibit D. Plaintiff maintained transparency of his mentorship of H. Collier with her mother C. Collier and father Mr. Craig T. Collier. Both Defendants C. Collier and H. Collier acted with malice because: (1) Defendant C. Collier was spurned by Plaintiff not reciprocating her advances to date; and, (2) Defendant H. Collier retaliated against Plaintiff's redirection for Defendant H. Collier's socially inappropriate manner at the birthday party for Plaintiff's son when Defendant H. Collier was a guest. The circumstances also present that Defendants H. Collier and C. Collier did not exercise good faith. Neither of these Defendants attempted to resolve their complaints with Plaintiff. Rather, the issue lies with Defendant H. Collier voluntarily disclosing internal family affairs to a third party that upset Defendant C. Collier and Craig T. Collier, and said disclosure by Defendant H. Collier was not unique to Plaintiff. Defendants C. Collier and H. Collier's reporting of Plaintiff to Pastor Jimmerson is not a privileged communication. Alternatively, if Defendants C. Collier and H. Collier have a qualified privilege, both of Defendants exceeded the scope when Defendant H. Collier responded no to Pastor Jimmerson's inquiry of romantic or sexual relations between Plaintiff and Defendant H. Collier.

Said statement is actionable as slander per se because the statement impugns Plaintiff. Whether Defendants C. Collier or H. Collier expressed an opinion is irrelevant because whether a statement is positively and directly by words of clear and unmistakable meaning or only indirectly and by means of innuendo is not part of the legal analysis when the statement triggers the commission of a crime of moral turpitude. Malice is presumed. Plaintiff's injury includes loss of reputation, mental anguish, and loss of wages. The enormity of an accusation regarding "inappropriate relationship" for an employee is undoubtedly implicates a statement concerning a crime of moral turpitude. Pastor Jimmerson's line of questioning provide the context for the effect of the phrase "inappropriate relationship" on a listener to mean romantic or sexual relations between two individuals. Such a

statement qualifies as slander per se against Plaintiff for the commission of a crime of moral turpitude or Plaintiff's unfitness in his business or profession with Defendant Church. Said comment has the effect on the listener for the listener to assume or imply one has committed a crime, or which raise a strong suspicion in the minds of the listener, that Plaintiff has committed a crime. Said statement infers that Plaintiff lacked impropriety or lack of integrity when performing Plaintiff's job in his dealings with Defendant H. Collier.

Defendant Smith intentionally committed slander per se when falsely reporting Plaintiff to members of the community that Plaintiff was having an inappropriate relationship with Defendant H. Collier. On or around April 25, 2018, all Defendants received a cease and desist notice to discuss Plaintiff's termination from Defendant Church; Defendants C. Collier and H. Collier received a demand letter from Plaintiff. See Exhibit G. On or around June of 2018, Defendant Smith called Roy Sabeau, who was a Deacon at the time of Plaintiff's termination, accusing Plaintiff of having an inappropriate relationship with her granddaughter Defendant H. Collier. Defendant Smith received a cease and desist notice from Plaintiff on or around April 25, 2018, upon which Defendant Smith violated said notice. See Exhibit B. Mr. Sabeau left Defendant Church as a result of Defendant Church's failure to follow proper protocol and procedures concerning Plaintiff's termination from Defendant Church. On or around June and July of 2018, Sue Lutz, a long-time parishioner of Defendant Church, had lunch with a mutual acquaintance of Defendant Smith whereby Defendant Smith accused Plaintiff of having an inappropriate relationship with her granddaughter Defendant H. Collier and gratification for Plaintiff being fired from Defendant Church. See Exhibit B. Defendant Smith's statements were unprivileged. Defendant Smith acted with malice because she was either knew the statement was false or reckless in making the statement with disregard to the truth or falsity of the statement when gossiping to members of the community. Defendant Smith did not act in good faith because Defendant Smith was aware of the internal family affairs of Defendants C. Collier and H. Collier, and Defendant Smith expressed immense gratitude that Plaintiff got fired because of her daughter and granddaughter. The remainder analysis is the same as previously discussed.

Plaintiff has separate grounds for cause(s) of action that occurred after the Agreement arising from defamatory statements published to third parties after Plaintiff's termination on April 10, 2018. Employees, agents, or both of Defendant Church further disclosed the nature of Plaintiff's termination to parishioners of Defendant Church. On or around April 11, 2018, and after Plaintiff was terminated from Defendant Church, Ms. Shaler held a brief meeting with the choir before choir practice announcing Plaintiff's termination from Defendant Church. Right afterward, Mr. Peden made the outburst to the entire choir, as to offer an explanation, that Plaintiff had an "inappropriate relationship with one of the teenagers," as witnessed by Caroline Jenkins who was a parishioner of Defendant Church and sang in the choir at the time of Plaintiff's termination from Defendant Church. See Exhibits H (Caroline Jenkiins), I (Warren Peden). Ms. Shaler did not refute Mr. Warren's outburst. After Plaintiff's termination from Defendant Church, Pastor Jimmerson with Defendant Church admitted to Caroline Jenkins, Anne Danciu, and Peter Danciu that Defendant H. Collier reported Plaintiff to the Church and accused Plaintiff of having an inappropriate relationship with her, disclosing that

Plaintiff was subject to an investigation accordingly. Caroline Jenkins decided not to join Defendant Church because of Defendant Church's poor handling of Plaintiff's termination. Arguably, Pastor Jimmerson, Ms. Shaler, and Mr. Peden lost any qualified privilege with Defendant Church when said statements were unnecessarily outside the scope of employment or agency. As previously discussed, the remaining analysis is similar as well as for the phrase "inappropriate contact" similar to "inappropriate relationship."

For reasons previously discussed, Plaintiff's cause of action for defamation should survive the Defendants' 12(b)(6) Motion to Dismiss accordingly.

III. PLAINTIFF'S CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS SHOULD SURVIVE A MOTION TO DISMISS AND A MOTION FOR JUDGMENT ON THE PLEADINGS

In a cause of action for intentional infliction of emotional distress, the plaintiff must show: "(1) the defendant intentionally or recklessly inflicted severe emotional distress, or knew that distress would probably result from his conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it." *Gattison v. S.C. State Coll.*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (Ct. App. 1995). Factors related to supporting this cause of action involve: (1) a pre-existing legal relationship existed between the parties as an employer-employee relationship; (2) the employer engages in coercive and oppressive abuse of an employee; (3) "the defendant calculatedly inflicted suffering or heedlessly and contemptuously disregarded the plaintiff's present emotional suffering either to force the plaintiff to accede to the defendant's wishes or to punish the plaintiff for prior failure to comply." *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 169-70, 321 S.E.2d 602, 610-11 (Ct. App. 1984); *Ford v. Hutson*, 276 S.C. 157, 166, 276 S.E.2d 776, 780 (1981) ("Conduct growing out of a business relationship may be so outrageous and shocking as to be actionable."). Severe emotional distress does not require manifestation of bodily harm. *Ford*, 276 S.C. at 162. By contrast, when a plaintiff experiences severe emotional distress, plaintiff may experience shock, illness, or bodily harm. *Id.*

For reasons previously discussed, Defendant's accusations of Plaintiff were outrageous and done intentionally to harm Plaintiff. Defendants H. Collier and C. Collier intended to punish Plaintiff. Defendant Church intended to engage in coercive and oppressive abuse of Plaintiff within the employer-employee relationship to force compliance. Plaintiff suffered extreme distress and sought counseling. Plaintiff's cause of action for the intentional infliction of emotional distress should survive the Defendants' 12(b)(6) motion to dismiss accordingly.

IV. PLAINTIFF'S CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS SHOULD SURVIVE A MOTION TO DISMISS AND A MOTION FOR JUDGMENT ON THE PLEADINGS

In South Carolina, the cause of action for the negligent infliction of emotional distress is a relatively new cause of action subject to expanding the application to other factual settings. See *McCaskey v. Shaw*, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988); *Folkens v. Hunt*, 290 S.C. 194, 204-05, 348 S.E.2d 839, 845 (Ct. App. 1986) (citing *Hensley v. Heavrin*, 277 S.C. 86, 87-88, 282 S.E.2d 854, 855 (1981)). Recovery under this cause of action is not limited to the by-stander theory. *Bray v. Marathon Corp.*, 347 S.C. 189, 196-97, 553

S.E.2d 477, 480 (Ct. App. 2001); *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582 n.2, 336 S.E.2d 465, 467 (1985); *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 604-08, 103 S.E.2d 265, 270-72 (1958); see also *Charleston Cty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 7-8, 437 S.E.2d 6, 9 (1993). For negligent infliction of emotional distress, the difference between intentional infliction of emotional distress and unintentional infliction of emotional distress is that unintentional infliction of emotional distress: (1) lacks intent through the defendant's act(s) or omission(s); and, (2) has basic negligence elements of duty, breach, and injury or damages. See *Moore*, 383 S.C. at 588-89; *Gattison*, 318 S.C. at 151; *SPAUGH v. A. C. L. R.R. CO.*, 158 S.C. 25, 30, 155 S.E. 145, 147 (1930); see also *Rodrigues v. State*, 52 Haw. 156, 518-19 (1970). The elements of defendant's extreme and outrageous conduct, defendant's conduct being the actual and proximate cause of plaintiff's injury, and plaintiff's severe emotional distress remain the same for both causes of action. *Gattison*, 318 S.C. at 151.

The cause of action for negligent infliction of emotional distress is rooted under the theory that one has a legal duty to use reasonable, ordinary care not to cause another emotional distress by invading into the emotional tranquility of another person. See *Kinard*, 286 S.C. at 581; *Mack v. S. Bound R.R. Co.*, 52 S.C. 323, 329-38, 29 S.E. 905, 907-11 (1898). Duty arises from the foreseeability that one's conduct, whether an act or omission, falls below the reasonable duty of care and causes another emotional distress. See *Bray*, 356 S.C. at 118-19; *Mack*, 52 S.C. at 333-34; see also Note, DAMAGES FOR MENTAL SUFFERING RESULTING FROM MISTREATMENT OF A CADAVER, 1960 DUKE L.J. 135, 135-36 (1960). Outside the analysis of the by-stander recovery theory, South Carolina does not require a physical impact from one's negligence that results in the emotional distress of another; rather, the analysis turns upon the plaintiff manifesting physical or bodily injury as a result from mental and emotional trauma. See *Bray*, 356 S.C. at 118; *Mack*, 52 S.C. at 335. For example, in *Spaugh*, the train conductor gave negligent instructions to the plaintiff that resulted in the plaintiff going the wrong way, getting stuck in the rain, and delayed the plaintiff from returning home to her infant children and invalid mother. The plaintiff suffered a nervous breakdown and became ill. The Court allowed the plaintiff to recover from the mental anguish and suffering from the defendant's negligent misdirection that the plaintiff's emotional distress physically manifested in the plaintiff in bodily injury proximately caused by the defendant's negligence. *SPAUGH*, 158 S.C. at 29-32.

For reasons previously discussed, Plaintiff's cause of action for the negligent infliction of emotional distress should survive the Defendants' 12(b)(6) Motion to Dismiss.

V. PLAINTIFF'S CAUSE OF ACTION FOR CIVIL CONSPIRACY AGAINST ALL DEFENDANTS SHOULD SURVIVE A MOTION TO DISMISS AND A MOTION FOR JUDGMENT ON THE PLEADINGS

Currently, South Carolina defines a civil conspiracy as when two or more persons join for the purpose to injure and cause special damage to the plaintiff. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010). The cause of action for civil conspiracy relates to the Plaintiffs' damages resulting "from an overt act done pursuant to a common design." *Id.* at 324. Special damage alludes to damage that is caused by the Defendants' conduct:

[The Defendants' conduct was] motivated by envy, ill will, spite and malice, did secretly and unlawfully further agree, combine, unite, scheme and conspire together for the purpose and with the design and intent of restraining, damaging, ruining, crushing and wrecking the plaintiff and driving him out of business and eliminating him as a competitor; and that pursuant to, and in furtherance and consummation of, said unlawful agreement, combination, scheme and conspiracy, the defendants herein, their co-conspirators, agents, servants, aiders and abettors, have acted, united and co-operated together and have committed, or caused to be committed, numerous illegal and vicious acts, to the plaintiff's great injury and damage. *Charles v. Tex. Co.*, 192 S.C. 82, 98, 5 S.E.2d 464, 471 (1939).

Special damages are defined as damages that "go beyond the damages alleged in other causes of action." *Cricket Cove Ventures, LLC*, 390 S.C. at 325. Whether special damages is an essential element for the cause of action related to civil conspiracy is a legal question as case law supports a developing change in pleading this cause of action for civil conspiracy with the element of special damages conflating the bar on recovering from double damages with the element of special damages being a pleading requirement. *Allegro, Inc. v. Scully*, 418 S.C. 24, 36-37, 791 S.E.2d 140, 146-47 (2016) (Beatty, J., dissenting) (proposing overruling the special damages requirement of civil conspiracy in South Carolina as a duplicative legal technicality). If applicable, Rule 9(g) of the South Carolina Rules of Civil Procedure requires a heightened pleading requirement for special damages.

For reasons previously discussed, Plaintiff has reason to believe that Defendant Church was collaborating with the other Defendants to cause Plaintiff harm leading to harm Plaintiff including pain and suffering, loss of reputation, and loss of wages. Therefore, the cause of action for civil conspiracy should survive the Defendants' 12(b)(6) motion to dismiss. Defendant's request to find Plaintiff's Complaint insufficient, or this cause of action, on this ground is moot and should be denied accordingly. In the alternative, Plaintiff hereby requests the Court's leave and permission to amend the complaint to insert the word "special" if so required pursuant to Rule 9(g) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff pray that:

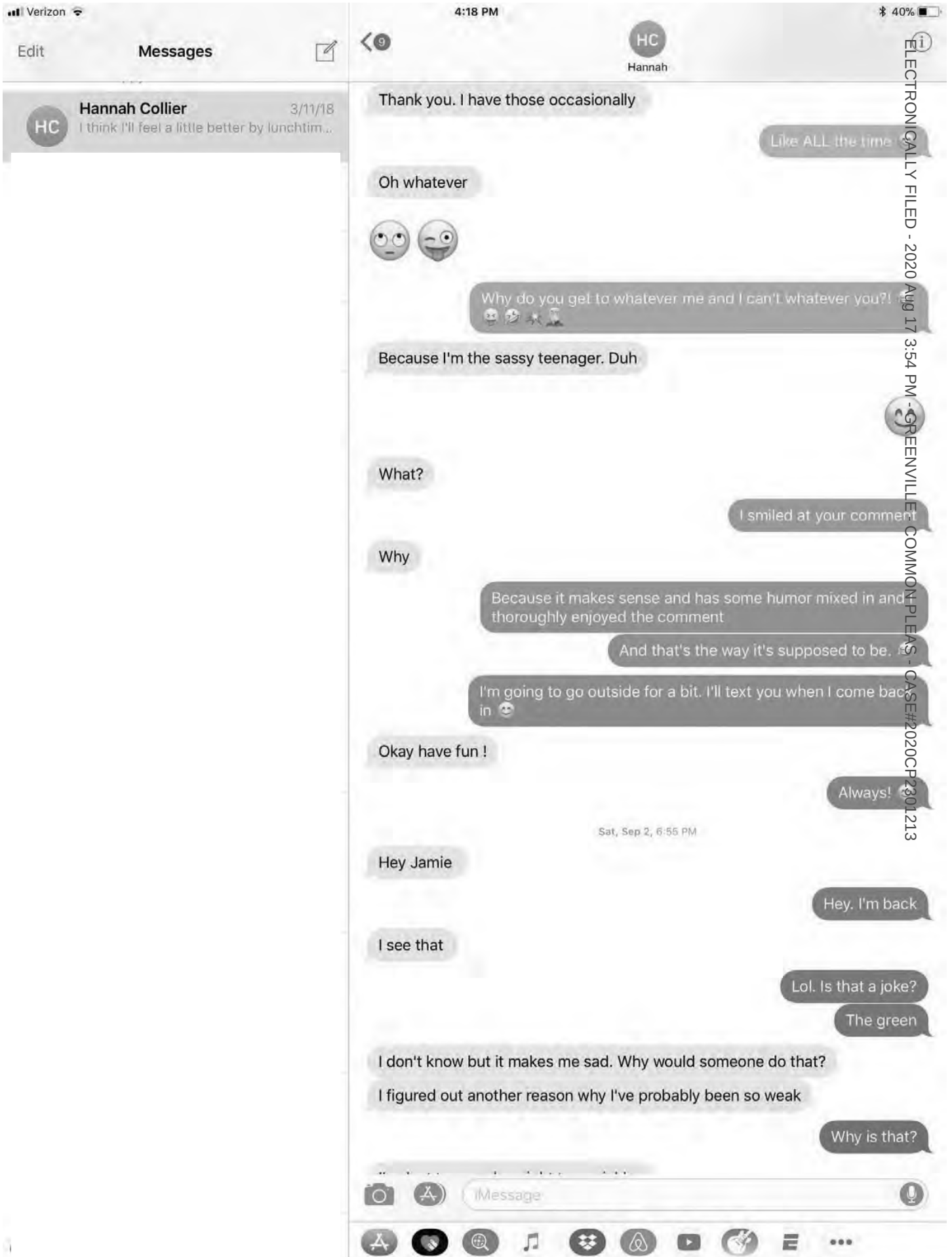
- (1) the Court give leave to amend this response as required;
- (2) the Court grant a hearing for as requested;
- (3) Defendants' Motion to Dismiss be denied;
- (4) Defendants **HANNAH ELIZABETH COLLIER** and **LINDA SMITH**'s Motion for Summary Judgment on the Pleadings be denied;
- (5) the Court give leave to amend Plaintiff's complaint as required; and,
- (6) the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 17 day of August, 2020.

Deborah D. Davis, Esq.
Dickson Davis Law Firm, LLC
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

/s/ Deborah D. Davis, Esq.
Deborah D. Davis, Esq.
SC Bar No.: 102942
Attorney for Plaintiff

EXHIBIT A



ELECTRONICALLY FILED - 2020 Aug 17 3:54 PM - GREENVILLE COMMON PLEAS - CASE#2020CP2801213

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

I've lost too much weight too quickly.

I wasn't trying to. But it happened.

I was 156.ish last Sunday, and I'm 148.ish today.

I'll be honest... as I always am... you're gonna lose weight with the walking you're gonna do. You have to make yourself eat at sane eating times to keep that from happening.

It's because of exercise. So you must replenish your body.

I haven't felt well enough to eat. Especially yesterday and today.

Well that's prob because of your metabolism.

So that should get better, you think?

I hope so.

Cuz this is unhealthy

I'm gonna bug you to eat.

Not that it'll do any good.

But

I'm not doing it on purpose James.

BU

Do you know?

however I'm still gonna remind you.

So don't get agitated at me.

Just kind reminders.

Or more like asking.

Or pleading.

Begging.



I know you're not.

But if it were me you'd bug me constantly.

Okay it'll prob be more like encouragement.

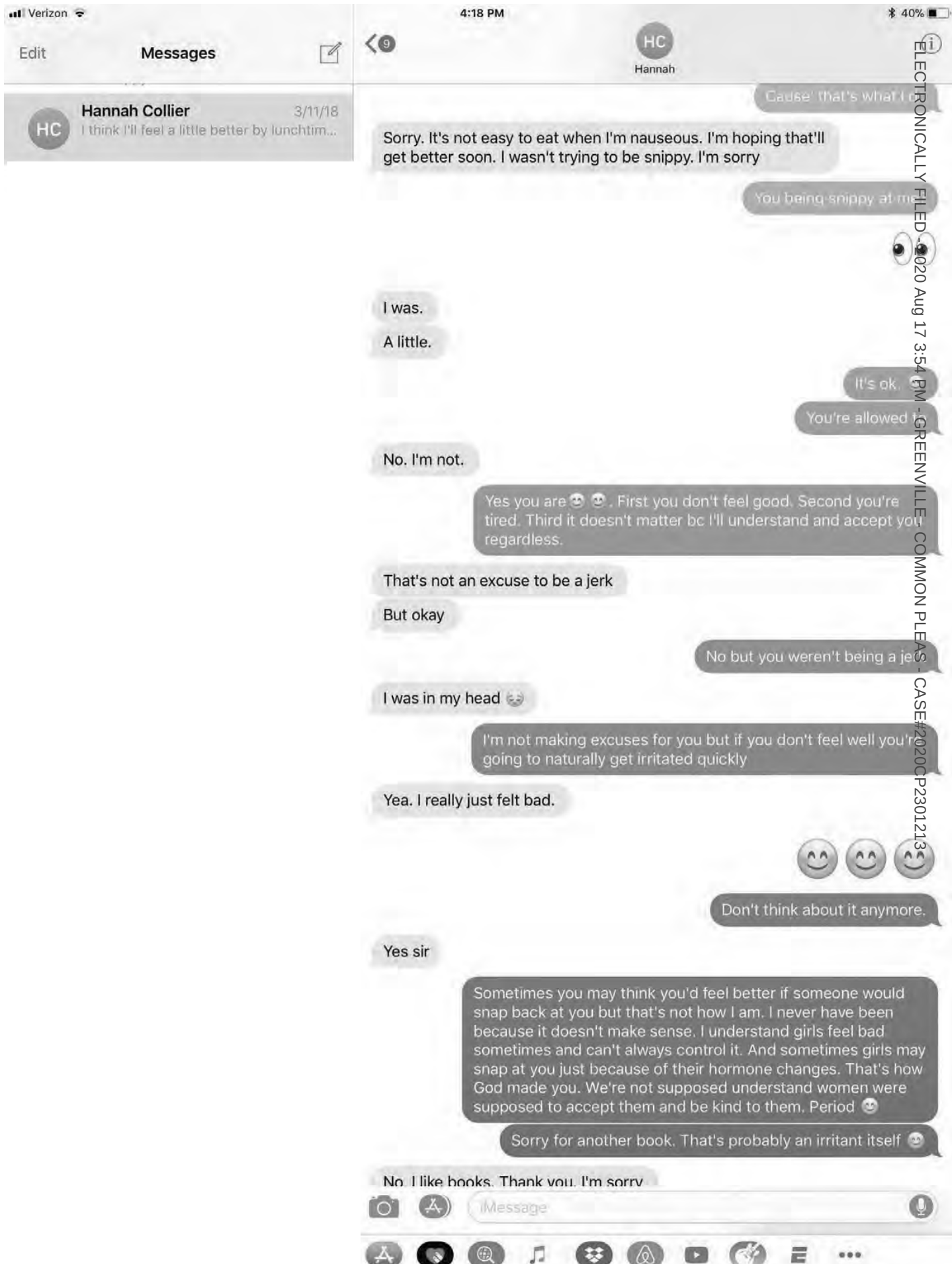
Cause' that's what I do.



iMessage



ELECTRONICALLY FILED - 2020 Aug 17 3:54 PM - GREENVILLE COMMON PLEAS - CASE# 2020CP-2301213



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

No, I like books. Thank you. I'm sorry

It's all good Hannah!
Did you rest any?

Yes sir. I slept from the time I got here to 7ish

Nice

Haha!

Nice

Yea. So that was nice

I'm eating soup

That's good

Yes

I'm actually eating rotisserie chicken breast and sweet potato

Yum

And spinach

Do you spend a lot of time with your boys?

Not as much anymore because where they have their own lives now sorta. We had them really young so in later teenage years you want more time around friends. They have good friends so that makes me happy. We do still spend time together just not like when they were 10 🤔

Yea

And it's okay. I understand that. We have a lot of respect for each other and a very calm and fun household

Yea

Both had to grow up really fast so that has matured them far beyond their years

Yes

That's hard

And I earn peoples trust. Like Josie's mom is excited that she's going to New York City with me and Andrew. Plus I'm taking a couple other friends. Josie is 17. Normally that would be weird but people who know me well understand know what I'm all



iMessage



Messages

<9

Hannah

HC

3/11/18

I think I'll feel a little better by lunchtime...

Well I'm talkative this evening



That's true. That's what my daddy would think, maybe that's why I was anxious at dinner.

Enjoy your piano. And I agree

You weren't anxious today were you

Not really

Werer

Why would you be worried if I wasn't anxious?

Because you need to be careful

And you are a good judge of character

I'm glad you feel that way. I felt guilty about not completely trusting you. But I just have a hard time

Girl I understand. Maybe this will help... see sometimes I get anxious too. I really have to trust someone to do what I've done with you. I mean you could ruin my life with a single word, so I put a lot of trust in you also. I've spent a lifetime building my music ministry and my business and I don't want that ruined, so I understand what you mean. Not totally in the same way but I do somewhat 😊

I don't want you to trust me right away. I want you to be careful.
I want you to be protected.

And I hope that's not true about the river because that's really green 🤔

You wouldn't do anything to hurt me, right? I don't think you would. People would think it's weird that we're so close. I know you don't care what people think. But



Edit

Messages



HC

Hannah



i

ELECTRONICALLY FILED - 2020 AUG 17 3:54 PM - GREENVILLE, COMMONWEALTH OF MASSACHUSETTS - CASE#2020CP2801213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

You wouldn't do anything to hurt me, right? I don't think you would. People would think it's weird that we're so close. I know you don't care what people think. But.

And in other words. I trust you 100%

I hope it's not true either.

And you don't. But it's okay

I do. Absolutely do. And Hannah, I'll never hurt you in any form. Physically mentally emotionally spiritually. I'm here to build you up and help your life not detract from it. I mean that with all my heart and every fiber of my soul 😊

I'm here to see you smile. To laugh and to enjoy life. To go for your dreams and to surpass them!!!!

Why?

I don't mean that in a bad way. But why?

First because that's just how I am with everyone that knows me. Secondly I connect with you well. I prayed a lot about it and I know God caused our paths to cross for some reason. And it helps both of us. I've told you that before 😊

I care about you therefore I want to see you meet and surpass your dreams.

I know. But what is this supposed to be? And what did you pray for

I don't know who you hang around but I guess maybe I'm just totally different from most people because that's how I've been my whole life. It's how my dad is too

I have no idea what it's supposed to be. And I'm not going to question God. I'm just going to take today and make it the best I can and not worry about the rest

I feel like your big brother and when you need somebody talk to I'm here. You know that 😊

What do you think the answer is?

I know you like to plan things and figure things out and see your pathway clearly. But sometimes you just have to take one step at a time and see where God leads you

I've just been hurt before. There's always a motive. And I just don't know. I need a plan.

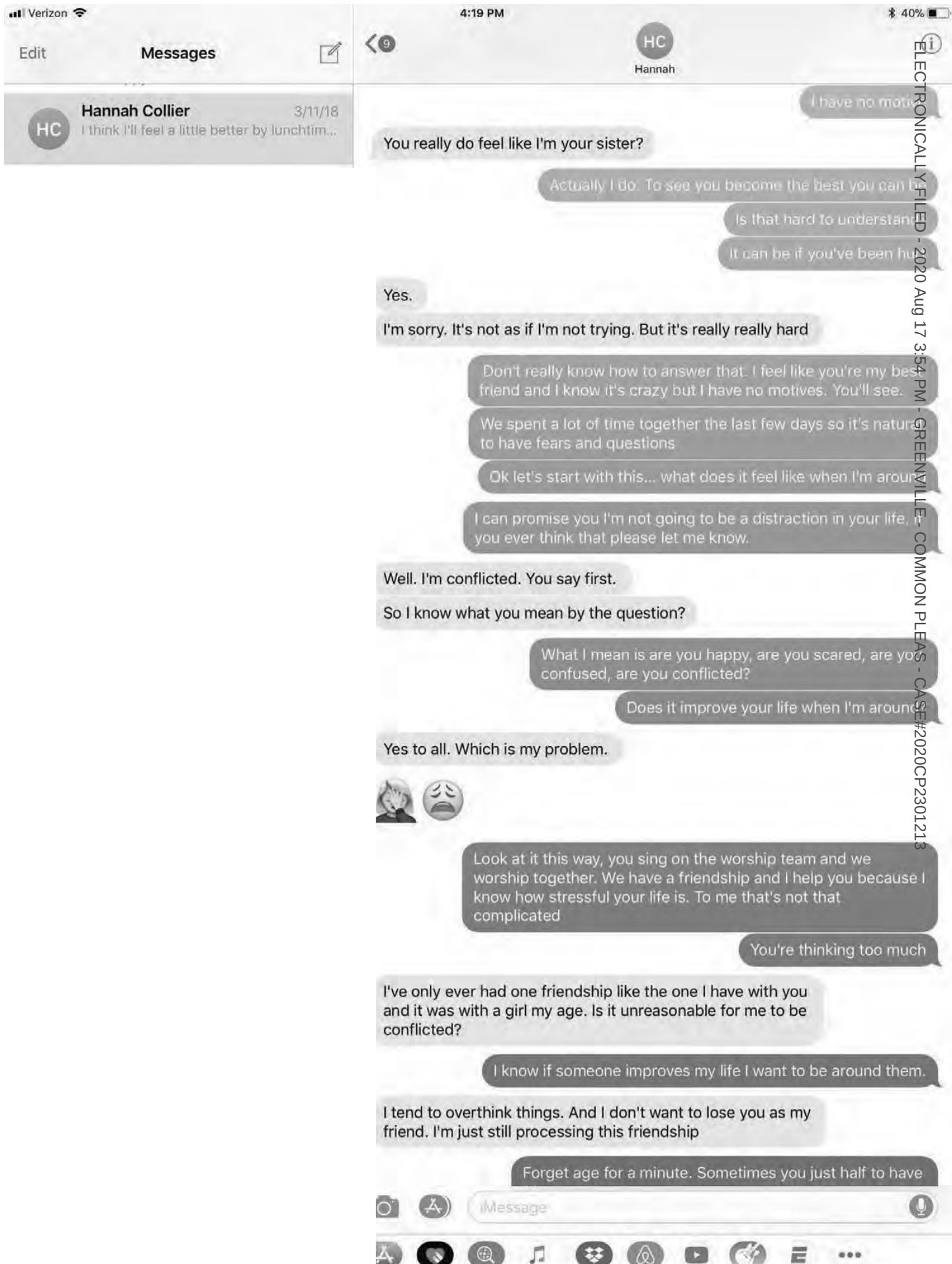
I have no motive

You really do feel like I'm your sister?



iMessage





Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 17 3:54 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Forget age for a minute. Sometimes you just have to have friends you relate to.

I'm sorry.

It's fine

I over complicate things.

And that's o

It's not okay. I do not like myself for this.

Follow your heart. If I improve your life then I don't let it scar you.

Easier said than done.

I don't have to hang around you if it confuses you

You didn't realize that I was such a nutcase.

Haha

I'm being serious.

You're just fin

That's the thing though!! I do like to spend time with you! I'm happy around you. But I'm also still processing my thoughts and trying to handle my feelings.

With what you've been through I totally understand why you're having these feelings. I'm here to be your friend. I am here to be a positive influence on your life.

It's difficult for me.

Here's what I think is happening in your mind, you really opened up and shared your past with me and now you kind of feel vulnerable. Do you think that's it? Bc if so it'll pass

Life is confusing and it'll always be confusing. Ask yourself this question. Is your life better when I'm in it or not and go with that. Sometimes you have to look the fear in the face and say stay out of the way. Take some time and process this. I'm never gonna force friendship on anyone. But I really enjoy you being my friend. And I really enjoy your contribution to our worship

You have several years to digest your life and figure out what's best for you. You can't do it in one week. Remember that

If I was a bad person, I've had every opportunity to be a bad person. I think it's pretty safe to assume I am as advertised



iMessage





ELECTRONICALLY FILED - 2020 Aug 17 3:54 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 17 3:54 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Ollie looks cute. That's a lot to process right now. I really appreciate your honesty. I also really appreciate your friendship. I was completely shocked when I read what you said about romance and whatnot. I've seen you as a father figure. My own daddy can't be here to take care of me, and you've done fatherly things. Buying me an umbrella, supporting me at my audition, etc. This puts a bit of stress on me, because I don't want things to be awkward between us. Honestly, I don't know what to do or say. I don't want to feel uncomfortable around you. I think you're a great person. I feel really awkward right now, which I know was not your intention. That's kind of where I'm at right now. I don't have any other words right now.

Fri, Sep 8, 6:19 PM

And I've seen myself as a father figure to you. I haven't felt anything else except friendship toward you. I know that no one will ever replace your daddy. But I knew me being in your life may help a little with that. 😊 Plus I'm a thoughtful person. I just want you to be yourself and I hope you can. 😊 I didn't know what you were feeling, and I just was guessing to try to ease your mind because you asked me point blank last week what my motive was. Therefore I felt I owed you an explanation. My motive is friendship because you help me too. 😊

Thank you for explaining.

You're not the first person I've been a father figure to. I could give you a list of ppl whom I've helped... who either lost their father, didn't have a father, or were away from him. It's so cool to see how their lives were changed. One in particular is now happily married. Not a week goes by that her mother doesn't send me a message to thank me for what I did for her. Do you realize when she was 16 her mother drove her here from Virginia to stay for almost a week to spend time with me and the boys? Her mom told me that changed her life because she got to see how real families should spend time together and do things together and have fun. That's it. I was like I was helping people before you came into my life and I'm always going to be that way. Also, when I mentioned the word romance, I was solely talking about myself and my life. I wasn't talking about you and I. I was just telling you that that was not my motive since you asked me several times last Saturday night what my motive was. I hope you didn't misunderstand that.

That's really how it came across, and it made your motives even more unclear to me. I understand now, though. I think. I know you help people, and it's great.

So you thought I had romantic feelings for you? How could you ascertain this? So I'm a little shocked now. Please keep in mind, I've never done anything except help you. Those thoughts have never once entered my mind. Never. They never would. I'm not sure why you would feel uncomfortable if you view me as a father figure. And here's how well I know you. And this is kinda funny... I knew yesterday that you would not come Saturday bc I knew you'd feel like this today. It's how you are bc of what



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000287



Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 17 3:54 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

So you thought I had romantic feelings for you? How could you ascertain this? So I'm a little shocked now. Please keep in mind I've never done anything except help you. Those thoughts have never once entered my mind. Never. They never would. I'm not sure why you would feel uncomfortable if you view me as a father figure. And here's how well I know you. And this is kinda funny... I knew yesterday that you would not come Saturday bc I knew you'd feel like this today. It's how you are bc of what you've been through. I don't fault you I just understand bc I try to understand people. It's my job. And then when your texts were short all morning I was just waiting for that one that said you couldn't come. And voilà. Lol. But romantic feelings? Uhmmm no. Never gonna happen. If my motive was a bf/gf kinda thing I would've been married before now. My wife passed away over four years ago. What I was trying to tell you... which obviously I miserably failed at... is I'm not even going to date ANYONE because my responsibility right now is my boys... and I take that very seriously. Not quite sure what else to say. But I hope it helps. 😊

I just feel like I've let you down somehow. And for that I'm disappointed in myself. But honestly I don't know how I could've conducted myself differently to not make you think that way... but please let me know so that I don't do it in the future. I'm going to go to the gym and stuff to clear my mind and I'll be back later and maybe we can straighten this out because we have a beautiful friendship and I don't wanna ruin it. You should clear your mind also. I'm so very sorry for coming across wrong. 🙏

I was driving, I just got here.

I'm not sure how I was supposed to take that. Do you not see how it could've come across that way? You should read it again, but put yourself in my shoes. My responsiveness today had nothing to do with tomorrow. I've had a very busy day, I don't feel well, and I'm exhausted. I clearly understand you now. Thank you.

Okay

I'm sorry you're upset. Be careful at the gym.

I'm not upset. I'm just perplexed. And honestly I have reread it. Many times. And not a single time did I see where you should've gotten that I had feelings for you. At one point I did surmise that if you had them for me, they'd subside. I mean I have no idea how you feel or felt. But I would've hoped with the way I've conducted myself around you that you woulda taken it differently. And this is why we should've talked a week ago like I mentioned so I could have explained my motives, or rather the absence thereof. It's impossible to understand the full meaning of texts sometimes. So that's probably the issue here. I'm sorry you feel bad, Hannah. I do care 😊

I am very upset right now. For many reasons. And I know you



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000288

Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 17 3:54 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

I am very upset right now. For many reasons. And I know you care. I do too. That's the way it seemed to me, whether you meant it or not (obviously not). I realize that that's not actually how it is, and I was wrong. Which happens. I'm sorry. You have to understand that I don't spend time with people. I don't. So I didn't know how else I would've taken it. I do now. I was wrong. And I feel like an idiot. I knew that you wouldn't feel that way, but from what you said I thought that's what you were saying. And I was confused. But I get it now. I get it. I'm sorry I didn't understand it earlier.

It's okay Hannah. 😊. This stuff happens. I mean sometimes guys don't know how to word things and I obviously didn't. And especially since I don't have a female perspective to rely on, it's difficult for me to understand what it's like to be in your shoes. Remember I told you I'm not perfect. Well now you know for sure. 😊 I'm still learning every day. Last thing I'd ever wanna do is hurt you. Get feeling better. Clear your mind and let's start fresh! 😊

Okay. Thanks.

Fri, Sep 8, 9:18 PM

Are your boys coming Sunday?

I'm not sure if Andrew has to work yet or not. But Alexander said he was coming. I invited both Josie and Alexander's girlfriend to come over tomorrow so I'll see if his girlfriend can come Sunday too. 😊 I would like to be able to recognize him for the video. It always brings tears to my eyes when they come to church because I'm so proud of them

That's so nice. Hopefully they can all come.

Josie won't. She helps with a class at Newspring

Oh okay

That's nice of her.

Yes. I'd like you to meet her sometime. She's like a member of the family.

That'd be great.

Alexander has been building computers piece by piece since he was like 10 years old. No kidding. It amazes me

That's impressive

Did you see my announcement about Sunday on Facebook?



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000289

EXHIBIT B

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT**

JAMES EARL TEGELER,

2020CP2301213

COMMON PLEAS CIVIL CASE NO.

Plaintiff(s),

v.

AFFIDAVIT FOR

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, NORTHGATE BAPTIST CHURCH,**

**ROY SABEAN
(LEGAL NAME)**

Defendant(s).

I, ROY SABEAN, having been duly sworn,

depose and say the following:

I am 18 years of age or older, of sound mind, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein.

1. I have known James Tegeler during the time he was employed by Northgate Baptist Church.
2. I had been a member of Northgate Baptist Church for around twenty-five (25) years.
3. At the time James was terminated on or around April 10, 2018, and subsequently thereafter, I was a Deacon of Northgate Baptist Church.
4. As a Deacon, I was part of the Deaconate for Northgate Baptist Church responsible for overseeing church affairs and providing spiritual guidance. The Personnel Committee chair reports to the Administration Cluster Leader. The Administration Cluster Leader then reports to the Leadership Council, which involves the Deacon Chairman. The Cluster Leaders are to communicate with the Personnel Committee Chair and the Leadership Council for any questions, concerns, recommendations, or actions by the Leadership Counsel that involves the Personnel Committee.
5. After James was fired by Northgate Baptist Church, I questioned Dr. Barry Jimmerson as to why James was fired. Barry silenced me by telling me not to push the issue or to interfere because of legal implications or ramifications from the church firing James. Barry just referred to the matter involved things he couldn't tell me. Barry informed me that the decision to fire James was made by the Personnel Committee.
6. The proper protocol involving the leadership hierarchy at Northgate Baptist Church was not followed when the church fired James. The Personnel Committee makes recommendations to hire or fire personnel. However, the Personnel Committee does not make charges or

accusations against church employees. And, the Personnel Committee does not investigate charges or accusations against church employees. If any disciplinary action was required against a church employee, the Deaconate should surely be apprised of the situation. But, more specifically, the Deaconate also took a special role in church matters. Without a doubt, the Deaconate should be involved in the termination of employees and investigating the surrounding circumstances. The Deaconate is there to aid the pastor and church in such matters.

7. The Deaconate should have been involved in the decision to terminate James based on allegations of James having an inappropriate relationship with Hannah Collier, who was a member of the church and sang in the Praise Team. In a matter such as the allegations against James by Charlotte Collier, who was the mother of Hannah Collier, and Hannah Collier, the Deaconate would have been in charge of the investigation. If the Deaconate were to investigate such accusations against James, then the investigation of the matter would have to be based on something other than mere hearsay. A thorough discussion with James would have been involved to present both sides of the story and get to the bottom of the issue. The Deaconate would have prayed over the matter for spiritual guidance.
8. To the best of my knowledge, if the church received any grievances against an employee or member of the church, then such a grievance was so isolated and rare. Not in all the years I was involved with the church was I ever aware of any grievance or incident involving an employee or member of the church to have legal implications. While grievances against an employee or member are permitted at the church, such an occurrence was so rare—especially an incident related to personnel problems.
9. Never has a church employee or member been accused of having an inappropriate relationship with another church employee or member to the best of my knowledge. And, to the best of my knowledge, the church does not have a history of incidents involving child molestation, adultery, or physical or sexual relations between a church employee and a member.
10. But, in this case, Laurel Shaler, who was the head of the Personnel Committee at the time James was fired by the church, deliberately bypassed the Deaconate in a godless manner. Laurel increasingly took control over more and more of the church to the point of appearing as if she ran the church. I would describe Laurel's personality as controlling, domineering, and manipulative. Here, Laurel overstepped her boundaries in this situation unquestionably. She defied the spiritual cornerstone of the church to appeal to the Christian faith regarding ghastly accusations against James. Barry just stood by and let Laurel trample over years of

church policy and procedure disrespecting the Deaconate and the Deaconate's role in the church. Their actions in this situation rendered the Deaconate as meaningless and contrary to the very foundation of this church and its organization. On something like this situation with James, the Deaconate is not supposed to be left in the dark. To me, Laurel does not inspire walking in the path of Christ that merits a leadership position in a place of worship. Instead, God played no part in what the Church did to James. The whole process was insensitive in and of itself.

11. After James was fired by Northgate Baptist Church, Linda Smith, who is the mother of Charlotte Collier and grandmother to Hannah Collier, called me stating that she wanted to straighten me out as to what happened with James being fired by the church because she knew that we, the Deaconate, were left out in the cold. Linda informed me that the church fired James because the church charged James with having an inappropriate relationship with Hannah.
12. Linda adopted and restated the church's reason to fire James for having an inappropriate relationship with Hannah as her own. Anyone who would hear such a statement would think that statement would be damaging to James's reputation.
13. In a church setting such as Northgate Baptist Church, and Linda's accusation of James having an inappropriate relationship with Hannah, the first thought that came to my mind hearing Linda's accusation is that Linda was accusing James of acting sexually inappropriate toward Hannah. Basically, my first impression of hearing "inappropriate relationship" means that sexual indiscretion between two people has taken place. To me, while the term "inappropriate relationship" may have different connotations based on the context of the situation, that term within the confines of the context of most situations clearly has a physical, emotional, touching, or sexual connotation between two individuals as is most commonly understood.
14. I emphasized that I could never imagine James having an inappropriate relationship with Hannah. The idea of James having a physical, emotional, romantic, touching, or sexual relationship of the sort with Hannah is unthinkable. The suggestion of James having a romantic or sexual relationship with Hannah is abhorrent if you truly knew James as a man of great character and a devout Christian.
15. When Charlotte and Hannah attended the church, I observed them around James. James had taken an interest in Hannah to help Hannah with her musical ability. Obviously, James mentoring someone in the Worship Team was not out of the ordinary when James was in charge of the music program at the church. I thought Hannah was an impressionistic young

girl with emotional issues. It was well known in the church that Hannah did not have a stable family unit and she was emotionally unstable.

16. Over time, I thought that Charlotte had feelings for James or a romantic attachment beyond a platonic friendship. It was obvious to me that James was oblivious to Charlotte pursuing James and that James did not reciprocate Charlotte's attempts. Charlotte's involvement in this situation seemed like that of a scorned woman.
17. I was outraged by the fact that James would be accused of having an inappropriate relationship with Hannah. Such an accusation is so serious and can utterly destroy a man let alone his reputation. The very idea is appalling. It makes me sick.
18. Essentially, the church excommunicated James and never gave James an opportunity to explain his side of the story as should have been done if the proper channels were used by the church. I see how this whole situation has been emotionally devastating for James. James got a raw deal. James should have had every opportunity to represent himself and defend himself in the face of such ghastly accusations never before heard of by this church as far as I am aware.
19. Greenville has a small-town kind of mentality. This situation at the church would make it difficult for James to get involved with another church in the same capacity as he was at Northgate Baptist Church.
20. This entire situation is terrible. I am at a loss as to how this situation got so out of hand. Everything about this situation runs contrary to the Christian doctrine. James was railroaded out of the church without the Deaconate having a say in it like a lamb left to the slaughter. This whole incident does not uphold to our Christian tenets. An injustice has been done to James and I don't want any part of it. Not long afterwards, I left the church.

[SIGNATURE PAGE TO FOLLOW]

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

April 30, 2020
Date

Roy H. Sabean Sr.
Affiant Signature

Roy H. Sabean Sr.
Affiant Printed Name

STATE OF South Carolina
COUNTY OF Aconville

I, PATRICK J. DANIELS, the undersigned Notary Public, do hereby affirm that the affiant personally appeared before me on the 30 day of April, 2020, and signed the above Affidavit as the affiant's free and voluntary act and deed.



Patrick J. Daniels
NOTARY PUBLIC

My Commission Expires on: 12/07/26

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

JAMES EARL TEGELER,

Plaintiff(s),

v.

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, NORTHGATE BAPTIST CHURCH,**

Defendant(s).

**IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT**

2020CP2301213

COMMON PLEAS CIVIL CASE NO.

AFFIDAVIT FOR

**SUE LUTZ
(LEGAL NAME)**

I, **SUE LUTZ**, having been duly sworn,
depose and say the following:

I am 18 years of age or older, of sound mind, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein.

1. I have known James Tegeler during the time he was employed by Northgate Baptist Church.
2. I had been a member of Northgate Baptist Church for around ten (10) years. I also sing in the choir, and I am in the Women's Mission Union.
3. James is well beloved by many of the parishioners of Northgate Baptist Church, and he is well respected as a musician.
4. I have known Linda Smith for a long time as well. I would say I've known her for more than twenty (20) years I suppose. Linda Smith is the mother of Charlotte Collier and the grandmother of Hannah Collier. Charlotte was married to Craig Collier and they had Hannah Collier and Tyler Collier as their children. Craig was a cop. Linda and I also have mutual friends such as Judy Butchert, who is in a bible study group with Linda.
5. About twenty (20) years ago, and at another church, Linda and I were in Sunday school and making our prayer requests. I'll never forget what she said because it was so shocking. Linda made a prayer request to help her daughter Charlotte because Charlotte's husband Craig would beat her. When you hear something like that, it sticks with you.
6. I was aware of the divorce between Charlotte and Craig Collier. Craig is Hannah's father. Craig was very strict with Hannah. The divorce seemed to really affect Hannah. I saw a young girl who loved her father, but she didn't seem to reason her way through the divorce when Charlotte and Craig's marriage fell apart.

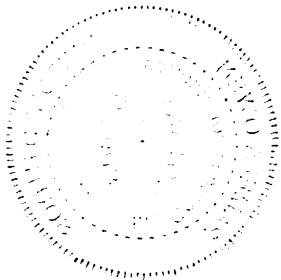
7. I see James as a grieving widower having lost his wife from a drawn-out terminal illness. Anyone who knows James knows that James is not interested in dating—at all. In line with his own sense of professionalism and decorum, James has been very clear at the church to avoid any dating relationships or any other kind of relationships of an intimate nature with anyone at the church.
8. While James has his own cross to bear losing his wife, he was also very concerned being there for his sons to help his sons cope with losing their mother. The experience was hard especially on his sons. James is very close to his sons, and his sons are actively involved in his life and in his home. With the planned social activities James throws together, James's sons are usually involved and participate.
9. James is the type of person who helps other people being a devout Christian. He is the kind of person who enjoys bringing people together in a shared community of faith in a very family-oriented manner. James has a very strong "father mentality" when dealing with younger adults, especially with his experience as a youth minister. He is the kind of man that asks himself what his wife would do for their child under the circumstances—what would a parent do for that child for the safety and well-being of that child. Over my years in different churches, I have observed youth ministers can often take the role of a parental figure in a spiritual sense like a faith-based guide to find one's way to walk the path of God.
10. I observed both Charlotte and Hannah Collier around James at the church. James was always trying to recruit people for the music program whether it was the Praise Team, Worship Team, or the choir. James took an interest in mentoring Hannah with her music when Hannah began singing in the Praise Team. Charlotte was often around initially as well although I only remember her singing in the Praise Team numerous times.
11. Over time, it appeared that Charlotte and Hannah Collier began getting more involved with James and his family in a family setting. I would describe Hannah as immature and a troubled youth from a broken home. Hannah is not a child nor acts like a child. But, Hannah acts immature for her age. Given Hannah's family background, James's previous experience as a youth minister, and James's allure as a wonderful father figure to his sons, it is no surprise that Hannah began to see James as a surrogate father figure.
12. Both Charlotte and Hannah seemed insecure to me in how they behaved around James at the church. Over time, it became more and more apparent that Charlotte became interested in James for more than just friendship or coordinating with James in the capacity of him being a mentor for Hannah. Oh, it was so obvious. Charlotte's dresses kept getting shorter and shorter. Charlotte started dressing more provocatively with short dresses and skirts. Not

much left in the mystery there with her body if you know what I mean by the way she dressed and acted.

13. And, James. Oh, James was so oblivious to Charlotte trying to get James's attention. You know how men can be slow sometimes to pick up on that sort of thing. To women, it is more obvious. After a while with the barrage of Charlotte's attire dwindling further and further, and seeing more of her than I cared to, I finally had enough. I told James that Charlotte was after him and that he should be prepared. James was flabbergasted and said to me: "Are you kidding me?" Knowing James and his complete lack of desire for any kind of romantic or intimate relationship with anyone, I knew James would want to avoid a situation of being pursued by Charlotte and her attempts to become more involved with James whether romantically or intimately. Hannah asked James to go hiking. The plan was for only James and Charlotte to go on the hike. James asked Hannah if she was going. She said, "no, just you and mom." James said absolutely no! After this is when all the troubles started.
14. Around two (2) or three (3) months after James was fired, I went to lunch at Stax with my friend Judy, and Judy reported the most inflammatory comments from Linda about James and why James was fired. Judy commented to me about being puzzled as to why I liked James so much when the church had problems with him as its choir director. I informed her that she had the wrong impression of James. Per Judy, Linda accused James of having an "inappropriate" relationship with Hannah and that she was glad James got fired. Per Judy, Linda claimed that James had no business being around Hannah. Per Judy, Linda claimed that when Charlotte and Hannah were at James's house for a social activity playing a family-oriented game with James's family and friends, Hannah being involved and playing the game was highly inappropriate.
15. To me, when I hear the term "inappropriate relationship," the first thing that pops into my mind is something sexual happening between two people. It could mean something romantic or touchy-feely happening between two people. But, mainly, it makes me think of sex between two people. My perception of Linda's claims against James was that she portrayed James as touching Hannah in more than just being innocent in nature. I got the impression based on Linda's claims that she was accusing James of chasing Hannah like an older man chasing young girls in a perverted sense.
16. I lost my temper at Judy and had to walk away from her before I could return back to the table and regain my composure. I was so outraged, shocked, and in disbelief about how Linda could be on a rampage to ruin James's reputation so publicly that she feels the need to tell anyone she comes across. James's situation is not idle gossip. Linda's accusations of

- James is so disastrous for his reputation. She is deliberately dragging James's reputation through the mud. It is as if she is determined to ruin him and will say anything to anyone to do it. That James would act in such a manner is incomprehensible.
17. This church community is a small community. Word of James's circumstances has rapidly spread like wildfire. When James got fired from the church, a lot of members, including myself, didn't understand why James was fired and we wanted to know why it happened. When I was at a meeting for the Women's Missions Group, the issue of James being fired was raised. We knew that Laurel Shaler was involved in firing James from the church and informed James that he no longer had a job. But, when we learned about Linda accusing James of having an inappropriate relationship with Hannah— we experienced disbelief and cried over something so horrible and outrageous. Shock doesn't even begin to compare to how I feel about this situation and the shame from it happening in a place of worship.
 18. Such an accusation is so inflammatory like lighting a match over a can of gasoline that has torn the church apart. Since James was fired, the congregation has gotten smaller. If you know James, then such an idea is so unimaginable that he would act in such a way with Hannah. When in fact, most of us agreed that Charlotte was pursuing James, especially with her provocative attire that was clearly inappropriate in a place of worship. I can't believe that James was accused of having an inappropriate relationship with Hannah. Hateful lies.
 19. I have observed Laurel Shaler at Northgate Baptist Church. Boy, does she wear her authority on her sleeve and let you know it. She has no problem overstepping others in the church affairs bypassing the chain of command easily. Laurel is arrogant and disrespectful to others in the church as her interpersonal skills are found wanting. She shoved it in your face about the string of ABC's after her name in all her degrees and that she was a doctor of something related to psychology. Or, at least that is the way she came across. She didn't dress as well for church either. Her attire wasn't nearly as provocative as Charlotte's attire, but, she wasn't far too off with short skirts and dresses either.
 20. Her personality leaves a sour taste in your mouth. At the time when James got fired from the church, she was just on the personnel committee. But, she acts like she is in charge of running the church. I'm amazed at how she has sunken her claws into the church. She is rigid and inflexible—almost like she has an absolute way of thinking. It is her way or the highway. She has to have the last word and that is final. She makes it seem as if no one can question her conclusion or decision even when she has not explained how she reached it. She does not have a positive impact and contribution to the church's community.

21. But, knowing Laurel, and with her being involved in firing James, she took something like this with Hannah and ran with it unchecked. For as long as I have been a member, and as far as I am aware, the church has never known any kind of issue like what has happened to James. I really don't have anything good to say about her, and I am not alone in that sentiment. This whole situation has been blown way out of proportion.
22. Laurel Shaler has referred to Hannah as a child during all this situation. Hannah is not a child! She is over 18, she is in college, she can carry a gun, and is old enough to be married and a mother.
23. I have observed that James has been devastated by this situation. His standing in the Christian community tainted with such an awful accusation. This kind of accusation is something you never really recover from. When you accuse anyone of having an inappropriate relationship between a man like James and an immature college student like Hannah, I have no doubt that such an accusation is so inflammatory toward James in a way that he will never escape it. What Linda, Charlotte, Hannah, Laurel, and the church have done will always follow James. His good name will always be in question now. It will be hard for him to be able find work again for another church like he did at Northgate Baptist Church.
24. James has lost his good name. A good man's honor is precious. To falsely condemn an innocent man is writhing damnation for the one pointing the finger all twisted in horror like a snake unfurling from the arm to the finger with a hissing spray. May the accuser endeavor to be worthy of forgiveness because this is not the Christian way of things.



[INTENTIONALLY LEFT BLANK]

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

22 June 2020
Date

Susan J. Lutz
Affiant Signature

Susan J. Lutz
Affiant Printed Name

STATE OF South Carolina

COUNTY OF Greenville

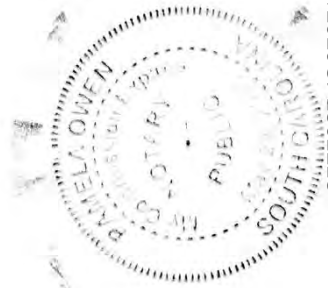
I, Pamela Owen, the undersigned Notary Public, do hereby affirm that the affiant personally appeared before me on the 22 day of June, 2020, and signed the above Affidavit as the affiant's free and voluntary act and deed.

Pamela Owen

NOTARY PUBLIC

My Commission Expires on: May 29, 2030

Pamela Owen
Notary Public, State of South Carolina
My Commission Expires May 29, 2030



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JAMES EARL TEGELER,

Plaintiff(s),

v.

CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, NORTHGATE BAPTIST CHURCH,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2020CP2301213
COMMON PLEAS CIVIL CASE NO.

AFFIDAVIT FOR

ANNE DANCIU
(LEGAL NAME)

I, ANNE DANCIU, having been duly sworn,
depose and say the following:

- I am 18 years of age or older, of sound mind, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein.
1. I have known James Tegeler during the time he was employed by Northgate Baptist Church.
 2. I had been a member of Northgate Baptist Church for over twenty (20) years.
 3. I have been acquainted with James's family and his parents' bible camp in Virginia for around thirty-five (35) years. James comes from a very Christian-based family background. Knowing his family and background, I would describe James as well-bred. He was a popular camp counselor from what my children remembered when my children went to James's family bible camp.
 4. I observed Charlotte Collier, who is the mother of Hannah Collier, and Hannah Collier at the church around James. It seemed to me as if Hannah was trying to set up her mother Charlotte with James.
 5. As Charlotte and Hannah spent more time around James, Charlotte's skirts kept getting shorter and shorter at church. Charlotte's clothing became increasingly provocative. In the front row and the section near where James played, I remember Charlotte wearing a mini skirt that was too revealing when she sat down during a church service. Whenever James stopped playing during the service, Charlotte and Hannah would leave the service early.
 6. Over time, I would describe Charlotte trying to monopolize James's attention during choir practice. The Worship Team and the choir would practice together for various services. When Hannah came to practice in the Worship Team, Charlotte almost always came too even though she was not in the choir and I only remember her singing very rarely. That is

unusual because there are other members of the Worship Team, Praise Team, and the Choir team about the same age as Hannah and their parents don't come to practice. Charlotte's mother lived about a block away from the church, so it wasn't like Hannah needed a ride to practice.

7. James was just happy to have more voices. It was obvious that James was oblivious to Charlotte's attempts to be more than friends with James. James never reciprocated to Charlotte's attempts for a relationship more than friendship.
8. James still has a married-man's mentality. I saw James give a concert at another church after playing the piano for Northgate Baptist Church. James told the story of losing his wife during that concert. I know James as a widower who was married for over twenty (20) years.
9. Even though James is a widower, his wife is still part of his life. I would describe James as a grieving widower still. He has never really moved on from the loss of his wife. James is not interested in dating, which is well-known to anyone who knows him well. Dating anyone or having a romantic attachment to anyone is just outside of his thinking. His sole focus is on his faith and raising his two sons.
10. While James was sincere in trying to help Hannah as a mentor when Hannah was singing in the Worship Team, James was always professional about it. My granddaughter Caroline Jenkins also sang in the Worship Team with Hannah as well when James was in charge of the music program at the church.
11. My observation of Hannah was that she did not come across as a normal 18-year-old and I could tell something was wrong with her. She had dramatic mood swings. I would describe Hannah as a troubled youth from a divided home. I would describe Hannah as very immature for her age and that she does not act her age.
12. When Charlotte was married to Craig Collier, that family used to attend the church more then. Craig had an abrasive personality. He was very intimidating being a cop. Approximately three years ago, we went to a birthday party for his mother-in-law Linda Smith. I had an intimidating experience with him that day, he was coming out of a room and I was walking to the room. Instead of being a gentleman, he walked straight to me and I had to back up so he can continue to walk. Over time, and compared to her real father, I would describe that Hannah saw James like a surrogate father figure.
13. Not long after the church fired James, Dr. Jimmerson went on a six-month sabbatical.
14. I have also known Linda Smith for a long time as well. It is well known at the church that mental illness runs in Linda's family, which became more obvious when Linda's husband died. Linda is not a regular, active member at the church. After the church fired James,

Linda did not come back for a while. But, recently, she has come infrequently but she is not very welcome.

15. I have observed Laurel Shaler at Northgate Baptist Church. She has an unpleasant personality to be around with poor interpersonal skills. She has a legalistic way in her thinking. To her, everything is inappropriate. I would describe Laurel as self-righteous and seems self-entitled. She comes across as if she is better than everyone else and arrogant.
16. She has a habit of making a conclusion on her own without discussing the situation with others—that, we should accept her word as gold because she is a doctor. She comes across as a “know-it-all.”
17. She has a habit of verbally attacking others or other ideas. She is not a good communicator with other people. Meaning, she has a way of making a simple item seem more complicated than the issue really is—making a mountain out of a molehill. Laurel came into the church choir room with Caroline Coker and made a one sentence statement that James will not be coming back to the choir because of information we have learned.
18. After the church fired James, both me and my granddaughter Caroline had lunch with James. He was very upset over the situation. James was distraught and emotional. James was sort of in a trance. He was horribly shocked. He informed us that the church accused him of having an inappropriate relationship with Hannah.
19. In a crowd of people, James is more extroverted with an outgoing personality. One-on-one, I would say that James is a very serious and introverted person with more of a stoic personality. Either way, James is a very private person and keeps his emotions close to his vest. James is not someone to display emotion in front of strangers, or people he does not know well normally. For James to show an emotional response of crying is highly unusual.
20. To me, the term “inappropriate relationship” means something sexual or having a romantic attachment between two people. The term makes me think of something romantic, physical, or sexual between two people. One example would be as if two people are dating. Regardless of the context of the term “inappropriate relationship,” there is no doubt that the effect of hearing that term taints an accused person’s reputation in a manner that is derogatory and appalling. The damage is done at that point.
21. There is no way possible that James could have ever had an inappropriate relationship with Hannah. I saw James around Hannah. No one could ever come to that conclusion. Such an accusation is awful, horrible, and appalling. I was so appalled to hear that James had been accused of having an inappropriate relationship with Hannah to the point that I couldn’t breathe. I was outraged to the point of tears. James has been falsely accused.

22. Since the church fired James, I have seen James's devastation over this situation. He has been emotionally wrought. What happened to James is wrong.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

August 12, 2020
Date

Anne R Danciu
Affiant Signature

Anne R Danciu
Affiant Printed Name

STATE OF South Carolina
COUNTY OF Greenville

I, Deborah D. Davis, the undersigned Notary Public, do hereby affirm that the affiant personally appeared before me on the 12 day of August, 2020, and signed the above Affidavit as the affiant's free and voluntary act and deed.



Deborah D Davis
NOTARY PUBLIC
My Commission Expires on: 6/15/2027



To Whom It May Concern,

When my daughter was in her early teens she began attending Bible camp at Camp Evangel in Pounding Mill, VA. From the first time she attended she was inspired by the Tegeler family. She instantly became friends with James Tegeler and his 2 sons along with the entire Tegeler family. This family has filled a void in her life. Although her dad was present in her life he was never a hands on dad. James became a mentor to her and showed her what a dad should be. He took the time to do things with her that a dad should do, He has included her in his family activities such as trips to Carowinds with his family, ice skating this his son, graduation party for Alexander, and just listening when she needed someone to talk to. She has been a guest in his home on several occasions and has never had anything but praise for his hospitality. She is now an adult with high expectations and goals in life and I credit James Tegeler with giving her the motivation and encouragement to be the best person she can be. She tells me that she has never felt threatened or taken advantage of while in his presence. Their relationship has always been as mentor/father daughter and nothing more.

Charlotte Hughes
[REDACTED]

11/10/2018

EXHIBIT C



DUGGAN & HUGHES, LLC
ATTORNEYS AND COUNSELORS AT LAW

John B. Duggan
Daniel R. Hughes
Evan C. Bramhall

457-B Pennsylvania Avenue
Greer, South Carolina 29650
Telephone: (864) 879-0144 or (864) 334-2500
Facsimile: (864) 879-0149

Mailing Address
Post Office Box 449
Greer, S.C. 29652

April 8, 2020

Via: Email Only: (d.davis@dicksondavislaw.com)

Deborah D. Davis, Esquire
Dickson Davis Law Firm, LLC
439 Congaree Road, Mailbox 6
Greenville, SC 29607

**Re: James Earl Tegeler v. Charlotte Collier, Hannah Elizabeth Collier, Linda
Smith and Northgate Baptist Church
C.A. No.: 2020-CP-23-01213
File No.: DH18.0098**

Dear Deborah:

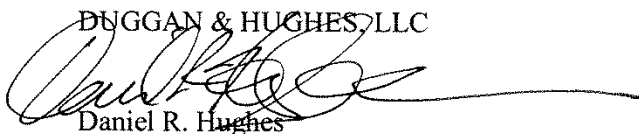
This letter is to follow up on our phone conversation this morning. As we discussed, I have had an opportunity to thoroughly review the allegations of Mr. Tegeler's Complaint, and based upon that review, our position now is the same as it was in June of 2018 when I responded to your initial demand letters. This case has no merit.

I respectfully request that you dismiss Linda Smith and Hannah Collier from this case with prejudice. Neither of them should be in the position of having to defend this lawsuit. I believe this case to be frivolous, and as a result, if you do not agree to dismiss Hannah and Linda, I will assert in my Amended Answer the remedies available to my clients pursuant to S.C. Code Ann. §15-36-10 (G)(1) or, in the alternative, Rule 11, *SCRCP*. I do not want to have to do that, but I believe this lawsuit gives me little choice.

Please review this letter in earnest with Mr. Tegeler. Please let me know your response by close of business on Tuesday, April 14, 2020. I look forward to hearing from you soon.

Sincerely,

DUGGAN & HUGHES, LLC



Daniel R. Hughes

DRH/tab
Enclosure

cc: **Via Email Only:**
Amy Snyder (amy@clawsonandstaubes.com)
Charles E. McDonald, III (Chuck.McDonald@ogletree.com)



DICKSON DAVIS LAW FIRM

Response to Rule 11 Letter

April 14, 2020

Duggan & Hughes, LLC
Attn: Daniel R. Hughes
457-B Pennsylvania Avenue
Greer, SC 29650

VIA EMAIL DHUGHES@DUGGANHUGHES.COM

Re : *James Earl Tegeler v. Charlotte Collier et al. (2020-CP-23-01213)*
File Id. : **2018-01-123**
Date of Incident : **April 10, 2018**

Mr. Hughes:

I am in receipt of your Rule 11 letter. I have discussed with my client concerning your request to dismiss Hannah Collier and Linda Smith per your Rule 11 letter. I respectfully disagree with your position to proceed with Rule 11 Sanctions and a claim under the South Carolina Frivolous Civil Proceedings Sanctions Act.

Your approach was to make an offer to have your clients dismissed from the case, or, in turn, move for sanctions against me. You asked me to discuss with my client to let your clients be dismissed from the case. You claimed that if anyone is at fault, that Defendant Northgate Baptist Church is at fault for handling this situation. You claimed that your client Hannah Collier had a right to complain against my client to Defendant Northgate Baptist Church. You claimed that your client Hannah Collier asserted at the end of her conversation with Defendant Northgate Baptist Church that "I don't want to get James in trouble." And, such an allegation could not possibly be defamation against my client when coupled with your client Hannah Collier denying any physical contact, sexual contact, or romantic relations with my client. Again, you disputed the meaning of "inappropriate relations."

Complaining about a church employee to that employee's supervisor about garden variety issues is wildly different in comparison to accusing that employee of having "inappropriate relations" that leaves a stain and stigma on one's reputation regardless of one's innocence.

South Carolina Human Affairs Commission with the South Carolina Department of Labor, Licensing and Regulation made a report of the position statement with Northgate Baptist Church, of which disclosed a factual basis for allegations against your clients in this case. Defendant Northgate Baptist Church reported that both Charlotte Collier and Hannah Collier together reported my client to Barry Jimmerson with Defendant Northgate Baptist Church. Additionally, Defendant Northgate Baptist Church reported additional witnesses later participating in Laurel Shaler's alleged investigation into my client with Defendant Northgate Baptist Church, which included family member(s) that I have reason to believe also involves your client Linda Smith. Charlotte Collier and Craig T. Collier were included in that alleged investigation.

DICKSON DAVIS LAW FIRM, LLC ■ 310 RUTHERFORD STREET ■ GREENVILLE, SOUTH CAROLINA ■ 29609
864.729.3428 TEL ■ 864.752.1424 FAX ■ WWW.DICKSONDAVISLAW.COM ■ INFO@DICKSONDAVISLAW.COM

ROA-000311

ELECTRONICALLY FILED - 2020 Aug 17 3:54 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

Around the day before Charlotte and Hannah Collier approached Barry Jimmerson with Defendant Northgate Baptist Church, Charlotte Collier emailed my client with similar type of language to “inappropriate relations.” The following day, and after Charlotte Collier expressed her concerns to Barry Jimmerson, your client Hannah Collier still proceeded and filed a complaint with Barry Jimmerson with Defendant Northgate Baptist Church under the color of this claim for my client allegedly having “inappropriate relations” with your client Hannah Collier. Your client adopted Charlotte Collier’s statements as her own by proceeding forward for questioning by Barry Jimmerson with Defendant Northgate Baptist Church. By other witnesses, Hannah Collier has been described as immature and unstable—a troubled youth from a divided home. Hannah Collier has been described as an impressionistic youth. You claim your client’s responses to Barry Jimmerson with Defendant Northgate Baptist Church do not warrant a claim for defamation because your client claims that she did not want to get my client in trouble. Your claim that Hannah Collier told Barry Jimmerson that “she did not want to get James in trouble” could lead to a dispute between two reasonable minds.

On the one hand, once your client Hannah Collier understood the gravity of the situation based on the line of questioning from Barry Jimmerson, and your client Hannah Collier suddenly realized the enormity of the situation at that time, your client Hannah Collier realized the full extent that my client was being accused of having sexual relations or a romantic relation with your client. Hannah Collier realized “oops” and claimed that she did not want to get my client in trouble. If your client did not intend to harm my client, then was she negligent to go along with a complaint for “inappropriate relations” allegations against my client? On the other hand, was such a statement made at the end of the conversation merely a retraction of filing a complaint with the church for my client having allegedly inappropriate relations with your client Hannah Collier? A retraction serves to mitigate damages from defamation—not that defamation never occurred. And, no one has the right to defame another.

By contrast, your client knew exactly what that claim of “inappropriate relations” meant and the effect of accusing my client of having “inappropriate relations” with your client Hannah Collier to any reasonable listener would have a disastrous impact on my client’s employment with Defendant Northgate Baptist Church and reputation. Hannah Collier arrived to Northgate Baptist Church with Charlotte Collier under the color of an accusation of my client having “inappropriate relations” with Hannah Collier. Your client, Hannah Collier, still proceeded forward with Charlotte Collier. Regardless of being prompted by Charlotte Collier to do so, Hannah Collier was an adult at the time and capable of grasping the enormity of such an allegation. Only, at the time, or at the end, your client Hannah Collier did not go through with accusing my client of having “inappropriate relations” with your client because she felt guilty for crying wolf against an innocent man. Only discovery will tell. Until you informed me of that fact, that fact was open for discovery based on what was known during the claim against Defendant Northgate Baptist Church with the South Carolina Department of Labor, Licensing and Regulation. And, still, that alleged fact is open to different, reasonable interpretations.

The conversation between Barry Jimmerson with Defendant Northgate Baptist Church and Hannah Collier concerning “inappropriate relations” and Barry Jimmerson’s line of questioning was directly stated to my client thus forming a basis for an admission by party opponent under Rule 801(d)(2) under the South Carolina Rules of Evidence. Therefore, I do have a justifiable basis to allege the cause(s) of action against Hannah Collier. The statements made by opposing counsel for Defendant Northgate Baptist Church concerning your client Hannah Collier and Charlotte Collier are

also an admission by party opponent under Rule 801(d)(2) under the South Carolina Rules of Evidence.

I have witnesses concerning Linda Smith and statements relayed by her to third parties concerning my client's reputation and promoting the terminology "inappropriate relations" and accusing my client of inappropriate touching of Hannah Collier. Both of the witnesses also viewed "inappropriate relations" in a sexual nature as well or connotations of the like. Arguably, while the term may be subject to some ambiguity without context of the two parties in question, the effect on the listener as to that term applied to the accused is derogatory and disparaging as to the accused's reputation with reference to a sexual, physical, or romantic association—whether solicited or unsolicited—between two persons as is commonly understood. Even if the accused is innocent, the damage to the accused's reputation is irreparable as one who is falsely accused of such behavior. Also, I have a witness who was present when Linda Smith admitted to Charlotte Collier being physically abused by her ex-husband Craig T. Collier. I have a witness who was present to Hannah Collier claiming that her relationship with her father Craig T. Collier was difficult, claiming that her father was abusive when she was younger, and witnessing Hannah Collier's behavior in various social settings. Such statements are also admissible as an admission by party opponent under Rule 801(d)(2) under the South Carolina Rules of Evidence. Therefore, I do have a legitimate basis based on witness interviews concerning Linda Smith for a justifiable basis to allege the cause(s) of action against her.

Either your clients intentionally meant to inflict emotional distress, or negligently did so. I am permitted to plead in the alternative. Additionally, Charlotte and Hannah Collier arrived together when reporting my client—together—to Barry Jimmerson with Defendant Northgate Baptist Church. They discussed the situation with Laurel Shaler. Then, my client got fired from his job. Your client Linda Smith then perpetuated her allegations against my client to third parties throwing around the phrase "inappropriate relations." Then, my client's reputation became dragged through the mud. Then, my client suffered severe emotional distress. That these defendants operated together to harm my client has a factual basis to support a cause of action for civil conspiracy.

You accused my client of being insecure that he must target your clients. You stated that my client needed to "let it go" against your clients. You raised the issue of financial difficulties your clients have with paying for legal representation. Then, you raised a threat of asking for sanctions against me accordingly. My client is not in this position because of idle gossip.

My client is in this position because he was accused of having "inappropriate relations" with your client Hannah Collier, of which led to his termination with your client Hannah Collier the subject matter and focal point of said termination. Not only did such accusations lead to the termination of my client from Defendant Northgate Baptist Church, my client was emotionally devastated by such horrifying accusations that never occurred—a reputation like a child molester. My client was defamed. His reputation was besmirched. Not for idle gossip. For the implication of having inappropriate sexual relations or romantic aspirations, unwanted or unsolicited in nature, with your client Hannah Collier further perpetuated by your other client Linda Smith. He was accused of being akin to a child molester. That is outrageous when nothing of a kind occurred in such a manner—especially in the context within a church. If a man is innocent of such allegations, then, the very making of such allegations against an innocent man is outrageous because crying wolf makes it worse for when such a sordid thing actually does happen to an unsuspecting victim.

That terminology began with your client Hannah Collier. Your client Hannah Collier stood by as that terminology was directed in a complaint toward my client. Your client Linda Smith purposefully relayed that same terminology to another witness and defamed my client that reached yet another witness. That terminology vilified my client based on what an objective reasonable person, who is the listener, perceives "inappropriate relations." Of the witnesses I have interviewed, the phrase "inappropriate relations" or "inappropriate contact" have a negative sexual or physical touching connotation that may be solicited or unsolicited. These two defendants played a role in vilifying my client to the congregation of Northgate Baptist Church and beyond akin to a child molester, chaser of young women, and so forth. No person has the right to defame another.

Such would form the basis of the allegations against your clients. Perhaps, with responses from my preliminary discovery, we can then revisit this conversation. If discovery changes the nature of the allegations, and no longer supports an allegation against one of your clients, then naturally, at that point I would request to amend the complaint accordingly. Therefore, it is premature to dismiss your clients in this case. The extent of your clients' role in this process depends upon the discovery process.

The signing attorney is entitled to notice and opportunity to respond to any Rule 11 violations prior to the imposition of Rule 11 violations. S.C. Code Ann. § 15-36-10(D); *Burns v. Universal Health Servs.*, 340 S.C. 509, 514, 532 S.E.2d 6, 9 (Ct. App. 2000). Sanctions are "a matter left to the discretion of the trial court." *Lawson v. Sumter Cty. Sheriff's Office*, 339 S.C. 133, 141, 528 S.E.2d 86, 90 (Ct. App. 2000). The award of attorney's fees is subject to an abuse of discretion standard. See *Heath v. Cty. of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990) (citing *Pierce v. Underwood*, 487 U.S. 552, 558-68, 108 S. Ct. 2541, 2546-51 (1988)). Novel arguments and applications of statutes to new circumstances are not grounds for automatic sanctions under Rule 11 of the South Carolina Rules of Civil Procedure as a frivolous argument when grounds exist to support a new application of the law under the circumstances made in good faith with reasonable grounds to support that legal argument. S.C.R.C.P. 11; see *Watkins v. Newsome Mgmt. Co. (Ex parte Beard)*, 359 S.C. 351, 359-60, 597 S.E.2d 835, 839 (Ct. App. 2004). Under Rule 3.1 of the South Carolina Professional Rules of Conduct state that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

By contrast, under Title 15, Chapter 36 of the South Carolina Frivolous Civil Proceedings Sanctions Act, if the signing party reasonably believes in the existence of facts upon which the claims are based, those facts support valid claims under existing or developing law, and those claims are not raised merely to harass or injure another party, then the signing party may not be charged with sanctions for initiating frivolous proceedings. S.C. Code Ann. § 15-36-10; *Ex parte Gregory*, 378 S.C. 430, 437-440, 663 S.E.2d 46, 50-51 (2008). Reasonable due diligence to ascertain the facts of the case is part of assessing the grounds for establishing various causes of actions to show that the signing party is exercising good faith when proceeding with such litigation. See *Ex parte Gregory*, 378 S.C. at 438-339. Moreover, sanctions for a signing party acting frivolously is reserved for egregious behavior that rises above the threshold than one acting without substantial justification. See *Father v. S.C. Dep't of S.C. Servs.*, 353 S.C. 254, 259, 578 S.E.2d 11, 13 (2003); see also *Heath*, 302 S.C. at 183. To measure against the egregiousness of frivolous proceedings, the U.S. Supreme Court has defined the statutory requirement of substantial justification before awarding attorney's fees against the government to mean that sanctions are unwarranted when the signing party's pleadings would satisfy a reasonable person as when a genuine dispute exists, or reasonable people could differ on the appropriateness of the action. *Pierce*, 487 U.S. at 558-68.

Furthermore, upon notification of sanctions under the South Carolina the signing party allegedly violated the South Carolina Frivolous Civil Proceedings Sanctions Act has thirty days to respond to the allegations "by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation." S.C. Code Ann. § 15-36-10(D). The Court must take into account various factors as to whether an attorney has violated the South Carolina Frivolous Proceedings Sanctions Act such as the number of parties, the complexity of the claims, the length of time for the attorney to investigate and conduct discovery of the alleged violations, information disclosed or undisclosed to the attorney through discovery and adequate investigation, previous violations under the South Carolina Frivolous Civil Proceedings Sanctions Act, the attorney's response to the allegations of violations under the South Carolina Frivolous Civil Proceedings, and other factors the Court deems as "just, equitable, or appropriate under the circumstances." S.C. Code Ann. § 15-36-10(E).

I do believe that I have a basis in law, in fact, or both to support my allegations. Therefore, I respectfully disagree with your position accordingly.

One of the reasons why Rule 11 letters typically are unsuccessful and rarely used, such a claim sets a poor tone of expectations moving forward. Such an act also prompts tit for tat behavior. And, that conduct makes counsel for the parties appear before the court like squabbling children. You made an offer for me to talk with my client to have your clients dismissed from the case or you would proceed with sanctions against me. You claim that your clients want you to proceed in this manner, but, you are reluctant to do so. I have yet to come across such clients so well-versed in the law who specifically ask for sanctions accordingly unless I advised them of such. In turn, I would like to raise to your attention to a following provision in the South Carolina Rules of Professional Conduct: "A lawyer shall not present, participate in presenting, or threaten to present criminal or professional disciplinary charges solely to obtain an advantage in a civil matter." Rule 4.5, RPC. Are we to really proceed in this manner? You file for sanctions. Then, I file for sanctions. And, around the wheel we go? I do not think such a course of action begets professional civility as we are expected to uphold.

While you raise financial concerns on behalf of your clients, my client has expressed to being amenable to early mediation for resolving this dispute. Above all, my client is looking for exoneration from the allegations raised against him by Defendants in this case—to have his good name restored.

In the meantime, I respectfully request that you withdraw your basis for a Rule 11 letter against me.

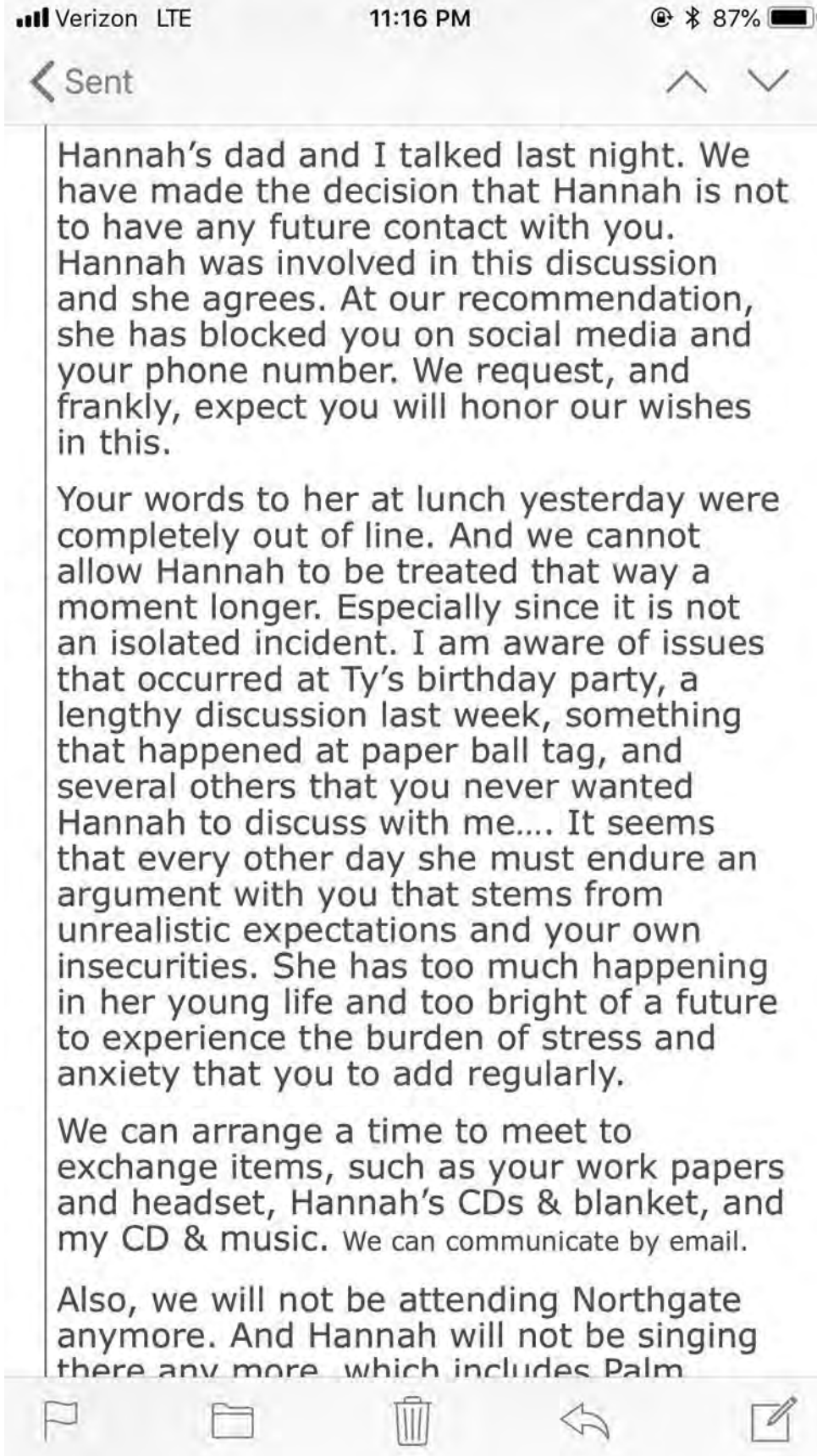
Best Regards,



Deborah D. Davis, Esq.
Attorney at Law

/ddd

EXHIBIT D



On Mar 12, 2018, at 10:40 AM, Charlotte Collier [REDACTED] wrote:

James,

Hannah's dad and I talked last night. We have made the decision that Hannah is not to have any future contact with you. Hannah was involved in this discussion and she agrees. At our recommendation, she has blocked you on social media and your phone number. We request, and frankly, expect you will honor our wishes in this.

Your words to her at lunch yesterday were completely out of line. And we cannot allow Hannah to be treated that way a moment longer. Especially since it is not an isolated incident. I am aware of issues that occurred at Ty's birthday party, a lengthy discussion last week, something that happened at paper ball tag, and several others that you never wanted Hannah to discuss with me.... It seems that every other day she must endure an argument with you that stems from unrealistic expectations and your own insecurities. She has too much happening in her young life and too bright of a future to experience the burden of stress and anxiety that you to add regularly.

We can arrange a time to meet to exchange items, such as your work papers and headset, Hannah's CDs & blanket, and my CD & music. We can communicate by email.

Also, we will not be attending Northgate anymore. And Hannah will not be singing there any more, which includes Palm Sunday.

Thanks,

Charlotte

From: James Tegeler [REDACTED]
Date: March 12, 2018 at 9:10:58 PM EDT
To: Charlotte Collier <[REDACTED]>
Subject: Re: your letter clarification

Charlotte,

I would like for you to clarify a few things. Because I didn't do anything to her during our paper ball tag game, or at Ty's birthday. At Ty's birthday I simply wanted to know why she was avoiding me and she wouldn't tell me and was very rude for no reason. Turned out she thought I was upset about something. If that's being insecure I'll take it. You have a lot of misinformation, and even though I don't really care anymore, just know that I take great offense to some of your accusations because they are simply not true. Honestly I'm glad this is over because I'm really tired of the high school antics and drama. All I have done for both of you from the day one is to do my best to make your lives better. I do not appreciate the accusations, and I will be more than happy to sit down with you and anyone else and go over exactly what occurred every single time. But to accuse me of wanting to hide things from you? Are you kidding me?? I'll show you every single message I have between us. Frankly I'm tired of this nonsense. Life is too short to act like she did yesterday. It would be nice to receive even a little bit of credit for what I did for her, as opposed to being berated and accused of doing things I did not do. I was going to just sit and

take it and let it go, but I can't because it's untrue and hurtful to me and my family. And I certainly have never had an insecurity problem before now.

I also take great offense to you saying that I used phone calls to yell at her and upset her. That is not all the case whatsoever. But all that gets lost in the fact that she has been very difficult to get along with, especially lately. If you were honest with yourself, and you looked in her past you would see that she has lost quite a few friends for similar reasons. She even told me this herself, and she was so afraid of losing me. And if you think blocking me from her life is best for her, fine. I don't agree based on her fragile state, but frankly I don't need that in my life. Based on what she has told me I know what most of her issues are, and they aren't me. But if you want to lay the blame for her issues on me and my insecurities, which I consider very rude from you, that's your prerogative. But I find it very offensive and I do not appreciate it. I have overlooked a lot of things just to be there for her when she had no one. But yet to blame me for being a huge part of her problems? I know what a lot of her problems are, and I even know what some solutions would be. I've been a very good single parent placed into a very difficult situation. But guess what, it's blame James for my daughter's rudeness so we all feel better about ourselves. Anyway it's none of my business and I don't really care anymore. Actually that's not true, I do care. I care for her more than myself and my heart is broken right now.

Just know I take offense to what you said in your letter because the majority of it is simply not true. I'll be glad to talk to you anytime, anyplace, and with anyone else listening. I don't need this kind of drama in my life or in my children's lives. We're not used to this negativity and moodiness. If anything I could've used a little more patience, but frankly I was spent and yesterday kind of broke the camels back. I only put up with it for as long as I did the sake of betterment of your daughter's life.

Some of the things she told me in confidence were shocking.
That's why I wanted to make her life happier and more positive.
I was in her life for one reason, and that was to improve it.
Anyway, Take some time to look honestly within yourself,
because if you do, you know what I'm telling you is true. I wish
you the best.

James

EXHIBIT E

Verizon LTE 8:55 AM 100%
December 30, 2017 8:49 AM
HANNAH
Wow. I don't have words. I just. I honestly don't know how God decided to give me you or why, but I am forever thankful. You are so beautiful. I promise to cherish your love and your heart forever and ever. I am so blessed to have you. I'm not usually so possessive, haha, but you are mine and I will love you always. Which is a long time. And I'll love you even longer than that. Forever and ever til the day I die. I'll be your little girl and your princess for as long as you'd have me. You just put into words what it means to be a father to a little girl. Keep my heart close and keep it safe. I'll trust you to help me make big decisions, just I trust my own Daddy. Just keep me safe. Let your arms always be a place I can come to and not be afraid. I love you. And that's that. Even when you're afraid that I don't anymore, that's when I love you most. I am so thankful for you. And for your family. I love you. 💖👶

EXHIBIT F



Raymond Buxton, II
Commissioner

STATE OF SOUTH CAROLINA
HUMAN AFFAIRS COMMISSION

1026 Sumter Street, Suite 101 (29201)
Post Office Box 4490
Columbia, South Carolina 29240-4490
(803) 737-7800 (803) 737-7835 Fax



www.state.sc.us/schac
(800) 521-0725 In-State

December 10, 2018

Re: James E. Tegeler v. Northgate Baptist Church
SHAC # 3-18-312A / EEOC # 14C-2018-00901

Dear Mr. Tegeler:

Enclosed you will find a notice of your right to bring a lawsuit in Federal or State Court related to the allegations investigated by the South Carolina Human Affairs Commission. Pursuant to my recent voice mail message when your attorney was informed that there was insufficient evidence to support a violation of the South Carolina Human Affairs Law, the above-referenced investigation is now closed. Additional information may be found on the enclosure. However, should you have remaining questions, you may contact our office.

Sincerely,

H. Shelton Lorick

H. Shelton Lorick
Investigator

Enclosure

Our mission is to eliminate and prevent unlawful discrimination in employment, housing and public accommodation

From: James Tegeler <jtegeler@msn.com>
Sent: Wednesday, April 25, 2018 3:51 PM
To: Dr. Laurel Shaler
Cc: Barry Jimmerson
Subject: Re: copy of agreement

Laurel,

Since there was no original employee agreement from when I was hired, I am requesting the personnel manual, which as you stated contains a job description and other policies regarding my hiring.

This is my second request.

Thank you.

James Tegeler

Sent from my iPhoneX 📱

On Apr 18, 2018, at 11:45 AM, Dr. Laurel Shaler <doctorlaurelshaler@gmail.com> wrote:

Good morning,

There was no original employee agreement as no employee of Northgate have an employee agreement. We do have information on your hire dates (both as pianist and worship leader) along with salary information. The personnel manual contains a job description and other policies.



Christian Author and Speaker
Associate Professor, Liberty University
www.drilaurelshaler.com



On Wed, Apr 18, 2018 at 11:40 AM, James Tegeler <jtegeler@msn.com> wrote:

I need a copy of my original employee agreement emailed to me please.

Sent from my iPhoneX 📱

> On Apr 17, 2018, at 1:12 PM, Dr. Laurel Shaler <doctorlaurelshaler@gmail.com> wrote:

>

> Copy of agreement is attached.

>
> <James.pdf>

From: James Tegeler <jtegeler@msn.com>
Date: October 5, 2017 at 7:14:45 PM EDT
To: "Dr. Laurel Shaler" <doctorlaurelshaler@gmail.com>
Subject: Re: Personnel follow-up

Hi Laurel,

Yes I'm still going to respond. I was a bit taken back by the knee-jerk reaction. And I've been spending time in prayer formulating a response. I've been a minister of music for 15 years before coming to this church, and I realize all of the committees it has to go through. That means nothing to me. \$2500 means nothing to the church.

I guess I presented it wrong because I wanted you all to mention it and then spend a few weeks in prayer about it, and then reconvene with me so we can discuss it further. I spent months in prayer about this, but yet you all turned it down immediately, namely because of the cost. That makes no sense to me, or to the pastor, or to God for that matter. That's why the

church structure is in such bad shape, because year after year they would vote down the reconstruction project because of the money. I don't want the worship to get into the shape the church is in. In worship and music, we are either moving forward or backward... There is no middle ground. As long as I am the director of music and worship leader, it will move forward under my direction, not stand still and not move backwards, if that makes sense.

And one other thing, when I am gone, I refuse to have "volunteer soloists" filling in with hymns and a "thrown together" service. I am appalled the personnel committee would suggest that. God would punish me for that. That's not what I was hired to do at this church.

Furthermore, that's not going to occur under my watch. What will happen is a mentor under me directing the service so there's very little difference from when I'm there. That would not be prudent of me leave the service in the hands of "volunteers". The pastor would NOT approve of that either at all.

So yes, I will formulate a response and I will definitely address those concerns, and I guarantee you I can overcome all of those objections. I will get back with you soon as I can. Not to mention this is a very busy time for me in the insurance business with open enrollment coming up.

I appreciate all you do and I would like you to narrate the Christmas cantata this year again!

You do an excellent job, and everyone in the

choir suggested you also!
You and Nick are in my prayers daily,

James

Sent from my iPhone

On Oct 4, 2017, at 9:30 PM, Dr. Laurel Shaler
<doctorlaurelshaler@gmail.com> wrote:

Hi James, I hope you are doing well. I may have missed an email, so wanted to follow-up on my reply to you dated September 22nd. I also wanted to let you know that the personnel committee met again tonight and discussed your concern and request at length. The personnel committee continues to have concerns about the development of a paid worship intern position. Several points were brought up that I was asked to pass along:

- 1) There is an ongoing concern about paying an intern when we have so many faithful volunteers. In other words, no one else is paid beyond our staff members for investing a tremendous amount of time weekly and sometimes bi-weekly into various aspects of the church, including the music and worship ministry.
- 2) When we create a position, a job description has to be written and approved by personnel, stewardship, music council, leadership council, and church vote. From there, typically, we advertise a position rather than creating a position for one person.
- 3) Finally, and perhaps most importantly, we truly value you and completely agree that you need a real break on occasion. We want you to know that we do not have the same expectations on those Sundays that you are not present, in particular related to piano playing. The committee suggested that having soloists or small groups sing that could practice on their own and/or hiring a fill in pianist to play while we sing hymns should allow you to have a full week off rather than just the Sunday morning when you are absent. Additionally, the committee felt like it while it would be wonderful if Dylan was a worship intern that you mentored, it would not be prudent to offer pay for this position in particular given the facts that we are behind on our budget and entering into a season of fundraising.

I know it is disappointing, but the unanimous decision

was in opposition to the proposal to hire a paid worship intern.

As an aside, we are removing the organist line item from the personnel budget as we do not have an organist, but certainly you could include a budget request for pianist and organist fill-ins on your planning packet.

Please let me know if you have any addition questions. Again, we are so thankful you are at Northgate, and we want to help "troubleshoot" to ensure you get the appropriate time off.

photo 	Dr. Laurel Shaler  Christian Author and Speaker Professor, Liberty University www.dr laurelshaler.com ☐ ☐

On Fri, Sep 22, 2017 at 9:49 AM, Dr. Laurel Shaler <doctorlaurelshaler@gmail.com> wrote:

Dear James,

Thank-you for the reply. I agree with you that you deserve true breaks! I have two follow-up questions:

- 1) What work has been done with the volunteers so that you can take those breaks?
- 2) Why does the intern position need to be paid? I direct a program with thousands of counseling students who all complete full time internships. The majority of them are not paid. So, can you help me understand why this position would need to be paid?

There is a lot to consider here as this would be adding a paid staff position to an already taxed budget. No other minister has a paid intern. When a position is added, typically it is opened up for applicants rather than a position being created for a person. Additionally, this would have to go through personnel, stewardship, worship cluster, leadership council, and the church. So, again, there is a lot to consider and the personnel committee felt like this needed to be volunteer based like every other area of the church. So, feel free to reply to me and again you may certainly address the issue with the committee.

When might you be free for a meeting? It would have to be in October. Thank-you!

photo



Dr. Laurel Shaler



Christian Author and Speaker

Professor, Liberty University | www.drLaurelShaler.com



On Thu, Sep 21, 2017 at 2:15 PM, James Tegeler
<JTegeler@msn.com> wrote:

Hi Laurel,

Thank you for your follow up. However, I am asking that the personnel committee revisit that decision. Apparently it was not presented to them properly. The title will be Worship Intern. I will take Dylan and mentor him to prepare him for the ministry of Worship Leading which he desires to do. I will also tell you that my ministry at Northgate will not be as effective as it could be, and will eventually lead to frustration if it continues as is. I'm sure you and the personnel committee will agree that we would all like the worship at Northgate to continue in the direction which I am taking it.

Another reason I need this to happen is because I do not get a "real vacation" from my responsibilities unless I have someone like this to totally take the reigns the two weeks I'm "supposed to get off". That will eventually cause burnout. At this point, I get one day off... Sunday... but the rest of the week, and weeks leading up to my "one day off" is spent putting in many extra hours getting everyone prepared, etc. So it's not really worth it to me. This must change.

So to review, this decision definitely needs to be revisited. Furthermore, after meeting with the pastor last night, he is in 100% agreement. I'm sure when I present the need to the Personnel Committee they will see that it is a necessary and vital part of my continuing ministry at Northgate.

I will be glad to do my assessment during that meeting as well.

Thank you!

James Tegeler

Field Sales Leader

USHEALTH Advisors

A Credit Suisse Company

864-680-3135

www.ushagent.com/insuranceadvice



From: Dr. Laurel Shaler

[<doctorlaurelshaler@gmail.com>](mailto:doctorlaurelshaler@gmail.com)

Sent: Thursday, September 21, 2017 1:38 PM

To: James Tegeler

Subject: Personnel follow-up

Hi James,

I wanted to let you know that the personnel committee met last night. I am sorry to tell you that the committee was not in favor of hiring an assistant worship leader for a number of reasons. When might you be free to meet with the committee for your annual evaluation? You would be welcome to bring up your request and any other concerns at that time.

Thank-you!

photo



Dr. Laurel Shaler



Christian Author and Speaker

Professor, Liberty University | www.drLaurelShaler.com



Northgate

Baptist Church

Dr. Barry Jimmerson, Pastor

August 6, 2019

Dear Northgate Church Family:

God has richly blessed His church at Northgate for more than seventy years since He planted it at 633 Summit Drive. We now, however, find His church which He has entrusted to us, to be in a very difficult financial position. Please read the balance of this letter to gain a greater perspective of our current financial situation.

First, we thank our Lord for the many blessings that He has poured out upon the church family at Northgate. This year has brought us blessings and opportunities as well as challenges.

The Good News Clubs at Stone Avenue and Summit Drive elementary schools and the Released Time ministry at League Academy have had an incredible and immeasurable impact upon our community. Without your obedience to God by allowing Him to give diligently of time and finances through you, these ministries may have never happened. Thank you for your faithfulness in allowing God to give through you.

In addition to the eternal impact the ministries of Northgate are having upon our local schools, Vacation Bible School in July 2019, was terrific! Many made decisions to follow the Lord Jesus as Savior and Lord or to renew their relationship with Him. We will begin baptizing these new believers soon!! Many of you worked tirelessly to make these events happen. While we may never really know the impact the ministries of God's church at Northgate have had and will have upon our community, we can rest assured that many people are confronted with the truth of the gospel of Jesus Christ through Northgate. Your faithfulness in allowing God to give time and money through you make these ministries possible.

We take great comfort in knowing that while our limits may be challenged at times, God's sovereign grace is always sufficient. We rejoice in new additions to the staff and to the church body at Northgate. God is at work in and through Northgate Baptist Church!

The Seek. God. First. emphasis for the renovation of our facilities have been a great blessing and a great success! The newly renovated spaces are simply beautiful! Praise God.

While offerings for the Seek. God. First. emphasis have remained strong and consistent, our budget offerings have declined significantly. This decrease in our budget tithes and offerings has put the church in an uncomfortable financial position. Not only are we seriously behind in our budget giving, we are also in a serious cash flow crisis. In the past few days, we have been forced to use emergency funds to meet our obligations. We remain seriously behind in our budget giving and are at a greater risk due to our cash flow crisis because some of our emergency funds have been used. As of August 6, 2019, we are \$63,000 behind in our budget receipts; that is approximately six weeks of budget tithes and offerings.

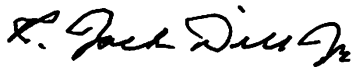
633 Summit Drive - Greenville, South Carolina 29609 - 864-242-3805 - Fax 864-242-9625
www.northgatebaptist.com

It is with this understanding we come to you at this time to make you aware of the serious financial situation at God's church at Northgate. We ask you to pray for Northgate, her ministries and her financial needs and to consider an additional offering to Northgate at this time; or perhaps, if you are not yet a tither, you will make that faith commitment now. As we pray for God's provision, we also claim the promise of His Word. Philippians 4:19-20 – "And my God shall supply all your need according to His riches in glory by Christ Jesus. Now to our God and Father be glory forever and ever. Amen."

For Christ,



Barry Jimmerson, Pastor



Jack Dill, Chairman, Stewardship Committee

EXHIBIT G



DICKSON DAVIS LAW FIRM

CEASE AND DESIST NOTICE**April 25, 2018**

Charlotte Collier
82 Briarview Circle
Greenville, SC 29615

VIA FEDEX 772081751756

Re : **James Earl Tegeler**
File Id. : **2018-01-123**
Date of Incident : **April 10, 2018**

Dear Ms. Collier:

Please be advised that **JAMES EARL TEGELER**, who is the abovementioned party ("Client"), has retained the Dickson Davis Law Firm, LLC ("Firm") to represent that party's interest in the potential or pending litigation regarding this matter concerning defamation of character against the Firm's Client by you, **HANNAH ELIZABETH CARTER**, and **LINDA SMITH**, of which resulted in the unfounded basis regarding the termination of the Firm's Client from Northgate Baptist Church on or around April 10, 2018.

You are hereby put on notice pursuant to all applicable Federal and South Carolina laws to cease and desist all direct communication, whether oral or written communication, from you to the Firm's Client, or any of the Client's family members, employer(s), agents, contractors, or other relations. Furthermore, all further communication and correspondence, whether oral or written, must be directed to the Firm, whether the Firm's attorney(s) or staff, as follows: Deborah D. Davis, Esq., Dickson Davis Law Firm, LLC, 439 Congaree Road, Mailbox 6, Greenville, SC 29607. This document serves as notice that the abovementioned party, and its officers, directors, employees, agents, and contractors, will henceforth cease and desist from any further direct or indirect communication with the Firm's Client or ongoing defamation of the Firm's Client to any third-party within or outside of the congregation of Northgate Baptist Church.

Failure to comply with this cease and desist will result in taking further legal action with a restraining order against you, or anyone acting on your behalf, regarding the potential or pending litigation concerning this matter. Further disparagement of the Firm's Client and defamation of character of the Firm's Client based on unmeritorious, false allegations will not be tolerated.

Sincerely,

DICKSON DAVIS LAW FIRM, LLC

By:

Name: Deborah D. Davis, Esq.
Title: Managing Attorney
Bar No.: 102942

April 25, 2018**Date**



DICKSON DAVIS LAW FIRM

CEASE AND DESIST NOTICE

April 25, 2018

Charlotte Collier
82 Briarview Circle
Greenville, SC 29615

VIA FEDEX 772081751756

Re	: James Earl Tegeler
File Id.	: 2018-01-123
Date of Incident	: April 10, 2018

Dear Ms. Collier:

Please be advised that **JAMES EARL TEGELER**, who is the abovementioned party ("Client"), has retained the Dickson Davis Law Firm, LLC ("Firm") to represent that party's interest in the potential or pending litigation regarding this matter concerning defamation of character against the Firm's Client by you, **HANNAH ELIZABETH COLLIER**, and **LINDA SMITH**, of which resulted in the unfounded basis regarding the termination of the Firm's Client from Northgate Baptist Church on or around April 10, 2018.

You are hereby put on notice pursuant to all applicable Federal and South Carolina laws to cease and desist all direct communication, whether oral or written communication, from you to the Firm's Client, or any of the Client's family members, employer(s), agents, contractors, or other relations. Furthermore, all further communication and correspondence, whether oral or written, must be directed to the Firm, whether the Firm's attorney(s) or staff, as follows: Deborah D. Davis, Esq., Dickson Davis Law Firm, LLC, 439 Congaree Road, Mailbox 6, Greenville, SC 29607. This document serves as notice that the abovementioned party, and its officers, directors, employees, agents, and contractors, will henceforth cease and desist from any further direct or indirect communication with the Firm's Client or ongoing defamation of the Firm's Client to any third-party within or outside of the congregation of Northgate Baptist Church.

Failure to comply with this cease and desist will result in taking further legal action with a restraining order against you, or anyone acting on your behalf, regarding the potential or pending litigation concerning this matter. Further disparagement of the Firm's Client and defamation of character of the Firm's Client based on unmeritorious, false allegations will not be tolerated.

Sincerely,

DICKSON DAVIS LAW FIRM, LLC

By:

Name: Deborah D. Davis, Esq.
Title: Managing Attorney
Bar No.: 102942

April 25, 2018

Date



DICKSON DAVIS LAW FIRM

CEASE AND DESIST NOTICE**April 25, 2018**

Hannah Elizabeth Collier
U.S.C. Upstate
470 Hodge Drive, PMB# 736
Spartanburg, SC 29303

VIA FEDEX 772082010981

Re	:	James Earl Tegeler
File Id.	:	2018-01-123
Date of Incident	:	April 10, 2018

Dear Ms. Collier:

Please be advised that **JAMES EARL TEGELER**, who is the abovementioned party ("Client"), has retained the Dickson Davis Law Firm, LLC ("Firm") to represent that party's interest in the potential or pending litigation regarding this matter concerning defamation of character against the Firm's Client by you, **CHARLOTTE COLLIER**, and **LINDA SMITH**, of which resulted in the unfounded basis regarding the termination of the Firm's Client from Northgate Baptist Church on or around April 10, 2018.

You are hereby put on notice pursuant to all applicable Federal and South Carolina laws to cease and desist all direct communication, whether oral or written communication, from you to the Firm's Client, or any of the Client's family members, employer(s), agents, contractors, or other relations. Furthermore, all further communication and correspondence, whether oral or written, must be directed to the Firm, whether the Firm's attorney(s) or staff, as follows: Deborah D. Davis, Esq., Dickson Davis Law Firm, LLC, 439 Congaree Road, Mailbox 6, Greenville, SC 29607. This document serves as notice that the abovementioned party, and its officers, directors, employees, agents, and contractors, will henceforth cease and desist from any further direct or indirect communication with the Firm's Client or ongoing defamation of the Firm's Client to any third-party within or outside of the congregation of Northgate Baptist Church.

Failure to comply with this cease and desist will result in taking further legal action with a restraining order against you, or anyone acting on your behalf, regarding the potential or pending litigation concerning this matter. Further disparagement of the Firm's Client and defamation of character of the Firm's Client based on unmeritorious, false allegations will not be tolerated.

Sincerely,

DICKSON DAVIS LAW FIRM, LLC

By:

Name: Deborah D. Davis, Esq.
Title: Managing Attorney
Bar No.: 102942

April 25, 2018

Date

DICKSON DAVIS LAW FIRM, LLC ■ 439 CONGAREE ROAD ■ MAILBOX 6 ■ GREENVILLE, SOUTH CAROLINA ■ 29607
 864.729.3424 TEL ■ 864.752.1424 FAX ■ WWW.DICKSONDAVISLAW.COM ■ INFO@DICKSONDAVISLAW.COM

ROA-000340



DICKSON DAVIS LAW FIRM

CEASE AND DESIST NOTICE

April 25, 2018

**Northgate Baptist Church
Attn: Dr. Barry Jimmerson
633 Summit Dr.
Greenville, SC 29609**

VIA FEDEX 772080665488

Re	: James Earl Tegeler
File Id.	: 2018-01-123
Date of Incident	: April 10, 2018

Dear Mr. Jimmerson:

Please be advised that **JAMES EARL TEGELER**, who is the abovementioned party ("Client"), has retained the Dickson Davis Law Firm, LLC ("Firm") to represent that party's interest in the potential or pending litigation regarding this matter concerning defamation of character against the Firm's Client by **HANNAH ELIZABETH COLLIER, CHARLOTTE COLLIER, and LINDA SMITH**, of which may result in the unfounded basis regarding the termination of the Firm's Client and validity of the documents pertaining to the termination of the Firm's Client on or around April 10, 2018.

You are hereby put on notice pursuant to all applicable Federal and South Carolina laws to cease and desist all direct communication, whether oral or written communication, from you to the Firm's Client, or any of the Client's family members, employer(s), agents, contractors, or other relations. Furthermore, all further communication and correspondence, whether oral or written, must be directed to the Firm, whether the Firm's attorney(s) or staff, as follows: Deborah D. Davis, Esq., Dickson Davis Law Firm, LLC, 439 Congaree Road, Mailbox 6, Greenville, SC 29607.

This document serves as notice that the abovementioned company, and its officers, directors, employees, agents, and contractors, will henceforth cease and desist from any further direct or indirect communication with the Firm's Client or ongoing defamation of the Firm's Client to any third-party within or outside of the congregation of Northgate Baptist Church.

Sincerely,

DICKSON DAVIS LAW FIRM, LLC

By:

Name: Deborah D. Davis, Esq.
Title: Managing Attorney
Bar No.: 102942

April 25, 2018

Date



DICKSON DAVIS LAW FIRM

CEASE AND DESIST NOTICE

April 25, 2018

Linda Smith
113 Broughton Drive
Greenville, SC 29609

VIA FEDEX 772082319690

Re : **James Earl Tegeler**
File Id. : **2018-01-123**
Date of Incident : **April 10, 2018**

Dear Ms. Smith:

Please be advised that **JAMES EARL TEGELER**, who is the abovementioned party ("Client"), has retained the Dickson Davis Law Firm, LLC ("Firm") to represent that party's interest in the potential or pending litigation regarding this matter concerning defamation of character against the Firm's Client by you, **CHARLOTTE COLLIER**, and **HANNAH ELIZABETH COLLIER**, of which resulted in the unfounded basis regarding the termination of the Firm's Client from Northgate Baptist Church on or around April 10, 2018.

You are hereby put on notice pursuant to all applicable Federal and South Carolina laws to cease and desist all direct communication, whether oral or written communication, from you to the Firm's Client, or any of the Client's family members, employer(s), agents, contractors, or other relations. Furthermore, all further communication and correspondence, whether oral or written, must be directed to the Firm, whether the Firm's attorney(s) or staff, as follows: Deborah D. Davis, Esq., Dickson Davis Law Firm, LLC, 439 Congaree Road, Mailbox 6, Greenville, SC 29607. This document serves as notice that the abovementioned party, and its officers, directors, employees, agents, and contractors, will henceforth cease and desist from any further direct or indirect communication with the Firm's Client or ongoing defamation of the Firm's Client to any third-party within or outside of the congregation of Northgate Baptist Church.

Failure to comply with this cease and desist will result in taking further legal action with a restraining order against you, or anyone acting on your behalf, regarding the potential or pending litigation concerning this matter. Further disparagement of the Firm's Client and defamation of character of the Firm's Client based on unmeritorious, false allegations will not be tolerated.

Sincerely,

DICKSON DAVIS LAW FIRM, LLC

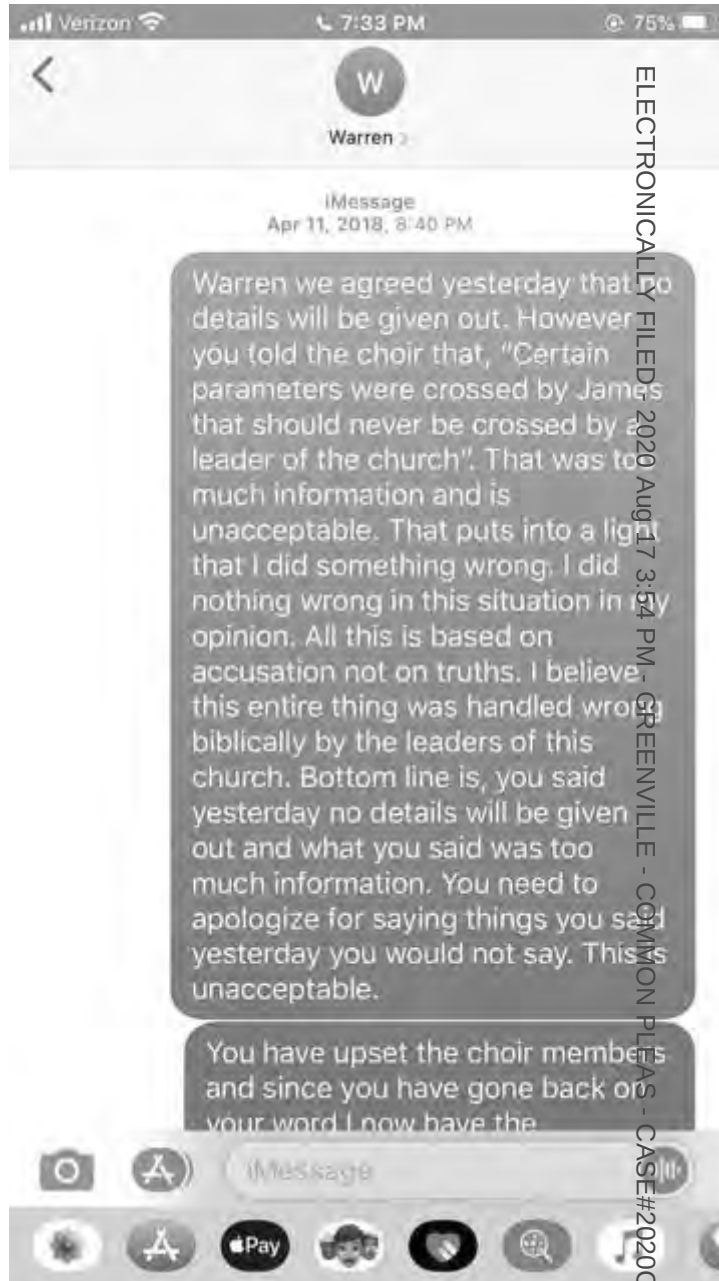
By:

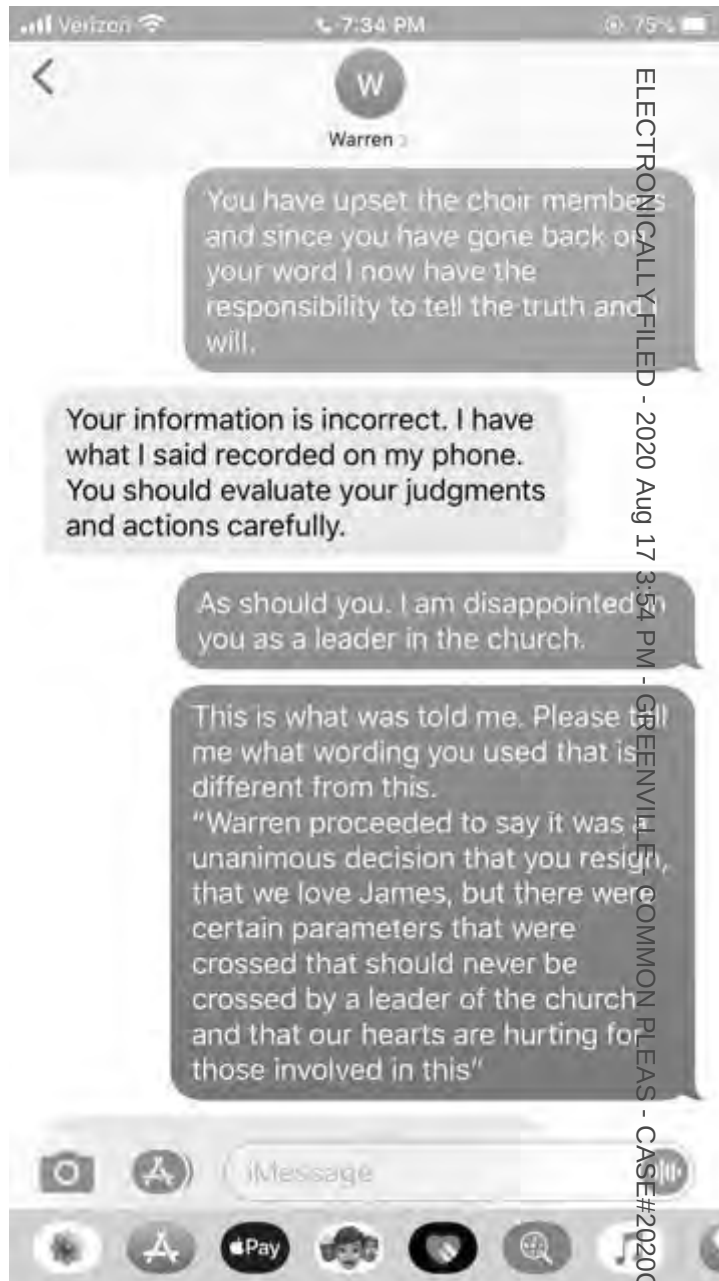
Name: Deborah D. Davis, Esq.
Title: Managing Attorney
Bar No.: 102942

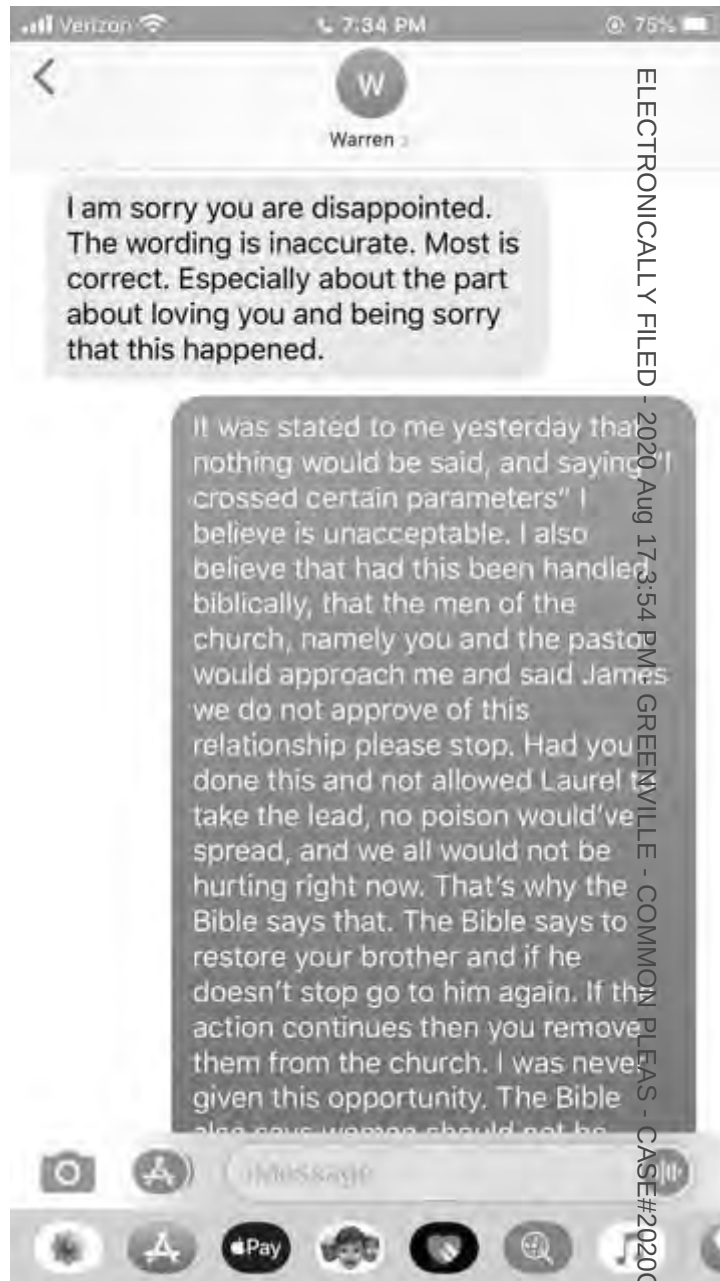
April 25, 2018

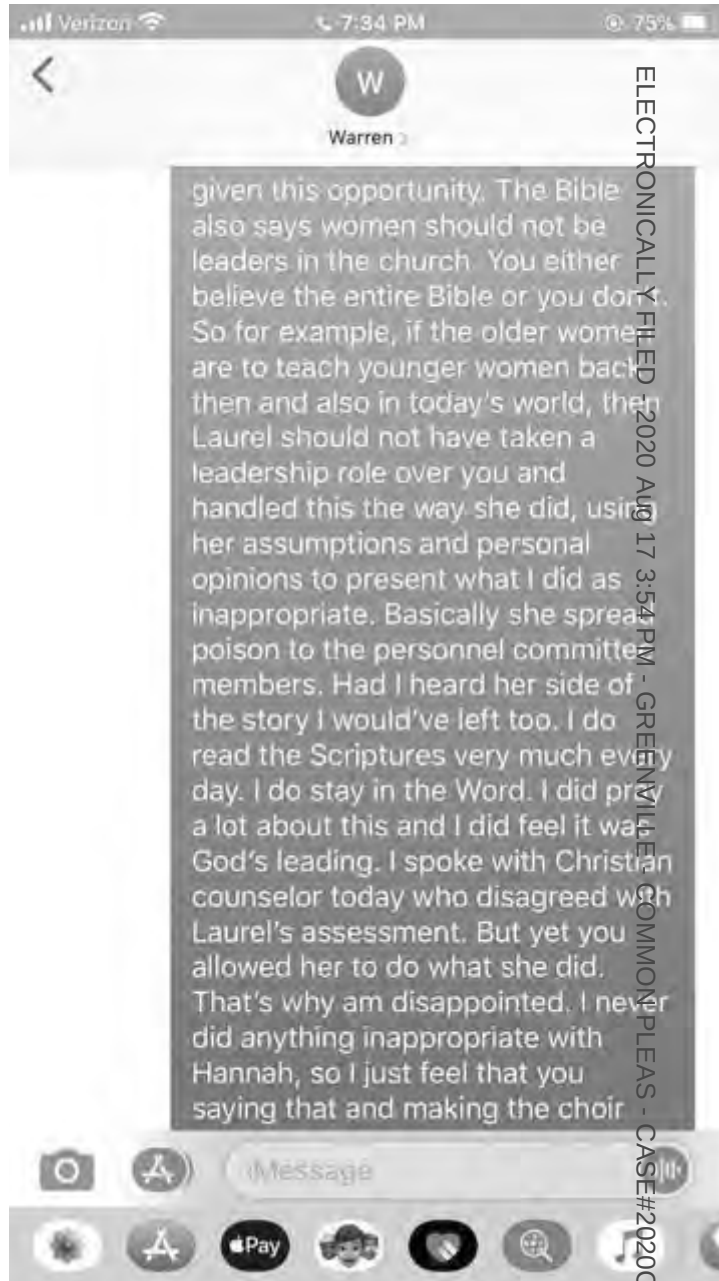
Date

EXHIBIT H









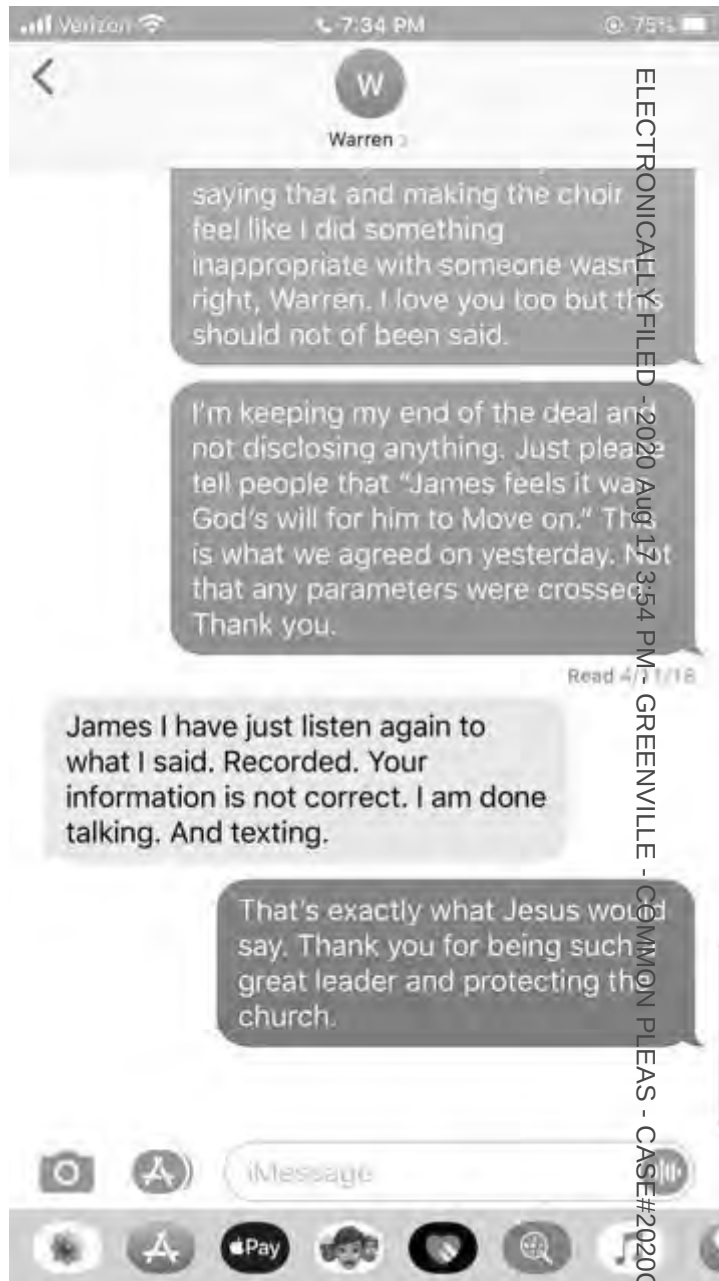
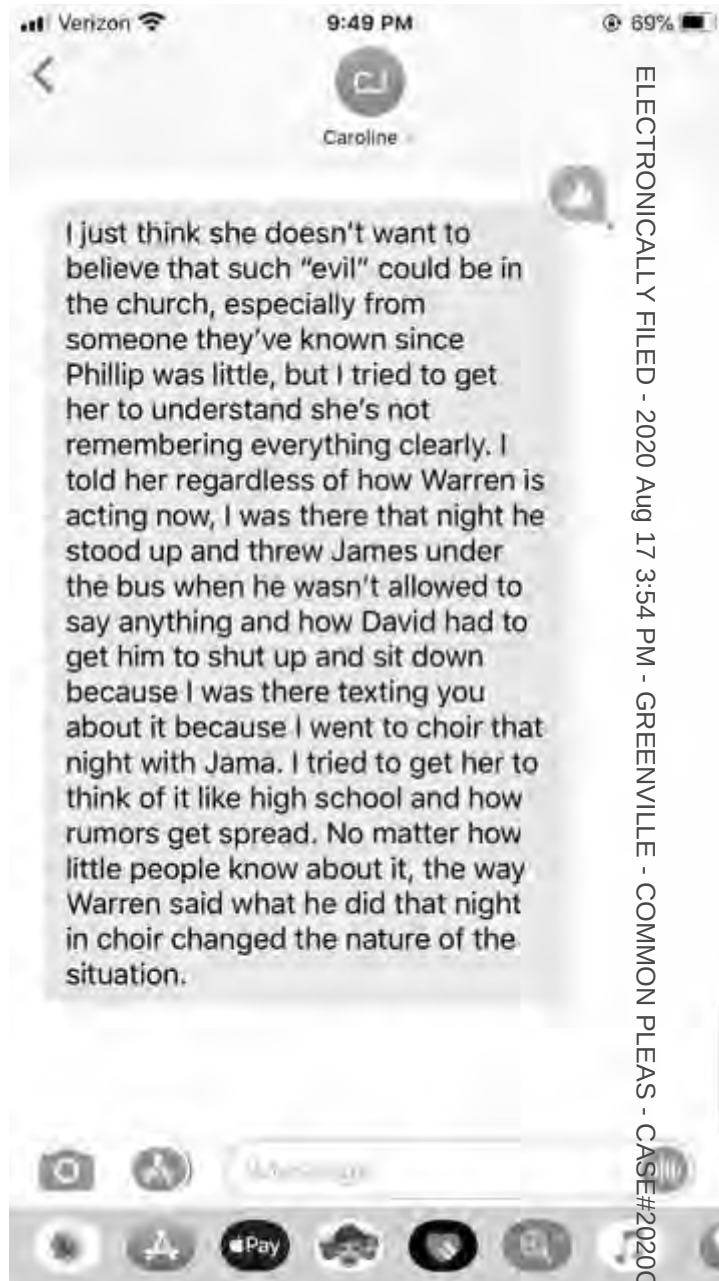
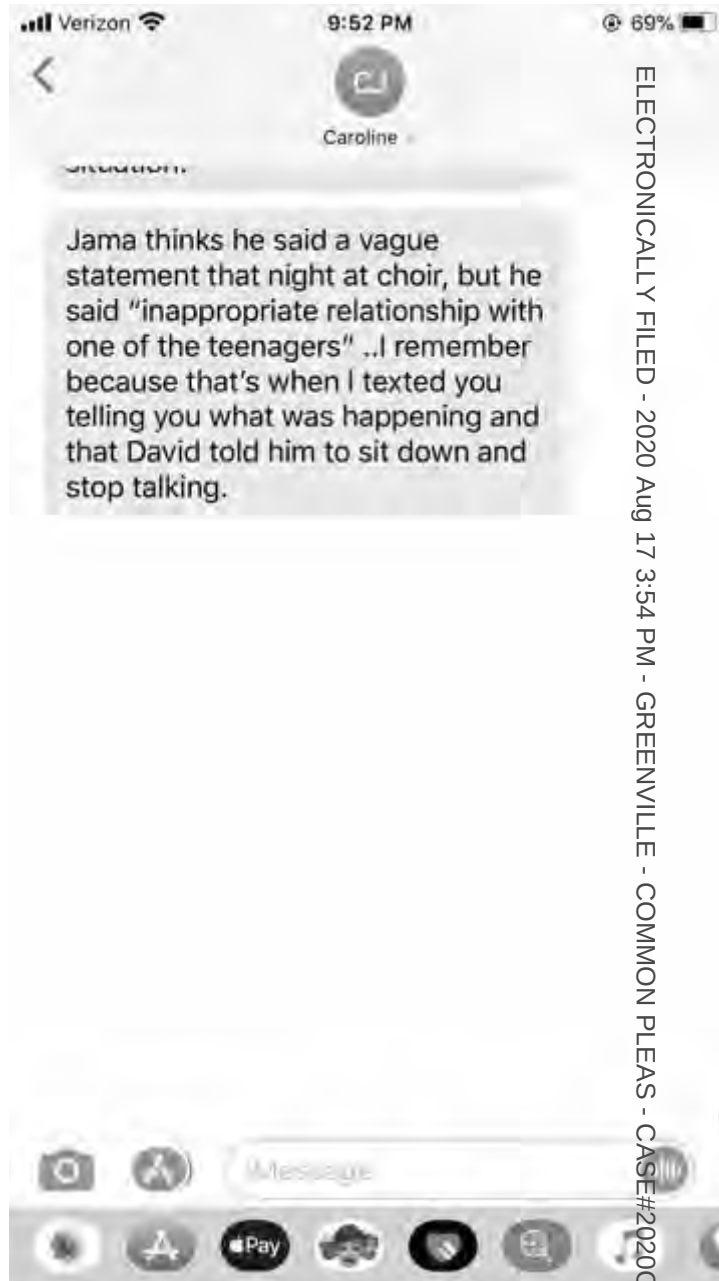


EXHIBIT H





ELECTRONICALLY FILED - 2020 Aug 17 3:54 PM - GREENVILLE - COMMON PLEAS - CASE#2020C

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

JAMES EARL TEGELER,

2020-CP-23-01213

COMMON PLEAS CIVIL CASE NO.

Plaintiff(s),

v.

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST CHURCH,**

**PLAINTIFF'S NOTICE AND MOTION FOR
RECONSIDERATION TO ALTER OR AMEND
A JUDGMENT AND MOTION FOR RELIEF FROM
JUDGMENT**

Defendant(s).

TO: CHARLOTTE COLLIER
HANNAH ELIZABETH COLLIER
LINDA SMITH
NORTHGATE BAPTIST CHURCH

PLEASE TAKE NOTICE that Plaintiff hereby submits this motion for reconsideration to alter or amend the Court's Orders entered and dated on August 18, 2020 ("Orders"), pursuant to rule 59(e) of the South Carolina Rules of Civil Procedure. Additionally, Plaintiff hereby submits this motion for relief from judgment for the Court's Orders pursuant to rule 60 of the South Carolina Rules of Civil Procedure. The motions are divided into several sections as set forth below. Each section provides multiple grounds for reconsideration of relief from the Court's Order. Collectively, pursuant to these grounds for reconsideration and relief, Plaintiff seeks rulings on matters that the Court did not address in its Orders; Plaintiff seeks the Court's reasons for deciding certain matters where no reasons are given; Plaintiff seeks for the Court to reconsider its findings and correct its errors based on the record, the law, and civil procedures; and, Plaintiff seeks relief from the Orders based on mistake(s), surprise, fraud, misrepresentation, or other misconduct of an adverse party. Plaintiff hereby incorporates all previous filings by Plaintiff into this motion. Plaintiffs' show the following:

FACTS

Plaintiff filed a Summons and Complaint on February 25, 2020. Plaintiff's Summons and Complaint included the following causes of action: (1) false imprisonment against Defendant **NORTHGATE BAPTIST CHURCH**; (2) defamation against all defendants; (3) fraud in the inducement against Defendant **NORTHGATE BAPTIST CHURCH**; (4) negligent misrepresentation against Defendant **NORTHGATE BAPTIST CHURCH**; (5) negligent hiring, supervision, and retention of employees against Defendant **NORTHGATE BAPTIST CHURCH**; (6) intentional infliction of emotional distress against all defendants; (7) negligent infliction of emotional distress against all defendants; (8) wrongful termination against Defendant **NORTHGATE BAPTIST CHURCH**; and, (9) civil conspiracy against all defendants. Plaintiff prayed for the Court's leave to amend

Plaintiff's complaint in both Plaintiff's Complaint and Plaintiff's Response to Defendant **NORTHGATE BAPTIST CHURCH**'s Motion to Dismiss and Memorandum in Support of its Motion to Dismiss, Defendant **CHARLOTTE COLLIER**'s Motion to Dismiss, Defendants **HANNAH COLLIER** and **LINDA SMITH**'s Motion for Judgment on the Pleadings and Motion to Dismiss, and Defendant **NORTHGATE BAPTIST CHURCH**'s Memorandum in Support of its Motion to Dismiss filed on August 14, 2020.

Defendant **NORTHGATE BAPTIST CHURCH** filed a Motion to Dismiss on March 25, 2020, to dismiss all cause(s) of action. Rule 12(b)(6), S.C.R.C.P. Defendant **CHARLOTTE COLLIER** filed an Answer to Complaint on March 30, 2020. Defendants **HANNAH ELIZABETH COLLIER** and **LINDA SMITH** filed an Answer on March 30, 2020. Defendant **CHARLOTTE COLLIER** filed an Amended Answer on April 2, 2020. Defendant **CHARLOTTE COLLIER** filed a Motion to Dismiss on April 2, 2020, based on a motion for summary judgment on the pleadings. Rule 12(c), S.C.R.C.P. Plaintiff filed an Order of Protection on April 9, 2020, through June 9, 2020, due to health reasons for Plaintiff's counsel who has experienced ongoing health complications subsequently thereafter. Defendants **HANNAH ELIZABETH COLLIER** and **LINDA SMITH** filed a Notice of Motion and Motion for Judgment on the Pleadings and Motion to Dismiss on April 27, 2020, to dismiss all cause(s) of action. Rules 12(b)(6), 12(c), S.C.R.C.P. **HANNAH ELIZABETH COLLIER** and **LINDA SMITH** filed an Amended Answer on April 27, 2020. Defendant **NORTHGATE BAPTIST CHURCH** filed a Memorandum in Support of its Motion to Dismiss on August 13, 2020. Defendant **CHARLOTTE COLLIER** filed a Memorandum in Support of Motion to Dismiss on August 14, 2020, based on a motion for summary judgment on the pleadings. Rule 12(c), S.C.R.C.P. Defendants **HANNAH ELIZABETH COLLIER** and **LINDA SMITH** filed a Memorandum in Support of Defendants, Hannah Collier and Linda Smith, Motion to Dismiss and Motion for Summary Judgment on the Pleadings on August 17, 2020. Rules 12(b), 12(c), S.C.R.C.P. Defendant **HANNAH ELIZABETH COLLIER** filed an affidavit on August 17, 2020. Plaintiff filed a Response to Defendant **NORTHGATE BAPTIST CHURCH**'s Motion to Dismiss filed on March 25, 2020, Defendant **CHARLOTTE COLLIER**'s Motion to Dismiss filed on April 2, 2020, Defendants **HANNAH COLLIER** and **LINDA SMITH**'s Motion for Judgment on the Pleadings and Motion to Dismiss filed on April 27, 2020, and Defendant **NORTHGATE BAPTIST CHURCH**'s Memorandum in Support of its Motion to Dismiss filed on August 14, 2020.

The hearing before the Court was on August 18, 2020, concerning Defendant **NORTHGATE BAPTIST CHURCH**'s Motion to Dismiss filed on March 25, 2020, Defendant **CHARLOTTE COLLIER**'s Motion to Dismiss filed on April 2, 2020, Defendants **HANNAH COLLIER** and **LINDA SMITH**'s Motion for Judgment on the Pleadings and Motion to Dismiss filed on April 27, 2020. On August 18, 2020, the Court granted: (1) the 12(b)(6) motion to dismiss Plaintiff's case in the entirety for Defendant **NORTHGATE BAPTIST CHURCH**; (2) the 12(c) motion for summary judgment on the pleadings to

dismiss Plaintiff's case in the entirety for Defendant **CHARLOTTE COLLIER**. On August 20, 2020, the Court amended its order and granted the 12(b)(6) motion to dismiss and the 12(c) motion for summary judgment on the pleadings to dismiss Plaintiff's case in the entirety for Defendants **HANNAH ELIZABETH COLLIER** and **LINDA SMITH**.

GROUND FOR RECONSIDERATION BASED ON EXCEPTIONS TO PARTICULAR STATEMENTS, FINDINGS, AND CONCLUSIONS IN THE ORDER

Plaintiff raises the following exceptions to particular statements, findings, and conclusions in the Orders, and Plaintiff respectfully requests that the Court reconsider the same based on the record and the evidence and arguments identified herein.

I. A RULING GRANTING A 12(b)(6) MOTION TO DISMISS AN ACTION IS PROCEDURALLY DEFECTIVE CONVERTING THE MOTION INTO A MOTION FOR SUMMARY JUDGMENT UNDER RULE 56 WHEN A GENUINE DISPUTE OF A MATERIAL FACT EXISTS OR NO SUPPORTING EVIDENCE OR AFFIDAVITS WERE SUBMITTED IN A TIMELY MANNER

a. THE STANDARD OF REVIEW FOR A 12(b)(6) MOTION TO DISMISS

A 12(b)(6) motion to Plaintiff's complaint is a drastic remedy that states Plaintiff failed "to state facts sufficient to constitute a cause of action." Rule 12(b)(6), S.C.R.C.P. A 12(b)(6) motion to dismiss may not survive "if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). Pleadings are construed liberally "to do substantial justice to all parties." S.C.R.C.P. 8(f); see *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 38, 530 S.E.2d 369, 373 (2000). Moreover, "[t]he allegations of a complaint are to be liberally construed in favor of the pleader." *Stroud v. Riddle*, 260 S.C. 99, 102-103, 194 S.E.2d 235, 237 (1973). A complaint is sufficient if the complaint raises an issue of fact that would entitle Plaintiff to judgment if the fact is resolved in favor of Plaintiff by stating any cause of action or Plaintiff is entitled to any relief whatsoever. *Russell v. Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). Typically, the remedy is for Plaintiff to be granted leave to amend Plaintiff's Complaint rather than be subject to dismissal with prejudice in a drastic and harsh reprieve. *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006); *Dockside Ass'n v. Detyens, Simmons & Carlisle*, 297 S.C. 91, 95, 374 S.E.2d 907, 909 (Ct. App. 1988).

By contrast, if the moving party transforms a 12(b)(6) motion to one of summary judgment for a cause of action, then the moving party must proceed under Rule 56 and all the parties must have a reasonable opportunity to present outside matters and materials separate from the pleadings. Rule 12(b)(6), S.C.R.P. A motion for summary judgment must be denied when a genuine issue regarding any material fact exists as a matter of law and "the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party." *Watson v. Underwood*, 407 S.C. 443, 453, 756 S.E.2d 155, 160 (Ct. App. 2014). By contrast, when resisting a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues that require a trial on the issue. If the moving party carries the initial burden that the nonmoving party's case lacks evidentiary support, the nonmoving party may not resort to

allegations or denials in the pleadings. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 453, 814 S.E.2d 643, 654 (Ct. App. 2018). Rule 56 requires a time frame for parties to exchange materials, admissible evidence, affidavits, or any of the above. Rule 56(e), S.C.R.C.P. The moving party must provide materials, admissible evidence, extrinsic evidence, affidavits, or any of the above ten (10) days before the hearing. Then the process follows for the non-moving party to dispute and refute evidence or introduce other evidence to support the non-moving party's position. However, through the exchange of materials, and for a motion for summary judgment, whether a motion for summary judgment or motion for summary judgment on the pleadings, the evidence must be admissible evidence subject to cross-examination, an affidavit, or any of the above.

b. PLAINTIFF'S CAUSE(S) OF ACTION AGAINST NORTHGATE BAPTIST CHURCH SHOULD NOT BE DISMISSED BECAUSE A GENUINE DISPUTE OF A MATERIAL FACT EXISTS CONCERNING THE VALIDITY OF THE NORTHGATE BAPTIST CHURCH'S THE SEPARATION AGREEMENT AND RELEASE OF CLAIMS

i. NORTHGATE BAPTIST CHURCH'S EXCULPATORY CLAUSE(S) IN THE SEPARATION AGREEMENT AND RELEASE OF CLAIMS IS AMBIGUOUS, SUSCEPTIBLE TO MORE THAN ONE MEANING, AND PERMITS RAISING CLAIM(S) ARISING AFTER THE AGREEMENT

A release is all governed by general contract law. *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 183 (2013); *Wade v. Berkeley Cty.*, 339 S.C. 495, 502-03, 529 S.E.2d 734, 737-38 (Ct. App. 1999). And, normal contract defenses are also still applicable. See *Aldridge v. Watts Mill*, 131 S.C. 222, 231-32, 127 S.E. 213, 216-17 (1925). "Like any contract, a release given without consideration is void. However, when the consideration for a release is something of value, the release is still subject to being voided by fraud, coercion[,] undue influence[, lack of mental capacity, or any of the above.]" *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 741 (D.S.C. 2001); *Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947). For example, inadequate consideration to forgo other rights may also result in the four corners of the release not representing the contemplation of the parties' intentions prior to entering into the agreement. Exculpatory contracts such as release contracts are disfavored by the law warranting judicial review of common sense and good faith in scrutinizing the construction of the contract to avoid an absurd result and reach a more reasonable, fair, and just construction to prevail. *Fisher v. Stevens*, 355 S.C. 290, 295, 584 S.E.2d 149, 152 (Ct. App. 2003).

Whether the construction of the contract between the parties is ambiguous as matter of contractual interpretation is a question of law. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Ultimately the Court must "ascertain and give legal effect to the parties' intentions as determined by the contract language." *Id.* The Court will give plain, unambiguous language the ordinary meaning intended when reading the contract as a whole document. *Id.* When a contract is ambiguous, the Court will allow extrinsic, parol evidence "to ascertain the true meaning and intent of the parties." *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997). A contract is ambiguous when it is construed with more than one meaning,

the meaning is unclear, the meaning is obscure through indefiniteness of expression, or having a double meaning. *Ecclesiastes Prod. Ministries*, 374 S.C. at 499-500; *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968). The courts construe ambiguity strictly against the drafter of the contract in favor of the non-drafter. *Ecclesiastes Prod. Ministries*, 374 S.C. at 499-500.

Here, the Agreement is still governed by contract law and contract defenses just like any other contract. When construed with Section 3.A. and 3.D., the construction of the Agreement is ambiguous and susceptible to more than one interpretation and unclear for examples such as: (1) whether the claims released in Section 3.A. are invalid when Section 3.D. provides that the Agreement does not apply to Plaintiff's claims that cannot be waived by operation of law; (2) whether the release in the Agreement applies to Plaintiff's cause(s) of action because Plaintiff cannot waive a claim when the claim has not fully consummated yet at the time of signing the Agreement as one could reasonably construe Section 3.D., even for circumstances surrounding the formation of the Agreement. Section 3.D. clearly states that Plaintiff does not release or waive any rights or claims that may arise after the execution of the Agreement. Such language is problematic for Defendant **NORTHGATE BAPTIST CHURCH** because the actual formation of the Agreement occurs simultaneously with a factual basis and ongoing injury that occurs during, after, or both of the formation of the Agreement. **Meaning, Plaintiff cannot waive cause(s) of action while those cause(s) of action are occurring at the same time for Defendant NORTHGATE BAPTIST CHURCH to neatly sweep Plaintiff's rights under the rug using unenforceable provision(s) to shield Defendant NORTHGATE BAPTIST CHURCH from liability for its negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct—even at the very moment of forming the Agreement. The severance amount in the settlement agreement was insufficient consideration compared to Plaintiff's annual salary, of which Defendant NORTHGATE BAPTIST CHURCH was notified of repudiation but never requested the funds to be returned upon notice.**

As Defendant **NORTHGATE BAPTIST CHURCH** is the drafter of the Agreement, the release should be construed strictly against Defendant **NORTHGATE BAPTIST CHURCH** in favor of Plaintiff to produce a more fair and just result than the absurdity Defendant **NORTHGATE BAPTIST CHURCH** is presenting in its legal analysis misconstruing its own Agreement. The language of the Agreement does not operate to bar Plaintiff's claims related to or surrounding the formation of the Agreement as a contract under the circumstances. Defendant's exculpatory provision(s) in the release are: (1) overly broad in the scope of claims released; and, (2) unenforceable as a matter of public policy because the Agreement is absent of explicit, clear language indicating the parties' consent to release negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct. Section 3.A. is a laundry list of potential claims, of which some would not apply to the circumstances or are in violation of public policy. In Section 3.D., the language stating "[t]he intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable

whether legal or equitable” does not clearly and explicitly indicate a meeting of the minds for both parties to release specifically cause(s) of action for negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct. The language is unclear and ambiguous to that exact construction, which is not specifically stated, and thereby negates Plaintiff's intentions for purposes of assenting to said provision. The phrase “any and all claims” does not translate to a specific release of claim(s) for negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct for purposes of the parties intent and whether a meeting of the minds exist. The blatant ambiguity and contradiction in Section 3.D. of the agreement is that, on the one hand the language seeks “to fully and finally resolve all claims and possible claims” between the parties while, on the other hand, the provision claims that Plaintiff's doesn't release claims arising after the execution of the Agreement—including possible claims. **Plaintiff cannot waive a cause of action when the right has not even accrued yet because the analysis focuses—not on the language of the Agreement—but the circumstances surrounding the Agreement happening at the same time during the formation of the Agreement that is the very subject matter giving rise to the factual basis for Plaintiff's cause(s) of action and negates Plaintiff's free will to execute a contract.**

ii. CAUSE(S) OF ACTION RELATED TO NEGLIGENCE, GROSS NEGLIGENCE, AND INTENTIONAL TORTS ARE STILL VIABLE CAUSES OF ACTIONS BECAUSE PUBLIC POLICY PROHIBITS DISCLAIMING THOSE CLAIM(S) BEFORE AND AFTER THE TERMINATION MEETING

An illegal contract is void and unenforceable if the contract: (1) violates public policy; (2) statutory law; or, (3) provisions of the Constitution. *Berkebile v. Outen*, 311 S.C. 50, 53 n.2, 426 S.E.2d 760, 762 (1993). Exculpatory contracts construed to exempt a party from that party's own negligence will be prohibited in the absence of explicit, clear language indicating doing so was the parties' consent. *S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc.*, 283 S.C. 182, 191, 322 S.E.2d 453, 458 (Ct. App. 1984). Moreover, overly broad exculpatory clauses contravene public policy, especially when exempting one party from any liability from that party's negligence. *Fisher*, 355 S.C. at 297. Exculpatory contracts such as waivers and releases intended to exempt one party from liability for gross negligence, reckless conduct, willful or wanton conduct, or, intentional acts is overly broad, unenforceable, and against public policy unless the in the absence of explicit, clear language indicating doing so was the parties' consent. *McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 248-52, 612 S.E.2d 462, 465-67 (Ct. App. 2005).

The very manner in which Defendant **NORTHGATE BAPTIST CHURCH** overpowered Plaintiff's will at the time of Plaintiff signing the Agreement, in addition to non-enforceable provision(s) contrary to public policy, negates the operation of the exculpatory contract. While false imprisonment, fraud in the inducement, and negligent misrepresentation occurred during the time of forming the contract, these cause(s) of action dovetail into the analysis for duress, lack of assent, and mental incapacity and

accrued after the Agreement with ongoing injury and damages. Duress avoids an unenforceable contract. *Whitlock v. Creswell*, 190 S.C. 314, 335-36, 2 S.E.2d 838, 847 (1939). To prove that the other party procured the contract through duress, one has to prove: “(1) coercion; (2) putting a person in such fear that he is bereft of the quality of mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind.” *Holler v. Holler*, 364 S.C. 256, 267, 612 S.E.2d 469, 475 (Ct. App. 2005). Under the totality of the circumstances, the wrongful conduct such as wrongful act(s), unlawful act(s), or threat(s) by another coerced the other party by preventing that party from exercising will in kind. *Id.* at 266-67. The byproduct of the coercion invokes fear that paralyzes one’s free will—not the means used to accomplish the wrongful conduct. *Id.* at 267-68. When the party in a superior position of bargaining strength dominates the weaker party, such as the employer toward the employee in an employer-employee relationship, the stronger party dictates the terms of the contract in such a pervasive manner as to displace the weaker party’s will. *Id.* Freedom of will is essential to the validity of a contract because the deprivation of one’s free will and oppression of one’s person by threats regarding the safety or liberty of one’s person, loved ones, or property negates the meeting of the minds required for a valid contract. *Id.*; *Whitlock*, 190 S.C. at 335-36.

Plaintiff’s allegations in paragraphs 59 to 112 of Plaintiff’s Complaint raises factual issues concerning the formation of the Separation Agreement and Release of Claims (“Agreement”) between Plaintiff and Defendant **NORTHGATE BAPTIST CHURCH** on or around April 10, 2020. Plaintiff has previously made the argument that the cause(s) of action did not accrue at the moment of signing the Agreement when Plaintiff was not in his right mind. Genuine disputes as to facts material to Plaintiff’s cause(s) of action exist with respect to the construction of the release, the accrual of cause(s) of action occurring at the very moment of the termination meeting, Plaintiff’s free will to contract overpowered when coerced to sign the termination agreement, and the ability to bring new cause(s) of action that arise after the termination meeting. Plaintiff raised issues with Plaintiff’s free will to enter into a contract being compromised because of the overwhelming coercion exercised by Dr. Barry Jimmerson, Laurel Shaler, and Warren Peden at the time of the termination meeting. Warren Peden with Defendant **NORTHGATE BAPTIST CHURCH** made a public outburst to the choir accusing Plaintiff of having an inappropriate relationship with one of the teenagers. Those in the room understood the implication of Plaintiff involved in engaging sexual activity with underage minors. Moreover, Dr. Barry Jimmerson with Defendant **NORTHGATE BAPTIST CHURCH** disclosed the nature of Plaintiff’s termination to third parties that had no involvement in Plaintiff’s termination.

On or around April 25, 2020, Plaintiff provided Defendant **NORTHGATE BAPTIST CHURCH** prompt notice of repudiating the termination agreement:

Please be advised that **JAMES EARL TEGELER**, who is the abovementioned party (“Client”), has retained the Dickson Davis Law Firm, LLC (“Firm”) to represent that party’s interest in the potential or pending litigation regarding this matter concerning defamation of character against the Firm’s Client by

HANNAH ELIZABETH COLLIER, CHARLOTTE COLLIER, and LINDA SMITH, of which may result in the unfounded basis regarding the termination of the Firm's Client and validity of the documents pertaining to the termination of the Firm's Client on or around April 10, 2018. Plaintiff's Response to Defendants' Motion to Dismiss, Exhibit G.

The cease and desist notice clearly provided Defendant **NORTHGATE BAPTIST CHURCH** prompt notice challenging the validity of the documents related to Plaintiff's termination.

Plaintiff hereby requests the Court to amend its order and deny Defendant **NORTHGATE BAPTIST CHURCH's** 12(b)(6) Motion to Dismiss Plaintiff's cause(s) of action, or in the alternative grant Plaintiff leave to amend Plaintiff's Complaint. Rule 15(a), 56(e), 60(b), S.C.R.C.P.

c. DEFENDANT HANNAH ELIZABETH COLLIER'S 12(b)(6) MOTION TO DISMISS PLAINTIFF'S CASE IS PROCEDURALLY DEFECTIVE AND SUBSTANTIVELY INACCURATE AS A MATTER OF LAW

i. DEFENDANT HANNAH ELIZABETH COLLIER'S 12(b)(6) MOTION TO DISMISS PLAINTIFF'S CAUSE OF ACTION FOR DEFAMATION SHOULD SURVIVE BECAUSE THE STATEMENT OF "INAPPROPRIATE RELATIONSHIP" HAS A PLAIN AND UNAMBIGUOUS OFFENSIVE MEANING AS A DEFAMATORY STATEMENT

Whether a statement is actionable per se is a matter of law for the court to decide. *Erickson v. Jones St. Publs., LLC*, 368 S.C. 444, 465-66, 629 S.E.2d 653, 664-65 (2006). When reasonable minds might differ on the meaning of the statement as defamatory, then the issue must go to a jury. *Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007). However, some statements are clearly defamatory that the court may answer the question as to whether the statement is defamatory per se. *Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007). In doing so, the court not only considers the facial value of the statement but evidence concerning extrinsic facts and circumstances. *Id.* When "defamation is actionable per se, then under common law principles the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages." See *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 508-13, 506 S.E.2d 497, 501-03 (1998). Spoken defamation published to a third party is slander. See *id.* Defamation per se is when the "[t]he defamatory meaning of a message or statement [is] obvious on the face of the statement." *Id.*

Slander per se is actionable per se "when [the statement] charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." *Erickson*, 368 S.C. at 466 n.7. A crime of moral turpitude is an accusation based on "an act of baseness, vileness, or depravity in private and social duties that a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man" *Smith v. Smith*, 194 S.C. 247, 251, 9 S.E.2d 584, 586 (1940). Slander per se is actionable for a crime of moral turpitude when the speaker publishes "any words which falsely or maliciously charge the commission of a crime, or which distinctly assume or imply one has committed a crime, or which raise a

strong suspicion in the minds of hearers or readers, that one has committed a crime.” *Lesesne v. Willingham*, 83 F. Supp. 918, 921 (D.S.C. 1949). The effect of such a charge on the listener, who is a third-party, involving an accusation for a crime of moral turpitude is the proper legal analysis rather than whether the meaning of the statement is understood “positively and directly by words of clear and unmistakable meaning or only indirectly and by means of innuendo.” *Id.* (explaining that the legal analysis does not go through the analysis of whether a defamatory statement is slander per se or slander per quod because the very nature of the statement itself is plan, clear, and unambiguous to have an offensive meaning at face value). A slanderous statement inferring a plaintiff’s impropriety or lack of integrity when performing plaintiff’s job is actionable per se as plaintiff being unfit for plaintiff’s profession. *Moshtaghi v. Citadel*, 314 S.C. 316, 324-25, 443 S.E.2d 915, 919-20 (Ct. App. 1994) (finding dismissing defamatory statement on the basis of a qualified privilege improper because a factual dispute arose as to whether the qualified privilege was lost); *Woodward v. S.C. Farm Bureau Ins. Co.*, 277 S.C. 29, 31, 282 S.E.2d 599, 600 (1981).

Furthermore, when the moving party for a motion for summary judgment tests the statement as to whether the words have an actionable quality, the moving party essentially admits to the allegations of defamatory statement(s) in the complaint. *Flowers v. Price*, 192 S.C. 373, 377, 6 S.E.2d 750, 751 (1940). In addition to words that raise a strong suspicion of a plaintiff’s guilt or criminal conduct within the minds of hearers, any words that are capable of attributing an offensive meaning is actionable. *Adams v. Daily Tel. Printing Co.*, 292 S.C. 273, 279, 356 S.E.2d 118, 122 (Ct. App. 1986). The analysis goes to whether a statement is defamatory per se—not to establishing the truth or falsity of the statement that is properly submitted to the factfinder. *Id.* Whether a statement is true or false is not dependent upon the speaker’s subjectivity or indefiniteness. *Id.* Rather, a court must deny a motion for summary judgment concerning a statement as defamatory if the court can affirmatively say that the published statement is capable of being construed as defamatory by a reasonable listener under the circumstances. *Flowers*, 192 S.C. at 377 (using an objective standard for the effect on the listener).

Here, the very essence of counsel for Defendant **HANNAH ELIZABETH COLLIER** submitting impermissible exhibits before the Court in a procedurally defective manner for the purpose of testing the meaning of “inappropriate relationship” operated as an admission that the statement “inappropriate relationship” is in fact defamatory on its face, especially when having to refute having any sexual relations with Plaintiff in response to the accusation of Plaintiff having an “inappropriate relationship” with Defendant **HANNAH ELIZABETH COLLIER**. When Counsel for Defendant **HANNAH ELIZABETH COLLIER** transforms a Rule 12(b)(6) motion into one for a motion for summary judgment, then Counsel for Defendant **HANNAH ELIZABETH COLLIER** must follow the procedure for a motion for summary judgment. Rule 56(c), S.C.R.C.P. Nevertheless, counsel for Defendant **HANNAH ELIZABETH COLLIER** reading the exhibit from Defendant **HANNAH ELIZABETH COLLIER**’s affidavit at the hearing on August 18, 2020, should be stricken. Rule 12(f),

S.C.R.C.P.¹ Such presentation is one-sided without Plaintiff having an opportunity to review said materials, dispute the same, or refute the same. Counsel for Defendant **HANNAH ELIZABETH COLLIER** submitted Defendant **HANNAH ELIZABETH COLLIER**'s affidavit and exhibits on August 17, 2020, giving Plaintiff no opportunity to refute the affidavit and exhibits as extrinsic evidence the day before the hearing on August 17, 2020. Counsel for Defendant **HANNAH ELIZABETH COLLIER** was supposed to submit all affidavits and proposed evidence ten (10) days prior to the hearing on August 18, 2020, which never happened. Therefore, Counsel's recitation before the court concerning was entirely improper and subject to evidentiary insufficiency. Rule 56(e).

Plaintiff hereby requests the Court to amend its order and deny Defendant **HANNAH ELIZABETH COLLIER**'s 12(b)(6) Motion to Dismiss Plaintiff's cause of action for defamation, or in the alternative grant Plaintiff leave to amend Plaintiff's Complaint. Rule 15(a), 56(e), S.C.R.C.P. The transcript of Counsel for Defendant **HANNAH ELIZABETH COLLIER** reading from Defendant **HANNAH ELIZABETH COLLIER**'s affidavit should be stricken from the record. Rule 12(f), S.C.R.C.P.

ii. DEFENDANT ELIZABETH COLLIER'S 12(b) MOTION TO DISMISS SHOULD BE DENIED BECAUSE A GENUINE ISSUE OF MATERIAL FACT TRACEABLE TO THE ELEMENT OF SEVERE DISTRESS AND OUTRAGE EXISTS IN THE CAUSES OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

In this case, Plaintiff has suffered severe emotional distress by the accusation of having an inappropriate relationship with Defendant **HANNAH ELIZABETH COLLIER**. Here, both Defendant **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** went together to report Plaintiff to Dr. Barry Jimmerson that Plaintiff was having an inappropriate relationship with Defendant **HANNAH ELIZABETH COLLIER**. However, Defendant **CHARLOTTE COLLIER** then admits to informing Dr. Barry Jimmerson that she believes the age difference between Plaintiff and Defendant **HANNAH ELIZABETH COLLIER** is now

¹ A motion to strike allegations in a pleading is permissible under Rule 12(f) of the South Carolina Rules of Civil Procedure:

Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

A motion to strike operates to challenge a theory of recovery alleged in a complaint, or counterclaim. *See Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 114, 682 S.E.2d 871, 874 (Ct. App. 2009); *Grooms v. Med. Soc'y of S.C.*, 298 S.C. 399, 401-04, 380 S.E.2d 855, 857-58 (Ct. App. 1989). A cause of action "accrues the moment the defendant breaches a duty owed to the plaintiff." *Grooms*, 298 S.C. at 399. The standard for reviewing a motion to strike is abuse of discretion when "either real cause for doubt [to a question in dispute], or it is clear that the ends of justice may well be promoted by a trial on the merits." *Mayes v. Paxton*, 313 S.C. 109, 115, 437 S.E.2d 66, 69-70 (1993). By contrast, if the facts are clear and undisputed as to whether the challenged defenses or cause(s) of action are insufficient, or further developing the issues in a trial on the merits is unnecessary to find the challenged defenses or cause(s) of action insufficient as a matter of law, then fair, judicial discretion warrants granting a motion to strike accordingly. *See id.* An abuse of discretion occurs when the lower court does not account for the latter. *See id.*

inappropriate after having spent around seven (7) months around both Plaintiff and Defendant **HANNAH ELIZABETH COLLIER**. The age difference merely perpetuates a stigma where no crime has occurred between two legal adults nor any romantic or sexual activity that further supports the defamatory nature of the phrase “inappropriate relationship” in toto. Then, Defendant **CHARLOTTE COLLIER** back-peddles to say her daughter Defendant **HANNAH ELIZABETH COLLIER** did not have romantic feelings or sex with Plaintiff. But, somehow, the phrase “inappropriate relationship” rears its ugly head to mean Defendant **CHARLOTTE COLLIER** accused Plaintiff of being a predator for having an “inappropriate relationship” with Defendant **HANNAH ELIZABETH COLLIER**. Counsel for Defendant **HANNAH ELIZABETH COLLIER** also characterizes Defendant **HANNAH ELIZABETH COLLIER** as a high school student when she is an adult of legal age attending college.

On August 18, 2020, the characterization of Plaintiff as a predator by opposing counsel for Defendant Charlotte Collier takes the phrase “inappropriate relationship” to a whole new meaning that has without a doubt the effect on the listener including, but not limited to, the following: (1) an offensive statement about Plaintiff; (2) the listener believes that Plaintiff may be guilty, or suspects that Plaintiff is guilty; (3) Plaintiff committed a crime; (4) Plaintiff committed a crime of moral turpitude; and, (5) Plaintiff is unfit for his profession or business (especially in church ministry).² The word “predator” does not escape the correlation to the connotation of a sexual predator and criminal statutes penalizing an older man engaging in sexual activity or assault of an underage minor. Plaintiff was never prosecuted for any sexual crimes in this case. Plaintiff never committed any sexual crimes in this case. Promoting a stigma does not a crime make to debase an innocent man of such implications. Clearly, a genuine issue of material facts exist as to: (1) the use of the phrase “inappropriate contact” with respect to being slander per se that is actionable at law; (2) the effect on the listener from the use of “inappropriate relationship” and “predator” as slander per se that is actionable at law; (3) whether

² Counsel for an adverse party is an agent for the named principal who is the adverse party; the adverse party “speaks from the viewpoint of the agent making the verification in its behalf.” *Blackwell v. First Nat'l Bank*, 185 S.C. 427, 435, 194 S.E. 339, 343 (1937). Therefore, counsel for Defendant **CHARLOTTE COLLIER** purports to Defendant **CHARLOTTE COLLIER** calling Plaintiff a predator with respect to accusing Plaintiff of having an inappropriate relationship with her daughter Defendant **HANNAH ELIZABETH COLLIER**. This characterization of Plaintiff likely exceeds the scope of having a qualified privilege in the courtroom transforming the statement as unnecessary defamation. The publication of defamatory matter is subject to a qualified privilege provided that “(1) the matter is published upon an occasion that makes it conditionally privileged[;] and[,] (2) the privilege is not abused.” *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). The occasion, the relationship of the parties, and the commonality of interest in the subject matter of the communication between the speaker and the listener set the parameters for rendering the publication conditionally privileged. *Id.* However, said publication by the speaker must be made honestly, in good faith to protect the commonality of interests, or confidentiality, and is limited in scope by going no further than the speaker's interests or duties require. Factors to determine whether the qualified privilege was exceeded or abused include: (1) whether the speaker acting with malice; (2) whether the speaker published the statement in good faith; (3) whether the speaker limited the scope of the statement; and, (4) whether the speaker published the statement to the proper parties. *Id.* at 485. A principal may be held vicariously liable for an agent's defamatory statements whether the agent acted within the scope of the agent's employment or apparent authority. *Murray v. Holnam, Inc.*, 344 S.C. 129, 139-41, 542 S.E.2d 743, 748-49 (Ct. App. 2001) (“Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business.”); *Moshtaghi v. Citadel*, 314 S.C. 316, 324, 443 S.E.2d 915, 920 (Ct. App. 1994) (discussing that the qualified privilege for the employer-employee relationship may be lost when manner of its exercise results in unnecessary defamation). However, a qualified privilege is merely an affirmative defense. *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 560-62, 698 S.E.2d 845, 852-54 (Ct. App. 2010).

Defendant(s) had a qualified privilege or lost it; and, that Plaintiff claims the accusation of “inappropriate relationship is false, which is a matter for a finder of fact to decide.

A genuine dispute of material facts goes to Defendant(s) exceeding the bounds of decency as outrageous conduct portraying an innocent man—Plaintiff—as a sexual predator through the use of the phrase “inappropriate relationship” or “inappropriate contact.” This incident is outrageous because such grossly, inaccurate characterization makes things difficult for the real victims of sexual assault. Instead, Defendant(s) are using a shock and awe propaganda campaign of a stigma related to an older man sexually engaging with underage minors without a veritable legal basis for the freedom to associate with interpersonal relationships between legal adults. Real sexual predators do exist. Real victims of child molestation and rape do exist. This situation is beyond acceptable within the normal bounds of decency to throw away a man’s life when the real predators and victims are out there lost among a crying wolf starting with Defendant **HANNAH ELIZABETH COLLIER**. Plaintiff is not a sexual predator. Defendant(s) entire context of the circumstances has been entirely taken out of proportion. Counsel for Defendant **HANNAH ELIZABETH COLLIER** submitted Defendant **HANNAH ELIZABETH COLLIER**’s affidavit and exhibits on August 17, 2020, giving Plaintiff no opportunity to refute the affidavit and exhibits as extrinsic evidence the day before the hearing on August 17, 2020. Counsel for Defendant **HANNAH ELIZABETH COLLIER** was supposed to submit all affidavits and proposed evidence ten (10) days prior to the hearing on August 18, 2020, which never happened. Therefore, Counsel’s recitation before the court concerning was entirely improper and subject to evidentiary insufficiency. Rule 56(e).

Plaintiff hereby requests the Court to amend its order and deny Defendant **HANNAH ELIZABETH COLLIER**’s 12(b)(6) Motion to Dismiss Plaintiff’s cause of action for intentional infliction of emotional distress and negligent infliction of emotional distress, or in the alternative grant Plaintiff leave to amend Plaintiff’s Complaint. Rules 15(a), 56(e), S.C.R.C.P.

iii. DEFENDANT ELIZABETH COLLIER’S 12(b) MOTION TO DISMISS SHOULD BE DENIED BECAUSE A GENUINE ISSUE OF MATERIAL FACT TRACEABLE TO THE ELEMENT OF CIVIL CONSPIRACY

Civil conspiracy is when two or more persons join for the purpose to injure and cause special damage to the plaintiff. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010). The cause of action for civil conspiracy relates to the Plaintiffs’ damages resulting “from an overt act done pursuant to a common design.” *Id.* at 324. Special damage alludes to damage that is caused by the Defendants’ conduct:

[The Defendants’ conduct was] motivated by envy, ill will, spite and malice, did secretly and unlawfully further agree, combine, unite, scheme and conspire together for the purpose and with the design and intent of restraining, damaging, ruining, crushing and wrecking the plaintiff and driving him out of business and eliminating

him as a competitor; and that pursuant to, and in furtherance and consummation of, said unlawful agreement, combination, scheme and conspiracy, the defendants herein, their co-conspirators, agents, servants, aiders and abettors, have acted, united and co-operated together and have committed, or caused to be committed, numerous illegal and vicious acts, to the plaintiff's great injury and damage. *Charles v. Tex. Co.*, 192 S.C. 82, 98, 5 S.E.2d 464, 471 (1939).

Special damages are defined as damages that “go beyond the damages alleged in other causes of action.” *Cricket Cove Ventures, LLC*, 390 S.C. at 325; *Allegro, Inc. v. Scully*, 418 S.C. 24, 36-37, 791 S.E.2d 140, 146-47 (2016) (Beatty, J., dissenting) (proposing overruling the special damages requirement of civil conspiracy in South Carolina as a duplicative legal technicality conflating the bar on recovering from double damages with the element of special damages being a pleading requirement).

For reasons previously discussed, Plaintiff has reason to believe that Defendant **NORTHGATE BAPTIST CHURCH** was collaborating with the other Defendant(s) to cause Plaintiff harm beyond pain and suffering, loss of reputation, and loss of other wages. Damages for defamation primarily deal with general damages. Defamation (for slander per se that is actionable at law), Intentional Infliction of Emotional Distress, and Negligent Infliction of Emotional Distress mainly deals with general damages. Should Plaintiff prevail, Plaintiff would then make an election of remedies to avoid double-dipping. Additionally, Negligent Intentional Infliction of Emotional Distress and Intentional Infliction of Emotional Distress are pled in the alternative as inconsistent pleading. For example, Plaintiff's special damages would include injuring Plaintiff's ability to work, causing Plaintiff to get fired from his job because of Defendants' allegations, ruining Plaintiff's ability to enter back into music ministry to youth ministry again, ruining Plaintiff's ability to work for a new employer, spreading wildfire gossip to the purpose of preventing Plaintiff from getting back into music ministry or youth ministry, and etc.

The phrase “inappropriate relationship” snakes its way through all the parties in this action. Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** reported Plaintiff to Dr. Barry Jimmerson with Defendant **NORTHGATE BAPTIST CHURCH** and accused Plaintiff of having an inappropriate relationship with Defendant **HANNAH ELIZABETH COLLIER**—and now the meaning of that phrase has transcended to the term “predator” by the Colliers. During Plaintiff's termination meeting, Laurel Shaler with Defendant **NORTHGATE BAPTIST CHURCH** spouts out accusing Plaintiff with the terminology inappropriate relationship and inappropriate contact regarding young girl(s) in the congregation, including Defendant **HANNAH ELIZABETH COLLIER**. Defendant Warren Peden with Defendant **NORTHGATE BAPTIST CHURCH** blatantly made an outburst in the church choir that Plaintiff was let go from Defendant **NORTHGATE BAPTIST CHURCH** for having an inappropriate relationship with one of the teenagers—the day after Plaintiff was fired. After Plaintiff was fired, Dr. Barry Jimmerson with Defendant **NORTHGATE BAPTIST CHURCH** disclosed the nature of Plaintiff's termination for having been investigated and accused of an inappropriate relationship with

Defendant **HANNAH ELIZABETH COLLIER** to other parishioners who were not involved in the termination process. Defendant **LINDA SMITH** was discovered gossiping with members of the community parroting Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** after receiving a cease and desist notice from Plaintiff. All of these opposing parties have a common denominator of the same phrase to have reasonable information and belief that conspiracy among the Defendant(s) is likely occurring.

Plaintiff hereby requests the Court to amend its order and deny Defendants' motions for 12(b)(6) and 12(c). Rule 56(e), S.C.R.C.P. If the Court deems that Plaintiff's Complaint should be amended to correct the element of special damages per Rule 9(g) of the South Carolina Rules of Civil Procedure for a heightened pleading requirement, then Plaintiff request leave from the Court to amend Plaintiff's Complaint accordingly. Rule 15(a), S.C.R.C.P.

d. DEFENDANT LINDA SMITH

Counsel for Defendant **LINDA SMITH** never submitted any materials, evidence, affidavits, or any of the above prior to the hearing on August 18, 2020, to support Defendant **LINDA SMITH**'s 12(b)(6) motion to dismiss. Rule 56(e), S.C.R.C.P. With the exception of Counsel for Defendant impermissibly reading exhibits from Defendant **HANNAH ELIZABETH COLLIER**'s affidavit that was submitted in an untimely manner and is procedurally defective, the analysis above is the largely the same for Defendant **LINDA SMITH**. In this case, Counsel for **LINDA SMITH** never presented any affidavit(s) or admissible evidence in a timely manner for Plaintiff to refute for Defendant **LINDA SMITH**. Counsel for **LINDA SMITH** was to file affidavit(s), admissible evidence, or any of the above ten (10) days before the hearing on August 18, 2020, of which never happened. For purposes of construing the Plaintiff's allegations in the Complaint as true, and reasonable doubts in favor of Plaintiff, Plaintiff's Complaint entitles Plaintiff to relief under any theory against Defendant **LINDA SMITH**. Plaintiff also provided affidavits supporting Plaintiff's cause(s) of action against Defendant **LINDA SMITH**.

Again, the testing of the phrase "inappropriate relationship" by counsel for Defendant **LINDA SMITH** operated as to an admission of the phrase being admitted under Plaintiff's Complaint. Upon information and belief, Defendant **LINDA SMITH** was also present when Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** reported Plaintiff to Dr. Barry Jimmerson with Defendant **NORTHGATE BAPTIST CHURCH**. The analysis for Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and Civil Conspiracy is similarly discussed above for Defendant **HANNAH ELIZABETH COLLIER**. For Defendant **LINDA SMITH**, Plaintiff alleges initially, without further discovery at this time, that Defendant **LINDA SMITH** was recklessly indifferent to Plaintiff's rights when spreading the defamatory accusation of Plaintiff having an inappropriate relationship with Defendant **HANNAH ELIZABETH COLLIER** to members of the community in a

manner of wildfire gossip. With regard to the cause of action for Civil Conspiracy, Defendant **LINDA SMITH** was a separate party that Plaintiff, upon information and belief, was working alongside Defendant **CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, NORTHGATE BAPTIST CHURCH**, or any of the above with the purpose to injure Plaintiff beyond his reputation to his ability to obtain work, keep his current employment, and so forth when she expresses immense gratification that Plaintiff got fired from Defendant **NORTHGATE BAPTIST CHURCH**.

Plaintiff hereby requests the Court to amend its order and deny Defendant **LINDA SMITH's** 12(b)(6) Motion to Dismiss Plaintiff's cause(s) of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, civil conspiracy, and any other cause(s) of action, or in the alternative grant Plaintiff leave to amend Plaintiff's Complaint. Rule 15(a), 56(e), S.C.R.C.P.

II. A RULING ON A 12(c) MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS IS FATALLY AND PROCEDUALLY DEFECTIVE AS MISCONDUCT BY OPPOSING COUNSEL FOR DEFENDANTS CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, AND LINDA SMITH WHEN FAILING TO ADHERE TO THE PROCEDURAL REQUIREMENTS OF RULE 56(e)

a. THE STANDARD OF REVIEW FOR A RULE 12(c) MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS PROVIDES THE REMEDY FOR PLAINTIFF TO AMEND THE COMPLAINT, OR, ALTERNATIVELY, ALLOW FOR PLAINTIFF TO REFUTE ADMISSIBLE EVIDENCE, AFFIDAVITS, OR BOTH IN A TIMELY MANNER PRIOR TO THE HEARING PURSUANT TO RULE 56

A 12(c) motion for summary judgment on the pleadings is similarly treated as a motion for summary judgment under Rule 56 of the South Carolina Rules of Civil Procedure:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. S.C.R.P. Rule 12(c).

The court must deny a motion for summary judgment on the pleadings as a matter of law when the evidence and reasonable inferences therefrom shows a genuine disputed issue exists regarding any material fact for each essential element in the claim. *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 628, 799 S.E.2d 318, 322 (Ct. App. 2017). The court must draw reasonable inferences from the evidence in favor of the non-moving party. *Id.* A summary judgment on the pleadings is, often, premature before preliminary discovery in litigation begins because the motion typically involves a variety of pleadings, including preliminary discovery, and other forms of admissible evidence together with affidavits. *See Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009). The standards for converting a motion into a motion for summary judgment previously discussed also apply to a 12(c) motion. Rule 56, S.C.R.C.P. Typically, Plaintiffs are entitled to amend the complaint than face dismissal under a Rule 12(c) motion.

b. DEFENDANTS CHARLOTTE COLLIER AND LINDA SMITH FAILED TO PROVIDE ANY EVIDENCE, AFFIDAVITS, OR BOTH TO SUPPORT A 12(c) MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS WHEN RESTING THEIR LAURELS ON THE PLEADINGS ALONE IN A FATALLY DEFECTIVE MANNER THAT DID NOT SUPPORT THEIR 12(c) MOTION NOR UPHELD THE PROCEDURAL REQUIREMENTS IN RULE 56

Counsel for **CHARLOTTE COLLIER** and counsel for **LINDA SMITH** failed to provide materials, extrinsic evidence, admissible evidence, affidavits, or any of the above ten (10) days prior to the hearing on August 18, 2020, for Plaintiff to review and dispute, submit materials in return, and offer other materials to support Plaintiff's position. Therefore, Defendants **CHARLOTTE COLLIER** and **LINDA SMITH** cannot rely upon the pleadings alone when converting a 12(c) motion for summary judgment on the pleadings pursuant to Rule 56. Rules 12(c), 56, S.C.R.C.P.

Plaintiff hereby requests the Court to amend its order and deny Defendants **CHARLOTTE COLLIER** and **LINDA SMITH**'s 12(c) Motion to Dismiss Plaintiff's cause(s) of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, civil conspiracy, and any other cause(s) of action, or in the alternative grant Plaintiff leave to amend Plaintiff's Complaint. Rule 15(a), 56(e), 60(b), S.C.R.C.P.

c. COUNSEL FOR DEFENDANT HANNAH ELIZABETH COLLIER FAILED TO PRESENT AN AFFIDAVIT IN A TIMELY MANNER FOR PLAINTIFF TO REFUTE SAID AFFIDAVIT PURSUANT TO THE REQUIREMENTS IN A 12(c) MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS SUBJECT TO THE PROCEDURAL REQUIREMENTS IN RULE 56

Again, counsel for Defendant **HANNAH ELIZABETH COLLIER** failed to file an affidavit ten (10) days prior to the hearing for Plaintiff to review and all parties engage in the exchange of materials, extrinsic evidence, admissible evidence, affidavits, or any of the above. The

Plaintiff hereby requests the Court to amend its order and deny Defendant **HANNAH ELIZABETH COLLIER**'s 12(c) Motion to Dismiss Plaintiff's cause(s) of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, civil conspiracy, and any other cause(s) of action, or in the alternative grant Plaintiff leave to amend Plaintiff's Complaint. Rule 15(a), 56(e), 60(b), S.C.R.C.P.

III. PLAINTIFF IS ENTITLED TO THE REMEDY TO AMEND COMPLAINT RATHER THAN FACE DISMISSAL FROM A 12(b)(6) MOTION OR A 12(c) MOTION

Should the Court find any deficiencies in Plaintiff's Complaint, Plaintiff should be entitled to amend the complaint to cure any noted deficiencies rather than face a dismissal with prejudice as a harsh and drastic remedy under the circumstances. *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006). The South Carolina Rules of Civil Procedure provide that, unless the opposing counsel gives written consent, "a party may amend his pleading only by leave of court . . . and leave shall be freely given when justice so requires and does not prejudice any other party." S.C.R.P. Rule 15(a). The standard of review for an order denying a motion to amend a complaint is an abuse of

discretion. See *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). Abuse of discretion by the judge issuing an order “was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.” *Id.* The lower court may not base its denial to amend a complaint on the merits of the amended claim(s) in lieu of the criteria outlined under Rule 15(a) of the South Carolina Rules of Civil Procedure. *Patton v. Miller*, 420 S.C. 471, 489-93, 804 S.E.2d 252, 261-63 (2017); *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (“In the absence of a proper reason, such as bad faith, undue delay, or prejudice, a denial of leave to amend is an abuse of discretion.”).

Under the first element of the court granting leave to amend a pleading freely as required to do justice, public policy strongly favors allowing parties to amend pleadings and encourages courts to freely grant a leave to amend pleadings. *Patton*, 420 S.C. at 489-93. Modeled after Rule 15(a) of the Federal Rules of Civil Procedure, the U.S. Supreme Court held that courts are behooved to follow the mandate outlined in Rule 15(a) and tread lightly:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be “freely given.” Of course, the grant or denial of an opportunity to amend is within the discretion of the [] Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962).

Furthermore, while “a circuit court’s ruling on a Rule 15 motion to amend is within [that court’s] discretion, a court’s failure to exercise its discretion is itself an abuse of discretion.” *Patton*, 420 S.C. at 489-93; see also *Duncan v. CRS Serrine Eng’rs, Inc.*, 337 S.C. 537, 542, 524 S.E.2d 115, 117-18 (Ct. App. 1999); *Berry v. McLeod*, 328 S.C. 435, 449-50, 492 S.E.2d 794, 802 (Ct. App. 1997); *Forrester*, 295 S.C. at 506-10.

Under the second element of the court granting leave to amend a pleading that does not prejudice the opposing party, the South Carolina Supreme Court outlined the analysis as “whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it.” *Patton*, 420 S.C. at 489-93. The non-moving party has the burden of establishing prejudice from the moving party’s motion to amend a pleading. *Collins Entm’t, Inc. v. White*, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Ct. App. 2005). Prejudice to the non-moving party in Rule 15(a) of the South Carolina Rules of Civil Procedure embodies “a lack of notice that the new issue is to be tried and a lack of opportunity to refute it . . . [whereas a]mendments [] conform[ing] to the proof should be liberally allowed when no prejudice to the opposing party will result.” *Id.* By contrast, the South Carolina Supreme Court clarified that prejudice to the non-moving party does not equate to

“the non-moving party [being] forced to defend the merits of a valid claim.” *Patton*, 420 S.C. at 489-93; *Forrester*, 295 S.C. at 506-10. Furthermore, the crux of the analysis concerning the prejudice prong under Rule 15(b) of the South Carolina Rules of Civil Procedure is whether the nonmoving party is afforded an opportunity to prepare and develop testimony for the issue that the moving party is raising formally when amending the complaint. *Soil & Material Eng'rs, Inc. v. Folly Assocs.*, 293 S.C. 498, 500-02, 361 S.E.2d 779, 781-82 (Ct. App. 1987). Finally, if the nonmoving party fails to raise proper objections to the moving party's motion to amend the complaint under Rule 15(b) of the South Carolina Rules of Civil Procedure, then the nonmoving party waives such objections. *Crestwood Golf Club v. Potter*, 328 S.C. 201, 218, 493 S.E.2d 826, 835-36 (1997).

Courts must adhere to “the basic principle . . . that, in order to avoid the danger that [courts] might dispose of viable claims prematurely, courts must allow the parties to develop an adequate record.” *Carlson v. Gen. Motors Corp.*, 883 F.2d 287, 293 (4th Cir. 1989). When a court grants a motion to amend a complaint on proper grounds, the amendments shape and alter the issues to determine the parties' rights before the court and test the merits to a plaintiff's causes of action. See *Dockside Ass'n v. Detyens, Simmons & Carlisle*, 297 S.C. 91, 93-94, 374 S.E.2d 907, 909 (Ct. App. 1988). By contrast, when a court denies a motion to amend a complaint that would shape the issues of the case as well as the mode of trial, then the denial of a motion to amend affects the substantial rights of the plaintiff related to the substantive merits of the amendments to the complaint when proceeding forward with litigation. Here, the Court's Orders issued on August 18, 2020, did not explain any basis for granting Defendants' motions. Generally, courts are liberal with granting a motion to amend a complaint for both 12(b)(6) and 12(c) motions.

For reasons discussed above, Plaintiff hereby requests the Court to amend and alter its Orders and grant Plaintiff leave to amend Plaintiff's Complaint. Rules 15(a), 56(e), 60(b), S.C.R.C.P.

IV. PLAINTIFF IS ENTITLED TO RELIEF FROM THE COURT'S ORDER BASED ON MISTAKE(S), SURPRISE, NEWLY DISCOVERED EVIDENCE, FRAUD, MISREPRESENTATION, AND MISCONDUCT OF AN ADVERSE PARTY UNDER RULE 60

a. STANDARD OF REVIEW FOR RULE 60

Rule 60(b) of the South Carolina Rules of Civil Procedure provides that:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party . . .

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. Rule 60(b), S.C.R.P.; *Tobias v. Rice*, 386 S.C. 306, 310, 688 S.E.2d 552, 554 n.3 (2010).

The moving party has the burden of proof to show grounds under Rule 60(b). *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010).

The defamatory statement toward plaintiff naming him as a predator by counsel for Defendant **CHARLOTTE COLLIER** is misconduct thereby losing the qualified privilege for making a statement in a court of law and further operated as an admission on behalf of Defendant **CHARLOTTE COLLIER** committing slander per se that is actionable as a crime of moral turpitude and unfitness for one's profession or business. The critical point here is that, while Plaintiff was working for Defendant **NORTHGATE BAPTIST CHURCH**, he was always professional toward Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** within the scope of his employment with Northgate Baptist Church. Aff. Jenkins, Caroline. Defendant **CHARLOTTE COLLIER** admitted that Defendant **HANNAH ELIZABETH COLLIER** began singing at Northgate Baptist Church on or around August 13, 2017 (Def CHARLOTTE COLLIER Ans. ¶ 11). Upon occasion during choir practice, Defendant **HANNAH ELIZABETH COLLIER** would unnecessarily interrupt practice that required Plaintiff to redirect her because Plaintiff was, in fact, in charge of the choir practice within the scope of employment with Northgate Baptist Church. Aff. Jenkins, Caroline. Upon request of Dr. Barry Jimmerson, Plaintiff redirected Defendant **HANNAH ELIZABETH COLLIER**'s dress attire while singing for Northgate Baptist Church. Aff. Tegeler, James. Plaintiff did not give any special treatment to Defendants **CHARLOTTE COLLIER** or **HANNAH ELIZABETH COLLIER** when working at Northgate Baptist Church—Plaintiff treated everyone the same when working for Northgate Baptist Church in a professional manner. Aff. Jenkins, Caroline. Contrary to Defendant **CHARLOTTE COLLIER**'s allegations, Defendant **HANNAH ELIZABETH COLLIER**'s behavior did require redirection when singing for Northgate Baptist Church.

By contrast, Defendants accusing Plaintiff of having an inappropriate relationship with Defendant **HANNAH ELIZABETH COLLIER** was unrelated to Plaintiff's scope of employment with Northgate Baptist Church. Therefore, Defendants **CHARLOTTE COLLIER**, **HANNAH ELIZABETH COLLIER**, and **LINDA SMITH** had no privilege to approach Dr. Barry Jimmerson as Plaintiff's supervisor for matters outside the scope of Plaintiff's employment with Northgate Baptist Church. Outside the scope of employment with Northgate Baptist Church, Defendant **HANNAH ELIZABETH COLLIER** admitted to asking Plaintiff to be her mentor because her father was not active in her life. Aff. Jenkins, Caroline. Over time, Defendant **HANNAH ELIZABETH COLLIER** began to treat Plaintiff as a surrogate father figure outside the scope of employment with Northgate Baptist Church. Aff. Tegeler, James Ex. A, C, D. More importantly, the real facts and applicable law here is that Defendant **HANNAH ELIZABETH COLLIER** is a legal adult capable of forming her own associations without any parent or grandparent, including Defendant **CHARLOTTE COLLIER**, Defendant

LINDA SMITH, or Craig T. Collier. Defendants **CHARLOTTE COLLIER**, **HANNAH ELIZABETH COLLIER**, and **LINDA SMITH** admitted that Defendant **HANNAH ELIZABETH COLLIER** was a legal adult on or around July 12, 2017 (Def. **CHARLOTTE COLLIER** Ans. ¶ 9); (Def. **HANNAH ELIZABETH COLLIER** and Linda Smith Ans. ¶ 10). Defendant **HANNAH ELIZABETH COLLIER** admits viewing herself as a legal adult to Plaintiff. Aff. Tegeler, James Ex. D. Moreover, Defendants **CHARLOTTE COLLIER**, **HANNAH ELIZABETH COLLIER**, and **LINDA SMITH** all admitted to being acquainted with Plaintiff from September of 2017 through March of 2018. Aff. Tegeler, James; (Def. **HANNAH ELIZABETH COLLIER** and Linda Smith Ans. ¶ 14); (Def. **CHARLOTTE COLLIER** Ans. ¶ 13); Aff. Jenkins, Caroline. Meaning, Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** did not refute maintaining their association with Plaintiff from September of 2017 through March of 2018. Until March 12, 2018, when Defendant **CHARLOTTE COLLIER** emailed Plaintiff, Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** consented to maintaining their association with Plaintiff without terminating said association. Aff. Tegeler, James.

Plaintiff is also a legal adult capable of forming his own associations with others as well. Both Plaintiff and Defendant **HANNAH ELIZABETH COLLIER** have the freedom of association to be in a consensual relationship, whether a mentor-mentee relationship or a surrogate father-daughter relationship. *Roberts v. United States Jaycees*, 468 U.S. 609, 618-20, 104 S. Ct. 3244, 3250-51 (1984) (discussing the freedom of association to develop interpersonal relationships as an aspect of individual liberty this is a protected right under the First Amendment of the United States Constitution); U.S. CONST. AMEND. XIV ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."). A consensual relationship between two legal adults is not a crime. Actual crimes related to nonconsensual contact of a sexual nature are codified in the South Carolina Criminal Code for sexual assault crimes and the Sexually Violent Predator Act in the South Carolina Health Code, for example. S.C. Code Ann. §§ 16-3-600, 16-3-651 to 656 (sexual assault crimes); S.C. Code Ann. §§ 44-48-10 to -170. The penal codes for sexual assault crimes carries a stigma against an older man having a relationship with an underage minor.³ At the heart of the matter, this case presents a dystopian fallacy of Defendants reinforcing a

³ A stigma is a learned behavior that is formed through social interactions creating shortcuts to cognitive associations through symbols, practices, or conduct for individuals to relate to one another in a society or a community. See generally Bernice A. Pescosolido et al., *Rethinking Theoretical Approaches to Stigma: A Framework Integrating Normative Influences on Stigma (FINIS)*, 67 Soc. Sci. Med. 3, Aug. 2008, at 431-440, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2587424/>. A negative stigma usually results in exclusion by shame for members of society or community associated with that stigma. Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 400-07 (1997). A powerful stigma may also arise from creating and reinforcing legislative schemes to reflect normative values as a means of social control. MATTHEW D. LIEBERMAN, SOCIAL: WHY OUR BRAINS ARE WIRED TO CONNECT 7-70 (2013) (exploring the complex cognitive associations behind

stigma against Plaintiff as a sexual predator to exclude and shame Plaintiff when no crime has occurred. When no crime has occurred, a stigma is not the law. When no crime has occurred, a stigma is not a fact. Arguments made by **CHARLOTTE COLLIER**, **HANNAH ELIZABETH COLLIER**, and **LINDA SMITH** revolve entirely around perpetuating a stigma against Plaintiff when accusing Plaintiff of having an “inappropriate relationship” with Defendant **HANNAH ELIZABETH COLLIER** akin to being a sexual predator—as fully manifested by counsel for Defendant **CHARLOTTE COLLIER** calling Plaintiff a “predator” before the Court on August 18, 2020.⁴

Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** omit that, after both Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** accused Plaintiff of having an inappropriate relationship with Defendant **HANNAH ELIZABETH COLLIER**, Dr. Barry Jimmerson’s initial response was a line of questioning to Hannah concerning a romantic or sexual relationship: (1) whether Defendant **HANNAH ELIZABETH COLLIER** had sex with Plaintiff; (2) whether Defendant **HANNAH ELIZABETH COLLIER** had romantic feelings toward Plaintiff; and, (3) whether Defendant **HANNAH ELIZABETH COLLIER** believed that Plaintiff had romantic feelings toward her. (Pl. Complaint ¶ 60); Aff. Tegeler, James. Clearly, the effect of hearing the phrase “inappropriate relationship” on Dr. Barry Jimmerson was that Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** accused Plaintiff of having a romantic or sexual relationship with Defendant **HANNAH ELIZABETH COLLIER**. The legal issue of defamation is not subjective to the speaker’s perception of the message. Rather, the legal issue of defamation is how a reasonable person listening to the statement—the listener—would perceive that statement by an objective standard.

On the one hand, Defendant **HANNAH ELIZABETH COLLIER** alleges telling Dr. Barry Jimmerson, as Plaintiff’s employer at Northgate Baptist Church, that Plaintiff’s “inappropriate conduct” was the reason she would be taking a break from attending Northgate Baptist Church. (Def. HC Answer ¶ 24). On the other hand, Defendant **CHARLOTTE COLLIER** alleged that: “[I]t was her opinion that the relationship between Plaintiff, a man in his 50’s and her 18-year-old daughter was inappropriate⁵ and expressed concern regarding the same with the preacher at her church who employed the Plaintiff, that employment being the source of the Plaintiff’s relationship with her daughter. This conversation occurred when she met with the church to explain that she and her daughter were going to take a break from their church for a while. This was after the Defendant [CHARLOTTE COLLIER] and her daughter had repeatedly requested the Plaintiff not contact them and the

humans experiencing stigma in relation to humans’ basic need for social interaction and the evolution of the human brain for social intelligence).

⁴ Plaintiff was not a 54-year-old man when he met Defendant **HANNAH ELIZABETH COLLIER**.

⁵ Such an allegation should be stricken per Rule 12(f). Promoting a stigma of Plaintiff being a sexual predator when no crime has been committed between two legal adults in a consensual relationship is still actionable for defamation.

Defendant [CHARLOTTE COLLIER] continued to do so. This Defendant [CHARLOTTE COLLIER] was asked if that break was a result of Plaintiff's actions toward her daughter and she responded that it was." (Def. CHARLOTTE COLLIER's Ans. ¶ 26). Here, Defendant **CHARLOTTE COLLIER** readily places a stigma on a pedestal by focusing on the age-gap between Plaintiff and Defendant **HANNAH ELIZABETH COLLIER** and portraying Plaintiff as a sexual predator to Plaintiff's employer with respect to Plaintiff's fitness for his profession at Northgate Baptist Church—when no crime has occurred between two legal adults. Defendant **CHARLOTTE COLLIER**'s very allegation is in and of itself a blatant admission to committing slander per se that is actionable at law for accusing Plaintiff of a crime of moral turpitude, which includes calling Plaintiff's fitness in his profession into question for a lack of propriety when portraying Plaintiff in the light of a sexual predator.

However, Defendant **HANNAH ELIZABETH COLLIER** omitted that she did not attend regularly to choir practices since singing at Northgate Baptist Church around August or September of 2017. Aff. Jenkins, Caroline; Aff. Danciu, Ann. Defendant **HANNAH ELIZABETH COLLIER** sometimes would leave during the middle of choir practice for no reason. Aff. Jenkins, Caroline. Typically, if Defendant **HANNAH ELIZABETH COLLIER** was at choir practice, Defendant **CHARLOTTE COLLIER** was there watching and singing on a few occasions. Aff. Danciu, Ann; Aff. Jenkins, Caroline. When Defendant **HANNAH ELIZABETH COLLIER** did sing during service at Northgate Baptist Church, Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** would leave after Defendant **HANNAH ELIZABETH COLLIER** sang without listening to the sermons or staying for the rest of the service. Aff. Tegeler, James Ex. D; Aff. Danciu, Ann. Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** both omitted that they stopped going to choir practices or any part of services at Northgate Baptist Church since January of 2018—because, Defendant **CHARLOTTE COLLIER** typically came only when Defendant **HANNAH ELIZABETH COLLIER** went to choir practices. Aff. Jenkins, Caroline. More importantly, Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** omit that they did not like or "connect with" Dr. Barry Jimmerson as a pastor for services at Northgate Baptist Church. Aff. Tegeler, James Ex D. Even Defendant **HANNAH ELIZABETH COLLIER** admitted that she did not "connect" with Dr. Barry Jimmerson on a personal level. Aff. Tegeler, James Ex D. By March of 2018, Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** had not been coming to Northgate Baptist Church anyway unrelated to Plaintiff. Other than Defendant **HANNAH ELIZABETH COLLIER** singing for Northgate Baptist Church on occasion, Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** were not very invested in Northgate Baptist Church as a place of worship.

Moreover, as previously discussed, the legal analysis of involving Defendant Northgate Baptist Church is whether Plaintiff's conduct occurred within the scope of employment or outside the scope of

employment. In a blatant contradiction from provoking the stigma of a sexual predator when calling Plaintiff a predator for his mentorship of Defendant **HANNAH ELIZABETH COLLIER**, Defendant **CHARLOTTE COLLIER** alleged: “[T]his Defendant would note that her daughter had no romantic interest in the Plaintiff and that her daughter had never had any sexual or intimate relations with the Plaintiff. Upon information and belief the Defendant **HANNAH ELIZABETH COLLIER** believed the attention being paid to her by the Plaintiff and the things he said to her and the way he treated her was inappropriate. The Defendant cannot speak as to what the Plaintiff thought.” (Def. CHARLOTTE COLLIER Ans. ¶ 28). However, Defendant **CHARLOTTE COLLIER** omits that she did receive an email from Plaintiff refuting her allegations of Plaintiff’s conduct toward Defendant **HANNAH ELIZABETH COLLIER**, of which clearly informed Defendant **CHARLOTTE COLLIER** exactly what Plaintiff thought as Defendant **CHARLOTTE COLLIER** accusing Plaintiff of having an inappropriate relationship with Defendant **HANNAH ELIZABETH COLLIER**. Aff. Tegeler, James Ex. G. Defendant **CHARLOTTE COLLIER** makes no references or accusations of Plaintiff’s conduct toward Defendant **HANNAH ELIZABETH COLLIER** occurring within Plaintiff’s scope of employment. In fact, Defendant **CHARLOTTE COLLIER**’s accusations toward Plaintiff occurred outside the scope of his employment with Northgate Baptist Church.

On or around March 12, 2018, Defendant **CHARLOTTE COLLIER** omits making defamatory statements to Plaintiff while publishing the same statements to a third-party Craig T. Collier: “Your words to her at lunch yesterday were completely out of line. And we cannot allow Hannah to be treated that way a moment longer. Especially since it is not an isolated incident. I am aware of issues that occurred at Ty’s birthday party, a lengthy discussion last week, something that happened at paper ball tag, and several others that you never wanted Hannah to discuss with me” Aff. Tegeler, James Ex. G. These same accusations echoed the accusations Defendant Linda Smith made to Sue Lutz after Plaintiff was fired from Northgate Baptist Church and Defendant Linda Smith had received a cease and desist notice. Aff. Lutz, Sue. After Defendant **CHARLOTTE COLLIER** emailed Plaintiff on or around March 12, 2018, Plaintiff responded directly to Defendant **CHARLOTTE COLLIER** regarding her accusations against Plaintiff: “I would like to clarify a few things. Because I didn’t do anything to her during our paper ball tag game, or at Ty’s birthday. At Ty’s birthday I simply wanted to know why she was avoiding me and she wouldn’t tell me and was very rude for no reason. Turned out she thought I was upset about something . . . You have a lot of misinformation, and even though I don’t really care anymore, just know that I take great offense to some of your accusations because they are simply not true . . . I do not appreciate the accusations, and I will be more than happy to sit down with you and anyone else and go over exactly what occurred every single time. But to accuse me of wanting to hide things from you? Are you kidding me?? I’ll show you every single message I have between us . . . I also take great offense to you saying that I used phone calls to yell at her and upset her. That is not all the case whatsoever. But all that gets lost in the fact that she has been very difficult to get along with, especially lately . . . But if you

want to lay the blame for her issues on me and my insecurities, which I consider very rude from you, that's your prerogative. But I find it very offensive and I do not appreciate it . . . Just know that I take offense to what you said in your letter because the majority of it is simply not true. I'll be glad to talk to you anytime, anyplace, and with anyone else listening . . . " Aff. Tegeler, James Ex. G.

Defendant **CHARLOTTE COLLIER** omits the fact that her daughter Defendant **HANNAH ELIZABETH COLLIER** had previously corresponded with Plaintiff prior to arriving to Plaintiff's birthday party for his son Alexander on March 11, 2018. Aff. Tegeler, James Ex. F. Plaintiff was clear that Defendant **HANNAH ELIZABETH COLLIER** was not obligated to come if she didn't feel well. During the party, Defendant **CHARLOTTE COLLIER** was wearing provocative, revealing clothing once again in front of Plaintiff. Aff. Tegeler, James. During the party, Defendant **HANNAH ELIZABETH COLLIER** stared at her plate, played with her phone, and complained of wanting to vomit at the table. Aff. Tegeler, James. Upon seeing Defendant **HANNAH ELIZABETH COLLIER** playing on her phone, Plaintiff politely asked Defendant **HANNAH ELIZABETH COLLIER** to be involved in the group conversation if she felt good enough to play on her phone. Defendant **HANNAH ELIZABETH COLLIER** then complained of not feeling well again. Plaintiff politely stated that if Defendant **HANNAH ELIZABETH COLLIER** didn't feel well, then she should not feel obligated to stay at the party. Defendant **HANNAH ELIZABETH COLLIER** stormed off to the bathroom in a violent mood swing with her mother Defendant **CHARLOTTE COLLIER** trailing behind. When both Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** returned from the restroom, Defendant **HANNAH ELIZABETH COLLIER** was also mad with her mother Defendant **CHARLOTTE COLLIER**. Aff. Tegeler, James. Plaintiff's son Andrew even found Defendant **HANNAH ELIZABETH COLLIER**'s behavior annoying. Aff. Allen, Josie. Ultimately, what both Defendants **CHARLOTTE COLLIER** and **HANNAH ELIZABETH COLLIER** omit is that, because of their behavior as guests to Plaintiff's birthday party for his son, they ruined Plaintiff's birthday party for his son lacking any conscientiousness or consideration toward anyone else except for the two of them in a socially inappropriate manner. Aff. Tegeler, James.

Defendant **CHARLOTTE COLLIER** omits that her daughter Defendant **HANNAH ELIZABETH COLLIER** corresponded with Plaintiff about the paper ball tag game and never said anything negative after-the-fact about Plaintiff. Aff. Tegeler, James Ex. B. Defendant **CHARLOTTE COLLIER** omits that her daughter Defendant **HANNAH ELIZABETH COLLIER** corresponded with Plaintiff several days after Defendant **CHARLOTTE COLLIER**'s birthday party for her son Ty Collier whereby Defendant **HANNAH ELIZABETH COLLIER** apologized to Plaintiff for her behavior and denies that Plaintiff is causing any issues for her. Aff. Tegeler, James Ex. D. At all times when Plaintiff interacted with Defendant **HANNAH ELIZABETH COLLIER**, and Defendant **HANNAH ELIZABETH COLLIER** solicited Plaintiff to be a mentor personally, Defendant **HANNAH ELIZABETH COLLIER** was a legal adult. Aff. Tegeler, James;

Aff. Jenkins, Caroline. Defendant CHARLOTTE COLLIER turns a blind eye to her daughter Defendant HANNAH ELIZABETH COLLIER, who is a legal adult, soliciting Plaintiff as a mentor because HANNAH ELIZABETH COLLIER claimed that her father was not part of her life. Aff. Jenkins, Caroline; Aff. Tegeler, James. On the contrary, Defendant CHARLOTTE COLLIER alleges that Plaintiff was neither a parent or mentor nor should Plaintiff be redirecting Defendant HANNAH ELIZABETH COLLIER as inappropriate or unacceptable. (Def. CHARLOTTE COLLIER Ans. ¶ 17). While legally unnecessary, Plaintiff presents affidavits that show Defendant CHARLOTTE COLLIER approved of Plaintiff's mentorship of her daughter Defendant HANNAH ELIZABETH COLLIER and witnessed expressive and affectionate behavior of Defendant HANNAH ELIZABETH COLLIER to Plaintiff without objections outside of Plaintiff's scope of employment with Northgate Baptist Church. Aff. Tegeler, J. Ex E, Aff. Allen, Josie; Aff. Lutz, Sue.

Defendant CHARLOTTE COLLIER intentionally omits consenting to Plaintiff mentoring her daughter Defendant HANNAH ELIZABETH COLLIER in correspondences with Plaintiff: "I also wanted to thank you for being such a good friend to Hannah . . . I am a firm believer in surrounding yourself with people that inspire and encourage. And for my kids to have kind, supportive adults in their lives besides their parents and extended family! I will not hesitate to call if she needs something 😊 . . . I appreciate you fostering and encouraging the music in Hannah! She amazes me every time!!" Aff. Tegeler, J. Ex E. Additionally, Defendant HANNAH ELIZABETH COLLIER omits that Defendant HANNAH ELIZABETH COLLIER admitted to Plaintiff that both Defendants CHARLOTTE COLLIER and HANNAH ELIZABETH COLLIER expressly denied that Plaintiff's mentorship of Defendant HANNAH ELIZABETH COLLIER was not odd to Defendant Linda Smith. Aff. Tegeler, James Ex. D. Furthermore, Defendant HANNAH ELIZABETH COLLIER admitted to Plaintiff: "You're like my dad. I think our relationship is fine" Aff. Tegeler, James Ex. D. Again, Defendant HANNAH ELIZABETH COLLIER looks to Plaintiff for redirection: "I'd rather know so I can fix myself so I don't cause any more problems for you. I just need to figure out myself. I clearly have some issues to work out. And I'm sorry that they've affected you." Aff. Tegeler, James Exhibit D.

Defendant CHARLOTTE COLLIER denies attempting to date Plaintiff from January to February of 2018. (Def. CHARLOTTE COLLIER Ans. ¶ 20). However, Defendant CHARLOTTE COLLIER intentionally omits her attempts to date Plaintiff in a romantic, sexual, or intimate manner from January through February of 2018. Aff. Tegeler, J. Plaintiff's close family friends observed Defendant HANNAH ELIZABETH COLLIER being infatuated with Plaintiff. Aff. Allen, J. Plaintiff presents affidavits that parishioners at Northgate Baptist Church clearly witnessed and observed Defendant CHARLOTTE COLLIER's behavior and dress attire around Plaintiff; these parishioners perceived Defendant CHARLOTTE COLLIER pursuing Plaintiff in a romantic, sexual, or intimate manner. Aff. Danciu, Ann; Aff. Lutz, Sue; Aff. Sabeau, Roy; Aff. Jenkins, Caroline. Defendant CHARLOTTE COLLIER intentionally omits being part of the gifts exchange and soliciting gifts from Plaintiff during Christmas of 2017. Aff. Tegeler, J. Ex E; Aff. Allen, Josie. Moreover, Defendant CHARLOTTE

COLLIER intentionally omits that her daughter HANNAH ELIZABETH COLLIER shared a snapshot of: (1) her bank accounts to poor-mouth to Plaintiff about not having money for Christmas presents; and, (2) her father Craig T. Collier approving of Plaintiff providing Defendant HANNAH ELIZABETH COLLIER with Christmas shopping money by way of a traceable check. Aff. Tegeler, J. Defendant CHARLOTTE COLLIER omits the fact of her daughter Defendant HANNAH ELIZABETH COLLIER being clingy toward Plaintiff during a day trip to Biltmore in January of 2018, and Defendant CHARLOTTE COLLIER made no objections. Aff. Allen, Josie. Defendant HANNAH ELIZABETH COLLIER cannot condemn Plaintiff without condemning her own behavior in an entirely consensual mentorship relationship between two legal adults whereby no romantic activity, sexual activity, or any of the above occurred between Plaintiff and Defendant HANNAH ELIZABETH COLLIER. Defendant HANNAH ELIZABETH COLLIER's accusation of Plaintiff having an inappropriate relationship with her is directly traceable to Plaintiff's termination from Laurel Shaler with Defendant Northgate Baptist Church and later slander by Defendant Linda Smith to members of the community. Defendant **CHARLOTTE COLLIER** cannot condemn Plaintiff without condemning her own behavior or her daughter Defendant **HANNAH ELIZABETH COLLIER**'s daughter.

WHEREFORE, Plaintiffs request that this Motion be granted and the Court amend its Order and Judgment in accordance with the above-requested relief, give leave to amend this motion as required, and such other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiff pray that:

- (1) the Court give leave to amend this response as required;
- (2) the Court grant a hearing if required;
- (3) the Court amend its Order and Judgment denying Defendants **NORTHGATE BAPTIST CHURCH, HANNAH ELIZABETH COLLIER, and LINDA SMITH's** Motion to Dismiss;
- (4) the Court amend its Order and Judgment denying Defendants **CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, and LINDA SMITH's** Motion for Summary Judgment on the Pleadings;
- (5) the Court give leave to amend Plaintiff's complaint as required; and,
- (6) the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 28 day of August, 2020.

/s/ Deborah D. Davis, Esq.

Deborah D. Davis, Esq.
SC Bar No.: 102942
Attorney for Plaintiff

Deborah D. Davis, Esq.
Dickson Davis Law Firm, LLC
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

JAMES EARL TEGELER,

2020CP2301213

COMMON PLEAS CIVIL CASE NO.

Plaintiff(s),

v.

CERTIFICATE OF SERVICE

CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST CHURCH,

Defendant(s).

The undersigned hereby certifies that I served a copy of the foregoing **PLAINTIFF'S NOTICE AND MOTION FOR RECONSIDERATION TO ALTER OR AMEND A JUDGMENT AND MOTION FOR RELIEF FROM JUDGMENT** in this action dated August 28, 2020, on August 28, 2020, upon the adverse party electronically to the following:

<u>Northgate Baptist Church c/o</u>	<u>Charlotte Collier c/o</u>	<u>Linda Smith & Hannah Collier</u>
<u>Ogletree, Deakins, Nash, Smoak &</u>	<u>Clawson and Staubes, LLC</u>	<u>Duggan & Hughes, LLC</u>
<u>Stewart, P.C.</u>	<u>Amy S. Snyder</u>	<u>Daniel R. Hughes</u>
<u>Charles E. McDonald & S. Michael Nail</u>	<u>1000 East North Street</u>	<u>457-B Pennsylvania Avenue</u>
<u>300 North Main Street</u>	<u>Suite 200</u>	<u>P.O. Box 449</u>
<u>P.O Box 2757</u>	<u>Greenville, SC 29601</u>	<u>Greer, SC 29652</u>
<u>Greenville, SC 29602</u>		

I have served a copy of the foregoing by one of the following methods:

- ☐ (1) Delivering a copy personally to the adverse party;
- ☐ (2) Mailing a copy to the adverse party's last known address, by depositing the copy in the U.S. Mail in an envelope with sufficient postage affixed;
- ☐ (3) Delivering it by commercial delivery service in accordance with Rule 4(d)(9), SCRCP; or,
- ☒ (4) Other pursuant to Rule 5(b)(1), SCRCP: electronic filing.

Respectfully submitted this 28 day of August, 2020.

Deborah D. Davis, Esq.
Dickson Davis Law Firm, LLC
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

/s/ Deborah D. Davis, Esq.
Deborah D. Davis, Esq.
Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2020-CP-2301213
	)	
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charlotte Collier, Hannah Elizabeth	)	
Collier, Linda Smith, and	)	
Northgate Baptist Church,	)	
	)	
Defendants.	)	

DEFENDANT NORTHGATE BAPTIST CHURCH'S
RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION
TO ALTER OR AMEND A JUDGMENT AND MOTION FOR RELIEF
FROM JUDGMENT

Defendant, Northgate Baptist Church (hereinafter "Northgate"), files this Response to Plaintiff's Motion for Reconsideration to alter or amend a judgment and Motion for relief from judgment ("Plaintiff's Motion").¹ In short, Plaintiff's claims against Northgate are barred because Plaintiff previously released any claims against Northgate related to his employment with Northgate, or the termination of that employment, for good and valuable consideration. Thus, the Court properly dismissed Plaintiff's claims against Northgate with *prejudice*.

BRIEF FACTUAL BACKGROUND

Plaintiff's Complaint asserts claims against Northgate for: false imprisonment; defamation; fraud in the inducement; negligent misrepresentation; negligent hiring, supervision, and retention of employees; intentional infliction of emotional distress; negligent infliction of emotional distress; wrongful termination; and civil conspiracy. However, before Plaintiff's separation from Northgate

¹ Plaintiff's Motion was filed before the Court's submission of a final order, rendering Plaintiff's Motion premature and based off arguments at the hearing rather than a final order.

on April 10, 2018, he voluntarily entered into a valid and enforceable severance agreement (“Agreement”)² with Northgate wherein he released all claims against Northgate related to his employment or separation from Northgate.

ARGUMENTS PRESENTED

Plaintiff’s Motion includes a number of broad, baseless allegations, but Plaintiff cannot overcome a complete lack of merit by the volume of his allegations. Indeed, Plaintiff’s Motion asserts a variety of arguments, all of which the Court has considered or have been waived by Plaintiff. Northgate sets forth below a brief response to each of Plaintiff’s arguments directed to Northgate. In sum, the Court properly granted Northgate’s Motion to Dismiss *with prejudice* for the following reasons:

- The release contained in the Agreement is valid and Plaintiff’s claims against Northgate are covered by the release. In Plaintiff’s Motion, he alludes to the fact that the Court improperly considered the Agreement when rendering its decision. However, Plaintiff did not present this argument to the Court before filing Plaintiff’s Motion and has thus waived this position.³ Further, even if the Plaintiff did not waive this position, the Court properly considered the Agreement as timely and proper evidence. There is simply no law to the contrary, nor does Plaintiff cite any applicable law supporting such a position. Finally, it

² The Agreement was attached as **Exhibit A** to Northgate’s Motion to Dismiss and Memorandum in Support and properly considered by the Court.

³ A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009), *aff’d as modified*, 405 S.C. 359, 747 S.E.2d 757 (2013) (citing *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (finding issue raised for first time in Rule 59, SCRPC, motion is not preserved for review); *Kiawah Prop. Owners Grp. v. Public Serv. Comm’n.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (stating an issue raised for first time in petition for rehearing not preserved)).

is simply unbelievable that Plaintiff was not aware of or did not have a copy of the Agreement that he negotiated and signed. His argument is meritless and a far-reaching attempt to cast doubt on the Court's proper ruling. Needless to say, nothing discussed at the Hearing was in any way "surprising" to Plaintiff. Also, to the extent that Plaintiff attempts to rely on numerous affidavits he filed with Plaintiff's Motion, his own argument related to timeliness bars this new evidence from consideration. If Plaintiff was concerned about his ability to respond to "new" or "surprising" information before or at the Hearing, his remedy was to request a continuance or at the very least raise it at the hearing. Plaintiff's last-ditch effort to undermine the Court's proper ruling is improper.

- The Court properly considered the Agreement and recognized that the plain terms of the Agreement releasing any and all claims against Northgate is unambiguous and covered all of the claims brought by Plaintiff against Northgate in this action. Indeed, the release in the Agreement meets the requirements of South Carolina law: it unambiguously represents a voluntary and bargained-for exchange whereby Plaintiff released Northgate and all of its employees and agents from any liability arising out of Plaintiff's employment or separation therefrom. The plain terms of the Agreement unambiguously reveal Plaintiff's intent to release all claims against Northgate. If the Court were to take Plaintiff's arguments regarding the validity of the Agreement to their logical conclusion, nearly every release agreement in this state would be unenforceable, which would discourage resolutions and lead to absurd results.
- Plaintiff was not under duress (nor has he met the conditions precedent for asserting the defense) because he executed the release through his own free will, and further ratified the Agreement by retaining the severance payment. Nearly two years after he executed the

Agreement, Plaintiff's Complaint is riddled with the notion that Northgate forced him to execute the Agreement. However, as the Court is aware, the general rule in South Carolina is that when a party seeks to set aside a release, he must first return any consideration received by him for the release.⁴ Here, it is undisputed that Plaintiff retained the monetary consideration he received from Northgate in exchange for his agreement to release all claims against Northgate in the Agreement. However, nearly *two years* later when he filed the Complaint, he then claimed that he was under "duress" when he signed the Agreement. Similar to *Hyman*, Plaintiff has not met the conditions precedent to asserting his new proposition of "duress" and it cannot be used to circumvent the valid and enforceable Agreement. And perhaps most importantly, Plaintiff did not refute the principles in the *Hyman* case at the Hearing, nor did he attempt to distinguish the *Hyman* principles in Plaintiff's Motion, which have now been waived.

- Plaintiff also ratified the release agreement by negotiating an increase in the severance amount and keeping the severance payment and not returning the severance or doing anything to refute the enforceability of the release until two years later when this lawsuit was instituted.

⁴ *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 747 (D.S.C. 2001), 142 F. Supp. 2d at 747–48 (citing *Gray v. Petoseed Co.*, 1997 WL 716454, 129 F.3d 1259 (4th Cir. 1997) (table) (affirming dismissal of fraud because under South Carolina law when a party to a compromise settlement wishes to avoid a valid release and be restored to his original rights, he must restore the other party to his original position by returning or offering to return the consideration received under the compromise); *McCarty v. Kendall Co.*, 242 F.Supp. 495 (W.D.S.C. 1965) (action to avoid a release allegedly induced by fraud dismissed due to plaintiff's failure to return or tender consideration given for settlement); *Dunaway v. United Ins. Co. of America*, 239 S.C. 407, 123 S.E.2d 353, 354 (1962) (failure to tender or return consideration given for settlement precluded recovery in action for fraudulent inducement of settlement); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 399 S.E.2d 22, 23 (1990) ("it is well settled that one who seeks to avoid the effects of a release must first return or tender consideration paid thereof").

- Simply put, the issues raised in Plaintiff's Motion have already been addressed properly by the Court and nothing in Plaintiff's Motion should alter the Court's conclusion. Further, Plaintiff could not change the result in any way by amending his complaint. The Court properly considered all arguments before it and made the proper determination that Plaintiff released his claims against Northgate.

CONCLUSION

For the reasons set forth herein, the Court should DENY Plaintiff's Motion.

Dated this 3rd day of September, 2020.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: s/ S. Michael Nail
Charles E. McDonald, III (SC Bar # 9612)
S. Michael Nail (SC Bar # 101818)
300 North Main Street
Post Office Box 2757
Greenville, South Carolina 29602
Telephone: (864) 271-1300
Facsimile: (864) 235-8806
chuck.mcdonald@ogletree.com
michael.nail@ogletree.com

***Attorneys for Defendant,
Northgate Baptist Church***

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JAMES EARL TEGELER,

Plaintiff(s),

v.

CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST CHURCH,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2020-CP-23-01213

COMMON PLEAS CIVIL CASE NO.

PLAINTIFF'S AMENDED NOTICE AND MOTION
FOR RECONSIDERATION TO ALTER OR AMEND
A JUDGMENT AND MOTION FOR RELIEF FROM
JUDGMENT

TO: CHARLOTTE COLLIER
HANNAH ELIZABETH COLLIER
LINDA SMITH
NORTHGATE BAPTIST CHURCH

PLEASE TAKE NOTICE that Plaintiff hereby submits this amended motion for reconsideration to alter or amend the Court's Orders entered and dated on August 18, 2020, and September 8, 2020 ("Orders"), pursuant to rule 59(e) of the South Carolina Rules of Civil Procedure. Additionally, Plaintiff hereby submits this motion for relief from judgment for the Court's Orders pursuant to rule 60 of the South Carolina Rules of Civil Procedure. This amended notice and motion for reconsideration to alter or amend a judgment and a motion for relief from judgment is permissible. *Gray v. Bryant*, 298 S.C. 285, 286-88, 379 S.E.2d 894, 895-96 (1989). The motions are divided into several sections as set forth below. Each section provides multiple grounds for reconsideration of relief from the Court's Order. Collectively, pursuant to these grounds for reconsideration and relief, Plaintiff seeks rulings on matters that the Court did not address in its Orders; Plaintiff seeks the Court's reasons for deciding certain matters where no reasons are given; Plaintiff seeks for the Court to reconsider its findings and correct its errors based on the record, the law, and civil procedures; and, Plaintiff seeks relief from the Orders based on mistake(s), surprise, fraud, misrepresentation, or other misconduct of an adverse party. Plaintiff hereby incorporates all previous filings by Plaintiff into this motion. Plaintiff shows the following:

FACTS

Plaintiff filed a Summons and Complaint on February 25, 2020. Plaintiff's Summons and Complaint included the following causes of action: (1) false imprisonment against Defendant **NORTHGATE BAPTIST CHURCH** ("Church"); (2) defamation against all defendants; (3) fraud in the inducement against Defendant **CHURCH**; (4) negligent misrepresentation against Defendant **CHURCH**; (5) negligent hiring, supervision, and retention of employees against Defendant **CHURCH**; (6) intentional infliction of emotional distress against all defendants; (7) negligent infliction of emotional distress against all defendants; (8) wrongful termination against Defendant **CHURCH**; and, (9) civil conspiracy against all defendants. Plaintiff prayed for the Court's leave to amend Plaintiff's complaint in both Plaintiff's Complaint and Plaintiff's Response to Defendant **CHURCH**'s

Motion to Dismiss and Memorandum in Support of its Motion to Dismiss, Defendant **CHARLOTTE COLLIER**'s Motion to Dismiss, Defendants **HANNAH COLLIER** ("H. Collier) and **LINDA SMITH**'s Motion for Judgment on the Pleadings and Motion to Dismiss, and Defendant **CHURCH**'s Memorandum in Support of its Motion to Dismiss filed on August 14, 2020. Defendant **CHURCH** filed a Motion to Dismiss on March 25, 2020, to dismiss all cause(s) of action. Rule 12(b)(6), S.C.R.C.P. Defendant **CHARLOTTE COLLIER** ("C. Collier") filed an Answer to Complaint on March 30, 2020. Defendants **H. COLLIER** and **LINDA SMITH** ("Smith") filed an Answer on March 30, 2020. Defendant **C. COLLIER** filed an Amended Answer on April 2, 2020. Defendant **C. COLLIER** filed a Motion to Dismiss on April 2, 2020, based on a motion for summary judgment on the pleadings. Rule 12(c), S.C.R.C.P. Plaintiff filed an Order of Protection on April 9, 2020, through June 9, 2020, due to health reasons for Plaintiff's counsel who has experienced ongoing health complications subsequently thereafter. Defendants **H. COLLIER** and **SMITH** filed a Notice of Motion and Motion for Judgment on the Pleadings and Motion to Dismiss on April 27, 2020, to dismiss all cause(s) of action. Rules 12(b)(6), 12(c), S.C.R.C.P. Defendants **H. COLLIER** and **SMITH** filed an Amended Answer on April 27, 2020. Defendant **CHURCH** filed a Memorandum in Support of its Motion to Dismiss on August 13, 2020. Defendant **C. COLLIER** filed a Memorandum in Support of Motion to Dismiss on August 14, 2020, based on a motion for summary judgment on the pleadings. Rule 12(c), S.C.R.C.P. Defendants **H. COLLIER** and **SMITH** filed a Memorandum in Support of Defendants, Hannah Collier and Linda Smith, Motion to Dismiss and Motion for Summary Judgment on the Pleadings on August 17, 2020. Rules 12(b), 12(c), S.C.R.C.P. Defendant **H. COLLIER** filed an affidavit on August 17, 2020. On August 17, 2020, Plaintiff filed a Response to Defendant **CHURCH**'s Motion to Dismiss filed on March 25, 2020, Defendant **C. COLLIER**'s Motion to Dismiss filed on April 2, 2020, Defendants **H. COLLIER** and **SMITH**'s Motion for Judgment on the Pleadings and Motion to Dismiss filed on April 27, 2020, and Defendant **CHURCH**'s Memorandum in Support of its Motion to Dismiss filed on August 14, 2020.

The hearing before the Court was on August 18, 2020, concerning Defendant **CHURCH**'s Motion to Dismiss filed on March 25, 2020, Defendant **C. COLLIER**'s Motion to Dismiss filed on April 2, 2020, Defendants **H. COLLIER** and **SMITH**'s Motion for Judgment on the Pleadings and Motion to Dismiss filed on April 27, 2020. On August 18, 2020, the Court granted: (1) the 12(b)(6) motion to dismiss Plaintiff's case in the entirety for Defendant **CHURCH**; (2) the 12(c) motion for summary judgment on the pleadings to dismiss Plaintiff's case in the entirety for Defendant **C. COLLIER**. On August 20, 2020, the Court amended its order and granted the 12(b)(6) motion to dismiss and the 12(c) motion for summary judgment on the pleadings to dismiss Plaintiff's case in the entirety for Defendants **H. COLLIER** and **SMITH**. On or around September 8, 2020, the Court issued an order granting Defendants' **H. COLLIER** and **SMITH** Motion to Dismiss Plaintiff's Complaint under Rules 12(b)(6) and 12(c) under the South Carolina Rules of Civil Procedure. Specifically, the Court dismissed Plaintiff's causes of action against Defendants **H. COLLIER** and **SMITH** solely under Rule 12(c) of the South Carolina Rules of Civil Procedure with no analysis under Rule 12(b)(6). The Court never addressed a basis for dismissing Plaintiff's cause of action against Defendants **H. COLLIER** and **SMITH** for

negligent infliction of emotional distress. On or around September 8, 2020, the Court issued an order granting Defendant's **C. COLLIER** Motion to Dismiss Plaintiff's Complaint for all causes of action against Defendant **C. COLLIER** under Rule 12(c) under the South Carolina Rules of Civil Procedure. On or around September 8, 2020, the Court issued an order granting Defendant **CHURCH**'s Motion to Dismiss for all of Plaintiff's causes of action against Defendant **CHURCH** under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

GROUND FOR RECONSIDERATION BASED ON EXCEPTIONS TO PARTICULAR STATEMENTS, FINDINGS, AND CONCLUSIONS IN THE ORDER

Plaintiff raises the following exceptions to particular statements, findings, and conclusions in the Order and Plaintiffs respectfully requests that the Court reconsider the same based on the record and the evidence and arguments identified herein. The Court's Order(s) on August 18, 2020, did not explain the grounds for dismissing Plaintiffs' Complaint or denying Plaintiff's request for leave to amend Plaintiff's complaint. For the Court's Order(s) on September 8, 2020, none of Defendants properly provided the Court with any additional materials, evidence, or affidavits to support a motion for summary judgment in a manner that is procedurally defective, of which also supports relief from judgment. Rules 56(c), (e), 60(b) S.C.R.C.P. The Court's Orders for Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** issued on September 8, 2020, are solely on the basis of Rule 12(c) of the South Carolina Rules of Civil Procedure without referencing to how the well pleaded factual allegations of Plaintiff's Complaint, when construed and admitted as true in favor of the nonmoving party, fail to state cause(s) of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and civil conspiracy. The Court Order for Defendants **H. COLLIER** and **SMITH** issued on September 8, 2020, never argued the legal basis for dismissing Plaintiff's complaint under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure as to whether Plaintiff's well pled allegations—construed as if true—provides reasonable inferences from the ultimate facts and elements set forth on the complaint to form cause(s) of action warranting a basis for any relief on any legal theory of the case. With respect to a motion for summary judgment, **C. COLLIER**, **H. COLLIER**, and **SMITH** failed to show that no genuine issue of material fact existed as to the causes of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and civil conspiracy. For Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH**, the Court misapplied the law of defamation on several grounds: (1) the issue of the phrase "inappropriate relationship" as slander per se that is actionable is a question for the jury when susceptible to the meaning in the sense the words were used regarding a crime of moral turpitude or unfitness on one's profession; (2) when a defamatory tested by the moving party, the essence of doing so operates as an admission that the defamatory statement is capable of an offensive meaning as defamatory per se that is actionable; (3) these Defendants bear the burden of proof to show a privileged communication existed or was maintained, yet each of these Defendants failed to meet said burden; (4) these Defendants bear the burden of proving the defamatory statement of "inappropriate relationship," "predator," or any of the above as false statements, yet each of these Defendants failed to meet said burden that is an affirmative defense usually supported by testimony. The Court Order for Defendant **CHURCH** on September 8, 2020, failed to address the ambiguity and temporal element of the release agreement that: (1) did not bar cause(s) of action arising on the day of

executing the release and subsequently thereafter under Rule 12(b)(6); and, (2) previous communications between Plaintiff and Defendant **CHURCH** supporting an offer made to return consideration under Rule 60(b).

I. STANDARD OF REVIEW

A. STANDARD OF JUDGMENT FOR MOTION FOR RELIEF UNDER RULE 60(b)

Rule 60 “does not indicate that the power of a court to entertain an independent action to relieve a party from a judgment is limited to actions based on any particular reasons to the exclusion of the other reasons specified.” *Momani v. Van Surdam*, 296 S.C. 409, 410, 373 S.E.2d 691, 691 (Ct. App. 1988). Rule 60(b) of the South Carolina Rules of Civil Procedure provides that:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party . . .

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. Rule 60(b), S.C.R.C.P.; *Tobias v. Rice*, 386 S.C. 306, 310, 688 S.E.2d 552, 554 n.3 (2010).

Rule 60(b) provides relief on two main grounds applicable here: “[I] one based on such rare, special, exceptional or unusual circumstances that may warrant equitable relief, including accident or mistake[;] or[, (2) one based in equity for fraud upon the court.” *T v. T (In re S.N.T.)*, 378 S.C. 127, 135, 662 S.E.2d 413, 417 (Ct. App. 2008). Under Rule 60(b)(1), a court may relieve a party from a final order based on the following considerations: “(1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party.” *Micronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 510-12, 548 S.E.2d 223, 225-26 (Ct. App. 2001) (discussing application of Rule 60(b)(1) for “mistake, inadvertence, surprise, or excusable neglect”). Seeking immediate relief will meet the promptness basis for relief. *Id.* A meritorious defense is one that raises a question of law or a real controversy regarding essential facts of an evidentiary nature:

A meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to essential facts arising from conflicting or doubtful evidence. *Graham v. Loris*, 272 S.C. 442, 453, 248 S.E.2d 594, 599 (1978).

A basis for relief will lie when a party makes a mistake of fact in good faith with “no attempt to thwart the judicial system” *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986).

Public policy favors “the disposition of issues on their merits rather than on technicalities.” *Micronics, Inc.*, 345 S.C. at 510-12. Regarding newly discovered evidence, that evidence “(1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching.” *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005). The evidence is not in existence as of yet at the time the case has been dismissed or adjudicated. *Id.* For grounds of fraud, the fraud must be “extrinsic or collateral

to the question examined and determined in the action in which the judgment was rendered.” *Bryan v. Bryan*, 220 S.C. 164, 167, 66 S.E.2d 609, 610 (1951). Extrinsic fraud is when a party prevents the other party’s opportunity to be heard that misleads a court when determining issues thereby inducing the court to rule in favor of the party perpetuating said fraud. *Robinson v. Estate of Harris*, 388 S.C. 645, 655, 698 S.E.2d 229, 235 (2010). Fraud, misrepresentation, or misconduct by the adverse party relates to subverting the court’s integrity that leads to a breakdown in the judicial machinery of adjudicating cases in a fair and impartial manner. *Chewning v. Ford Motor Co.*, 346 S.C. 28, 34, 550 S.E.2d 584, 587 (Ct. App. 2001). The moving party has the burden of proof to show grounds under Rule 60(b). *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010). The moving party typically relies upon affidavits with essential facts that entitle that party to relief. *Bowers v. Bowers*, 304 S.C. 65, 67-68, 403 S.E.2d 127, 129 (Ct. App. 1991). An abuse of discretion standard applies to granting a motion under Rule 60(b) whereby an abuse of discretion arises when “the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support.” *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990); *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004). Amended motions for relief from the court’s judgment may be permissible under the circumstances. *Gray v. Bryant*, 298 S.C. 285, 286-88, 379 S.E.2d 894, 895-96 (1989).

B. STANDARD OF REVIEW FOR A 12(b)(6) MOTION TO DIMISS

In a responsive pleading, by motion, or any of the above, Rule 12(b)(6) of the South Carolina Rules of Civil Procedure provides that a party may plead a defense, whether in law or fact, to a cause of action in any pleading that the cause of action fails “to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), S.C.R.C.P. Pleading in a complaint that states the causes of action should be concise and incorporate the facts as alleged throughout the complaint as grounds for relief, stating the grounds that the plaintiff is entitled to for relief, and requesting the prayer for relief accordingly. Rule 8(a), S.C.R.C.P.; *cf.* Rule 8(e) (permitting a plaintiff to plead inconsistent causes of action provided that the facts as alleged support the causes of actions). Under Rule 8, the complaint must provide the defendant(s) fair notice by pleading the ultimate facts as alleged to support each cause of action—not all of the facts or mere legal conclusions. Rule 8, S.C.R.C.P.; *Food Lion, Inc. v. United Food & Commer. Workers Int’l Union*, 351 S.C. 65, 78-79, 567 S.E.2d 251, 257-58 (Ct. App. 2002) (Stilwell, J., dissenting) (“At the pleadings stage, a litigant is not required to submit the evidence necessary to prove its case.”); *see Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). The ultimate facts pertain to the plaintiff presenting “evidence [that] upon trial will prove, and not the evidence which will be required to prove those facts.” *Brown v. Inv. Mgmt. & Research*, 323 S.C. 395, 400 n.3, 475 S.E.2d 754, 756 (1996); *Stroud v. Riddle*, 260 S.C. 99, 102-103, 194 S.E.2d 235, 237 (1973). Typically, the remedy for any noted deficiencies in a complaint is for the plaintiff to amend the complaint rather than face a dismissal with prejudice that is a harsh and drastic remedy under the circumstances.¹ *Spence v.*

¹ Should the Court find any deficiencies in Plaintiff’s Complaint, Plaintiff should be entitled to amend the complaint to cure any noted deficiencies rather than face a dismissal with prejudice as a harsh and drastic remedy under the circumstances. *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006). The South Carolina Rules of Civil Procedure provide that, unless the opposing

Spence, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006). Therefore, pleadings are construed liberally “to do substantial justice to all parties.” Rule 8(f), S.C.R.C.P.; see *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 38, 530 S.E.2d 369, 373 (2000); *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271-72 (Ct. App. 2000) (reversing a motion to dismiss because the court prematurely dismissed the action without further analysis).

While admitting to well-pleaded facts in a complaint, the essence of a 12(b)(6) motion is that the moving party challenges the factual and legal sufficiency of the complaint by not admitting to the non-moving party’s: (1) allegations that are merely conclusions of law such as conclusory assertions of liability; and, (2) inferences drawn from factual allegations that do not set forth assertions of fact warranting relief as a matter of law. *Charleston Cty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424-26, 559 S.E.2d 362, 364-65 (Ct. App. 2001); *Carolina Winds Owners’ Ass’n v. Joe Harden Builder, Inc.*, 297 S.C. 74, 76, 374 S.E.2d 897, 899 (Ct. App. 1988); *Woodell v. Marion Sch. Dist. One*, 307 S.C. 297, 298, 414 S.E.2d 794, 794 (Ct. App. 1992) (reversing and remanding motion to dismiss for the court improperly deciding a factual issue). For a 12(b)(6) motion to dismiss, the court may only render a decision “based solely upon the allegations set forth on the face of the complaint.” *Food Lion, Inc.*, 351 S.C. at 69. The Court must take the plaintiff’s well pleaded factual allegations in the plaintiff’s complaint as if those factual allegations were true. *Carolina Winds Owners’ Ass’n*, 297 S.C. at 76. The court must construe the plaintiff’s allegations liberally resolving doubt in the plaintiff’s favor and “view the allegations in the light most favorable to the plaintiff.” *Food Lion, Inc.*, 351 S.C. at 69-74 (dismissing a cause of action for the plaintiff’s failure to allege an ultimate fact for an element in a cause of action); *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112-21, 659 S.E.2d 158, 161-66 (2008) (dismissing the motion to dismiss as factually premature); *Stroud*, 260 S.C. at 102-103. For a motion to dismiss, the legal analysis is based on “whether . . . the allegations set forth on the face of the complaint state any valid claim for relief [under any theory of the case].” *Sloan Constr. Co.*, 377 S.C. at 112-13; *Plyler v. Burns*,

counsel gives written consent, “a party may amend his pleading only by leave of court . . . and leave shall be freely given when justice so requires and does not prejudice any other party.” Rule 15(a), S.C.R.C.P. The standard of review for an order denying a motion to amend a complaint is an abuse of discretion. See *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). Abuse of discretion by the judge issuing an order “was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.” *Id.* The lower court may not base its denial to amend a complaint on the merits of the amended claim(s) in lieu of the criteria outlined under Rule 15(a) of the South Carolina Rules of Civil Procedure. *Patton v. Miller*, 420 S.C. 471, 489-93, 804 S.E.2d 252, 261-63 (2017); *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (“In the absence of a proper reason, such as bad faith, undue delay, or prejudice, a denial of leave to amend is an abuse of discretion.”). Under the first element of the court granting leave to amend a pleading freely as required to do justice, public policy strongly favors allowing parties to amend pleadings and encourages courts to freely grant a leave to amend pleadings. *Patton*, 420 S.C. at 489-93. Modeled after Rule 15(a) of the Federal Rules of Civil Procedure, the U.S. Supreme Court held that courts are behooved to follow the mandate outlined in Rule 15(a) and tread lightly: “If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962). Under the second element of the court granting leave to amend a pleading that does not prejudice the opposing party, the South Carolina Supreme Court outlined the analysis as “whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it.” *Patton*, 420 S.C. at 489-93. The non-moving party has the burden of establishing prejudice from the moving party’s motion to amend a pleading. *Collins Entm’t, Inc. v. White*, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Ct. App. 2005). The crux of the analysis concerning the prejudice prong under Rule 15(b) of the South Carolina Rules of Civil Procedure is whether the nonmoving party is afforded an opportunity to prepare and develop testimony for the issue that the moving party is raising formally when amending the complaint. *Soil & Material Eng’rs, Inc. v. Folly Assocs.*, 293 S.C. 498, 500-02, 361 S.E.2d 779, 781-82 (Ct. App. 1987). Courts must adhere to “the basic principle . . . that, in order to avoid the danger that [courts] might dispose of viable claims prematurely, courts must allow the parties to develop an adequate record.” *Carlson v. Gen. Motors Corp.*, 883 F.2d 287, 293 (4th Cir. 1989).

373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). The court may not dismiss the complaint “merely because the court doubts the plaintiff will prevail in the action.” *Food Lion, Inc.*, 351 S.C. at 78-79 (Stilwell, J., dissenting); *Plyler*, 373 S.C. at 645. Whether a 12(b)(6) motion to dismiss survives is “if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). A complaint is sufficient if the complaint raises an issue of fact that would entitle the plaintiff to judgment and any relief whatsoever if the fact is resolved in favor of the plaintiff under any cause of action or any theory of the case. *Russell v. Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). While the Court may treat a motion under SCRPC 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, the parties must be afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) of the South Carolina Rules of Civil Procedure. *Brown v. Leverette*, 291 S.C. 364, 366-67, 353 S.E.2d 697, 698-99 (1987).

C. STANDARD OF REVIEW FOR A 12(c) MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS

Under a Rule (12)(c) motion, the court “may not consider matters outside the pleadings.” *Firemen’s Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 236, 394 S.E.2d 855, 856 (Ct. App. 1990). For a motion for summary judgment on the pleadings, the court “admits the well pleaded facts in the complaint and the court must take those well pleaded factual allegations as true. The motion does not admit the inferences drawn by the plaintiff from the facts nor does it admit conclusions of law.” *Id.* Rule 12(c) of the South Carolina Rules of Civil Procedure provides that:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Rule 12(c), S.C.R.C.P.

Granting a motion for summary judgment on the pleadings is improper when construing and admitting all of the alleged facts in the pleadings, a cause of action and defense is stated. See *Diminich v. 2001 Enters., Inc.*, 292 S.C. 141, 142, 355 S.E.2d 275, 275 (Ct. App. 1987). A 12(c) motion for summary judgment on the pleadings is a drastic remedy “is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle her to judgment . . . [because] the pleadings must be construed liberally to ensure substantial justice between the parties.” *McCurry v. Keith*, 312 S.C. 254, 255, 439 S.E.2d 861, 862 (Ct. App. 1994). Ultimately, “a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever.” *Russell*, 305 S.C. at 89.

D. STANDARD OF REVIEW FOR A MOTION FOR SUMMARY JUDGMENT UNDER RULES 56(C) AND RULE 56(E)

The court must deny a motion for summary judgment on the pleadings as a matter of law when the evidence and reasonable inferences therefrom shows a genuine disputed issue exists regarding any material fact for each essential element in the claim. *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 628, 799 S.E.2d 318, 322 (Ct. App. 2017). The court must draw reasonable inferences from the evidence in favor of the non-moving party. *Id.* A summary judgment on the pleadings is, often, premature before preliminary discovery in

litigation begins because the motion typically involves a variety of pleadings, including preliminary discovery, and other forms of admissible evidence together with affidavits. See *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009). Transforming a Rule 12(b)(6) motion to dismiss into one of summary judgment to dismiss a case as a matter of law follows Rule 56(c) and 56(e) of the South Carolina Rules of Civil Procedure:

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Rule 12(b)(6), S.C.R.C.P.; *Dawkins v. Fields*, 354 S.C. 58, 69-71, 580 S.E.2d 433, 438-40 (2003); *Brown v. Leverette*, 291 S.C. at 366-67.

While Rule 12(b)(6) permits the introduction of matters outside of the pleadings in a motion for summary judgment, the introduction of matters outside of the pleadings are construed in tandem with the totality of the pleadings, discovery, and affidavits under Rule 56(c) as to whether a genuine² issue of any material fact³ exists. Rule 56(c), S.C.R.C.P.; *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 737-38 (D.S.C. 2001). While a motion for summary judgment operates to expedite disposing of cases without a factfinder, a motion for “[s]ummary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Dawkins*, 354 S.C. at 69; *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The non-moving party must raise “the likelihood that further discovery will uncover additional relevant evidence.” *Dawkins*, 354 S.C. at 69.

Whether summary judgment under Rule 56(c) is appropriate depends on whether a genuine issue of any material fact exists based on the totality of the pleadings, discovery, and affidavits:

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56 (c), S.C.R.C.P.

Additionally, Rule 56(e) provides the context of the parties exchanging affidavits according to Rule 56(c):

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him. Rule 56(e), S.C.R.C.P.

² A genuine issue of fact is when “the evidence is such that a reasonable jury could return a verdict for plaintiff.” *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 737-38 (D.S.C. 2001).

³ An issue regarding a material fact is when establishing that “fact might affect the outcome of the lawsuit under governing substantive law.” *Hyman*, 142 F. Supp. at 737-38.

In a motion for summary judgment, the court must determine “whether any triable issues of fact exist.” *Bloom v. Ravoira*, 339 S.C. 417, 421-22, 529 S.E.2d 710, 712 (2000). The court reviews “the [facts] and all inferences which can be reasonably drawn from the [facts].” *Id.* The court “must view the facts in the light most favorable to the non-moving party.” *George*, 345 S.C. at 452; *Dawkins*, 354 S.C. at 69-71. By contrast, when “no dispute as to the evidentiary facts [exists], but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Bloom*, 339 S.C. at 422. Akin to the standard for a motion for directed verdict, the legal issue before the court is whether issuing a verdict against a non-moving party would be reasonably possible based on the facts of the case. *Id.* The plain language for a motion for granting summary judgment under Rule 56(c) typically occurs “after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S. Ct. 2548, 2552-53 (1986). The moving party bears the burden to show the court the basis for a motion for summary judgment and identifying portions of the pleadings, discovery, and affidavits to “demonstrate the absence of a genuine issue of material fact.” *Id.* at 323; *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

II. A RULING GRANTING A 12(b)(6) MOTION TO DISMISS AN ACTION OR A 12(c) MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS IS PROCEDURALLY DEFECTIVE FOR CONVERTING THE MOTION INTO A MOTION FOR SUMMARY JUDGMENT UNDER RULE 56 WHEN A GENUINE ISSUE OF A MATERIAL FACT EXISTS OR NO SUPPORTING MATERIALS, EVIDENCE, OR AFFIDAVITS WERE PROPERLY SUBMITTED IN A TIMELY MANNER BY THE MOVING PARTY

A motion for summary judgment in this case is wildly premature when no preliminary discovery exchange has occurred, no depositions have occurred, no exchange of affidavits have occurred, for example. Further discovery will uncover relevant evidence to support Plaintiff’s action.

A. DEFENDANTS HANNAH ELIZABETH COLLIER AND LINDA SMITH’S 12(b)(6) MOTION TO DISMISS, 12(c) MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS, AND MOTION FOR SUMMARY JUDGMENT UNDER RULES 56(c) AND 56(e) SHOULD BE REVERSED

Defendants **H. COLLIER** and **SMITH** raised a 12(b)(6) motion to dismiss Plaintiff’s cause(s) of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, civil conspiracy, and any other cause(s) of action. Defs.’ Mot. Dismiss. Additionally, Defendants **H. COLLIER** and **SMITH** also sought transforming 12(b)(6) motion to dismiss into a motion for summary judgment under Rules 56(c) and 56(e). Defs.’ Mem. Mot. Dismiss. However, the Court never provided any basis for dismissing Plaintiff’s action under Rule 12(b)(6). Defendants **H. COLLIER** and **SMITH** failed to provide any legal basis as to why Plaintiff failed to state a cause of action as alleged. These Defendants also failed to show that no genuine issue of material fact existed under the totality of the circumstances. Counsel for Defendant **H. COLLIER** failed to file an affidavit ten (10) days prior to the hearing for Plaintiff to review and all parties engage in the exchange of materials, extrinsic evidence, admissible evidence, affidavits, or any of the above. Counsel for Defendant **SMITH** failed to provide materials, extrinsic evidence, admissible evidence, affidavits, or any of the above ten (10) days prior to the hearing on August 18, 2020, for Plaintiff to review and dispute, submit

materials in return, and offer other materials to support Plaintiff's position. Defendants **H. COLLIER** and **SMITH**'s 12(b)(6) motion to dismiss and Rule 56 motion for summary judgment should be denied because genuine issue(s) of material fact(s) exist concerning Plaintiff's cause(s) of action. Rules 12(b)(6), 56(c), 56(e), 60(b), S.C.R.C.P. Therefore, the Court's ruling under Rule 12(b)(6) must be reversed.

Moreover, Defendants **H. COLLIER** and **SMITH** raised a motion for summary judgment on the pleadings under Rule 12(c) to dismiss Plaintiff's cause(s) of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, civil conspiracy, and any other cause(s) of action. Defs.' Mem. Mot. Dismiss. Only Defendant **H. COLLIER** introduced an affidavit with corresponding exhibits for Defendant **H. COLLIER** on August 17, 2020, which was a day prior to the hearing on August 18, 2020. Defendant **SMITH** never provided any additional materials, evidence, or affidavits prior to the hearing on August 18, 2020. Counsel for **SMITH** failed to provide any materials, extrinsic evidence, admissible evidence, affidavits, or any of the above for the Court's consideration ten (10) days prior to the hearing on August 18, 2020, for Plaintiff to review and dispute, submit materials in return, and offer other materials to support Plaintiff's position. Defendants **H. COLLIER** and **SMITH** failed to provide any materials, extrinsic evidence, admissible evidence, affidavits, or any of the above for the Court's consideration other than sole reliance on the pleadings in Plaintiff's complaint and these Defendants' Answer and Amended Answer. Def. **H. COLLIER** and **LINDA SMITH**'s Mem. Mot. Dismiss. Therefore, Defendants **H. COLLIER** and **SMITH** cannot rely upon the pleadings alone when converting a 12(c) motion for summary judgment on the pleadings pursuant to Rule 56. Rules 12(c), 56, S.C.R.C.P. Said motion under Rule 12(c) must also follow the procedure outlined in Rules 56(c) and 56(e). The normal remedy under a Rule 12(c) motion is to permit Plaintiff to amend Plaintiff's complaint rather than face dismissal as a drastic remedy. Therefore, the Court's ruling under Rule 12(c) must be reversed.

Plaintiff hereby requests the Court to amend its order and grant Plaintiff relief by denying Defendant **H. COLLIER** and **SMITH**'s 12(b)(6) Motion to Dismiss Plaintiff's cause(s) of action, denying **H. COLLIER** and **SMITH**'s 12(c) Motion for Summary Judgment, denying **H. COLLIER** and **SMITH**'s 56 motion for summary judgment, granting Plaintiff leave to amend Plaintiff's Complaint, or any of the above. Rules 12(b)(6), 12(c), 15(a), 56(c), 56(e), 60(b), S.C.R.C.P. The transcript of Counsel for Defendant **H. COLLIER** reading from Defendant **H. COLLIER**'s affidavit and corresponding exhibits at the hearing on August 18, 2020, should be stricken from the record.⁴ Rule 12(f), S.C.R.C.P.

⁴ A motion to strike allegations is permissible under Rule 12(f) of the South Carolina Rules of Civil Procedure: "Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Rule 12(f), S.C.R.C.P.

1. PLAINTIFF'S CAUSE OF ACTION FOR DEFAMATION SHOULD SURVIVE DEFENDANT HANNAH ELIZABETH COLLIER'S 12(b)(6) MOTION TO DISMISS BECAUSE THE STATEMENT OF "INAPPROPRIATE RELATIONSHIP" HAS A PLAIN AND UNAMBIGUOUS OFFENSIVE MEANING AS A DEFAMATORY STATEMENT

Generally, whether a statement is actionable per se is a matter of law for the court to decide. *Erickson v. Jones St. Publr., LLC*, 368 S.C. 444, 465-66, 629 S.E.2d 653, 664-65 (2006). While some statements are clearly defamatory that the court may answer the question as to whether the statement is defamatory per se, when reasonable minds might differ on the meaning of the statement as defamatory per se, then the issue must go to a jury. *Parrish v. Allison*, 376 S.C. 308, 321-23, 656 S.E.2d 382, 389-90 (Ct. App. 2007). In doing so, the court, jury, or any of the above not only considers the facial value of the statement but evidence concerning extrinsic facts and circumstances. *Id.* Whether the defamatory statement is actionable per se permits the "contemplation of the context and circumstances under which words are spoken when determining if the words have a defamatory meaning or are actionable per se . . . [and] the resolution of conflicting meanings is reserved for the jury." *Id.* When "defamation is actionable per se, then under common law principles the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages." See *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 508-13, 506 S.E.2d 497, 501-03 (1998). Spoken defamation published to a third party is slander. See *id.* Defamation per se is when the "[t]he defamatory meaning of a message or statement [is] obvious on the face of the statement." *Id.*

Slander per se is actionable per se "when [the statement] charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." *Erickson*, 368 S.C. at 466 n.7.⁵ A crime of moral turpitude is an accusation based on "an act of baseness, vileness, or depravity in private and social duties that a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man" *Smith v. Smith*, 194 S.C. 247, 251, 9 S.E.2d 584, 586 (1940). Slander per se is actionable for a crime of moral turpitude when the speaker publishes "any words which falsely or maliciously charge the commission of a crime, or which distinctly assume or imply one has committed a crime, or which raise a strong suspicion in the minds of hearers or readers, that one has committed a crime." *Lesesne v. Willingham*, 83 F. Supp. 918, 921 (D.S.C. 1949). A slanderous statement inferring a plaintiff's impropriety or lack of integrity when performing plaintiff's job is actionable per se as plaintiff being unfit for plaintiff's profession. *Moshtaghi v. Citadel*, 314 S.C. 316, 324-25, 443 S.E.2d 915, 919-

⁵ The Court relies upon solely the analysis of crime of moral turpitude as slander per se that is actionable at law. *Parrish v. Allison*, 376 S.C. 308, 321-23, 656 S.E.2d 382, 389-90 (Ct. App. 2007). However, the legal analysis in this case for slander per se concerns both crime of moral turpitude and unfitness in one's profession. *Id.* The legal analysis is not based on slander per se that is not actionable at law concerning determining the innuendo from the circumstances. When a defamatory statement refers to a charge of a crime, the "charge of a crime need not be express but, with verbal slander, words are to be given their ordinary and popular meaning . . . [a]nd when words are susceptible of an innocent meaning and one imputing a crime, the jury must decide in what sense they were used." *Id.* at 325. In *Parrish*, whether the allegation of "con" as related to being "conned" was a defamatory statement per se that was actionable under the context and circumstances of the situation was properly before the jury. *Id.* at 325-26. In *Herring v. Lawrence Warehouse Co.*, an employee-warehouse manager was accused of being "short" with the inventory of machinery. 222 S.C. 226, 232-35, 72 S.E.2d 453, 454-56 (1952). In *Herring*, the court found the statement "short" was slander per se that was actionable under the context and circumstances of the situation as a crime of moral turpitude as well as unfitness for the warehouse manager's profession to maintain custody and control of the inventory of machinery. *Id.* Therefore, context and circumstances—not innuendo—are critical to assessing whether a defamatory statement is slander per se that is actionable.

20 (Ct. App. 1994) (finding that dismissing a defamatory statement on the basis of a qualified privilege was improper because a factual dispute arose as to whether the qualified privilege was lost).

The effect of such a charge on the listener, who is a third-party, involving an accusation for a crime of moral turpitude is the proper legal analysis rather than whether the meaning of the statement is understood “positively and directly by words of clear and unmistakable meaning or only indirectly and by means of innuendo.” *Lesesne*, 83 F. Supp. at 921 (explaining that the legal analysis does not go through the analysis of whether a defamatory statement is slander per se or slander per quod because the very nature of the statement itself is plain, clear, and unambiguous to have an offensive meaning at face value); *Woodward v. S.C. Farm Bureau Ins. Co.*, 277 S.C. 29, 31, 282 S.E.2d 599, 600 (1981); *Herring v. Lawrence Warehouse Co.*, 222 S.C. 226, 232-35, 72 S.E.2d 453, 454-56 (1952) (discussing that defamation per se that is actionable is based on the sense in which the listener understood the words). Furthermore, when the moving party for a motion for summary judgment tests the statement as to whether the words have an actionable quality, the moving party essentially admits to the allegations of defamatory statement(s) in the complaint. *Flowers v. Price*, 192 S.C. 373, 377, 6 S.E.2d 750, 751 (1940). In addition to words that raise a strong suspicion of a plaintiff’s guilt or criminal conduct within the minds of hearers, **any words that are capable of attributing an offensive meaning is actionable.** *Adams v. Daily Tel. Printing Co.*, 292 S.C. 273, 279, 356 S.E.2d 118, 122 (Ct. App. 1986). The analysis goes to whether a statement is defamatory per se—not to establishing the truth or falsity of the statement that is properly submitted to the factfinder. *Id.*

Whether a statement is true or false is not dependent upon the speaker’s subjectivity or indefiniteness. *Id.* Rather, a court must deny a motion for summary judgment concerning a statement as defamatory if the court can affirmatively say that the published statement is capable of being construed as defamatory by a reasonable listener under the circumstances. *Flowers*, 192 S.C. at 377 (using an objective standard for the effect on the listener). Furthermore, slander per se that is actionable presumes falsity whereby the defendant bears the burden of proof to show that the statement is false, of which defendant must overcome the presumption of the element of falsity with testimony. *Herring*, 222 S.C. at 233-35. Regarding opinions as being protected speech, the proper legal analysis is whether a statement is a matter of public concern⁶ or private concern that warrants more or less protection under the First Amendment respectively. *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 195-202, 838 S.E.2d 698, 711-15 (Ct. App. 2019). Whether a statement is protected as an opinion only relates to whether the statement relates to a matter of public concern. *Garrard*, 429 S.C. at 198-99. The First Amendment provides no protection for false statements of facts, especially when “an expression of opinion [] conveys a false and defamatory statement of fact [that] can be actionable.” *Id.*

⁶ A statement of public concern typically relates to a statement of “any matter of political, social, or other concern to the community . . . [that is] determined by the content, form, and context of a given statement, as revealed by the whole record.” *Connick v. Myers*, 461 U.S. 138, 146-48, 103 S. Ct. 1684, 1690 (1983). The fair report privilege to defamation is a qualified privilege that extends to “the privilege to publish fair and substantially accurate reports of judicial and other governmental proceedings without incurring liability.” *West v. Morehead*, 396 S.C. 1, 7, 720 S.E.2d 495, 498 (Ct. App. 2011). In *Garrard*, the legal analysis focused on the fair report privilege with respect to newspapers concerning matters of public concern. 429 S.C. at 181-88; *Padgett v. Sun News*, 278 S.C. 26, 29-33, 292 S.E.2d 30, 32-34 (1982). The legal analysis of an opinion is moot for Defendants **C. COLLIER, H. COLLIER, and SMITH.**

(emphasis added). A statement of private concern receives less protection under the First Amendment being subject to defamation law under that state. *Id.* at 195-202; *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 759-61, 105 S. Ct. 2939, 2945-46 (1985). A private statement does not concern a public issue that is done solely for the speaker's personal interest and told in confidence to the speaker's specific audience such as an employer regarding an employee's conduct outside the scope of employment; because, such a statement does not inform the public about the aspects of the employer's function or operations. *Snyder v. Phelps*, 562 U.S. 443, 453, 131 S. Ct. 1207, 1216 (2011). In *City of San Diego v. Roe*, a cop was terminated for producing and selling a sexually explicit custom video while displaying his cop uniform that was done outside the scope of employment. 543 U.S. 77, 78-85, 125 S. Ct. 521, 522-26 (2004). Lacking protection under the First Amendment, such "speech was [a private concern because it was] unrelated to the employment and had no effect on the mission and purpose of the employer." *City of San Diego*, 543 U.S. at 80.

Plaintiff and Defendant **H. COLLIER** are legal adults capable of forming their own associations with others as well outside Plaintiff's scope of employment. Both Plaintiff and Defendant **H. COLLIER** have the freedom of association to be in a consensual relationship, whether a mentor-mentee relationship or a surrogate father-daughter relationship. *Roberts v. United States Jaycees*, 468 U.S. 609, 618-20, 104 S. Ct. 3244, 3250-51 (1984) (discussing the freedom of association to develop interpersonal relationships as an aspect of individual liberty this is a protected right under the First Amendment of the United States Constitution); U.S. CONST. amend. XIV ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."). A consensual relationship between two legal adults is not a crime. Actual crimes related to nonconsensual contact of a sexual nature are codified in the South Carolina Criminal Code for sexual assault crimes and the Sexually Violent Predator Act in the South Carolina Health Code, for example. S.C. Code Ann. §§ 16-3-600, 16-3-651 to 656 (sexual assault crimes); S.C. Code Ann. §§ 44-48-10 to -170. The penal codes for sexual assault crimes carries a stigma against an older man having a relationship with an underage minor.⁷ At the heart of the matter, this case presents a dystopian fallacy of Defendants reinforcing a stigma against Plaintiff as a sexual predator to exclude and shame Plaintiff when no crime has occurred. When no crime has occurred, a stigma is not the law. When no crime has occurred, a stigma is not a fact. Arguments made by Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** revolve entirely around perpetuating a stigma against Plaintiff when accusing Plaintiff of having an "inappropriate relationship" with Defendant **H. COLLIER** akin to being a sexual predator—as fully manifested

⁷ A stigma is a learned behavior that is formed through social interactions creating shortcuts to cognitive associations through symbols, practices, or conduct for individuals to relate to one another in a society or a community. See generally Bernice A. Pescosolido et al., *Rethinking Theoretical Approaches to Stigma: A Framework Integrating Normative Influences on Stigma (FINIS)*, 67 SOC. SCI. MED. 3, Aug. 2008, at 431-440, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2587424/>. A negative stigma usually results in exclusion by shame for members of society or community associated with that stigma. Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 400-07 (1997). A powerful stigma may also arise from creating and reinforcing legislative schemes to reflect normative values as a means of social control. MATTHEW D. LIEBERMAN, *SOCIAL: WHY OUR BRAINS ARE WIRED TO CONNECT* 7-70 (2013) (exploring the complex cognitive associations behind humans experiencing stigma in relation to humans' basic need for social interaction and the evolution of the human brain for social intelligence).

by counsel for Defendant **C. COLLIER** calling Plaintiff a “predator” before the Court on August 18, 2020.⁸ As both Defendant **C. COLLIER** and **H. COLLIER** reported Plaintiff to Defendant **CHURCH** together, then a genuine issue of material facts exists concerning the surrounding circumstances of these Defendants accusing Plaintiff of both having an “inappropriate relationship” with and being a “predator” toward **H. COLLIER** during the very same meeting with Dr. Barry Jimmerson for Defendant **CHURCH**. Outside the scope of employment with Defendant **CHURCH**, Defendant **H. COLLIER** admitted to asking Plaintiff to be her mentor because her father was not active in her life.⁹ Caroline Jenkins Aff. Over time, Defendant **H. COLLIER** began to treat Plaintiff as a surrogate father figure outside the scope of employment with Defendant **CHURCH**. James Tegeler Aff., Ex. A, C, D. More importantly, the real facts and applicable law here is that Defendant **H. COLLIER** is a legal adult capable of forming her own associations without any parent or grandparent, including Defendant **C. COLLIER**, Defendant **SMITH**, or Craig T. Collier, who is Defendant H. Collier’s father. Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** admitted that Defendant **H. COLLIER** was a legal adult on or around July 12, 2017. Def **C. COLLIER** Ans. ¶ 9; Def. **H. COLLIER** and **LINDA SMITH** Ans. ¶ 10. Defendant **H. COLLIER** admitted viewing herself as a legal adult to Plaintiff. James Tegeler Aff., Ex. D. At all times when Plaintiff interacted with Defendant **H. COLLIER**, and Defendant **H. COLLIER** solicited Plaintiff to be a mentor personally, Defendant **H. COLLIER** was a legal adult. James Tegeler Aff.; Caroline Jenkins Aff.

Defendant **H. COLLIER** omits the fact that she had previously corresponded with Plaintiff prior to arriving to Plaintiff’s birthday party for his son Alexander on March 11, 2018. James Tegeler Aff., Ex. F. Plaintiff was clear that Defendant **H. COLLIER** was not obligated to come if she didn’t feel well. During the party, Defendant **C. COLLIER** was wearing provocative, revealing clothing once again in front of Plaintiff. James Tegeler Aff. During the party, Defendant **H. COLLIER** stared at her plate, played with her phone, and complained of wanting to vomit at the table. James Tegeler Aff. Upon seeing Defendant **H. COLLIER** playing on her phone, Plaintiff politely asked Defendant **H. COLLIER** to be involved in the group conversation if she felt good enough to play on her phone. Defendant **H. COLLIER** then complained of not feeling well again. Plaintiff politely stated that if Defendant **H. COLLIER** didn’t feel well, then she should not feel obligated to stay at the party. Defendant **H. COLLIER** stormed off to the bathroom in a violent mood swing with her mother Defendant **C. COLLIER** trailing behind. When both Defendants **C. COLLIER** and **H. COLLIER** returned from the restroom, Defendant **H. COLLIER** was also mad with her mother Defendant **C. COLLIER**. James Tegeler Aff. Plaintiff’s son Andrew even found Defendant **H. COLLIER**’s behavior annoying. Josie Allen Aff. Ultimately, what both Defendants **C. COLLIER** and **H. COLLIER** omit is that, because of their behavior as guests to

⁸ Defendant **C. COLLIER** admitted to raising the age difference between Plaintiff and Defendant **H. COLLIER** when reporting Plaintiff to Dr. Barry Jimmerson with Defendant **CHURCH** when accusing Plaintiff of having an inappropriate relationship with Defendant **H. COLLIER**. Def. **C. COLLIER** Am. Answer ¶ 26. The context and circumstances of Defendant **C. COLLIER** making such an allegation of “inappropriate relationship” and “predator” clearly outwardly manifests the implication of guilt or a crime by Plaintiff upon the listener related to both a crime of moral turpitude charged against Plaintiff and Plaintiff’s unfitness in his profession. Such a statement correlates to accusing Plaintiff of the stigma of an older man pursuing a minor as well as accusing Plaintiff of being a sexual predator, of which is akin to being accused of a crime. Such context and circumstances leave no doubt that the accusation of “inappropriate relationship” would be attributable to an offensive meaning rendering the same as slander per se that is actionable.

⁹ This allegation was newly discovered by witness Caroline Jenkins upon finalizing and executing her affidavit. Rule 60(b)(2), S.C.R.C.P.

Plaintiff's birthday party for his son, they ruined Plaintiff's birthday party for his son lacking any conscientiousness or consideration toward anyone else except for the two of them in a socially inappropriate manner. James Tegeler Aff. The next day on or around March 12, 2018, Defendants **C. COLLIER** and **H. COLLIER** omit that, after both Defendants **C. COLLIER** and **H. COLLIER** accused Plaintiff of having an inappropriate relationship with Defendant **H. COLLIER**, Dr. Barry Jimmerson's initial response was a line of questioning to Hannah concerning a romantic or sexual relationship: (1) whether Defendant **H. COLLIER** had sex with Plaintiff; (2) whether Defendant **H. COLLIER** had romantic feelings toward Plaintiff; and, (3) whether Defendant **H. COLLIER** believed that Plaintiff had romantic feelings toward her. Pl. Complaint ¶ 60; James Tegeler Aff. Clearly, the effect of hearing the phrase "inappropriate relationship" on Dr. Barry Jimmerson was that Defendants **C. COLLIER** and **H. COLLIER** accused Plaintiff of having a romantic or sexual relationship with Defendant **H. COLLIER**.¹⁰ The legal issue of defamation is not subjective to the speaker's perception of the message. Rather, the legal issue of defamation is how a reasonable person listening to the statement—the listener—would perceive that statement by an objective standard.

As a separate legal issue, neither Defendants **C. COLLIER** nor **H. COLLIER** may claim any privilege to discuss with Plaintiff's supervisor Dr. Barry Jimmerson for Defendant **CHURCH** on matters occurring outside of the scope of Plaintiff's employment with Defendant **CHURCH**. Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** all allege to Plaintiff's inappropriate relationship with Defendant **H. COLLIER** that had no relation to Plaintiff's conduct during the scope of Plaintiff's employment with Defendant **CHURCH**. Furthermore, Defendant **CHURCH** provided no employment documentation detailing Plaintiff's conduct requirements outside the scope of employment with Defendant **CHURCH**. Pl. Resp. Defs. Motion to Dismiss, Ex. F. Neither Defendants **C. COLLIER** nor **H. COLLIER** may claim stating an opinion is protected against defamation when their reporting of Plaintiff to Dr. Barry Jimmerson with Defendant **CHURCH** was a matter of private concern unrelated to the Plaintiff's employment with Defendant Church or the mission and purpose of Defendant **CHURCH**. Def. **C. COLLIER**'s Am. Answer, ¶ 26; Def. **C. COLLIER**'s Mem. Mot. Dismiss; Defs. **H. COLLIER** and **SMITH**'s Am. Answer, ¶ 23-24; Defs. **H. COLLIER** and **SMITH**'s Mem. Mot. Dismiss. Defendant **C. COLLIER**'s role as a parent reporting Plaintiff to Dr. Barry Jimmerson with Defendant **CHURCH** and accusing Plaintiff of having an inappropriate relationship with Defendant **H. COLLIER** is irrelevant when Defendant **H. COLLIER** is a legal adult capable of forming her own associations legally without Defendant **C. COLLIER**. Defendant **H. COLLIER** reporting Plaintiff to Dr. Barry Jimmerson with Defendant **CHURCH** and accusing

¹⁰ Plaintiff raised the actual issue for the effect on the listener of Dr. Barry Jimmerson with Defendant **CHURCH** when Defendants **C. COLLIER** and **H. COLLIER** accused Plaintiff of having an "inappropriate relationship" with Defendant **H. COLLIER** because Dr. Barry Jimmerson responded with questions regarding a sexual or romantic nature having occurred between Plaintiff and Defendant **H. COLLIER**. Pl. Compl. ¶ 59-62. Furthermore, Plaintiff raised the context and circumstances of "inappropriate relationship" resulting in potential susceptible meanings between Dr. Barry Jimmerson and Laurel Shaler with Defendant Church when Dr. Barry Jimmerson does not see the text message sent by Defendant **H. COLLIER** to Plaintiff on December 31, 2017, as inappropriate under the context and circumstances of Plaintiff's mentorship of Defendant **H. COLLIER** whereas Laurel Shaler did not consider the context or circumstances when accusing Plaintiff's mentorship of Defendant **H. COLLIER** as "inappropriate." Pl. Compl. ¶ 63-72; Pl. Resp. Defs. Mtn. Dismiss, Ex. E (text message). Thus, if more than one susceptible interpretation exists as to the phrase "inappropriate relationship," then the issue clearly belongs within the province of the jury and such attack under a motion for summary judgment should be denied.

Plaintiff of having an inappropriate relationship with her is unrelated to Plaintiff's employment with Defendant **CHURCH**. Plaintiff's role with the choir was unrelated to Defendant **H. COLLIER**'s interactions with Plaintiff outside Plaintiff's employment with Defendant **CHURCH**, of which Defendant **C. COLLIER** was heavily involved in those interactions outside the scope of Plaintiff's employment with Defendant **CHURCH**. Neither Defendants **C. COLLIER** nor **H. COLLIER** complained of Plaintiff's work performance within the scope of his duties and employment with Defendant **CHURCH**.

Defendant **H. COLLIER** cannot condemn Plaintiff without condemning her own behavior in an entirely consensual mentorship relationship between two legal adults whereby no romantic activity, sexual activity, or any of the above occurred between Plaintiff and Defendant **H. COLLIER**. Defendant **H. COLLIER**'s attempt to litigate whether the statement "inappropriate relationship" is true or false is a matter for the jury and arguably a false statement upon further discovery and a genuine dispute of a material fact warranting reversal. Rules 12(c), 56, 59, 60(b)(2)-(3), S.C.R.C.P. Defendant **H. COLLIER**'s accusation of Plaintiff having an inappropriate relationship with her is directly traceable to Plaintiff's termination from Laurel Shaler with Defendant **CHURCH** and later slander by Defendant **SMITH** to members of the community. Counsel for Defendant **H. COLLIER** submitted Defendant **H. COLLIER**'s affidavit and exhibits on August 17, 2020, giving Plaintiff no opportunity to refute the affidavit and exhibits as extrinsic evidence the day before the hearing on August 17, 2020. Counsel for Defendant **H. COLLIER** was supposed to submit all affidavits and proposed evidence ten (10) days prior to the hearing on August 18, 2020, which never happened. Therefore, Counsel's recitation of exhibits from Defendant **H. COLLIER**'s affidavit before the court concerning was entirely improper that should be stricken and subject to evidentiary insufficiency. Rules 12(f), 56(e), 60, S.C.R.C.P.

2. DEFENDANT HANNAH ELIZABETH COLLIER AND LINDA SMITH'S 12(b)(6) MOTION TO DISMISS SHOULD BE DENIED BECAUSE A GENUINE ISSUE OF MATERIAL FACT TRACEABLE TO THE ELEMENT OF SEVERE DISTRESS AND OUTRAGE EXISTS IN THE CAUSES OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

In a cause of action for intentional infliction of emotional distress, the plaintiff must show: "(1) the defendant intentionally or recklessly inflicted severe emotional distress, or knew that distress would probably result from his conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it." *Gattison v. S.C. State Coll.*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (Ct. App. 1995). Factors related to supporting this cause of action involve: (1) a pre-existing legal relationship existed between the parties as an employer-employee relationship; (2) the employer engages in coercive and oppressive abuse of an employee; (3) "the defendant calculatedly inflicted suffering or heedlessly and contemptuously disregarded the plaintiff's present emotional suffering either to force the plaintiff to accede to the defendant's wishes or to punish the plaintiff for prior failure to comply." *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 169-70, 321 S.E.2d 602, 610-11 (Ct. App. 1984); *Ford v. Hutson*, 276 S.C. 157, 166, 276 S.E.2d 776, 780 (1981) ("Conduct growing out of a business

relationship may be so outrageous and shocking as to be actionable.”). Severe emotional distress does not require manifestation of bodily harm. *Ford*, 276 S.C. at 162. By contrast, when a plaintiff experiences severe emotional distress, plaintiff may experience shock, illness, or bodily harm. *Id.* Negligent infliction of emotional distress is closely related to the intentional infliction of emotional distress except for that this cause of action: (1) lacks intent through the defendant's act(s) or omission(s); and, (2) has basic negligence elements of duty, breach, and injury or damages.¹¹ See *Moore v. Weinberg*, 383 S.C. 583, 588-89, 681 S.E.2d 875, 878 (2009); *Gattison*, 318 S.C. at 151; *SPAUGH v. A. C. L. R.R. CO.*, 158 S.C. 25, 30, 155 S.E. 145, 147 (1930); see also *Rodrigues v. State*, 52 Haw. 156, 518-19 (1970). Outside the analysis of the by-stander recovery theory, South Carolina does not require a physical impact from one's negligence that results in the emotional distress of another; rather, the analysis turns upon the plaintiff manifesting physical or bodily injury as a result from mental and emotional trauma. See *Bray v. Marathon Corp.*, 347 S.C. 189, 196-97, 553 S.E.2d 477, 480 (Ct. App. 2001); *Mack*, 52 S.C. at 335.

In this case, Plaintiff has suffered severe emotional distress by the accusation of having an inappropriate relationship with Defendant **H. COLLIER** with sleepless nights, nausea, anguish, mental suffering, counseling, and so forth. Here, both Defendant **C. COLLIER** and **H. COLLIER** went together to report Plaintiff to Dr. Barry Jimmerson that Plaintiff was having an inappropriate relationship with Defendant **H. COLLIER**. However, Defendant **C. COLLIER** then admits to informing Dr. Barry Jimmerson that she believes the age difference between Plaintiff and Defendant **H. COLLIER** is now inappropriate after having spent around seven (7) months around both Plaintiff and Defendant **H. COLLIER**. The age difference merely perpetuates a stigma where no crime has occurred between two legal adults nor any romantic or sexual activity that further supports the defamatory nature of the phrase “inappropriate relationship” in toto. Then, Defendant **C. COLLIER** back-peddles to say her daughter Defendant **H. COLLIER** did not have romantic feelings or sex with Plaintiff. But, somehow, the phrase “inappropriate relationship” rears its ugly head to mean Defendant **C. COLLIER** accused Plaintiff of being a predator for having an “inappropriate relationship” with Defendant **H. COLLIER** to Dr. Barry Jimmerson with Defendant **CHURCH** when in the presence of Defendants **H. COLLIER** and **SMITH**. Counsel for Defendant **H. COLLIER** also characterizes Defendant **H. COLLIER** as a high school student when she is an adult of legal age attending college.

A genuine dispute of material facts goes to Defendant(s) exceeding the bounds of decency as outrageous conduct portraying an innocent man—Plaintiff—as a sexual predator through the use of the phrase “inappropriate relationship” or “inappropriate contact.” Rules 12(c), 56, 59, 60(b), S.C.R.C.P. This incident is

¹¹ In South Carolina, the cause of action for the negligent infliction of emotional distress is a relatively new cause of action subject to expanding the application to other factual settings. See *McCaskey v. Shaw*, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988); *Folkens v. Hunt*, 290 S.C. 194, 204-05, 348 S.E.2d 839, 845 (Ct. App. 1986) (citing *Hensley v. Heavrin*, 277 S.C. 86, 87-88, 282 S.E.2d 854, 855 (1981)). Recovery under this cause of action is not limited to the by-stander theory. *Bray v. Marathon Corp.*, 347 S.C. 189, 196-97, 553 S.E.2d 477, 480 (Ct. App. 2001); *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582 n.2, 336 S.E.2d 465, 467 (1985); *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 604-08, 103 S.E.2d 265, 270-72 (1958); see also *Charleston Cty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 7-8, 437 S.E.2d 6, 9 (1993). The elements of defendant's extreme and outrageous conduct, defendant's conduct being the actual and proximate cause of plaintiff's injury, and plaintiff's severe emotional distress remain the same for both causes of action. *Gattison*, 318 S.C. at 151.

outrageous because such grossly, inaccurate characterization makes things difficult for the real victims of sexual assault. Instead, Defendant(s) are using a shock and awe propaganda campaign of a stigma related to an older man sexually engaging with underage minors without a veritable legal basis for the freedom to associate with interpersonal relationships between legal adults. Real sexual predators do exist. Real victims of child molestation and rape do exist. This situation is beyond acceptable within the normal bounds of decency to throw away a man's life when the real predators and victims are out there lost among a crying wolf starting with Defendant **H. COLLIER**. Plaintiff is not a sexual predator. Defendant(s) entire context of the circumstances has been entirely taken out of proportion.

3. DEFENDANT HANNAH ELIZABETH COLLIER AND LINDA SMITH'S 12(b)(6) MOTION TO DISMISS SHOULD BE DENIED BECAUSE A GENUINE ISSUE OF MATERIAL FACT TRACEABLE TO THE ELEMENTS OF CIVIL CONSPIRACY

Civil conspiracy is when two or more persons join for the purpose to injure and cause special damage to the plaintiff. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010). The cause of action for civil conspiracy relates to the Plaintiffs' damages resulting "from an overt act done pursuant to a common design." *Id.* at 324. Special damage alludes to damage that is caused by the Defendants' conduct:

[The Defendants' conduct was] motivated by envy, ill will, spite and malice, did secretly and unlawfully further agree, combine, unite, scheme and conspire together for the purpose and with the design and intent of restraining, damaging, ruining, crushing and wrecking the plaintiff and driving him out of business and eliminating him as a competitor; and that pursuant to, and in furtherance and consummation of, said unlawful agreement, combination, scheme and conspiracy, the defendants herein, their co-conspirators, agents, servants, aiders and abettors, have acted, united and co-operated together and have committed, or caused to be committed, numerous illegal and vicious acts, to the plaintiff's great injury and damage. *Charles v. Tex. Co.*, 192 S.C. 82, 98, 5 S.E.2d 464, 471 (1939).

Special damages are defined as damages that "go beyond the damages alleged in other causes of action." *Cricket Cove Ventures, LLC*, 390 S.C. at 325; *Allegra, Inc. v. Scully*, 418 S.C. 24, 36-37, 791 S.E.2d 140, 146-47 (2016) (Beatty, J., dissenting) (proposing overruling the special damages requirement of civil conspiracy in South Carolina as a duplicative legal technicality conflating the bar on recovering from double damages with the element of special damages being a pleading requirement).

For reasons previously discussed, Plaintiff has reason to believe that Defendant **CHURCH** was collaborating with the other Defendant(s) to cause Plaintiff harm beyond pain and suffering, loss of reputation, and loss of other wages. Damages for defamation primarily deal with general damages. Defamation (for slander per se that is actionable at law), Intentional Infliction of Emotional Distress, and Negligent Infliction of Emotional Distress mainly deals with general damages. Should Plaintiff prevail, Plaintiff would then make an election of remedies to avoid double-dipping. Additionally, Negligent Intentional Infliction of Emotional Distress and Intentional Infliction of Emotional Distress are pled in the alternative as inconsistent pleading. For example, Plaintiff's special damages would include injuring Plaintiff's ability to work, causing Plaintiff to get fired from his job because of Defendants' allegations, ruining Plaintiff's ability to enter back into music ministry to youth ministry again, ruining Plaintiff's ability to work for a new employer, spreading wildfire gossip to the purpose of

preventing Plaintiff from getting back into music ministry or youth ministry, and etc. The phrase “inappropriate relationship” snakes its way through all the parties in this action. Defendants **C. COLLIER** and **H. COLLIER** reported Plaintiff to Dr. Barry Jimmerson with Defendant **CHURCH** and accused Plaintiff of having an inappropriate relationship with Defendant **H. COLLIER**—and now the meaning of that phrase has transcended to the term “predator” by the Colliers. During Plaintiff’s termination meeting, Laurel Shaler with Defendant **CHURCH** spouts out accusing Plaintiff with the terminology inappropriate relationship and inappropriate contact regarding young girl(s) in the congregation, including Defendant **H. COLLIER**. Defendant Warren Peden with Defendant **CHURCH** blatantly made an outburst in the church choir that Plaintiff was let go from Defendant **CHURCH** for having an inappropriate relationship with one of the teenagers—the day after Plaintiff was fired. After Plaintiff was fired, Dr. Barry Jimmerson with Defendant **CHURCH** disclosed the nature of Plaintiff’s termination for having been investigated and accused of an inappropriate relationship with Defendant **H. COLLIER** to other parishioners who were not involved in the termination process.¹² Defendant **SMITH** was discovered gossiping with members of the community parroting Defendants **C. COLLIER** and **H. COLLIER** after receiving a cease and desist notice from Plaintiff. All of these opposing parties have a common denominator of the same phrase to have reasonable information and belief that conspiracy among the Defendant(s) was likely occurring. A genuine dispute as to a material fact exists warranting reversal. Rules 12(c), 56, 59, 60(b), S.C.R.C.P.

B. DEFENDANT CHARLOTTE COLLIER’S 12(c) MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS AND MOTION FOR SUMMARY JUDGMENT UNDER RULES 56(c) AND 56(e) SHOULD BE REVERSED AND CONSTRUED UNDER RULE 60(b)

In this case, Defendants **C. COLLIER** raised a motion for summary judgment on the pleadings under Rule 12(c) to dismiss Plaintiff’s cause(s) of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, civil conspiracy, and any other cause(s) of action. Def. **C. COLLIER**’s Mem. Mot. Dismiss. Counsel for **C. COLLIER** failed to provide any materials, extrinsic evidence, admissible evidence, affidavits, or any of the above for the Court’s consideration ten (10) days prior to the hearing on August 18, 2020, for Plaintiff to review and dispute, submit materials in return, and offer other materials to support Plaintiff’s position. Def. **C. COLLIER**’s Mem. Mot. Dismiss. Defendant **C. COLLIER** never provided any affidavit or any other additional materials for the Court’s consideration sole reliance on the pleadings in Plaintiff’s complaint and Defendant **C. COLLIER**’s Answer and Amended Answer. Def. **C. COLLIER**’s Mem. Mot. Dismiss. Said motion under Rule 12(c) must also follow the procedure outlined in Rules 56(c) and 56(e). Therefore, Defendant **C. COLLIER** cannot rely upon the pleadings alone when converting a 12(c) motion for summary judgment on the pleadings pursuant to Rule 56. Rules 12(c), 56(c), 56(e), 60(b), S.C.R.C.P. The normal remedy under a Rule 12(c) motion is to permit Plaintiff to amend Plaintiff’s complaint rather than face dismissal as a drastic remedy. Therefore, the Court’s ruling under Rule 12(c) must be reversed. Defendant **C.**

¹² This information had just been discovered before 72 hours of the hearing by witness Caroline Jenkins. The witness’s affidavit had not been finalized yet due to the witness’s scheduling availability, upon which additional information was then provided in that affidavit as well as submitted on August 28, 2020. This factual allegation is material as to cause(s) of action arising after Plaintiff’s termination from Defendant **CHURCH**, of which is not barred for Plaintiff to pursue further legal action. Rule 60(b)(2), S.C.R.C.P.

COLLIER never raised grounds to dismiss Plaintiff's case under Rule 12(b)(6). This analysis encompasses previous legal bases and analysis on the cause(s) of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and civil conspiracy as previously discussed for Defendants **H. COLLIER** and **SMITH**.

Plaintiff hereby requests the Court to amend its order and grant Plaintiff relief by denying Defendant **C. COLLIER**'s 12(c) Motion for Summary Judgment, denying Defendant **C. COLLIER**'s 56 motion for summary judgment, granting Plaintiff leave to amend Plaintiff's Complaint, or any of the above. Rules 12(c), 15(a), 56(c), 56(e), 60(b), S.C.R.C.P.

1. PLAINTIFF'S CAUSE(S) OF ACTION SHOULD SURVIVE DEFENDANT CHARLOTTE COLLIER'S 12(c) MOTION TO DISMISS BECAUSE THE PLEADINGS REPRESENT A GENUINE ISSUE OF MATERIAL FACT RELATED TO THE STATEMENT OF "INAPPROPRIATE RELATIONSHIP" AND "PREDATOR"

Plaintiff placed Defendant **C. COLLIER** on notice as to Defendant **C. COLLIER**'s defamatory conduct in Plaintiff's complaint. Pl. Compl. ¶ 59-62. On or around March 12, 2018, Defendant **C. COLLIER** omits making defamatory statements to Plaintiff while publishing the same statements to a third-party Craig T. Collier: "Your words to her at lunch yesterday were completely out of line. And we cannot allow Hannah to be treated that way a moment longer. Especially since it is not an isolated incident. I am aware of issues that occurred at Ty's birthday party, a lengthy discussion last week, something that happened at paper ball tag, and several others that you never wanted Hannah to discuss with me" James Tegeler Aff., Ex. G. These same accusations echoed the accusations Defendant **SMITH** made to Sue Lutz after Plaintiff was fired from Defendant **CHURCH** and Defendant **SMITH** had received a cease and desist notice. Sue Lutz Aff. Defendant **C. COLLIER** omits that she did receive an email from Plaintiff, and Plaintiff responded refuting Defendant **C. COLLIER**'s allegations of Plaintiff's conduct toward Defendant **H. COLLIER** based on the examples referenced to in Defendant **C. COLLIER**'s email on March 12, 2018; Plaintiff expressly denied having an inappropriate relationship with Defendant **H. COLLIER** based on Defendant **C. COLLIER**'s accusations in her email.¹³ James Tegeler Aff., Ex. G.

¹³ Defendant **H. COLLIER** omits that she corresponded with Plaintiff about the paper ball tag game and never said anything negative after-the-fact about Plaintiff in the fall of 2017. James Tegeler Aff., Ex. B. Additionally, Defendant **H. COLLIER** omits that Defendant **H. COLLIER** admitted to Plaintiff that both Defendants **C. COLLIER** and **H. COLLIER** expressly denied that Plaintiff's mentorship of Defendant **H. COLLIER** was not odd to Defendant **SMITH**. James Tegeler, Ex. D. Furthermore, Defendant **H. COLLIER** admitted to Plaintiff: "You're like my dad. I think our relationship is fine" James Tegeler Aff., Ex. D. Defendant **H. COLLIER** shared a snapshot of: (1) her bank accounts to poor-mouth to Plaintiff about not having money for Christmas presents; and, (2) her father Craig T. Collier approved of Plaintiff providing Defendant **H. COLLIER** with Christmas shopping money by way of a traceable check. James Tegeler Aff. Defendant **H. COLLIER** corresponded with Plaintiff several days after Defendant **C. COLLIER**'s birthday party for her son Ty Collier whereby Defendant **H. COLLIER** apologized to Plaintiff for her behavior and denied that Plaintiff caused any issues for her in the spring of 2018. James Tegeler Aff., Ex. D. Plaintiff hosting a birthday party for his son will be discussed separately.

Again, Defendant **H. COLLIER** solicited Plaintiff for redirection: "I'd rather know so I can fix myself so I don't cause any more problems for you. I just need to figure out myself. I clearly have some issues to work out. And I'm sorry that they've affected you." James Tegeler Aff., Ex. D. Defendant **C. COLLIER** alleged that Plaintiff was neither a parent or mentor nor should Plaintiff be redirecting Defendant **H. COLLIER**'s behavior as inappropriate or unacceptable. Def. **C. COLLIER** Ans. ¶ 17. Upon occasion during choir practice, Defendant **H. COLLIER** would unnecessarily interrupt practice that required Plaintiff to redirect her because Plaintiff was, in fact, in charge of the choir practice within the scope of employment with Defendant **CHURCH**. Caroline Jenkins Aff. Upon request of Dr. Barry Jimmerson, Plaintiff redirected Defendant **H. COLLIER**'s dress attire while singing for Defendant **CHURCH**. James Tegeler Aff. Contrary to Defendant **C. COLLIER**'s allegations, Defendant **H. COLLIER**'s behavior did require redirection when singing for Defendant **CHURCH**. However, Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** do not raise these examples of redirection when reporting Plaintiff to Dr. Barry Jimmerson with Defendant **CHURCH**.

After Defendant **C. COLLIER** emailed Plaintiff on or around March 12, 2018, Plaintiff responded directly to Defendant **C. COLLIER** regarding her accusations against Plaintiff:

"I would like to clarify a few things. Because I didn't do anything to her during our paper ball tag game, or at Ty's birthday. At Ty's birthday I simply wanted to know why she was avoiding me and she wouldn't tell me and was very rude for no reason. Turned out she thought I was upset about something . . . You have a lot of misinformation, and even though I don't really care anymore, just know that I take great offense to some of your accusations because they are simply not true . . . I do not appreciate the accusations, and I will be more than happy to sit down with you and anyone else and go over exactly what occurred every single time. But to accuse me of wanting to hide things from you? Are you kidding me?? I'll show you every single message I have between us . . . I also take great offense to you saying that I used phone calls to yell at her and upset her. That is not all the case whatsoever. But all that gets lost in the fact that she has been very difficult to get along with, especially lately . . . But if you want to lay the blame for her issues on me and my insecurities, which I consider very rude from you, that's your prerogative. But I find it very offensive and I do not appreciate it . . . Just know that I take offense to what you said in your letter because the majority of it is simply not true. I'll be glad to talk to you anytime, anyplace, and with anyone else listening" James Tegeler Aff., Ex. G.

Defendant **C. COLLIER** makes no references or accusations of Plaintiff's conduct toward Defendant **H. COLLIER** occurring within Plaintiff's scope of employment with Defendant **CHURCH**. In fact, Defendant **C. COLLIER**'s accusations toward Plaintiff occurred outside the scope of his employment with Defendant **CHURCH**.

On or around March 12, 2018, Defendant **C. COLLIER** reported Plaintiff to Dr. Barry Jimmerson with Defendant **CHURCH** alleging Plaintiff having an inappropriate relationship with her daughter Defendant **H. COLLIER**. Defendant **C. COLLIER** alleged that: "[I]t was her opinion that the relationship between Plaintiff, a man in his 50's and her 18-year-old daughter was inappropriate¹⁴ and expressed concern regarding the same with the preacher at her church who employed the Plaintiff, that employment being the source of the Plaintiff's relationship with her daughter. This conversation occurred when she met with the church to explain that she and her daughter were going to take a break from their church for a while. This was after the Defendant [**C. COLLIER**] and her daughter had repeatedly requested the Plaintiff not contact them and the Defendant [**C. COLLIER**] continued to do so. This Defendant [**C. COLLIER**] was asked if that break was a result of Plaintiff's actions toward her daughter and she responded that it was." Def. **C. COLLIER**'s Ans. ¶ 26. Defendant **C. COLLIER** alleged: "[T]his Defendant would note that her daughter had no romantic interest in the Plaintiff and that her daughter had never had any sexual or intimate relations with the Plaintiff. Upon information and belief

¹⁴ Defendants **C. COLLIER** and **H. COLLIER** have not provided any legal analysis as to their accusation of Plaintiff having an inappropriate relationship with Defendant **H. COLLIER** as one of public concern related to the mission and purpose of Defendant **CHURCH** as an employer for Plaintiff. These Defendants complained of Plaintiff's interactions with Defendant **H. COLLIER** that were unrelated to the scope of Plaintiff's employment with Defendant **CHURCH**. Defendant **C. COLLIER** and **H. COLLIER**'s conversation with Dr. Barry Jimmerson for Defendant **CHURCH** was entirely a matter of private concern, of which stating an opinion is legally irrelevant when the matter is not a public concern. Defendants **C. COLLIER** and **H. COLLIER** admitted that their conversation with Dr. Barry Jimmerson for Defendant **CHURCH** was for their own self-interest speaking to Plaintiff's employer in the privacy of Defendant **C. COLLIER**'s own home to end social connections with Plaintiff outside the scope of Plaintiff's employment with Defendant **CHURCH**. Def. Am. Answer, ¶ 26; Def. **C. COLLIER** Mem. Mot. Dismiss. Here, Plaintiff did not commit a crime nor is being prosecuted for a crime. Promoting a stigma of Plaintiff being a sexual predator when no crime has been committed between two legal adults in a consensual relationship is still actionable for defamation. Defendant **C. COLLIER** and **H. COLLIER**'s allegation "inappropriate relationship" is not protected speech as an "opinion" and the use of "opinion" should be stricken per Rule 12(f).

the Defendant **H. COLLIER** believed the attention being paid to her by the Plaintiff and the things he said to her and the way he treated her was inappropriate. The Defendant cannot speak as to what the Plaintiff thought.” Def. **C. COLLIER** Ans. ¶ 28. Defendant **H. COLLIER** alleges telling Dr. Barry Jimmerson, as Plaintiff’s employer at Defendant **CHURCH**, that Plaintiff’s “inappropriate conduct” was the reason she would be taking a break from attending Defendant **CHURCH**. Def. **H. COLLIER** Answer ¶ 24.

On August 18, 2020, the defamatory statement toward Plaintiff naming him as a predator by counsel for Defendant **C. COLLIER** is misconduct thereby losing the qualified privilege for making a statement in a court of law and further operated as an admission on behalf of Defendant **C. COLLIER** committing slander per se that is actionable as a crime of moral turpitude and unfitness for one’s profession or business. The characterization of Plaintiff as a predator by opposing counsel for Defendant **C. COLLIER** takes the phrase “inappropriate relationship” to a whole new meaning that has without a doubt the effect on the listener including, but not limited to, the following: (1) an offensive statement about Plaintiff; (2) the listener believes that Plaintiff may be guilty, or suspects that Plaintiff is guilty; (3) Plaintiff committed a crime; (4) Plaintiff committed a crime of moral turpitude; and, (5) Plaintiff is unfit for his profession or business (especially in church ministry).¹⁵ The word “predator” does not escape the correlation to the connotation of a sexual predator and criminal statutes penalizing an older man engaging in sexual activity or assault of an underage minor. Plaintiff was never prosecuted for any sexual crimes in this case. Plaintiff never committed any sexual crimes in this case. Promoting a stigma does not a crime make to debase an innocent man of such implications. Clearly, a genuine issue of material facts exist as to: (1) the use of the phrase “inappropriate contact” and “predator” with respect to being slander per se that is actionable at law; (2) the effect on the listener from the use of “inappropriate relationship” and “predator” as slander per se that is actionable at law; (3) whether Defendant(s) had a qualified privilege or lost it; and, (4) that Plaintiff claims the accusations of “inappropriate relationship” and “predator” are false, which is a matter for a finder of fact to decide.

¹⁵ Counsel for an adverse party is an agent for the named principal who is the adverse party; the adverse party “speaks from the viewpoint of the agent making the verification in its behalf.” *Blackwell v. First Nat’l Bank*, 185 S.C. 427, 435, 194 S.E. 339, 343 (1937). Therefore, counsel for Defendant **C. COLLIER**, on the behalf of Defendant **C. COLLIER**, literally named Plaintiff a “predator” with respect to accusing Plaintiff of having an inappropriate relationship with Defendant **H. COLLIER**. This characterization of Plaintiff likely exceeds the scope of having a qualified privilege in the courtroom transforming the statement as unnecessary defamation. The publication of defamatory matter is subject to a qualified privilege provided that “(1) the matter is published upon an occasion that makes it conditionally privileged[;] and[,] (2) the privilege is not abused.” *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). The occasion, the relationship of the parties, and the commonality of interest in the subject matter of the communication between the speaker and the listener set the parameters for rendering the publication conditionally privileged. *Id.* However, said publication by the speaker must be made honestly, in good faith to protect the commonality of interests, or confidentiality, and is limited in scope by going no further than the speaker’s interests or duties require. Factors to determine whether the qualified privilege was exceeded or abused include: (1) whether the speaker acting with malice; (2) whether the speaker published the statement in good faith; (3) whether the speaker limited the scope of the statement; and, (4) whether the speaker published the statement to the proper parties. *Id.* at 485. A principal may be held vicariously liable for an agent’s defamatory statements whether the agent acted within the scope of the agent’s employment or apparent authority. *Murray v. Holnam, Inc.*, 344 S.C. 129, 139-41, 542 S.E.2d 743, 748-49 (Ct. App. 2001) (“Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business.”); *Moshtaghi v. Citadel*, 314 S.C. 316, 324, 443 S.E.2d 915, 920 (Ct. App. 1994) (discussing that the qualified privilege for the employer-employee relationship may be lost when manner of its exercise results in unnecessary defamation). However, a qualified privilege is merely an affirmative defense upon which the defendant bears the burden of proof to establish that a qualified privilege exists. *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 560-62, 698 S.E.2d 845, 852-54 (Ct. App. 2010); *Herring*, 222 S.C. at 233-35; *Bell v. Bank of Abbeville*, 208 S.C. 490, 494, 38 S.E.2d 641, 643 (1946).

This context of “inappropriate relationship” with Plaintiff being characterized as a “predator” as claimed by Defendant **C. COLLIER** presents new evidentiary matter as to the defamatory nature of “inappropriate relationship” that is clearly slander per se that is actionable at law. Rule 60(b)(2). Here, Defendant **C. COLLIER** readily places a stigma on a pedestal by focusing on the age-gap between Plaintiff and Defendant **H. COLLIER** and portraying Plaintiff as a sexual predator to Plaintiff’s employer with respect to Plaintiff’s fitness for his profession at Defendant **CHURCH**—when no crime has occurred between two legal adults. Defendant **C. COLLIER**’s very allegation is in and of itself a blatant admission to committing slander per se that is actionable at law for accusing Plaintiff of a crime of moral turpitude, calling Plaintiff’s fitness in his profession into question for a lack of propriety, or any of the above when portraying Plaintiff in the light of a sexual predator. In a blatant contradiction from provoking the stigma of a sexual predator when calling Plaintiff a predator for his mentorship of Defendant **H. COLLIER**, Defendant **C. COLLIER** turns a blind eye to her daughter Defendant **H. COLLIER**, who is a legal adult, soliciting Plaintiff as a mentor because **H. COLLIER** claimed that her father was not part of her life. Aff. Jenkins, Caroline; Aff. Tegeler, James.

While legally unnecessary, Plaintiff presents affidavits that show Defendant **C. COLLIER** approved of Plaintiff’s mentorship of her daughter Defendant **H. COLLIER** and witnessed expressive and affectionate behavior of Defendant **H. COLLIER** to Plaintiff outside of Plaintiff’s scope of employment with Defendant **CHURCH** and without objections. James Tegeler Aff., Ex E; Josie Allen Aff.; Sue Lutz Aff. Defendant **C. COLLIER** omits the fact of her daughter Defendant **H. COLLIER** being clingy toward Plaintiff during a day trip to Biltmore in January of 2018, and Defendant **C. COLLIER** made no objections. Josie Allen Aff. Defendant **C. COLLIER** intentionally omits consenting to Plaintiff mentoring her daughter Defendant **H. COLLIER** in correspondences with Plaintiff:

I also wanted to thank you for being such a good friend to Hannah . . . I am a firm believer in surrounding yourself with people that inspire and encourage. And for my kids to have kind, supportive adults in their lives besides their parents and extended family! I will not hesitate to call if she needs something 😊. . . I appreciate you fostering and encouraging the music in Hannah! She amazes me every time!! James Tegeler Aff., Ex E.

Defendant **C. COLLIER** intentionally omits being part of the gifts exchange and soliciting gifts from Plaintiff during Christmas of 2017. James Tegeler Aff., Ex E; Josie Allen Aff. Defendant **C. COLLIER** denies attempting to date Plaintiff from January to February of 2018. Def. **C. COLLIER** Ans. ¶ 20. Moreover, Defendant **C. COLLIER** intentionally omits her attempts to date Plaintiff in a romantic, sexual, or intimate manner from January through February of 2018. James Tegeler Aff. Plaintiff’s close family friends observed Defendant **C. COLLIER** being infatuated with Plaintiff. Josie Allen Aff. Plaintiff presents affidavits that parishioners at Defendant **CHURCH** clearly witnessed and observed Defendant **C. COLLIER**’s behavior and dress attire around Plaintiff; these parishioners perceived Defendant **C. COLLIER** pursuing Plaintiff in a romantic, sexual, or intimate manner. Ann Danciu Aff.; Sue Lutz Aff.; Roy Sabeau Aff.; Caroline Jenkins Aff.

Defendant **C. COLLIER** cannot condemn Plaintiff without condemning her own behavior or her daughter Defendant **H. COLLIER**. Defendant **C. COLLIER**’s attempt to litigate whether the statement

“inappropriate relationship” or “predator” is true or false is a matter for the jury and arguably false statements. Rule 60(b)(2)-(3), S.C.R.C.P. Defendant **C. COLLIER**’s accusation of Plaintiff having an inappropriate relationship with her daughter Defendant **H. COLLIER** is directly traceable to Plaintiff’s termination from Laurel Shaler with Defendant **CHURCH** and later slander by Defendant **SMITH** to members of the community.

2. DEFENDANTS CHARLOTTE COLLIER AND HANNAH ELIZABETH COLLIER FEIGN A PRIVILEGE FOR DEFAMATORY STATEMENTS AGAINST PLAINTIFF WHEN BOTH DISCLAIM PASTOR FROM DEFENDANT NORTHGATE BAPTIST CHURCH

Further discovery and legal analysis involving Defendant **CHURCH** is whether Plaintiff’s complained of conduct by Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** occurred within the scope of employment or outside the scope of employment. The answer is Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** made no complaints concerning Plaintiff’s conduct within the scope of Plaintiff’s employment with Defendant **CHURCH**. The critical point here is that, while Plaintiff was working for Defendant **CHURCH**, he was always professional toward Defendants **C. COLLIER** and **H. COLLIER** within the scope of his employment with Defendant **CHURCH**. Caroline Jenkins Aff. Defendant **C. COLLIER** admitted that Defendant **H. ELIZABETH COLLIER** began singing at Defendant **CHURCH** on or around August 13, 2017. Def. **C. COLLIER** Ans. ¶ 11. Plaintiff did not give any special treatment to Defendants **C. COLLIER** or **H. COLLIER** when working at Defendant **CHURCH**—Plaintiff treated everyone the same when working for Defendant **CHURCH** in a professional manner. Caroline Jenkins Aff. By contrast, Defendants accusing Plaintiff of having an inappropriate relationship with Defendant **H. COLLIER** was unrelated to Plaintiff’s scope of employment with Defendant **CHURCH**. Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** all admitted to being socially acquainted with Plaintiff outside of his employment with Defendant **CHURCH** from September of 2017 through March of 2018. James Tegeler Aff.; Def. **H. COLLIER** and **SMITH** Ans. ¶ 14; Def. **C. COLLIER** Ans. ¶ 13; Caroline Jenkins Aff. Meaning, Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** did not refute maintaining their association with Plaintiff from September of 2017 through March of 2018. Until March 12, 2018, when Defendant **C. COLLIER** emailed Plaintiff, Defendants **C. COLLIER** and **H. COLLIER** consented to maintaining their association with Plaintiff socially outside of Plaintiff’s scope of employment with Defendant **CHURCH** without terminating said association. James Tegeler Aff.

By contrast, Defendant **H. COLLIER** omitted that she did not attend regularly to choir practices since singing at Defendant **CHURCH** around August or September of 2017. Caroline Jenkins Aff.; Ann Danciu Aff. Defendant **H. COLLIER** sometimes would leave during the middle of choir practice for no reason. Caroline Jenkins Aff. Typically, if Defendant **H. COLLIER** was at choir practice, then Defendant **C. COLLIER** was there watching (and sometimes singing on a few occasions). Caroline Jenkins Aff.; Ann Danciu Aff. When Defendant **H. COLLIER** did sing during service at Defendant **CHURCH**, Defendants **C. COLLIER** and **H. COLLIER** would leave after Defendant **H. COLLIER** sang without listening to the sermons or staying for the rest of the service. James Tegeler Aff., Ex. D; Ann Danciu Aff. Defendants **C. COLLIER** and **H. COLLIER** both omitted that they stopped going to choir practices or any part of services at Defendant **CHURCH** since January of 2018—because, Defendant **C. COLLIER** typically came only when Defendant **H. COLLIER** went to choir practices.

Caroline Jenkins Aff. More importantly, Defendants **C. COLLIER** and **H. COLLIER** omit that they did not like or “connect with” Dr. Barry Jimmerson as a pastor for services at Defendant **CHURCH**. James Tegeler, Ex D. Even Defendant **H. COLLIER** admitted that she did not “connect” with Dr. Barry Jimmerson on a personal level. James Tegeler Aff., Ex D. By March of 2018, Defendants **C. COLLIER** and **H. COLLIER** had not been coming to Defendant **CHURCH** anyway unrelated to Plaintiff. Other than Defendant **H. COLLIER** singing for Defendant **CHURCH** on occasion, Defendants **C. COLLIER** and **H. COLLIER** were not very invested in Defendant **CHURCH** as a place of worship much less as Dr. Jimmerson as their pastor.

Therefore, Defendants **C. COLLIER**, **H. COLLIER**, and **SMITH** had no privilege to approach Dr. Barry Jimmerson as Plaintiff’s supervisor for matters outside the scope of Plaintiff’s employment with Defendant **CHURCH**. To claim otherwise is misleading to the Court warranting relief of judgment under Rule 60(b).

C. DEFENDANT NORTHGATE BAPTIST CHURCH’S 12(b)(6) MOTION TO DISMISS AND RULE 56(c) MOTION FOR SUMMARY JUDGMENT SHOULD BE REVERSED

Defendant **CHURCH** moved to dismiss Plaintiff’s claims with prejudice under a Rule 12(b)(6) Motion to Dismiss under the South Carolina Rules of Civil Procedure based on a severance agreement concerning the parties on the day of Defendant **CHURCH** terminating Plaintiff from employment with Defendant **CHURCH** on April 10, 2018 (“Agreement”). For the purposes of a 12(b)(6) motion converted to a motion for summary judgment, Plaintiff’s allegations in Plaintiff’s Summons and Complaint surrounding the formation of the Agreement on the day of Plaintiff’s termination from Defendant **CHURCH** are asserted with a factual basis surrounding Plaintiff’s lack of consent during the termination meeting on April 10, 2018, with respect to Rule 56(c). Pl. Compl., ¶ 86-112. Plaintiff’s Summons and Complaint references to other documents outside of the pleadings that contained two exhibits concerning Defendant **CHURCH**: (1) Articles of Incorporation of Northgate Baptist Church as Exhibit A; and, (2) Together Everyone Achieves More Ministry Handbook for Northgate Baptist Church as Exhibit B. Plaintiff’s allegations in Plaintiff’s Summons and Complaint referenced said exhibits with respect to the totality of the circumstances surrounding the formation of the Agreement concerning the particular cause(s) of action for false imprisonment; fraud in the inducement; negligent hiring, supervision, and retention of employees; and, wrongful termination. Plaintiff’s allegations referenced defamation by Warren Peden after Plaintiff’s termination with respect to defamation by Defendant **CHURCH**. Pl. Compl., ¶ 113; see also *Brown v. Leverette*, 291 S.C. at 366-67. Defendant **CHURCH**’s procedurally defective exhibit for purposes of summary judgment will be discussed below.

Plaintiff hereby requests the Court to amend its order and grant Plaintiff relief by denying Defendant **CHURCH**’s 12(b)(6) Motion to Dismiss Plaintiff’s cause(s) of action, denying Defendant **CHURCH**’s 56 motion for summary judgment, granting Plaintiff leave to amend Plaintiff’s Complaint, or any of the above. Rules 12(b)(6), 12(c), 15(a), 56(c), 56(e), 60(b), S.C.R.C.P.

1. DEFENDANT NORTHGATE BAPTIST CHURCH’S INTRODUCTION OF MATERIALS WERE FATALLY DEFECTIVE UNDER RULE 56(C) AS UNTIMELY INTRODUCED

In this case, Defendant **CHURCH** raised a 12(b)(6) motion to dismiss. Additionally, Defendant **CHURCH** also sought transforming 12(b)(6) motion to dismiss into a motion for summary judgment under Rule 56(c). Defendant **CHURCH** remitted an alleged copy of a separation agreement between Defendant **CHURCH**

and Plaintiff before the Court on March 25, 2020, of which certain portions were redacted. Def. **NORTHGATE BAPTIST CHURCH** Mot. Dismiss, Ex. A ¶ 1(A)-(B). Defendant **CHURCH** only remitted an unredacted, alleged copy of a separation agreement between Defendant **CHURCH** and Plaintiff before the Court on August 13, 2020, prior to the hearing on August 17, 2020. Def. **NORTHGATE BAPTIST CHURCH** Mem. Mot. Dismiss, Ex. A ¶ 1(A)-(b). For Defendant **CHURCH**, Rule 56(e) does not apply as Defendant **CHURCH** did not submit any affidavits before the Court. Therefore, only Rule 56(c) applies to Defendant **CHURCH** with respect to presenting additional materials, evidence, and affidavits for Plaintiff to review prior to the hearing on August 18, 2020. Defendant **CHURCH**'s Motion to Dismiss does not automatically transform a 12(b)(6) motion to a motion for summary judgment under Rule 56(c), Rule 56(e), or any of the above: "[T]he Court may treat a motion under SCRPC 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the Rules of Civil Procedure." Def. Mot. Dismiss, n. 1 (emphasis added). Furthermore, Exhibit A for Defendant **CHURCH**'s Motion to Dismiss filed before the Court on March 25, 2020, displays a redaction under Section 1 of the Separation Agreement and Release of Claims with respect to consideration. Defendant **CHURCH**'s Memorandum to Support its Motion to Dismiss filed on August 13, 2020, only then included a full, non-redacted document of the Separation Agreement and Release of Claims for purposes of any legal argument by Defendant **CHURCH** on the element of consideration. Therefore, the entire document is not available for legal analysis concerning outside materials when transforming a Rule 12(b)(6) motion to one as a motion for summary judgment under Rule 56(c) prior to ten (10) days before the hearing on August 18, 2020. See Exhibit A, at ¶ 1(A) wherein the proposed consideration is allegedly doubled from \$2,600.00 to \$5,200.00. Exhibit A for Northgate's Memorandum in Support of its Motion to Dismiss filed before the Court on August 13, 2020, removed the previous redaction under Section 1 of the Separation Agreement and Release of Claims with respect to consideration and alleged negotiations for the severance pay compared to Exhibit A filed before the Court on March 25, 2020. The unredacted version of the Separation Agreement and Release of Claims was never provided to Plaintiff prior to ten (10) days before the hearing. Rule 56(c), S.C.R.C.P.

Therefore, Exhibit A of the Separation Agreement and Release of Claims was not presented in a timely manner warranting the Court's reversal. Rules 12(b)(6), 56(c), 60(b), S.C.R.C.P. The entire document was not available for legal analysis or response by the non-moving party concerning outside materials when transforming a Rule 12(b)(6) motion to one as a motion for summary judgment under Rule 56(c) prior to ten (10) days before the hearing on August 18, 2020. Furthermore, all references concerning allegations of Plaintiff entering into negotiations with Plaintiff should be stricken from the record under Rule 12(f), S.C.R.C.P.

2. DEFENDANT NORTHGATE BAPTIST CHURCH'S MOTION TO DISMISS SHOULD BE REVERSED BECAUSE A GENUINE ISSUE OF MATERIAL FACT EXISTS CONCERNING THE FORMATION OF THE ALLEGED THE SEPARATION AGREEMENT AND RELEASE OF CLAIMS

As with any contract, "a release given without consideration is void[; h]owever, when the consideration for a release is something of value[, the release is still subject to being voided by] fraud, coercion, [] undue influence [, lack of mental capacity, or any of the above.]" *Hyman*, 142 F. Supp. 2d at 741; *Lowery v. Callahan*,

210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947) (discussing the factor of having ample opportunity to receive legal advice before signing a settlement agreement). If “a party to a compromise settlement wishes to avoid a duly executed release, and be restored to his original rights, he must restore the other party to his original position by returning *or offering to return the consideration received under the compromise.*” *Jones v. Massingale*, 251 S.C. 456, 461, 163 S.E.2d 217, 219 (1968) (emphasis added). Under South Carolina Law, duress is coercion that puts a person in such fear that he is bereft of the quality of mind essential to the making of a contract, and the contract was thereby obtained as a result of this state of mind. *In re Nightingale's Estate*, 182 S.C. 527, 545, 189 S.E. 890, 897 (1937).¹⁶ Duress is “defined as condition of mind produced by improper external pressure or influence which practically destroys party's free agency and causes him to do act or make contract not of his own volition.” *Id.* at 530. As noted in *Nightingale's Estate*, the fear which makes it impossible for a person to exercise his own free will is not so much to be tested by the means employed to accomplish the act, as by the state of mind produced by the means invoked. *Id.* Duress avoids an unenforceable contract. *Whitlock v. Creswell*, 190 S.C. 314, 335-36, 2 S.E.2d 838, 847 (1939). Whether a contract was formed under duress depends on the surrounding circumstances whereby “one party to the transaction was prevented from exercising his free will by threats or the wrongful conduct of another.” *Gainey v. Gainey*, 382 S.C. 414, 428, 675 S.E.2d 792, 799 (Ct. App. 2009). Under the totality of the circumstances, the wrongful conduct such as wrongful act(s), unlawful act(s), or threat(s) by another coerced the other party by preventing that party from exercising will in kind. *Holler v. Holler*, 364 S.C. 256, 266-67, 612 S.E.2d 469, 475-76 (Ct. App. 2005). The byproduct of the coercion invokes fear that paralyzes one's free will—not the means used to accomplish the wrongful conduct. *Id.* at 267-68. When the party in a superior position of bargaining strength dominates the weaker party, such as the employer toward the employee in an employer-employee relationship, the stronger party dictates the terms of the contract in such a pervasive manner as to displace the weaker party's will. *Id.* Freedom of will is essential to the validity of a contract because the deprivation of one's free will and oppression of one's person by threats regarding the safety or liberty of one's person, loved ones, or property negates the meeting of the minds required for a valid contract. *Id.*; *Whitlock*, 190 S.C. at 335-36.¹⁷

Under a totality of the circumstances test when a plaintiff executes a release, the court may evaluate whether plaintiff's waiver was knowing and voluntary based on several factors such as: “(1) the clarity and specificity of the [r]elease language; (2) the [p]laintiff's education and business experience; (3) the amount of time the [p]laintiff had for deliberation about the [r]elease before signing the [r]elease; (4) whether the [p]laintiff knew or should have known [the plaintiff's] rights upon execution of the [r]elease; (5) whether [p]laintiff was

¹⁶ To prove that the other party procured the contract through duress, one has to prove: “(1) coercion; (2) putting a person in such fear that he is bereft of the quality of mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind.” *Holler v. Holler*, 364 S.C. 256, 267, 612 S.E.2d 469, 475 (Ct. App. 2005).

¹⁷ A meeting of the minds is required to form a contract that objectively manifests an intent by the parties to enter into a contract. *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989). Mutual assent “is not based on secret purpose or intention on the part of one of the parties, stored away in [only one party's] mind[,] and not brought to the attention of the other party . . .” *Id.* Duress often occurs concomitantly with other tort(s) such as unlawful imprisonment or means that amount to or induce coercion over the will of another negating free will. *Whitlock*, 190 S.C. at 333. As a result, one is coerced to uneven bargaining with a disproportionate exchange of values. *Holler*, 364 S.C. at 266-67.

encouraged to seek, or in fact received, benefit of counsel; (6) whether there was opportunity for negotiation of the terms of the [r]elease; and[,] (7) whether the consideration given in exchange for the waiver and accepted by the [p]laintiff exceeds the benefits to which the [p]laintiff was already entitled by law or contract. *Scoggins v. Honeywell Int'l, Inc.*, Civil Action No. 2:11-3028-PMD-BM, 2012 U.S. Dist. LEXIS 174302, at *5-6 (D.S.C. Dec. 10, 2012). Duress also focuses on certain subjective individual characteristics of the influenced party such as: age; sex, capacity of the influenced party; education and business experience of influenced party; level of negotiations of the terms during the contract; clarity of the agreement; amount of time influenced party had for deliberations before signing the contract; whether the influenced party read the contract and considered its terms before signing the contract; whether the influenced party was represented by counsel, or had a reasonable opportunity to seek and consult with legal counsel; whether the contract exceeded the benefits for the influenced party in an uneven bargaining position; and, whether the influenced party was induced by improper conduct of the other party to enter into the contract. See *Holler*, 364 S.C. at 266-67; *Gainey*, 382 S.C. at 428-29.

Defendant **CHURCH** argues that Plaintiff entered into the Agreement that was a voluntary and bargained-for exchange whereby Plaintiff received a severance pay in exchange for releasing Defendant **CHURCH** and all of its employees and agents from any liability arising out of Plaintiff's employment. By contrast, Plaintiff reached out to Defendant **CHURCH** prior to filing this action multiple times challenging the validity of the Agreement and to come to an understanding before and during the beginning of commencing this action. For example, Defendant **CHURCH** was placed on notice of Plaintiff's offer to return back to the status quo when expressing a desire to reinstate Plaintiff's employment operating as an offer to reconcile funds received upon termination of Plaintiff's employment when reinstated. Ex. A; see *also* Rule 60(b). Clearly, if Plaintiff were reinstated by Defendant **CHURCH**, said funds from the termination agreement would have been reconciled with payroll accordingly to place the parties at status quo. **Defendant CHURCH was fully aware of these correspondences when claiming Plaintiff never made an offer to return the consideration and return the parties' status back to status quo prior to the Agreement.** Therefore, the analysis concerning coercion and lack of consideration still presents a genuine issue of material fact. The very manner in which Defendant **CHURCH** overpowered Plaintiff's will at the time of Plaintiff signing the Agreement, in addition to non-enforceable provision(s) contrary to public policy, negates the operation of the exculpatory contract. While false imprisonment, fraud in the inducement, and negligent misrepresentation occurred during the time of forming the contract, these cause(s) of action dovetail into the analysis for duress, lack of assent, and mental incapacity and accrued after the Agreement with ongoing injury and damages.

Duress avoids an unenforceable contract. Plaintiff's allegations in paragraphs 59 to 112 of Plaintiff's Complaint raises factual issues concerning the formation of the Separation Agreement and Release of Claims ("Agreement") between Plaintiff and Defendant **CHURCH** on or around April 10, 2018. Plaintiff attached Defendant **CHURCH**'s policies and procedures to Plaintiff's Summons and Complaint in support of Plaintiff's claims of duress and other cause(s) of action. Plaintiff has previously made the argument that these cause(s)

of action did not accrue until the moment of signing the Agreement when Plaintiff was not in his right mind. Genuine disputes as to facts material to Plaintiff's cause(s) of action exist with respect to the construction of the release, the accrual of cause(s) of action occurring at the very moment of the termination meeting, Plaintiff's free will to contract overpowered when coerced to sign the termination agreement without any opportunity to seek legal counsel, and the ability to bring new cause(s) of action that arise after the termination meeting. Plaintiff raised issues with Plaintiff's free will to enter into a contract being compromised because of the overwhelming coercion exercised by Dr. Barry Jimmerson, Laurel Shaler, and Warren Peden at the time of the termination meeting. Dr. Barry Jimmerson used the threat of placing Plaintiff before the congregation of Defendant **CHURCH** for the congregation to vote upon retaining Plaintiff due to accusations of having inappropriate contact with young girls as a means to coerce Plaintiff into entering said Agreement. Unbeknownst to Plaintiff, said threat is falsely based according to the policies and procedures of Defendant **CHURCH**, of which Defendant **CHURCH** was in a superior position to know at the time of terminating Plaintiff. Defendant **CHURCH** is aware of threatening Plaintiff during Plaintiff's termination. Rule 60(b).

3. DEFENDANT NORTHGATE BAPTIST CHURCH'S MOTION TO DISMISS SHOULD BE REVERSED BECAUSE A GENUINE ISSUE OF MATERIAL FACT EXISTS CONCERNING THE VALIDITY OF THE ALLEGED THE SEPARATION AGREEMENT AND RELEASE OF CLAIMS AS AMBIGUOUS AND UNENFORCEABLE

A release is a contract, which is governed by general contract law. *Wade v. Berkeley Cty.*, 339 S.C. 495, 501, 529 S.E.2d 734, 737 (Ct. App. 1999). Whether the construction of the contract between the parties is ambiguous as matter of contractual interpretation is a question of law. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Ultimately the Court must "ascertain and give legal effect to the parties' intentions as determined by the contract language." *Id.* The Court will give plain, unambiguous language the ordinary meaning intended when reading the contract as a whole document. *Id.* An unambiguous, clear, and explicit contract is "construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense." *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Com.*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) (prohibiting extrinsic evidence as inadmissible when plain language governs). A contract is ambiguous when it is construed with more than one meaning, the meaning is unclear, the meaning is obscure through indefiniteness of expression, or having a double meaning. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 499-500, 649 S.E.2d 494, 498-500 (Ct. App. 2007). If the context of particular words and expressions used in releases indicates a different meaning, then said particular words and expressions may be construed as ambiguous. *Gardner v. Columbia Police Dep't*, 216 S.C. 219, 223, 57 S.E.2d 308, 309 (1950). When a contract is ambiguous, the Court will allow extrinsic, parol evidence "to ascertain the true meaning and intent of the parties." *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997). The courts construe ambiguity strictly against the drafter of the contract in favor of the non-drafter. *Ecclesiastes Prod. Ministries*, 374 S.C. at 499-500.

Contractual interpretation for "[t]he scope and effect of a release must be gathered from its terms, which may be interpreted in the light of the surrounding facts and circumstances . . . and within the

contemplation of the parties.” *Gardner*, 216 S.C. at 222-23.¹⁸ By contrast, an illegal contract is void and unenforceable if the contract: (1) violates public policy; (2) statutory law; or, (3) provisions of the Constitution. *Berkebile v. Outen*, 311 S.C. 50, 53 n.2, 426 S.E.2d 760, 762 (1993). Exculpatory contracts construed to exempt a party from that party’s own negligence will be prohibited in the absence of explicit, clear language indicating doing so was the parties’ consent. *S.C. Elec. & Gas Co. v. Combustion Eng’g, Inc.*, 283 S.C. 182, 191, 322 S.E.2d 453, 458 (Ct. App. 1984). Moreover, overly broad exculpatory clauses contravene public policy, especially when exempting one party from any liability from that party’s negligence. *Fisher v. Stevens*, 355 S.C. 290, 295-97, 584 S.E.2d 149, 152-54 (Ct. App. 2003). Exculpatory contracts such as waivers and releases intended to exempt one party from liability for gross negligence, reckless conduct, willful or wanton conduct, or, intentional acts is overly broad, unenforceable, and against public policy unless the in the absence of explicit, clear language indicating doing so was the parties’ consent. *McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 248-52, 612 S.E.2d 462, 465-67 (Ct. App. 2005) (enumerating specific disclaimers or releases individually, separately, and conspicuously to show clear, explicit mutual assent).

The legal issue here is whether the formation of the Agreement was a valid and enforceable Agreement with Defendant **CHURCH** wherein Plaintiff released claims alleged against Defendant **CHURCH** arising from Plaintiff’s employment with Defendant **CHURCH** prior to the time of Plaintiff’s termination:

In exchange for the Company’s agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee’s employment with or termination from the Company. See Exhibit A, at ¶ 3(A).

Defendant **CHURCH** argued that this provision barred Plaintiff from bringing any and all claims against Defendant **CHURCH** in perpetuity. Defendant **CHURCH** sought a dismissal with prejudice of all of Plaintiff’s claim against Defendant **CHURCH** on the grounds that Plaintiff previously released all claims against Defendant **CHURCH** in exchange for valid monetary consideration through the Agreement. However, Defendant **CHURCH** fails to acknowledge Plaintiff’s correspondences with Defendant **CHURCH**, of which placed Defendant **CHURCH** on notice of Plaintiff’s desire to reinstate Plaintiff’s employment that as an offer to reconcile funds received upon termination of Plaintiff’s employment. Ex. A; see *also* Rule 60(b). In response, Plaintiff argued that: (1) the construction of the release in the Agreement created ambiguity that did not bar Plaintiff from bringing claims against Defendant **CHURCH** based on cause(s) of action arising out of the termination meeting itself and subsequently thereafter; (2) the exculpatory provisions of the release in the Agreement, whether in part or in full, were also unenforceable and against public policy; and, (3) Plaintiff was coerced into resigning under the circumstances with Plaintiff’s will overcome to enter into the Agreement

¹⁸ For example, federal courts in Virginia have construed the temporal scope in releases based on the contract language before the court. See *Va. Impression Prods. Co. v. SCM Corp.*, 448 F.2d 262, 267 (4th Cir. 1971) (Winter, H, dissenting). In that instance, the release language dealt with known or unknown claims based on “differences” that existed at the time of entering into the contract, arose after entering the contract, or arose after cancelling the contract. *Id.* (raising issues of ambiguity as to releasing unknown claims after executing the release). Moreover, in that instance, the release contained general release language to settle and release all matters forever in explicit, clear language. *Id.* at 265. However, the scope of all claims released was overly broad and found unenforceable as a violation of public policy and federal law. *Id.*

voluntarily through duress derivative of Plaintiff's claims of false imprisonment; fraud in the inducement; negligent hiring, supervision, and retention of employees; and, wrongful termination.

Here, the dispute over the release language when construed as a whole pertains to the application as to whether the release bars Plaintiff from raising all claims at any time against Defendant **CHURCH** in perpetuity. Defendant **CHURCH** postures that the Agreement is plain and unambiguous whereby Plaintiff released Defendant **CHURCH** and all of its employees and agents from any liability arising out of Plaintiff's employment. Defendant **CHURCH** refers to the following provisions to reflect the parties' intention for the scope of the release:

In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company See Exhibit A, at ¶ 3(A).

Plaintiff also argued that Plaintiff's cause(s) of action related to the Agreement accrued from the day of and after Plaintiff's termination from Defendant **CHURCH**.¹⁹ Then, Plaintiff argued that Defendant **CHURCH**'s abovementioned particular cause(s) of action in the exculpatory language of Section 3(A) of the Agreement also referred to these cause(s) of action that occurred prior to the date of the Agreement:

This [Section 3(A)] specifically includes, but is not limited to, a release of any and all rights, claims, and causes of action of any sort arising under . . . any other legal theory or cause of action, regardless of type, character or form, he may have; any and all causes of action, whether in law and/or in equity, for any expense, reinstatement, loss, mental or physical injury, costs, attorneys' fees, mental anguish, pain and suffering, medical bills or costs, physical or mental impairment, damage to reputation, loss of enjoyment of life, loss of consortium, lost earnings or profits, lost wages of commissions, lost bonuses, lost seniority or retirement benefits, other lost employment benefits including, but not limited to, vacation, or holiday pay and long or short term disability, *or any other damage (whether actual, compensatory, punitive, treble or otherwise) suffered or which may be suffered by Employee due to any event which occurred prior to the date of this Separation Agreement and Release* Exhibit A, at ¶ 3(A) (emphasis added).

Section 3(A) improperly disclaimed certain cause(s) of action as unenforceable exculpatory provision(s) insulating Defendant **CHURCH** from gross negligence, reckless conduct, willful or wanton conduct, or, intentional acts as overly broad, unenforceable, and against public policy with said disclaimers or releases in an inconspicuous manner absent of explicit and clear language.

Defendant **CHURCH** raised Section 3(B) with a qualifying condition of the parties' intent with respect to the scope and operation of claims whereby the release may be applicable to defend Defendant **CHURCH** against lawsuits related to Plaintiff's employment or termination:

Employee further expressly agrees that *this Agreement may be treated as a complete defense* to any action or proceeding that may be brought by Employee . . . against the Company . . . for relief or damages of any kind arising from Employee's employment or termination from employment with the Company Exhibit A, at ¶ 3(B) (emphasis added).

¹⁹ Plaintiff refers to the following cause(s) of action against Northgate with respect to the Agreement occurring on the termination date of April 10, 2018: false imprisonment; fraud in the inducement; negligent hiring, supervision, and retention of employees; and, wrongful termination.

Defendant **CHURCH** further relied upon Section 3(D) of the agreement to show the parties' intent for the release to operate as Plaintiff waiving all and possible claims against Defendant **CHURCH**:

The intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable. *However, it is understood that Employee is not releasing or waiving any rights or claims which may arise after this Agreement is executed, any claims for the sole purpose of enforcing Employee's rights under this Agreement, or any claims which by law cannot be waived* Exhibit A, ¶ 3(D) (emphasis added).

By contrast, Plaintiff argued as to the ambiguity in the release(s) concerning the application of Section 3(A) and Section 3(D) of the Agreement with respect to Plaintiff's ability to raise cause(s) of action that arose the day of and after the formation of the Agreement. In tandem of Section 3(D) of the Agreement, Plaintiff's termination on April 10, 2018, gave rise to the following cause(s) of action: false imprisonment; fraud in the inducement; negligent hiring, supervision, and retention of employees; and, wrongful termination. Pl. Compl., ¶ 86-112, Ex. A, Ex. B. Therefore, Plaintiff's cause(s) of action are not barred due to the temporal nature of the Agreement because the Agreement does not bar cause(s) of action arising from the day of or subsequently thereafter the date of the Agreement—regardless of any consideration under the Agreement.

Defendant **CHURCH** was also aware of disclosing the details of Plaintiff's termination to third parties after Plaintiff's termination unrelated to the Agreement or any confidentiality provision therein. Rule 60(b). Plaintiff raised allegations of defamation occurring after the formation of the Agreement by Warren Peden, who was involved in the termination of Plaintiff from Defendant **CHURCH**. Pl's Compl., ¶ 113. Warren Peden with Defendant **CHURCH** made a public outburst to the choir accusing Plaintiff of having an inappropriate relationship with one of the teenagers in the presence of Laurel Shaler, who was also involved in Plaintiff's termination, remained silent as to Warren Peden's outburst, and adopted Warren Peden's outburst on behalf of Defendant **CHURCH**. Those in the room understood the implication of Plaintiff involved in engaging sexual activity with underage minors. Caroline Jenkins Aff.; James Tegeler Aff. Moreover, Dr. Barry Jimmerson with Defendant **CHURCH** disclosed the nature of Plaintiff's termination to third parties that had no involvement in Plaintiff's termination, of which leave to amend Plaintiff's complaint would allow for evidence to that effect that Dr. Jimmerson with Defendant **CHURCH** was fully aware of doing after Plaintiff's termination. Caroline Jenkins Aff. Defendant **CHURCH** did not address the temporal element in the Agreement that does not operate as a complete bar for Plaintiff to raise claim(s) against Defendant **CHURCH** the day of or after Plaintiff's termination from Defendant **CHURCH**. Defendant **CHURCH**'s only alleged that Warren Peden was not a representative of Defendant **CHURCH**. However, Defendant **CHURCH** provided no materials, pleadings, or affidavits to that fact whereby creating a genuine issue of material fact as to the apparent agency of Warren Peden acting on behalf of Defendant **CHURCH** after Plaintiff's termination committed defamation against Plaintiff. Caroline Jenkins Aff. A genuine dispute of material fact as to the construction of the temporal application of the Agreement for Plaintiff to bring cause(s) of action against Defendant **CHURCH** exists warranting reversal. Rules 12(b)(6), 56, 59, 60(b), S.C.R.C.P.

III. CONCLUSION

At this time, Plaintiffs expressly reserve all rights without prejudice or waiver of the same with respect to the preserving other legal arguments and grounds within Plaintiffs Motion to Reconsider and Motion for Relief filed before the Court on August 28, 2020.

WHEREFORE, Plaintiff pray that:

- (1) the Court give leave to amend this response as required;
- (2) the Court grant a hearing if required;
- (3) the Court amend its Order and Judgment denying Defendants **NORTHGATE BAPTIST CHURCH, HANNAH ELIZABETH COLLIER**, and **LINDA SMITH**'s Motion to Dismiss;
- (4) the Court amend its Order and Judgment denying Defendants **CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER**, and **LINDA SMITH**'s Motion for Summary Judgment on the Pleadings;
- (5) the Court give leave to amend Plaintiff's complaint as required; and,
- (6) the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 14 day of September, 2020.

/s/ Deborah D. Davis, Esq.

Deborah D. Davis, Esq.

SC Bar No.: 102942

Attorney for Plaintiff

Deborah D. Davis, Esq.
Dickson Davis Law Firm, LLC
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

EXHIBIT A

Deborah Davis

From: Deborah Davis
Sent: Wednesday, April 25, 2018 9:42 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Cease and Desist Notice re: James Earl Tegeler
Attachments: Tegeler_Cease and Desist Notice_Northgate_Baptist_Church_042518.pdf

Dr. Jimmerson,

Please be advised that I represent James Earl Tegeler with respect to the recent termination of my client on April 10, 2018. I have reviewed the documents. I am concerned due to the nature of the termination concerning my client based on unfounded allegations concerning an adult in your congregation, Hannah Collier. I am also concerned about the lack of opportunity my client had to have these separation documents reviewed independently by legal counsel on or around April 10, 2018. My client was clearly under emotional distress during this ordeal and the termination documentation was executed, arguably, under duress.

I am investigating into the matter, as well as to the baseless allegations raised by other members of your congregation concerning Charlotte Collier, Hannah Collier, and Linda Smith. Pending further investigation, I hereby demand that the Northgate Baptist Church, whether acting individually or through its agents, cease and desist all defamatory remarks concerning my client's character. If the basis for the church's allegations are founded upon fraud and misrepresentation by other members of your congregation, Northgate Baptist Church's indemnification agreement will be subject to challenge and the baseless allegations will expose Northgate Baptist Church to liability for wrongful termination among other causes of action.

Attached please find a copy of the cease and desist notice. The same is being sent via FedEx to you.

Furthermore, my client has requested a copy of his personnel file with Northgate Baptist Church. As such documentation is forthcoming as potential evidence in future or pending litigation related to the other members of your congregation, you are hereby instructed to retain all documentation, correspondence, and evidence related to the termination of my client.

I am requesting the personnel file for my client to be mailed and addressed to my attention:

Deborah D. Davis, Esq.
Dickson Davis Law Firm, LLC
439 Congaree Road
Greenville, SC 29607

You can either voluntarily provide my client's personnel file, or I can obtain them at a later time during litigation via a subpoena request should the occasion arise. If Northgate Baptist Church has an attorney, then please have your attorney contact me directly to coordinate the disclosure of potential evidence concerning this matter and I will cease direct communication with you at that time.

Best Regards,



Deborah D. Davis, Esq.
Attorney at Law

Dickson Davis Law Firm, LLC
439 Congaree Road
Mailbox 6
Greenville, SC 29607
www.dicksondavislaw.com

864.729.3424 tel
864.752.1424 fax
d.davis@dicksondavislaw.com

DISCLOSURES:

This is a transmission from the Dickson Davis Law Firm, LLC, and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (864) 729-3424 or email d.davis@dicksondavislaw.com.

Please note that, unless you have signed the fee contract agreement, the engagement letter (as applicable), and paid the deposit or retainer fee in full, then Dickson Davis Law Firm, LLC, does not represent you in this matter after your initial consultation.



DICKSON DAVIS LAW FIRM

CEASE AND DESIST NOTICE

April 25, 2018

**Northgate Baptist Church
Attn: Dr. Barry Jimmerson**

██████████
██████████

VIA FEDEX ██████████

Re : **James Earl Tegeler**
File Id. : **2018-01-123**
Date of Incident : **April 10, 2018**

Dear Mr. Jimmerson:

Please be advised that **JAMES EARL TEGELER**, who is the abovementioned party ("Client"), has retained the Dickson Davis Law Firm, LLC ("Firm") to represent that party's interest in the potential or pending litigation regarding this matter concerning defamation of character against the Firm's Client by **HANNAH ELIZABETH COLLIER**, **CHARLOTTE COLLIER**, and **LINDA SMITH**, of which may result in the unfounded basis regarding the termination of the Firm's Client and validity of the documents pertaining to the termination of the Firm's Client on or around April 10, 2018.

You are hereby put on notice pursuant to all applicable Federal and South Carolina laws to cease and desist all direct communication, whether oral or written communication, from you to the Firm's Client, or any of the Client's family members, employer(s), agents, contractors, or other relations. Furthermore, all further communication and correspondence, whether oral or written, must be directed to the Firm, whether the Firm's attorney(s) or staff, as follows: Deborah D. Davis, Esq., Dickson Davis Law Firm, LLC, 439 Congaree Road, Mailbox 6, Greenville, SC 29607.

This document serves as notice that the abovementioned company, and its officers, directors, employees, agents, and contractors, will henceforth cease and desist from any further direct or indirect communication with the Firm's Client or ongoing defamation of the Firm's Client to any third-party within or outside of the congregation of Northgate Baptist Church.

Sincerely,

DICKSON DAVIS LAW FIRM, LLC

By:

Name: Deborah D. Davis, Esq.
Title: Managing Attorney
Bar No.: 102942

April 25, 2018

Date

Deborah Davis

From: Deborah Davis
Sent: Thursday, April 26, 2018 5:27 PM
To: McDonald, III Charles E.
Subject: RE: James Earl Tegeler [ODNSS-UGL.071421.000001]

Hey Chuck,

I discussed with my client our conversation today. Having discussed the situation with my client, I would like to make an informal proposal at this stage that can be later drafted into a settlement agreement.

I present you with two options to amicably resolve this dispute:

- (1) A full year's salary as additional severance pay, a letter of reference for my client to obtain employment elsewhere, and the cease and desist on any defamatory remarks against my client's character to remain in effect; or,
- (2) Reinstatement of my client's former position provided that Charlotte Collier, Hannah Collier, and Linda Smith are not permitted to remain as members of the congregation along with a signed affidavit from Dr. Laura Shaler as the chair of the personnel committee renouncing the allegations against my client concerning Charlotte Collier, Hannah Collier, and Linda Smith as baseless and unfounded.

Let me preface with saying that, my client loved his job at Northgate Baptist Church. My client loved working with the members of the congregation and playing the piano to praise God in my client's faith and style of worship at Northgate Baptist Church. Members of the congregation would welcome my client back with open arms, who have repeatedly reached out to my client since Northgate Baptist Church terminated my client and even suggested a petition to bring my client back into the fold of the ministry of Northgate Baptist Church.

At the heart of the matter, Charlotte and Hannah Collier took advantage of a grieving widower, who lost his wife to cancer four years ago and has been the sole breadwinner for his motherless sons.

These baseless allegations against my client raised by Charlotte Collier, Hannah Collier, and Linda Smith have devastated my client. The insinuation that my client was terminated based on "inappropriate behavior" because of these baseless allegations creates the impression that my client was lumped into the same category as a child molester like some spiritual pariah. This association and connotation has been emotionally devastating for my client.

It is our position that the investigation of these baseless, unfounded allegations by Charlotte Collier regarding Hannah Collier was not vetted properly and misconstrued out of context and proportion in an unreasonable manner. Moreover, Hannah Collier was treated as if she were a mere child, of which she is not. Hannah Collier is an adult in the eyes of the law. It is our position that Charlotte Collier reported these allegations with an ulterior motive in retaliation to my client not reciprocating her advances to have a romantic relationship, of which my client has had no inclination or interest toward dating Charlotte Collier. As a grieving widower, my client has had no interest in dating anyone or forming any romantic attachment since losing his wife, placing his priorities in his faith in God and being a father to his motherless sons.

Again, as I stated, if my client had the reasonable opportunity to seek independent, legal counsel at the time of receiving the termination documentation under the circumstances related to Charlotte Collier and Hannah Collier, and I was involved at that stage, I would not have advised my client to sign any documentation and challenged the basis for terminating my client on these baseless allegations. As I stated earlier, hell hath no fury like a woman scorned, and one

must consider the source when properly vetting such serious allegations of "inappropriate behavior" in the proper context for all that phrase implies under the circumstances.

My client is sensitive to the nature of these unfortunate circumstances, the ongoing fundraising efforts of the Northgate Baptist Church, and the rift caused in the congregation of the Northgate Baptist Church from the termination of my client. Nevertheless, my client should not have to pay for the sins of others for this cross is not his to bear.

Please discuss these options with your client to see what we may be able to do as far as reaching an amicable resolution.

Best Regards,



Deborah D. Davis, Esq.
Attorney at Law

Dickson Davis Law Firm, LLC
439 Congaree Road
Mailbox 6
Greenville, SC 29607
www.dicksondavislaw.com

864.729.3424 tel
864.752.1424 fax
d.davis@dicksondavislaw.com

DISCLOSURES:

This is a transmission from the Dickson Davis Law Firm, LLC, and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (864) 729-3424 or email d.davis@dicksondavislaw.com.

Please note that, unless you have signed the fee contract agreement, the engagement letter (as applicable), and paid the deposit or retainer fee in full, then Dickson Davis Law Firm, LLC, does not represent you in this matter after your initial consultation.

From: McDonald, III Charles E. <Chuck.McDonald@ogletree.com>
Sent: Thursday, April 26, 2018 11:21 AM
To: Deborah Davis <d.davis@dicksondavislaw.com>
Subject: James Earl Tegeler [ODNSS-UGL.071421.000001]

Deborah,

I am writing on behalf of our client Northgate Baptist Church in response to your April 25 email and cease and desist letter. We disagree with your characterization that James Tegeler was under duress from anyone at Northgate Baptist Church when he signed the Separation Agreement and Release of Claims. He knowingly and willingly signed the Agreement releasing any claims related to his employment or termination of employment with Northgate Baptist Church. Northgate Baptist Church is on notice of your client's claims and will preserve all relevant documents related to any potential claims. Northgate Baptist Church denies that any management officials or leaders of Northgate Baptist

Church have made any defamatory comments about Mr. Tegeler. Nonetheless, our client has no desire to get into litigation over this matter if such can be avoided.

As Mr. Tegeler has retained you as counsel, we simply would like to know what Mr. Tegeler is requesting from Northgate Baptist Church at this time to see if an amicable resolution is possible. Please let me know. Thanks.

Charles E. McDonald, III | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.



This transmission is intended only for the proper recipient(s). It is confidential and may contain attorney-client privileged information. If you are not the proper recipient, please notify the sender immediately and delete this message. Any unauthorized review, copying, or use of this message is prohibited.

ELECTRONICALLY FILED - 2020 Sep 14 12:54 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

Deborah Davis

From: Deborah Davis
Sent: Tuesday, March 10, 2020 3:51 PM
To: McDonald, III Charles E.
Cc: Pam Owen
Subject: Informal Settlement Negotiations re: Tegeler v. Northgate Baptist Church et al.
Attachments: 2020_03_10_response_letter_NGBC.pdf

CONFIDENTIAL

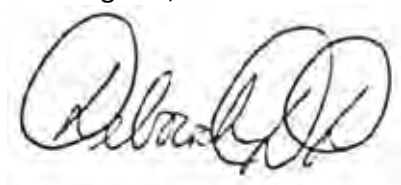
All correspondence enclosed in this Response Letter is confidential regarding settlement communications pursuant to Rule 408 of the South Carolina Rules of Evidence.

Hey Chuck,

Attached is my response letter to your request for early mediation. Briefly, my client would consider informal settlement negotiations with your client at this time. My client is not unopposed to early mediation with all parties in the near future, but, my client would prefer to deal with your client first beforehand on an informal basis without the Colliers or Linda Smith.

I look forward to hearing from you as to your client's response accordingly.

Best Regards,



Deborah D. Davis, Esq.
Attorney at Law

Dickson Davis Law Firm, LLC
310 Rutherford Street
Greenville, SC 29609
www.dicksondavislaw.com

864.729.3428 tel
864.752.1424 fax
d.davis@dicksondavislaw.com

DISCLOSURES:

This is a transmission from the Dickson Davis Law Firm, LLC, and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (864) 729-3428 or email d.davis@dicksondavislaw.com.

Please note that, unless you have signed the fee contract agreement, the engagement letter (as applicable), and paid the deposit or retainer fee in full, then Dickson Davis Law Firm, LLC, does not represent you in this matter after your initial consultation.

The Dickson Davis Law Firm, LLC, uses encryption email for sensitive information or client correspondences through GoDaddy using ProofPoint or PracticePanther. If you receive an email from the Dickson Davis Law Firm, LLC, from GoDaddy and ProofPoint, please respond using that portal to ensure and maintain confidentiality in attorney-client correspondence. You may also send sensitive information via PracticePanther as well. Please do not sent sensitive client information through regular email and upload such information either through PracticePanther or GoDaddy ProofPoint.



DICKSON DAVIS LAW FIRM

CONFIDENTIAL

All correspondence enclosed in this Response Letter is confidential regarding settlement communications pursuant to Rule 408 of the South Carolina Rules of Evidence.

RESPONSE LETTER

March 10, 2020

Charles E. McDonald, III
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

VIA

Re : *James Earl Tegeler v. Northgate Baptist Church et al.*
Case No. : 2020CP2301213
File Id. : 2018-01-123
Date of Incident : April 10, 2018

Dear Mr. McDonald:

As you know, I represent **JAMES EARL TEGELER**, who is the abovementioned party and Plaintiff in the abovementioned pending litigation. You had called me on March 2, 2020, requesting the potential for early mediation concerning this case. After discussing the following request with my client, my client is open to conducting informal settlement negotiations directly with your client and Defendant **NORTHGATE BAPTIST CHURCH** ("Church") at this time.

My client hereby requests:

- (1) The full policy limit of the general liability insurance policy for Defendant **CHURCH**;
- (2) An affidavit from Defendant **CHURCH** exonerating and vindicating Plaintiff of all allegations, investigations, or any of the above, against my client for having inappropriate relations with young girls, inappropriate contact with young girls, or any other such allegations of like nature; and,
- (3) A letter of recommendation from Defendant **CHURCH** for my client to resume employment of similar nature elsewhere as he was employed with Defendant **CHURCH**.

Should we not reach a settlement during such informal settlement negotiations, and while my client feels that early mediation may be premature at this time, my client is not unopposed to early mediation in the near future should we fail to settle this matter between our clients informally. We look forward to hearing your response within the next ten (10) business days if you feel that is adequate time for your client to respond accordingly.

Best Regards,

DICKSON DAVIS LAW FIRM, LLC

By:

Name: Deborah D. Davis, Esq.
Title: Managing Attorney
Bar No.: 102942

March 10, 2020

Date

DICKSON DAVIS LAW FIRM, LLC ■ 310 RUTHERFORD STREET ■ GREENVILLE, SOUTH CAROLINA ■ 29609
864.729.3428 TEL ■ 864.752.1424 FAX ■ WWW.DICKSONDAVISLAW.COM ■ INFO@DICKSONDAVISLAW.COM

ELECTRONICALLY FILED - 2020 Sep 14 12:54 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2020-CP-2301213
	)	
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charlotte Collier, Hannah Elizabeth	)	
Collier, Linda Smith, and	)	
Northgate Baptist Church,	)	
	)	
Defendants.	)	

DEFENDANT NORTHGATE BAPTIST CHURCH'S
RESPONSE TO PLAINTIFF'S AMENDED MOTION FOR RECONSIDERATION
TO ALTER OR AMEND A JUDGMENT AND MOTION FOR RELIEF
FROM JUDGMENT

Defendant, Northgate Baptist Church (hereinafter "Northgate"), files this Response to Plaintiff's AMENDED Motion for Reconsideration to alter or amend a judgment and Motion for relief from judgment ("Plaintiff's Motion").¹

In short, Plaintiff's claims against Northgate are barred because Plaintiff previously released any claims against Northgate related to his employment with Northgate, or the termination of that employment, for good and valuable consideration. Thus, the Court properly dismissed Plaintiff's claims against Northgate with *prejudice*.

¹ Plaintiff previously filed a similar motion before the Court's submission of a final order granting Northgate's Motion to Dismiss (September 8, 2020), rendering the previous motion premature and based off arguments at the hearing rather than a final order. Northgate previously responded to Plaintiff's first motion on September 3, 2020. Plaintiff's Motion contains very similar arguments to those arguments contained in his first motion, but Northgate has addressed each argument in turn. For the Court's ease of reference, any of Northgate's new rebuttals are underlined. The remainder of Northgate's response remains the same.

BRIEF FACTUAL BACKGROUND

Plaintiff's Complaint asserts claims against Northgate for: false imprisonment; defamation; fraud in the inducement; negligent misrepresentation; negligent hiring, supervision, and retention of employees; intentional infliction of emotional distress; negligent infliction of emotional distress; wrongful termination; and civil conspiracy. However, before Plaintiff's separation from Northgate on April 10, 2018, he voluntarily entered into a valid and enforceable severance agreement ("Agreement")² with Northgate wherein he released all claims against Northgate related to his employment or separation from Northgate.

ARGUMENTS PRESENTED

Plaintiff's Motion includes a number of broad, baseless allegations, but Plaintiff cannot overcome a complete lack of merit by the volume of his allegations. Indeed, Plaintiff's Motion asserts a variety of arguments, all of which the Court has considered or have been waived by Plaintiff. Northgate sets forth below a brief response to each of Plaintiff's arguments directed to Northgate. In sum, the Court properly granted Northgate's Motion to Dismiss *with prejudice* for the following reasons:

- The release contained in the Agreement is valid and Plaintiff's claims against Northgate are covered by the release. In Plaintiff's Motion, he alludes to the fact that the Court improperly considered the Agreement when rendering its decision. However, Plaintiff did not present this argument to the Court before filing Plaintiff's Motion and has thus waived

² The Agreement was attached as **Exhibit A** to Northgate's Motion to Dismiss and Memorandum in Support and properly considered by the Court.

this position.³ Further, even if the Plaintiff did not waive this position, the Court properly considered the Agreement as timely and proper evidence. There is simply no law to the contrary, nor does Plaintiff cite any applicable law supporting such a position. Finally, it is simply unbelievable that Plaintiff was not aware of or did not have a copy of the Agreement that he negotiated and signed. In fact, **Exhibit A** to Plaintiff's Motion illustrates that Plaintiff's counsel had "reviewed the documents" within a couple of weeks after Plaintiff executed the Agreement. If that was not enough, **Exhibit F** to Plaintiff's Memorandum in Opposition to Northgate's Motion to Dismiss illustrates that Plaintiff himself obtained the Agreement from Laurel Shaler just one week after he executed it. Finally, **Exhibit H** to Plaintiff's Memorandum in Opposition to Northgate's Motion to Dismiss reveals text messages between Plaintiff and Warren Peden just one day after Plaintiff executed the Agreement. Notably, Plaintiff recognizes that he "agreed" to terms the day prior and that he was "keeping [his] end of the deal." Clearly, his argument that he was not afforded a reasonable opportunity⁴ to review the unredacted Agreement before the Hearing is meritless and a far-reaching attempt to cast doubt on the Court's proper ruling. Needless to say, nothing discussed at the Hearing was in any way "surprising" to Plaintiff. Also, to the extent that Plaintiff attempts to rely on numerous affidavits he filed

³ A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009), aff'd as modified, 405 S.C. 359, 747 S.E.2d 757 (2013) (citing *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (finding issue raised for first time in Rule 59, SCRCF, motion is not preserved for review); *Kiawah Prop. Owners Grp. v. Public Serv. Comm'n.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (stating an issue raised for first time in petition for rehearing not preserved)).

⁴ Contrary to Plaintiff's assertion, all that is required by SCRCF 56(c) is that *motions* are filed at least ten (10) days before the Hearing, a requirement that Northgate met here. Affidavits (of which none were submitted by Northgate) would only have to be filed two (2) days before the Hearing.

with Plaintiff's Motion, his own argument related to timeliness bars this new evidence from consideration. If Plaintiff was concerned about his ability to respond to "new" or "surprising" information before or at the Hearing, his remedy was to request a continuance or at the very least raise it at the hearing. Plaintiff's last-ditch effort to undermine the Court's proper ruling is improper.

- The Court properly considered the Agreement and recognized that the plain terms of the Agreement releasing any and all claims against Northgate is unambiguous and covered all of the claims brought by Plaintiff against Northgate in this action. Indeed, the release in the Agreement meets the requirements of South Carolina law: it unambiguously represents a voluntary and bargained-for exchange whereby Plaintiff released Northgate and all of its employees and agents from any liability arising out of Plaintiff's employment or separation therefrom. The plain terms of the Agreement unambiguously reveal Plaintiff's intent to release all claims against Northgate. If the Court were to take Plaintiff's arguments regarding the validity of the Agreement to their logical conclusion, nearly every release agreement in this state would be unenforceable, which would discourage resolutions and lead to absurd results.
- Plaintiff was not under duress (nor has he met the conditions precedent for asserting the defense) because he executed the release through his own free will, and further ratified the Agreement by retaining the severance payment. Nearly two years after he executed the Agreement, Plaintiff's Complaint is riddled with the notion that Northgate forced him to execute the Agreement. However, as the Court is aware, the general rule in South Carolina is that when a party seeks to set aside a release, he must first return any consideration

received by him for the release.⁵ Here, it is undisputed that Plaintiff retained the monetary consideration he received from Northgate in exchange for his agreement to release all claims against Northgate in the Agreement. However, nearly two years later when he filed the Complaint, he then claimed that he was under “duress” when he signed the Agreement. Similar to *Hyman*, Plaintiff has not met the conditions precedent to asserting his new proposition of “duress” and it cannot be used to circumvent the valid and enforceable Agreement. And perhaps most importantly, Plaintiff did not refute the principles in the *Hyman* case at the Hearing, which have now been waived. Finally, while Plaintiff now alleges that he “offered” to return the consideration, Exhibit A to Plaintiff’s Motion⁶ reveals nothing of the sort.

- Plaintiff also ratified the release agreement by negotiating an increase in the severance amount and keeping the severance payment and not returning the severance or doing

⁵ *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 747 (D.S.C. 2001), 142 F. Supp. 2d at 747–48 (citing *Gray v. Petoseed Co.*, 1997 WL 716454, 129 F.3d 1259 (4th Cir. 1997) (table) (affirming dismissal of fraud because under South Carolina law when a party to a compromise settlement wishes to avoid a valid release and be restored to his original rights, he must restore the other party to his original position by returning or offering to return the consideration received under the compromise); *McCarty v. Kendall Co.*, 242 F.Supp. 495 (W.D.S.C. 1965) (action to avoid a release allegedly induced by fraud dismissed due to plaintiff’s failure to return or tender consideration given for settlement); *Dunaway v. United Ins. Co. of America*, 239 S.C. 407, 123 S.E.2d 353, 354 (1962) (failure to tender or return consideration given for settlement precluded recovery in action for fraudulent inducement of settlement); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 399 S.E.2d 22, 23 (1990) (“it is well settled that one who seeks to avoid the effects of a release must first return or tender consideration paid thereof”).

⁶ Exhibit A also improperly attaches preliminary resolution discussions between counsel. Northgate therefore requests that these documents, which are also labeled as confidential settlement discussions pursuant to SCRE 408, be disregarded by the Court and stricken from the record. Further, to the extent that these confidential documents are ancillary to any of Plaintiff’s arguments, those arguments should also be disregarded by the Court and stricken from the record. As previously mentioned, Plaintiff also did not raise this issue at the Hearing and it should not be considered.

anything to refute the enforceability of the release until two years later when this lawsuit was instituted.

- Simply put, the issues raised in Plaintiff's Motion have already been addressed properly by the Court and nothing in Plaintiff's Motion should alter the Court's conclusion. Further, Plaintiff could not change the result in any way by amending his complaint, and, therefore amendment would be futile. The Court properly considered all arguments before it and made the proper determination that Plaintiff released his claims against Northgate.

CONCLUSION

For the reasons set forth herein, the Court should DENY Plaintiff's Motion.

Dated this 15th day of September, 2020.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: s/ S. Michael Nail

Charles E. McDonald, III (SC Bar # 9612)
S. Michael Nail (SC Bar # 101818)
300 North Main Street
Post Office Box 2757
Greenville, South Carolina 29602
Telephone: (864) 271-1300
Facsimile: (864) 235-8806
chuck.mcdonald@ogletree.com
michael.nail@ogletree.com

***Attorneys for Defendant,
Northgate Baptist Church***

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	C.A. NO.: 2020-CP-23-01213
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
vs	)	AFFIDAVIT OF HANNAH COLLIER
	)	
Charlotte Collier, Hannah Elizabeth	)	
Collier, Linda Smith and Northgate	)	
Baptist Church,	)	
	)	
Defendants.	)	
	)	

Personally appeared before me, Hannah Collier, who being duly sworn, deposes and states as follows:

1. I am a named Defendant in the above-referenced matter and I am making this Affidavit in support of my Motions to Dismiss the Plaintiff's Complaint against me.
2. I am a former member of Northgate Baptist Church and was part of the Church Worship Team led by the Plaintiff.
3. During my time on church's Worship Team, I believed that the Plaintiff developed an inappropriate relationship with me. As proof of this inappropriate relationship, attached hereto as Exhibit "A" are text messages from the Plaintiff to me which identify why I believed it was clearly an inappropriate relationship.
4. On or about March 12, 2018, I informed Dr. Barry Jimmerson, the pastor for Northgate Baptist Church, that I believed the Plaintiff's relationship with me was inappropriate and that this was the reason I was going to stop attending the church. I confirmed to Dr. Jimmerson that Plaintiff's relationship to me was not sexual in nature. I also told Dr. Jimmerson that I did not wish for the Plaintiff to get in trouble.

FURTHER AFFIANT SAYETH NOT!

Hannah Collier
Hannah Collier

SWORN to before me this 17th
day of August, 2020.

Jake A. Sny
Notary Public for South Carolina
My commission expires: 4/27/2021

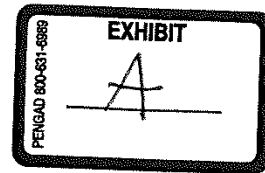
Verizon LTE

08:01

100%



James Tegeler



JAMES

TODAY

Hey Princess. While I'm falling asleep I was thinking of you and how thankful I am to have you in my life. You are seriously the best friend and/or family member anyone could ask for... especially for the way you take up for those you love. Like tonight you were so upset for your brother. (Btw I ordered him a Fitbit 😊) You truly do watch out for others more than you do yourself. You've made this one of the best years of my life... that's right, YOU. I love you so much and I can't wait for our first family Christmas together! You're a sweetie pie and a cutie pie all mixed into one amazing person! I'm so proud to have you in my life, and I can't get enough of ya!! I'll snap you in the Am! I love you my sweet, awesome Ninja Princess Daughter!!! 😊👉❤️🐱

Good morning! I love you! ❤️

Verizon LTE 07:22 100%



James Tegeler



JAMES

TODAY

Here's a story for you... Once there was a beautiful princess who had a beautiful heart and a beautiful soul. And whenever she smiled her face lit up and her eyes twinkled like the twinkling blue stars on a crisp, clear winter night. And everyone she came in contact with could feel her love and warmth and kindness. I loved her very much and knew I didn't want to live without her... so I adopted her into my life and into my family... and I always want her to stay there. I promise that I will never leave her and that she will always be my Princess! I love you baby girl! Sweet dreams! 😊❤️

Verizon LTE

08:10

100% 

James Tegeler



JAMES

TODAY

Sorry I'm up so late, Princess. I was helping Andrew get stuff ready to leave tomorrow and wrapping gifts and stuff. I promise to get to bed early tomorrow nite. You are one special young lady... to me, to my family, to your family, to your friends and basically anyone who comes in contact with you. You genuinely hurt for your friends and family when they are hurting. That's such a beautiful quality. Painful yes... but it shows your character and beauty as well. I can't tell you enough how blessed I am to have you in my life. I love you more each day. I think and pray for you every minute of every day. You are seriously always on my mind, and you are very important to me. Thank you for being such a beautiful blessing to my life! God sent me an angel and a princess... you! 😊 I love you and I miss you! Dad. 😊😊❤️
❤️❤️❤️👉

ELECTRONICALLY FILED - 2020 Aug 17 4:42 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

Verizon LTE

07:59

100%



James Tegeler



I love you even longer than that. 🙄🙄🙄
So last Christmas I never imagined in my wildest dreams that such a cute, sweet, vibrant, thoughtful, caring and smart young lady would be in my life and in my heart. And to get to have a family Christmas with her and her family is so much more than I could ever ask for. God is good. You gotta know if you look at me with those bright sparkly blue eyes and ask for something I'll give it to you. Probably shouldn't have told you that. But it's toooooo late now! Merry Christmas Eve, Princess. The first of many! I hope I'm not dreaming because I'd be devastated. So if I happen to pinch your arm lightly, it's to make sure you're real. And of course, every time I look in the mirror and see my black-eye you gave me for pitching you, then I'll know for sure!! Little humor on a Sunday morning! But hey, it's Christmas Eve!! I love you, Princess! ❤️❤️🙄🙄❤️❤️
👶👶👶👶👶👶👶👶👶👶👶👶👶👶👶👶

Verizon

01:30

99%



James Tegeler



JAMES

TGS/7

Here is your letter to wake up to, Princess
♥ Btw, you fell asleep on my shoulder
tonight which was really special to me. I
can't tell you how much you mean to me. I
had one of the best days of my life. I really
enjoyed just getting to ride with you, and
chat with you and laugh with you. I enjoyed
that so much. And then to get to hold your
hand, and go ice-skating, and eat dinner
with your family, and have you fall asleep on
my shoulder created some really special
memories for me. But tomorrow, (which is
actually today now 😊) is going to create
even more special memories that I will
remember and cherish forever. I can
honestly say without a doubt that you are
the most amazingly special person to ever
be in my life. I love you **even longer**, Sweet
Princess! Forever **and ever**! Sweet dreams!



Verizon

07:46

100%



James Tegeler



JAMES

TODAY

Here's a note for ya to wake up to! I loved everything about today! Your gifts meant the world to me!! So sweet and they were the perfect gifts! I will cherish them forever and ever! Thank you for making me feel part of your family, and for being part of my family. I was so happy to be able to tuck you in and I hope you sleep well and have sweet dreams!! It makes me happy to be your sunshine! Thank you for being my Princess! I love everything about you!! I love you long time and even longer than that! I love you forever and ever! Good night, Princess! 😊



>

[illegible]

Search  LTE

10:34

 100% 

James Tegeler



Here's your first 2018 wake up note! 😊
Without a doubt, the best thing to happen to me in 2017 was you! By a long shot! I'm looking forward to this year and many more years with you in my life! There have been times when I wished I could've watched you grow up. You were sooo cute!! That would've been lots of fun... **but** God has a perfect plan, and He wanted you in my life now, and I'll take that with my whole heart. And by the way, you're just as cute now as you were then, so there! 😊 Anyhoo, I'm so excited to see you!!!! Thanks for calling me tonight! Praying for safety! I love you sweet baby girl!! Thank you for being my Princess!! Happy New Year! I can't wait to see what this year brings! My heart feels so safe with you holding it! Thank you for being so sweet to me, for loving me and for making me feel so special! I will always take care of you, my Princess 😊❤️👉😊❤️👉😊



Verizon 08:16 16%



James Tegeler



JAMES

TODAY

I'm home! I love you!

I wanted to write you a quick wake up note!

I'm looking forward to today, especially because I get to spend it with you! I really enjoyed being with you last night. It just makes me feel so warm all over and so happy! Thank you for being so special and for making me feel special. You'll never know how much that means to me. I hope you are sound asleep and I loved tucking you in... even if you don't remember! I hope I make you feel like a princess, because I love you being my princess! I love you long time. Even longer than that. Forever. And ever! 🤗😊💕👉❤️❤️

Verizon

08:31

100%



James Tegeler



Hannah. Princess. Sweetie Pie. I love you. There has only been one person who walked this earth who was perfect. And it certainly was not me. I don't tell you about being upset to try and make you feel bad or make you think something is wrong with you. There isn't. We just express our feelings. That's important. I know that I can do it in a much softer way, and I promise to work on that, just like I promise to never stop loving you. Ever. You are the sweetest, most precious thing that's ever happened in my life, other than my children being born. That's you baby girl. I hope you know how special you are to me. Sometimes I hold your blanket that's here and close my eyes and smell your smell, and hope that when I open my eyes you are here. You mean so much to me. You have improved my life so much. I hope you can forgive me for when I hurt you and upset you. I love you so much.

A long long time in fact. Even longer than

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT**

JAMES EARL TEGELER,

2020CP2301213

COMMON PLEAS CIVIL CASE NO.

Plaintiff(s),

v.

AFFIDAVIT FOR

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, NORTHGATE BAPTIST CHURCH,**

JOSIE ALLEN
(LEGAL NAME)

Defendant(s).

I, **JOSIE ALLEN**, having been duly sworn,

depose and say the following:

I am 18 years of age or older, of sound mind, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein. I understand that the statements made herein are done so to the best of my knowledge under the penalty of perjury, and I reserve the right to amend or update certain statements accordingly.

1. I have known James Tegeler during the time he was employed by Northgate Baptist Church ("Church").
2. James and his family, including his sons Andrew and Alexander Tegeler, are close family friends with my family. I am a long-time close childhood friend of James's son Andrew Tegeler.
3. I was present during the time when Charlotte and Hannah Collier interacted with James during family events and activities with the Tegeler family. When I spent time with the Tegeler family, I never saw James on a one-on-one basis or alone with Charlotte or Hannah.
4. Hannah generally made me feel uncomfortable because she seemed to be jealous or resentful of me since I have been around the Tegeler family long before Charlotte and Hannah briefly got involved in Tegeler family events and activities. Hannah would hardly speak to me. Getting her to have a normal conversation was like pulling teeth.
5. For example, I went on a trip to New York City with James and his son Andrew in the fall of 2017. James had my parents' approval for me to go on the trip. My parents had no objections with me taking this trip. To the best of my knowledge, James never invited Hannah to go on the Tegeler family trip to New York City. I distinctly remember Hannah appearing jealous or resentful of me stating something along the lines of: "Why does Josie get to go [on the New York City trip] but I don't?" Hannah seemed to sulk and pout when she couldn't go on the trip but I could.

6. I spent Christmas with the Tegeler family in 2017. James gave Hannah \$500.00 to give and receive gifts during the Tegeler Christmas. Hannah got Christmas gifts for herself, Charlotte, Ty Collier (Hannah's younger brother), James, Andrew, Alexander, me, and Sarah Youngblood (who is Alexander's girlfriend). Hannah also got Christmas gifts for the Collier family to give Christmas gifts to one another. Hannah's \$500.00 from James for Christmas gifts was spread out to around eight people, or an average of \$62.50 per person. I got \$200.00 from James for Christmas, and my family knew about his gift to me. If you were comparing apples to apples, I got more than Hannah did.
7. For the Christmas gifts from or to the Collier family, James doing that for Hannah was nothing unusual or out of character because James is generous by nature. My family had no issue with my Christmas gift from James. For example, James does a lot for my family, including helping to pay for my family to go on a joint family trip with my family and the Tegeler family. My family has never raised an issue for James helping out financially or giving me gifts.
8. I went on the Tegeler family trip to the Biltmore Estate in Asheville, North Carolina on or around January 2, 2018. Attached in an exhibit is a photograph from this trip that shows Charlotte and Hannah were also there. Hannah placed her head on James's shoulder. Charlotte is to the left of James and Hannah with the pink jacket that is cut off. Exhibit A.
9. As on the Biltmore trip, Charlotte was right there in front of Hannah to observe Hannah's affectionate behavior toward James. Charlotte never made any objections about Hannah's behavior toward James to the best of my knowledge. Instead, Charlotte seemed happy that Hannah acted like an affectionate daughter to James. After the Biltmore trip, Charlotte and Hannah weren't around as much to the best of my knowledge.
10. On or around March 11, 2018, Andrew texted me from his brother Alexander's birthday party. Apparently, Charlotte and Hannah were at Alexander's birthday party that day. Andrew was complaining about Hannah being rude and annoying during Alexander's birthday party. Andrew wanted to leave his brother's birthday party because of Hannah.
11. My grandmother Tina Speakman works as a secretary for the Church. My grandmother's desk is right outside of the conference room and office for Dr. Barry Jimmerson, who is a pastor of the Church. To the best of my knowledge, on or around April 10, 2018, and while James was in a meeting in the conference room, my grandmother texted me to ask me something along the lines of: "What is going on? James was forced to resign because of a girl Hannah?" I responded to something along the lines of: "Are you serious?"
12. On July 7, 2018, I received a social media message from Hannah that was very rude and ominous. Exhibit B.

13. I would describe Hannah's behavior as if she was using James to set him up with her mom Charlotte. I was under the impression that Charlotte and Hannah were looking to create a new surrogate family unit with James. In that context, Charlotte and Hannah seemed very much attracted to the idea of James in a new surrogate family unit and using James for his money, nice house, and so forth like a piggy bank. Charlotte and Hannah did not seem genuinely considerate of James's sons from his previous marriage.
14. Charlotte and Hannah did not really socialize or talk with the rest of the Tegeler family. They were mainly around James. Charlotte seemed very happy around James, and she seemed infatuated with him. It was clear to me that Charlotte was interested in dating James. Charlotte always seemed to be on her best behavior when James was around. And, she usually had to be near James.
15. Hannah came across as very needy, insecure, and immature. She often wanted to be the center of attention talking to everyone in a group setting about herself. But, she was socially awkward on a one-on-one basis to the point of giving one-worded answers or conversing very little with others in the Tegeler family besides James. Typically, with Charlotte right there, Hannah wanted James's undivided attention away from others and his sons.
16. Hannah clearly consented to James in the role of a surrogate father as Charlotte and Hannah spent more time with the Tegeler family. Hannah was often affectionate toward James in a daughterly way, of which Charlotte was typically present to observe Hannah's behavior toward James. After James refused to date Charlotte, Hannah seemed to flip like a switch because James wasn't interested in her mom Charlotte.
17. I learned that Hannah reported James as having an inappropriate relationship with her to the Church. Generally speaking, when I hear the term "inappropriate relationship," I think the term in this context means an older man having sex with an underage girl. No one would mistake Hannah's relationship with James as anything but a surrogate fatherly-daughter type of relationship in the Tegeler family setting. No one would ever imagine James having sex with Hannah, or having romantic feelings toward Hannah. No one would ever imagine Hannah having romantic feelings toward James.
18. No matter what the context for "inappropriate relationship" means, the scope of the meaning for that phrase in a statement alone when Hannah accused James of having an inappropriate relationship with her is damning to James in the workplace, especially in a church. For Hannah to make that accusation is hypocritical because Hannah cannot condemn James without condemning herself. At that time, Hannah was a legal adult and consented to treating James like a surrogate father figure—right in front of Charlotte. Charlotte making the same accusation is equally hypocritical because Charlotte was happy that Hannah acted in a daughterly way around James.

19. Having been around James, Charlotte, and Hannah together, no one would ever, ever, ever believe James was a "predator" toward Hannah. To hear James accused of being a predator toward Hannah by the attorney for Charlotte at James's hearing makes me sick to my stomach and distraught. The word "predator" means a person sexually preys on another person—usually in the context of an adult molesting an underage child. When you call someone a predator, you are accusing that person of committing a crime. No crime was committed here. James is not being prosecuted for a crime in this case. James is not a criminal. Calling James a "predator" in this case is even more damaging than James being accused of having an "inappropriate relationship" with Hannah and completely unnecessary that would utterly destroy a man's reputation.
20. I see James as a father figure. My family has never made any objections to James being around me. James has never made me feel uncomfortable at the Tegeler residence or during Tegeler family activities or events. James does not deserve what happened to him because of Charlotte and Hannah. This whole situation is morally wrong. James is an innocent man. His name should be cleared.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

8/27/2020
Date

Josie Allen
Affiant Signature
Josie Allen
Affiant Printed Name

STATE OF South Carolina
COUNTY OF Greenville

I, Deborah D. Davis, the undersigned Notary Public, do hereby affirm that the affiant personally appeared before me on the 27 day of August, 2020, and signed the above Affidavit as the affiant's free and voluntary act and deed.

Deborah D. Davis
NOTARY PUBLIC

My Commission Expires on:

6/15/2027



EXHIBIT A



ROA-000450

EXHIBIT B

6:31



Hannah ❤️

hannah.e.collier99



July 07, 2018



Hey

hey



I need to ask you something

what's up?

I hate to ask this, but have you been following me so that you can screenshot what I post and send to somebody? I hate to be untrusting, but I have good reason

I hope that's not the case, but it wouldn't surprise me with the way my luck has been with that family.

That tells me what I need to know. Thanks.



Message...





ELECTRONICALLY FILED - 2020 Aug 28 11:05 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT**

JAMES EARL TEGELER,

**2020CP2301213
COMMON PLEAS CIVIL CASE NO.**

Plaintiff(s),

v.

AFFIDAVIT FOR

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, NORTHGATE BAPTIST CHURCH,**

**ANNE DANCIU
(LEGAL NAME)**

Defendant(s).

I, **ANNE DANCIU**, having been duly sworn,

depose and say the following:

- I am 18 years of age or older, of sound mind, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein.
1. I have known James Tegeler during the time he was employed by Northgate Baptist Church.
 2. I had been a member of Northgate Baptist Church for over twenty (20) years.
 3. I have been acquainted with James's family and his parents' bible camp in Virginia for around thirty-five (35) years. James comes from a very Christian-based family background. Knowing his family and background, I would describe James as well-bred. He was a popular camp counselor from what my children remembered when my children went to James's family bible camp.
 4. I observed Charlotte Collier, who is the mother of Hannah Collier, and Hannah Collier at the church around James. It seemed to me as if Hannah was trying to set up her mother Charlotte with James.
 5. As Charlotte and Hannah spent more time around James, Charlotte's skirts kept getting shorter and shorter at church. Charlotte's clothing became increasingly provocative. In the front row and the section near where James played, I remember Charlotte wearing a mini skirt that was too revealing when she sat down during a church service. Whenever James stopped playing during the service, Charlotte and Hannah would leave the service early.
 6. Over time, I would describe Charlotte trying to monopolize James's attention during choir practice. The Worship Team and the choir would practice together for various services. When Hannah came to practice in the Worship Team, Charlotte almost always came too even though she was not in the choir and I only remember her singing very rarely. That is

unusual because there are other members of the Worship Team, Praise Team, and the Choir team about the same age as Hannah and their parents don't come to practice. Charlotte's mother lived about a block away from the church, so it wasn't like Hannah needed a ride to practice.

7. James was just happy to have more voices. It was obvious that James was oblivious to Charlotte's attempts to be more than friends with James. James never reciprocated to Charlotte's attempts for a relationship more than friendship.
8. James still has a married-man's mentality. I saw James give a concert at another church after playing the piano for Northgate Baptist Church. James told the story of losing his wife during that concert. I know James as a widower who was married for over twenty (20) years.
9. Even though James is a widower, his wife is still part of his life. I would describe James as a grieving widower still. He has never really moved on from the loss of his wife. James is not interested in dating, which is well-known to anyone who knows him well. Dating anyone or having a romantic attachment to anyone is just outside of his thinking. His sole focus is on his faith and raising his two sons.
10. While James was sincere in trying to help Hannah as a mentor when Hannah was singing in the Worship Team, James was always professional about it. My granddaughter Caroline Jenkins also sang in the Worship Team with Hannah as well when James was in charge of the music program at the church.
11. My observation of Hannah was that she did not come across as a normal 18-year-old and I could tell something was wrong with her. She had dramatic mood swings. I would describe Hannah as a troubled youth from a divided home. I would describe Hannah as very immature for her age and that she does not act her age.
12. When Charlotte was married to Craig Collier, that family used to attend the church more then. Craig had an abrasive personality. He was very intimidating being a cop. Approximately three years ago, we went to a birthday party for his mother-in-law Linda Smith. I had an intimidating experience with him that day, he was coming out of a room and I was walking to the room. Instead of being a gentleman, he walked straight to me and I had to back up so he can continue to walk. Over time, and compared to her real father, I would describe that Hannah saw James like a surrogate father figure.
13. Not long after the church fired James, Dr. Jimmerson went on a six-month sabbatical.
14. I have also known Linda Smith for a long time as well. It is well known at the church that mental illness runs in Linda's family, which became more obvious when Linda's husband died. Linda is not a regular, active member at the church. After the church fired James,

Linda did not come back for a while. But, recently, she has come infrequently but she is not very welcome.

15. I have observed Laurel Shaler at Northgate Baptist Church. She has an unpleasant personality to be around with poor interpersonal skills. She has a legalistic way in her thinking. To her, everything is inappropriate. I would describe Laurel as self-righteous and seems self-entitled. She comes across as if she is better than everyone else and arrogant.
16. She has a habit of making a conclusion on her own without discussing the situation with others—that, we should accept her word as gold because she is a doctor. She comes across as a “know-it-all.”
17. She has a habit of verbally attacking others or other ideas. She is not a good communicator with other people. Meaning, she has a way of making a simple item seem more complicated than the issue really is—making a mountain out of a molehill. Laurel came into the church choir room with Caroline Coker and made a one sentence statement that James will not be coming back to the choir because of information we have learned.
18. After the church fired James, both me and my granddaughter Caroline had lunch with James. He was very upset over the situation. James was distraught and emotional. James was sort of in a trance. He was horribly shocked. He informed us that the church accused him of having an inappropriate relationship with Hannah.
19. In a crowd of people, James is more extroverted with an outgoing personality. One-on-one, I would say that James is a very serious and introverted person with more of a stoic personality. Either way, James is a very private person and keeps his emotions close to his vest. James is not someone to display emotion in front of strangers, or people he does not know well normally. For James to show an emotional response of crying is highly unusual.
20. To me, the term “inappropriate relationship” means something sexual or having a romantic attachment between two people. The term makes me think of something romantic, physical, or sexual between two people. One example would be as if two people are dating. Regardless of the context of the term “inappropriate relationship,” there is no doubt that the effect of hearing that term taints an accused person’s reputation in a manner that is derogatory and appalling. The damage is done at that point.
21. There is no way possible that James could have ever had an inappropriate relationship with Hannah. I saw James around Hannah. No one could ever come to that conclusion. Such an accusation is awful, horrible, and appalling. I was so appalled to hear that James had been accused of having an inappropriate relationship with Hannah to the point that I couldn’t breathe. I was outraged to the point of tears. James has been falsely accused.

Linda did not come back for a while. But, recently, she has come infrequently but she is not very welcome.

15. I have observed Laurel Shaler at Northgate Baptist Church. She has an unpleasant personality to be around with poor interpersonal skills. She has a legalistic way in her thinking. To her, everything is inappropriate. I would describe Laurel as self-righteous and seems self-entitled. She comes across as if she is better than everyone else and arrogant.
16. She has a habit of making a conclusion on her own without discussing the situation with others—that, we should accept her word as gold because she is a doctor. She comes across as a “know-it-all.”
17. She has a habit of verbally attacking others or other ideas. She is not a good communicator with other people. Meaning, she has a way of making a simple item seem more complicated than the issue really is—making a mountain out of a molehill. Laurel came into the church choir room with Caroline Coker and made a one sentence statement that James will not be coming back to the choir because of information we have learned.
18. After the church fired James, both me and my granddaughter Caroline had lunch with James. He was very upset over the situation. James was distraught and emotional. James was sort of in a trance. He was horribly shocked. He informed us that the church accused him of having an inappropriate relationship with Hannah.
19. In a crowd of people, James is more extroverted with an outgoing personality. One on one, I would say that James is a very serious and introverted person with more of a stoic personality. Either way, James is a very private person and keeps his emotions close to his vest. James is not someone to display emotion in front of strangers, or people he does not know well, normally. For James to show an emotional response of crying is highly unusual.
20. To me, the term “inappropriate relationship” means something sexual or having a romantic attachment between two people. The term makes me think of something romantic, physical, or sexual between two people. One example would be as if two people are dating. Regardless of the context of the term “inappropriate relationship,” there is no doubt that the effect of hearing that term taints an accused person’s reputation in a manner that is derogatory and appalling. The damage is done at that point.
21. There is no way possible that James could have ever had an inappropriate relationship with Hannah. I saw James around Hannah. No one could ever come to that conclusion. Such an accusation is awful, horrible, and appalling. I was so appalled to hear that James had been accused of having an inappropriate relationship with Hannah to the point that I couldn’t breathe. I was outraged to the point of tears. James has been falsely accused.

22. Since the church fired James, I have seen James's devastation over this situation. He has been emotionally wrought. What happened to James is wrong.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

August 12, 2020
Date

Anne R Danciu
Affiant Signature

Anne R Danciu
Affiant Printed Name

STATE OF South Carolina
COUNTY OF Greenville

I, Deborah D. Davis, the undersigned Notary Public, do hereby affirm that the affiant personally appeared before me on the 12 day of August, 2020, and signed the above Affidavit as the affiant's free and voluntary act and deed.



Deborah D Davis
NOTARY PUBLIC
My Commission Expires on: 6/15/2027



**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT**

JAMES EARL TEGELER,

2020CP2301213

COMMON PLEAS CIVIL CASE NO.

Plaintiff(s),

v.

AFFIDAVIT FOR

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, NORTHGATE BAPTIST CHURCH,**

CAROLINE JENKINS
(LEGAL NAME)

Defendant(s).

I, **CAROLINE JENKINS**, having been duly sworn,

depose and say the following:

I am 18 years of age or older, of sound mind, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein. I understand that the statements made herein are done so to the best of my knowledge under the penalty of perjury, and I reserve the right to amend or update certain statements accordingly.

1. I have known James Tegeler during the time he was employed by Northgate Baptist Church ("Church").
2. James is a close family friend with my family.
3. I attended the Church with my grandparents to get to know the Church. However, while I attended the Church, I never took the membership class to become a member of the Church that is required to become a member officially.
4. I sung in both the Worship Team, or the choir, the Praise Team, or any of the above when James was the Music Director over both of the teams. The Worship Team practice was usually at 7:00 P.M. and the Praise Team practice was usually from around 8:00 P.M. to 9:00-9:30 P.M. on Wednesdays. The Praise Team usually had only about five (5) people singing on it.
5. I was present during the time when Charlotte and Hannah Collier interacted with James at the Church. I personally observed the behavior and statements made by both Charlotte and Hannah. To the best of my knowledge, Linda Smith, who is Charlotte's mother and Hannah's grandmother, was a member of the Church, but Charlotte and Hannah were not members.
6. Hannah mainly sung on the Praise Team for around six (6) or seven (7) months. Charlotte sang on the Worship Team, Praise Team, or any of the above every once in a while. Hannah did not come

to practices for the Praise Team consistently. When either Hannah, Charlotte, or any of the above sang, I usually sat next to one or both of them during practice.

7. Charlotte was usually there for most of Hannah's practices, which was odd because, usually, no one else was there to watch practices. Nobody else who sang on the Praise Team had a parent coming to practices.
8. During my practices singing at the Church, I never saw James on a one-on-one basis or alone with Charlotte or Hannah. I always saw both Charlotte and Hannah together around James. To the best of my knowledge, James mainly interacted with Charlotte and Hannah in a group setting. Typically, Charlotte and Hannah would stay after practice for a while to talk with James even after the others, including me, left. No one else usually stayed as long afterward to talk with James like that.
9. At no time did I think Charlotte or Hannah were treated any differently than anyone else. James was always very professional during practices and never gave anyone special treatment. James treated everyone the same and equally. James is kind and respectful to everyone I have seen him around.
10. On the other hand, I found Hannah socially awkward because she was immature for her age and difficult to be around on occasion during her mood swings.
11. Sometimes, Hannah was condescending towards others on the Praise Team, including James. When Hannah acted that way, James would have to redirect Hannah's behavior because she was being socially inappropriate when interrupting practice.
12. Hannah was stand-offish at first until she got to know you. When Hannah had a mood swing, then she would go from being more open and expressive to withdrawn and quiet at the flip of a switch. When Hannah had a mood swing, she would just get up and leave in the middle of practice sometimes. Then, sometimes, she would go from being withdrawn and quiet back to open and expressive. During Hannah's mood swings, the change in her behavior was drastic to the point that I was uncomfortable being around her during those times.
13. At no time, did Hannah ever seem uncomfortable around James. Instead, she was always the most comfortable around her mom and James than everyone else. She had to be the center of attention with her mom and James. She seemed desperate for approval from a parent figure. I would not describe the way Hannah acted towards James as a romantic attachment or an infatuation and vice versa with James. And, I would certainly never think anything sexual happened between Hannah and James.
14. Hannah definitely acted like James was her surrogate father. On or around September of 2017, I remember Hannah coming to me and telling me that she had gone to James to be a mentor because her dad wasn't around. I never felt that James's role as a mentor toward Hannah was inappropriate having been around them both often under the circumstances in a group setting.

15. Charlotte was around when Hannah acted like James was a surrogate father in front of Charlotte, and Charlotte seemed happy about it. Charlotte always seemed to be happy around James too. It definitely came across as if Charlotte wanted to pursue a relationship with James, and Hannah wanted James as a surrogate father figure. But, James didn't act any differently toward Charlotte and Hannah from others during practices.
16. To me, it was so obvious that Charlotte was chasing James and using Hannah during practices and church services as a way to go after James. Meaning, it was obvious to me that Charlotte definitely was attracted to James and wanted more than just friendship with James—of a romantic nature, intimate nature, or both. I noticed Charlotte began dressing more provocatively around James over time. It was clear that James did not reciprocate Charlotte's attempts—he was oblivious to her.
17. Hannah stopped coming to practices around January of 2018. I remember James asking us if anyone had heard from Hannah around the time she stopped coming because he didn't know why.
18. On or around March 14, 2018, my grandmother conveyed the conversation between she and Dr. Barry Jimmerson, who was the pastor at the Church. Hannah had recently complained to her father about James at that time. Hannah's father then called Dr. Barry and cussed him out. Dr. Barry apparently was very shaken up by the phone call. I found it really weird because Hannah acted like her dad was out of the picture in her life.
19. In the time between when James found out that Hannah had reported him to Dr. Barry and when he was fired, James was off. He wasn't his usual self. He was quiet and withdrawn. He was clearly upset by the situation. Many members noticed the change in James and were concerned. Clearly, James was in shock, devastated, and severely distressed during this time because of the severity of the situation related to him working at the Church. James told me that he felt betrayed.
20. On or around April 11, 2018, Dr. Laurel Shaler held a brief meeting for the Worship Team before practice started. She informed us that the Church was investigating a situation about James, and he was not going to be working at the Church "for right now." She let us know that we would have an interim choir director in the meantime. At the time, others in the choir, including me, didn't know that James had been fired yet. I had no idea why Laurel was even telling us about this situation instead of Dr. Barry.
21. Warren Peden also sang in the Worship Team under the direction of James. Right after Laurel spoke to us, Warren
22. made an outrageous outburst along the lines of: "James was having an inappropriate relationship with one of the teenagers." Laurel just stood there and never said anything to Warren. She just let him go on.

23. I was able to connect the dots to Hannah because my grandmother reminded me of our earlier conversation that she had with Dr. Barry. Aside from Warren and Laurel, everyone else in the room was shocked too. After Warren's outburst, it was so quiet that you could hear a pin drop in the room. At least three or four other people in the room at that time were deacons of the Church. The deacons were just as shocked as the others in the room. I texted James to let him know what Warren said about James at practice. David Ammons, who was the president of the choir at that time, told Warren to stop talking and that Warren did not need to say anything else. Warren seemed bothered that David redirected him.
24. After Warren's outburst during choir practice, I went to Dr. Barry with my grandmother Anne Danciu and my grandfather Peter Danciu. Dr. Barry admitted to us that Hannah reported James to the Church and accused James of having an inappropriate relationship with her. Dr. Barry didn't go into further details, but he did confirm Hannah's statement to the Church when she reported James to the Church. Dr. Barry then admitted that the Church had to investigate James because of Hannah's accusation. Dr. Barry claimed that there was nothing he or the Church could do about the Church's investigation into James because of Hannah accusation. Dr. Barry claimed that James was on a leave of absence while the Church was conducting its investigation into James.
25. Worse, Dr. Barry admitted agreeing with Laurel that Hannah was a child and a young girl while James was an older man. My impression of Dr. Barry's admissions was that the Church made out James to be like an older man having an illegal relationship with a minor.
26. After James was fired from the Church, both my grandmother and me, we met with James for lunch to talk with him about what happened because of Hannah's accusation against him. He was devastated. Aside from his faith and family, James lost his most cherished livelihood and means of worship through music ministry because Hannah was being impetuous and spiteful toward James.
27. After James was fired from the Church, I reached out to Hannah and asked her what happened between she and James. I wanted to know why she accused James of having an inappropriate relationship with her. One of the text messages in particular is attached in Exhibit A, however, I don't have the entire conversation thread. I remember that Hannah denied going to the Church and accusing James of having an inappropriate relationship with her.
28. I remember saying to Hannah something along the lines of: "You and I both know this [accusation of James having an inappropriate relationship with you] is not true." Hannah claimed that she didn't want James to get in trouble at the Church over and over again. She was pressing me as to whether I believed her story or James's story instead. She was asking me about whose side I was on. She was very defensive.

29. I knew that Hannah lied to me because: (1) my grandmother told me about her conversation with Dr. Barry before James was fired related to Hannah; (2) Warren made an outburst during choir practice about James having an inappropriate relationship with one of the teenagers, and I knew that accusation involved Hannah; and, (3) Dr. Barry admitted that Hannah did report James and accuse him of having an inappropriate relationship with her.
30. My impression of Hannah's response to me was that she seemed to want to take back what she did to James afterwards because she realized the enormity of what she had done. She knew what she did at the time. But, she seemed guilty after-the-fact. When Hannah was called out for what she did, she seemed like: "Oops, what have I done?"
31. Knowing Hannah, she knew what she was doing when she accused James of having an inappropriate relationship with her without any regard for the impact that such an accusation would have on James or destroy James's reputation and livelihood. The meaning of Hannah's accusation was crystal clear. Hannah painted James out to be a predator intentionally and maliciously. If Hannah condemns James's behavior, then she condemns her own behavior because Hannah solicited James to be a mentor to her from the very beginning.
32. Hannah was a college student. She was not a child. The portrayal of Hannah as a child was grossly inaccurate and inappropriate. At the time, Hannah was eighteen (18) years old or older—she is a legal adult. She is not a minor. She can vote. She can join the military.
33. Generally speaking, when I hear the term "inappropriate relationship," I think the context refers to a romantic relationship, a sexual relationship, or any of the above between two people that is consensual. For example, that term makes me think of pornography, or sexually-natured pictures; sexts, or sex texts, sending nude photos to each other; or, two people sneaking off together in a clandestine romantic or sexual relationship like a single person having affair with a married person.
34. However, in this instance with Warren Peden, the term "inappropriate relationship" implied—without a doubt—an age difference that had the stigma of an older man pursuing a minor in a sexual manner. The intent behind Warren's statement about James was crystal clear. Nothing good comes from Warren making a statement like that to drag James's reputation through the mud. In that moment, Warren shattered James as a person intentionally and maliciously as if James was a criminal, or predator, for being some kind of child molester in church setting.
35. No matter what the context for "inappropriate relationship" means, the scope of the meaning for that phrase when accusing someone would destroy the accused person's reputation. That result would definitely apply in the workplace, especially in the workplace of a Church. James's reputation will always be stained because of this situation. He will never truly be able to recover.

36. When I hear the term "inappropriate contact," I think of physical touching that is not wanted or nonconsensual. If James were accused of having "inappropriate contact" with Hannah, then I would think that James was accused of touching Hannah without her consent. And, the very thought of James being accused of something like "inappropriate contact" with another person at the Church, or anyone really, is unthinkable.
37. If you knew James, then you knew that Hannah accusing James of having an inappropriate relationship with her as if she was a minor was outrageous. It could not be possible because James would never have an inappropriate relationship with a minor. No one would ever believe that James was a predator.
38. To me, accusing someone of having an "inappropriate relationship" versus having "inappropriate contact" with another person is vastly different. If you were to accuse an innocent man of having "inappropriate contact" with another woman, who is a legal adult by the way, in a church, then that kind of accusation is loaded—almost as if that man were accused of being a rapist. Such an accusation would break an innocent man. Such an accusation would destroy an innocent man.
39. To me, it appeared as if neither Laurel nor Warren wanted James at the Church after Hannah's accusation against him based on perpetuating a stigma instead of facts. I was and still am under the impression that if an employer has a problem with an employee, and the employer is investigating an incident concerning that employee, then the issue should be confidential and not made in an outburst in the middle of a choir practice.
40. Both Laurel and Warren were around the choir enough to see James interact with Hannah at the Church. For example, at the Christmas cantata, Warren and Laurel were around to see both Charlotte and Hannah interact with James. The way James was at the Christmas Cantata was not really different than how he was during practices.
41. Laurel was never very friendly or personable. In my opinion, she would at times act like she was better than everyone else. She had to have things her way or it isn't good enough. She calls herself a doctor and expects everyone to call her Laurel like she is a medical doctor. She doesn't like to be questioned, and she talks down to you if you do.
42. Before Warren's outburst, I always saw Warren as a father and family man in his position with the Church. After Warren's outburst, I saw Warren in a different light. Warren's behavior was so unusual and off-putting that I was shocked. I had never seen Warren act like that or make such an accusation like that about anyone else at the Church before.
43. At practices, James took prayer requests and praises for good things happening to others. James put together the music ministry that is part of the Church's ministry as a whole. While James did not

have a title of a minister at the Church, he very much filled that role in his capacity with the Church. The Church cannot crucify James without condemning others in the Church.

44. In my opinion, James is the kind of person who is friendly and outgoing in social situations, but he is still guarded and emotionally reserved. James is not an emotional person by nature. He is not the kind of man to cry easily. He is well-rounded, and he is the kind of person that has everything put together. For James to cry in front of people he is not really close to, or doesn't know as well, such as his boss or employer, would be highly unusual for James. If James were to cry in front of his boss or employer, then he would have to be very emotionally distraught and distressed to exhibit such abnormal behavior that is highly out of character for him. Knowing James, if James were threatened to face the Church congregation for being accused of having "inappropriate contact" or an "inappropriate relationship" with Hannah, James would not be in his right mind.
45. This whole situation is morally wrong. I left the Church because of how the Church handled the situation between Hannah and James, and I wanted nothing to do with the Church afterward. The Church intentionally painted James as a social pariah making James a scapegoat by sweeping the whole situation under the rug when nothing diligent was ever done about James's investigation.
46. James is an innocent man. His name should be cleared.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

8/21/2020
Date

Caroline Jenkins
Affiant Signature

Caroline Jenkins
Affiant Printed Name

STATE OF South Carolina
COUNTY OF Greenville

I, Deborah D. Davis, the undersigned Notary Public, do hereby affirm that the affiant personally appeared before me on the 21 day of August, 2020, and signed the above Affidavit as the affiant's free and voluntary act and deed.

Deborah D. Davis
NOTARY PUBLIC

My Commission Expires on: 6/15/2027

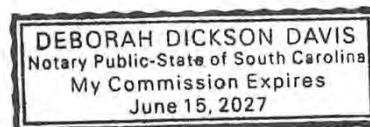


EXHIBIT A

Hannah to Caroline:
Hope you can find it in your heart to realize that this was not my fault or my intention

Caroline to Hannah:
How wasn't it your intention??
Why was this something that needed to happen??

Hannah to Caroline:
I never wanted him to resign.

Hannah to Caroline:
You don't have to believe me. You don't have to talk to me ever again. I'm sorry that you've been hurt by this. Have a good day.

Caroline to Hannah:
If that is true then why take it as far as it was taken? Why not try and figure out a different solution as you see fit?

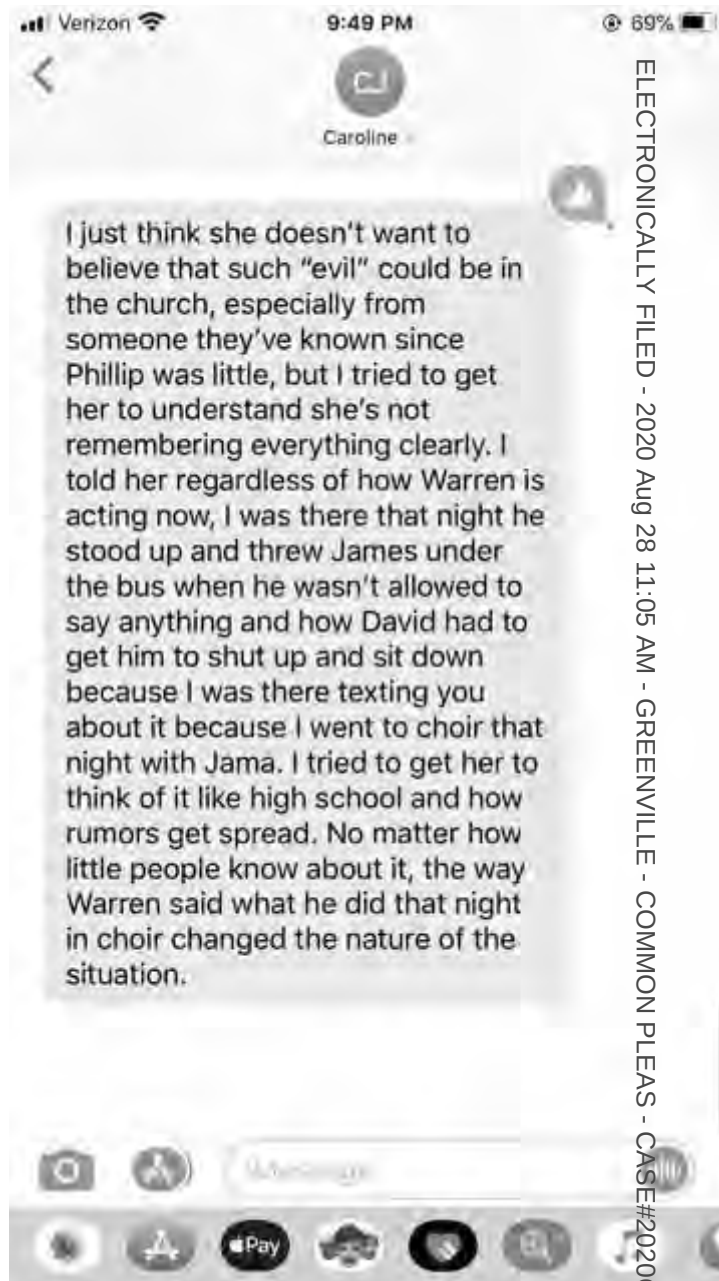
Hannah to Caroline:
It was out of my hands. I had absolutely nothing to do with this.

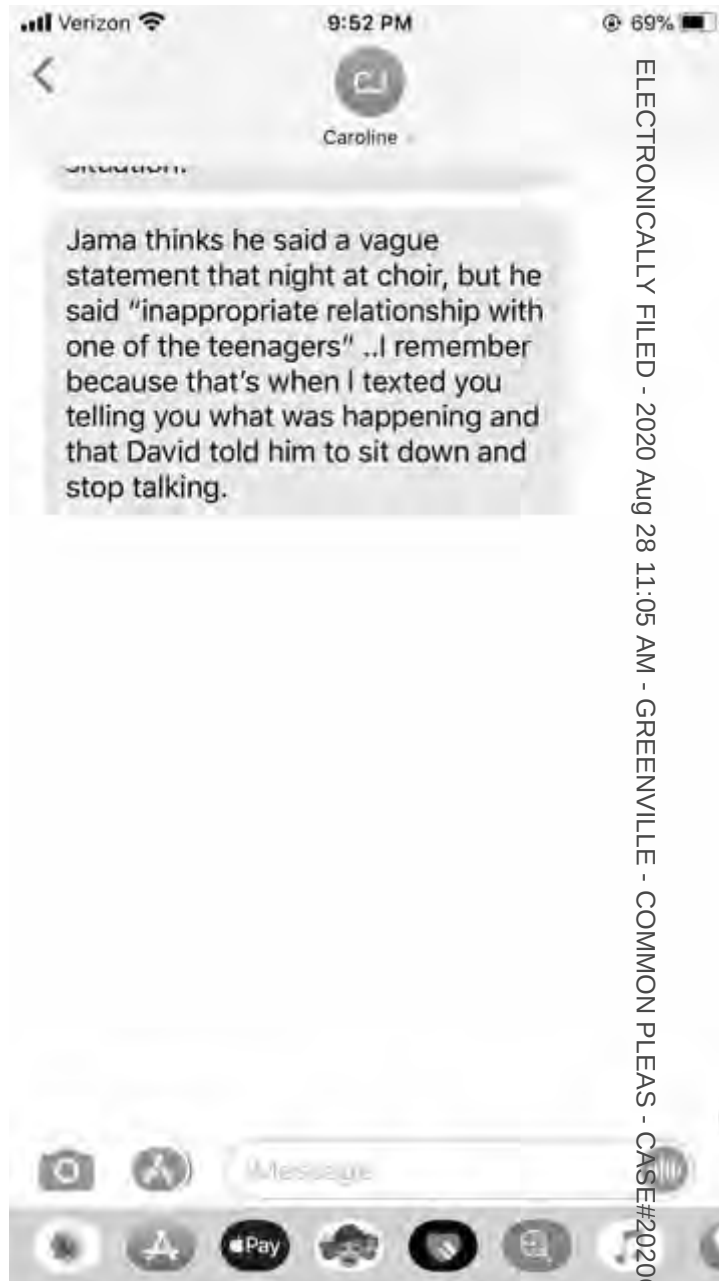
Hannah to Caroline:
Literally nothing.

Caroline to Hannah:
He was asked to resign because you said to the pastor that he had an inappropriate relationship with you and that's what the pastor told him you said. He has texts to prove that the accusations aren't true.



EXHIBIT B





ELECTRONICALLY FILED - 2020 Aug 28 11:05 AM - GREENVILLE - COMMON PLEAS - CASE#20200

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

JAMES EARL TEGELER,

Plaintiff(s),

v.

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, NORTHGATE BAPTIST CHURCH,**

Defendant(s).

**IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT**

2020CP2301213

COMMON PLEAS CIVIL CASE NO.

AFFIDAVIT FOR

**SUE LUTZ
(LEGAL NAME)**

I, **SUE LUTZ**, having been duly sworn,
depose and say the following:

- I am 18 years of age or older, of sound mind, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein.
1. I have known James Tegeler during the time he was employed by Northgate Baptist Church.
 2. I had been a member of Northgate Baptist Church for around ten (10) years. I also sing in the choir, and I am in the Women's Mission Union.
 3. James is well beloved by many of the parishioners of Northgate Baptist Church, and he is well respected as a musician.
 4. I have known Linda Smith for a long time as well. I would say I've known her for more than twenty (20) years I suppose. Linda Smith is the mother of Charlotte Collier and the grandmother of Hannah Collier. Charlotte was married to Craig Collier and they had Hannah Collier and Tyler Collier as their children. Craig was a cop. Linda and I also have mutual friends such as Judy Butchert, who is in a bible study group with Linda.
 5. About twenty (20) years ago, and at another church, Linda and I were in Sunday school and making our prayer requests. I'll never forget what she said because it was so shocking. Linda made a prayer request to help her daughter Charlotte because Charlotte's husband Craig would beat her. When you hear something like that, it sticks with you.
 6. I was aware of the divorce between Charlotte and Craig Collier. Craig is Hannah's father. Craig was very strict with Hannah. The divorce seemed to really affect Hannah. I saw a young girl who loved her father, but she didn't seem to reason her way through the divorce when Charlotte and Craig's marriage fell apart.

7. I see James as a grieving widower having lost his wife from a drawn-out terminal illness. Anyone who knows James knows that James is not interested in dating—at all. In line with his own sense of professionalism and decorum, James has been very clear at the church to avoid any dating relationships or any other kind of relationships of an intimate nature with anyone at the church.
8. While James has his own cross to bear losing his wife, he was also very concerned being there for his sons to help his sons cope with losing their mother. The experience was hard especially on his sons. James is very close to his sons, and his sons are actively involved in his life and in his home. With the planned social activities James throws together, James's sons are usually involved and participate.
9. James is the type of person who helps other people being a devout Christian. He is the kind of person who enjoys bringing people together in a shared community of faith in a very family-oriented manner. James has a very strong "father mentality" when dealing with younger adults, especially with his experience as a youth minister. He is the kind of man that asks himself what his wife would do for their child under the circumstances—what would a parent do for that child for the safety and well-being of that child. Over my years in different churches, I have observed youth ministers can often take the role of a parental figure in a spiritual sense like a faith-based guide to find one's way to walk the path of God.
10. I observed both Charlotte and Hannah Collier around James at the church. James was always trying to recruit people for the music program whether it was the Praise Team, Worship Team, or the choir. James took an interest in mentoring Hannah with her music when Hannah began singing in the Praise Team. Charlotte was often around initially as well although I only remember her singing in the Praise Team numerous times.
11. Over time, it appeared that Charlotte and Hannah Collier began getting more involved with James and his family in a family setting. I would describe Hannah as immature and a troubled youth from a broken home. Hannah is not a child nor acts like a child. But, Hannah acts immature for her age. Given Hannah's family background, James's previous experience as a youth minister, and James's allure as a wonderful father figure to his sons, it is no surprise that Hannah began to see James as a surrogate father figure.
12. Both Charlotte and Hannah seemed insecure to me in how they behaved around James at the church. Over time, it became more and more apparent that Charlotte became interested in James for more than just friendship or coordinating with James in the capacity of him being a mentor for Hannah. Oh, it was so obvious. Charlotte's dresses kept getting shorter and shorter. Charlotte started dressing more provocatively with short dresses and skirts. Not

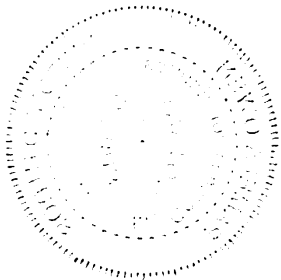
much left in the mystery there with her body if you know what I mean by the way she dressed and acted.

13. And, James. Oh, James was so oblivious to Charlotte trying to get James's attention. You know how men can be slow sometimes to pick up on that sort of thing. To women, it is more obvious. After a while with the barrage of Charlotte's attire dwindling further and further, and seeing more of her than I cared to, I finally had enough. I told James that Charlotte was after him and that he should be prepared. James was flabbergasted and said to me: "Are you kidding me?" Knowing James and his complete lack of desire for any kind of romantic or intimate relationship with anyone, I knew James would want to avoid a situation of being pursued by Charlotte and her attempts to become more involved with James whether romantically or intimately. Hannah asked James to go hiking. The plan was for only James and Charlotte to go on the hike. James asked Hannah if she was going. She said, "no, just you and mom." James said absolutely no! After this is when all the troubles started.
14. Around two (2) or three (3) months after James was fired, I went to lunch at Stax with my friend Judy, and Judy reported the most inflammatory comments from Linda about James and why James was fired. Judy commented to me about being puzzled as to why I liked James so much when the church had problems with him as its choir director. I informed her that she had the wrong impression of James. Per Judy, Linda accused James of having an "inappropriate" relationship with Hannah and that she was glad James got fired. Per Judy, Linda claimed that James had no business being around Hannah. Per Judy, Linda claimed that when Charlotte and Hannah were at James's house for a social activity playing a family-oriented game with James's family and friends, Hannah being involved and playing the game was highly inappropriate.
15. To me, when I hear the term "inappropriate relationship," the first thing that pops into my mind is something sexual happening between two people. It could mean something romantic or touchy-feely happening between two people. But, mainly, it makes me think of sex between two people. My perception of Linda's claims against James was that she portrayed James as touching Hannah in more than just being innocent in nature. I got the impression based on Linda's claims that she was accusing James of chasing Hannah like an older man chasing young girls in a perverted sense.
16. I lost my temper at Judy and had to walk away from her before I could return back to the table and regain my composure. I was so outraged, shocked, and in disbelief about how Linda could be on a rampage to ruin James's reputation so publicly that she feels the need to tell anyone she comes across. James's situation is not idle gossip. Linda's accusations of

James is so disastrous for his reputation. She is deliberately dragging James's reputation through the mud. It is as if she is determined to ruin him and will say anything to anyone to do it. That James would act in such a manner is incomprehensible.

17. This church community is a small community. Word of James's circumstances has rapidly spread like wildfire. When James got fired from the church, a lot of members, including myself, didn't understand why James was fired and we wanted to know why it happened. When I was at a meeting for the Women's Missions Group, the issue of James being fired was raised. We knew that Laurel Shaler was involved in firing James from the church and informed James that he no longer had a job. But, when we learned about Linda accusing James of having an inappropriate relationship with Hannah—we experienced disbelief and cried over something so horrible and outrageous. Shock doesn't even begin to compare to how I feel about this situation and the shame from it happening in a place of worship.
18. Such an accusation is so inflammatory like lighting a match over a can of gasoline that has torn the church apart. Since James was fired, the congregation has gotten smaller. If you know James, then such an idea is so unimaginable that he would act in such a way with Hannah. When in fact, most of us agreed that Charlotte was pursuing James, especially with her provocative attire that was clearly inappropriate in a place of worship. I can't believe that James was accused of having an inappropriate relationship with Hannah. Hateful lies.
19. I have observed Laurel Shaler at Northgate Baptist Church. Boy, does she wear her authority on her sleeve and let you know it. She has no problem overstepping others in the church affairs bypassing the chain of command easily. Laurel is arrogant and disrespectful to others in the church as her interpersonal skills are found wanting. She shoved it in your face about the string of ABC's after her name in all her degrees and that she was a doctor of something related to psychology. Or, at least that is the way she came across. She didn't dress as well for church either. Her attire wasn't nearly as provocative as Charlotte's attire, but, she wasn't far too off with short skirts and dresses either.
20. Her personality leaves a sour taste in your mouth. At the time when James got fired from the church, she was just on the personnel committee. But, she acts like she is in charge of running the church. I'm amazed at how she has sunken her claws into the church. She is rigid and inflexible—almost like she has an absolute way of thinking. It is her way or the highway. She has to have the last word and that is final. She makes it seem as if no one can question her conclusion or decision even when she has not explained how she reached it. She does not have a positive impact and contribution to the church's community.

21. But, knowing Laurel, and with her being involved in firing James, she took something like this with Hannah and ran with it unchecked. For as long as I have been a member, and as far as I am aware, the church has never known any kind of issue like what has happened to James. I really don't have anything good to say about her, and I am not alone in that sentiment. This whole situation has been blown way out of proportion.
22. Laurel Shaler has referred to Hannah as a child during all this situation. Hannah is not a child! She is over 18, she is in college, she can carry a gun, and is old enough to be married and a mother.
23. I have observed that James has been devastated by this situation. His standing in the Christian community tainted with such an awful accusation. This kind of accusation is something you never really recover from. When you accuse anyone of having an inappropriate relationship between a man like James and an immature college student like Hannah, I have no doubt that such an accusation is so inflammatory toward James in a way that he will never escape it. What Linda, Charlotte, Hannah, Laurel, and the church have done will always follow James. His good name will always be in question now. It will be hard for him to be able find work again for another church like he did at Northgate Baptist Church.
24. James has lost his good name. A good man's honor is precious. To falsely condemn an innocent man is writhing damnation for the one pointing the finger all twisted in horror like a snake unfurling from the arm to the finger with a hissing spray. May the accuser endeavor to be worthy of forgiveness because this is not the Christian way of things.



[INTENTIONALLY LEFT BLANK]

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

22 June 2020
Date

Susan J. Lutz
Affiant Signature

Susan J. Lutz
Affiant Printed Name

STATE OF South Carolina

COUNTY OF Greenville

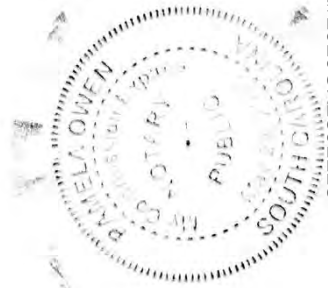
I, Pamela Owen, the undersigned Notary Public, do hereby affirm that the affiant personally appeared before me on the 22 day of June, 2020, and signed the above Affidavit as the affiant's free and voluntary act and deed.

Pamela Owen

NOTARY PUBLIC

My Commission Expires on: May 29, 2030

Pamela Owen
Notary Public, State of South Carolina
My Commission Expires May 29, 2030



**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT**

JAMES EARL TEGELER,

2020CP2301213

COMMON PLEAS CIVIL CASE NO.

Plaintiff(s),

v.

AFFIDAVIT FOR

**CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, NORTHGATE BAPTIST CHURCH,**

**ROY SABEAN
(LEGAL NAME)**

Defendant(s).

I, **ROY SABEAN**, having been duly sworn,

depose and say the following:

I am 18 years of age or older, of sound mind, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein.

1. I have known James Tegeler during the time he was employed by Northgate Baptist Church.
2. I had been a member of Northgate Baptist Church for around twenty-five (25) years.
3. At the time James was terminated on or around April 10, 2018, and subsequently thereafter, I was a Deacon of Northgate Baptist Church.
4. As a Deacon, I was part of the Deaconate for Northgate Baptist Church responsible for overseeing church affairs and providing spiritual guidance. The Personnel Committee chair reports to the Administration Cluster Leader. The Administration Cluster Leader then reports to the Leadership Council, which involves the Deacon Chairman. The Cluster Leaders are to communicate with the Personnel Committee Chair and the Leadership Council for any questions, concerns, recommendations, or actions by the Leadership Counsel that involves the Personnel Committee.
5. After James was fired by Northgate Baptist Church, I questioned Dr. Barry Jimmerson as to why James was fired. Barry silenced me by telling me not to push the issue or to interfere because of legal implications or ramifications from the church firing James. Barry just referred to the matter involved things he couldn't tell me. Barry informed me that the decision to fire James was made by the Personnel Committee.
6. The proper protocol involving the leadership hierarchy at Northgate Baptist Church was not followed when the church fired James. The Personnel Committee makes recommendations to hire or fire personnel. However, the Personnel Committee does not make charges or

accusations against church employees. And, the Personnel Committee does not investigate charges or accusations against church employees. If any disciplinary action was required against a church employee, the Deaconate should surely be apprised of the situation. But, more specifically, the Deaconate also took a special role in church matters. Without a doubt, the Deaconate should be involved in the termination of employees and investigating the surrounding circumstances. The Deaconate is there to aid the pastor and church in such matters.

7. The Deaconate should have been involved in the decision to terminate James based on allegations of James having an inappropriate relationship with Hannah Collier, who was a member of the church and sang in the Praise Team. In a matter such as the allegations against James by Charlotte Collier, who was the mother of Hannah Collier, and Hannah Collier, the Deaconate would have been in charge of the investigation. If the Deaconate were to investigate such accusations against James, then the investigation of the matter would have to be based on something other than mere hearsay. A thorough discussion with James would have been involved to present both sides of the story and get to the bottom of the issue. The Deaconate would have prayed over the matter for spiritual guidance.
8. To the best of my knowledge, if the church received any grievances against an employee or member of the church, then such a grievance was so isolated and rare. Not in all the years I was involved with the church was I ever aware of any grievance or incident involving an employee or member of the church to have legal implications. While grievances against an employee or member are permitted at the church, such an occurrence was so rare—especially an incident related to personnel problems.
9. Never has a church employee or member been accused of having an inappropriate relationship with another church employee or member to the best of my knowledge. And, to the best of my knowledge, the church does not have a history of incidents involving child molestation, adultery, or physical or sexual relations between a church employee and a member.
10. But, in this case, Laurel Shaler, who was the head of the Personnel Committee at the time James was fired by the church, deliberately bypassed the Deaconate in a godless manner. Laurel increasingly took control over more and more of the church to the point of appearing as if she ran the church. I would describe Laurel's personality as controlling, domineering, and manipulative. Here, Laurel overstepped her boundaries in this situation unquestionably. She defied the spiritual cornerstone of the church to appeal to the Christian faith regarding ghastly accusations against James. Barry just stood by and let Laurel trample over years of

church policy and procedure disrespecting the Deaconate and the Deaconate's role in the church. Their actions in this situation rendered the Deaconate as meaningless and contrary to the very foundation of this church and its organization. On something like this situation with James, the Deaconate is not supposed to be left in the dark. To me, Laurel does not inspire walking in the path of Christ that merits a leadership position in a place of worship. Instead, God played no part in what the Church did to James. The whole process was insensitive in and of itself.

11. After James was fired by Northgate Baptist Church, Linda Smith, who is the mother of Charlotte Collier and grandmother to Hannah Collier, called me stating that she wanted to straighten me out as to what happened with James being fired by the church because she knew that we, the Deaconate, were left out in the cold. Linda informed me that the church fired James because the church charged James with having an inappropriate relationship with Hannah.
12. Linda adopted and restated the church's reason to fire James for having an inappropriate relationship with Hannah as her own. Anyone who would hear such a statement would think that statement would be damaging to James's reputation.
13. In a church setting such as Northgate Baptist Church, and Linda's accusation of James having an inappropriate relationship with Hannah, the first thought that came to my mind hearing Linda's accusation is that Linda was accusing James of acting sexually inappropriate toward Hannah. Basically, my first impression of hearing "inappropriate relationship" means that sexual indiscretion between two people has taken place. To me, while the term "inappropriate relationship" may have different connotations based on the context of the situation, that term within the confines of the context of most situations clearly has a physical, emotional, touching, or sexual connotation between two individuals as is most commonly understood.
14. I emphasized that I could never imagine James having an inappropriate relationship with Hannah. The idea of James having a physical, emotional, romantic, touching, or sexual relationship of the sort with Hannah is unthinkable. The suggestion of James having a romantic or sexual relationship with Hannah is abhorrent if you truly knew James as a man of great character and a devout Christian.
15. When Charlotte and Hannah attended the church, I observed them around James. James had taken an interest in Hannah to help Hannah with her musical ability. Obviously, James mentoring someone in the Worship Team was not out of the ordinary when James was in charge of the music program at the church. I thought Hannah was an impressionistic young

girl with emotional issues. It was well known in the church that Hannah did not have a stable family unit and she was emotionally unstable.

16. Over time, I thought that Charlotte had feelings for James or a romantic attachment beyond a platonic friendship. It was obvious to me that James was oblivious to Charlotte pursuing James and that James did not reciprocate Charlotte's attempts. Charlotte's involvement in this situation seemed like that of a scorned woman.
17. I was outraged by the fact that James would be accused of having an inappropriate relationship with Hannah. Such an accusation is so serious and can utterly destroy a man let alone his reputation. The very idea is appalling. It makes me sick.
18. Essentially, the church excommunicated James and never gave James an opportunity to explain his side of the story as should have been done if the proper channels were used by the church. I see how this whole situation has been emotionally devastating for James. James got a raw deal. James should have had every opportunity to represent himself and defend himself in the face of such ghastly accusations never before heard of by this church as far as I am aware.
19. Greenville has a small-town kind of mentality. This situation at the church would make it difficult for James to get involved with another church in the same capacity as he was at Northgate Baptist Church.
20. This entire situation is terrible. I am at a loss as to how this situation got so out of hand. Everything about this situation runs contrary to the Christian doctrine. James was railroaded out of the church without the Deaconate having a say in it like a lamb left to the slaughter. This whole incident does not uphold to our Christian tenets. An injustice has been done to James and I don't want any part of it. Not long afterwards, I left the church.

[SIGNATURE PAGE TO FOLLOW]

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

April 30, 2020
Date

Roy H. Sabrean, Sr.
Affiant Signature

Roy H. Sabrean, Sr.
Affiant Printed Name

STATE OF South Carolina
COUNTY OF Aconville

I, PATRICK J. DANIELS, the undersigned Notary Public, do hereby affirm that the affiant personally appeared before me on the 30 day of April, 2020, and signed the above Affidavit as the affiant's free and voluntary act and deed.



Patrick J. Daniels
NOTARY PUBLIC

My Commission Expires on: 12/07/26

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JAMES EARL TEGELER,

Plaintiff(s),

v.

CHARLOTTE COLLIER, HANNAH ELIZABETH
COLLIER, NORTHGATE BAPTIST CHURCH,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2020CP2301213
COMMON PLEAS CIVIL CASE NO.

AFFIDAVIT FOR

JAMES EARL TEGELER
(LEGAL NAME)

I, JAMES EARL TEGELER, having been duly sworn,

depose and say the following:

I am 18 years of age or older, of sound mind, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein to the best of my knowledge. I reserve the right to make corrections, updates, or revisions as necessary.

1. I never had any opportunity to refute the affidavits, exhibits, or allegations, without any supporting evidence or affidavits, as presented by the opposing parties per the hearing in this case on April 18, 2020.
2. I have over 21 years of experience directing a choir and being a pianist. I also have training and extensive experience in youth ministry. I was employed by Northgate Baptist Church ("Church"). I was hired by the Church as a pianist on or around July 1, 2015, earning approximately \$250.00 per week. On or around June of 2016, the Church asked Plaintiff to take over the music program, earning an annual salary that was approximately \$33,800.00. During his employment with the Church, Plaintiff held the position of Worship Leader, Director of Music (including leadership of the Praise Team), and pianist for the congregation.
3. On or around June of 2017, I met Charlotte Collier, who is the mother of Hannah Collier and Ty Collier, through connections with the Church. On or around July of 2017, Linda Smith, who is the mother of Charlotte and grandmother to Hannah, asked me to recruit Hannah for her to sing at the Church. I interacted with Charlotte and Hannah Collier primarily from September of 2017 through March of 2018.
4. After Hannah joined the Praise Team at the Church around August or September of 2017, I helped Hannah with her music when singing in the Praise Team at the Church. On or around August or September of 2017, Hannah solicited me to become a mentor because she claimed her father was not very active in her life. After a while, Charlotte, Hannah, and Ty got involved in some of the social or family activities with my family and friends. Charlotte was typically around when Hannah was around me, including my son(s) and family friend(s). I did not see much of Charlotte or Hannah from January through February of 2018 because Charlotte was persistently trying to date me.
5. I was very clear up front setting the boundaries of my role as a mentor to Hannah for her to let me know that if for any reason she felt uncomfortable around me, then she needed to let me know (and I would

- terminate the relationship). Hannah fully appreciated, understood, and consented to my expectations and boundaries. Exhibit A. At anytime, Hannah—as a legal adult—was free to terminate my mentorship of her for any reason, but she never once did so until Charlotte emailed me on or around March 12, 2018.
6. At my home in the fall of 2017, I had family friends and guests over for a party. My guests played paper ball tag. I created this indoor game for my sons that is basically a tag-you're-out game by throwing a crumpled wad of a glow-in-the-dark paper ball to hit another player and knock them out of the game (the last standing player wins). Others of all ages played in the game and had a ton of fun, including my sons and family friends. Hannah stayed behind the couch and won twice. She had a friend from U.S.C. Upstate with her too. Nothing “inappropriate” happened during that game. Hannah never raised any issues from that game. Exhibit B.
 7. From that time through on or around March of 2018, Hannah began to treat me like a surrogate father figure as time passed and she did so in front of Charlotte. For example, Hannah asked to call me “dad” around October of 2017. Charlotte was happy that Hannah treated me as a surrogate father figure. My mentor relationship with Hannah was a two-way street. Hannah very much participated in treating me like a surrogate father of her own free will and volition being a legal adult. Hannah wanted me to be part of her life in the role of a surrogate father and help her make big decisions in her life. Exhibit C.
 8. From that time through on or around March of 2018, the Church was aware of my mentorship of Hannah. In fact, Laurel Shaler, who was head of the personnel committee, expressed concern over Hannah's dress attire because she believed that Hannah's dress(es), skirt(s), or any of the above were too short and inappropriate in a place of worship when singing for the Church. Laurel expressed not having confidence to address the issue with Charlotte because she believed that Charlotte's own dress attire was inappropriate in a place of worship. Dr. Barry Jimmerson, who was the pastor of the Church, then asked me to redirect Hannah's dress attire when singing for the Church.
 9. Hannah, including Charlotte, repeatedly stated that she did not have an issue with me, and she was fine with our surrogate father-daughter relationship. Exhibit D. Neither Charlotte nor Hannah questioned or complained about the nature of my mentorship of Hannah until I received an email for the first time on March 12, 2018, from Charlotte, of which. Craig T. Collier was also copied on the same email. Craig is Charlotte's ex-husband and Hannah's father.
 10. During Christmas, I spoke with both Charlotte about giving Hannah Christmas money (by way of a traceable check) and gifts for the Collier family when Hannah sent me snapshots of her bank account and poor-mouthed about not having any money. Exhibit E. Hannah sent me a snapshot of my letting Craig know and he approved the same on Snapchat. Charlotte and Craig were both aware of my giving Hannah a check, and they never said anything to me about having a problem with the situation. It was clearly understood by Charlotte, Hannah, Craig, or any of the above that the money I gave to Hannah was specifically for the purpose of the Collier family giving gifts to one another and to the Tegeler family and friends at the Tegeler Christmas in 2017. Hannah and Charlotte said that was one of the best Christmas holidays they ever had.

11. After the Christmas Eve Service at the Church in December of 2017, Charlotte publicly kissed me on the cheek and gave me a full-frontal hug pressing her body against mine that made me uncomfortable—I felt violated. Then, Charlotte asked me out on a date several times afterward. Charlotte's attempts to date me made me feel uncomfortable. I rejected her attempts and did not reciprocate to Charlotte's interest in me.
12. On or around March 11, 2018, I hosted my son Alexander's birthday party at Olive Garden. Hannah had texted me prior to the party letting me know she didn't feel well. I responded essentially letting her know that she was not obligated to come if she didn't feel well. Exhibit F. I was sitting in between Charlotte and Hannah at the dinner table. Charlotte and Hannah were a very poor guests at Alexander's birthday party for the following reasons including, but not limited to, the following: (1) Hannah complained of wanting to vomit at the dinner table; (2) Hannah was completely silent staring at her plate or on her phone the entire time not talking to anyone, making the situation socially awkward; (3) I felt suffocated by both Charlotte and Hannah having to entertain them instead of being able to enjoy my son's birthday party; and, (4) Charlotte made me feel uncomfortable, especially with the provocative clothing that was more revealing than I cared to see.
13. Charlotte never said anything to Hannah being socially awkward, withdrawn, playing on her phone, or any of the above the entire time during my son's birthday party. Even others at the party thought Hannah was being rude, annoying, ungrateful, unpleasant, and socially awkward. I remember politely asking Hannah to put her phone down at the table saying something along the lines of: "If you feel good enough to text on your phone, then you should feel good enough to talk to us." Meaning, that Hannah should socialize with others at the party instead of being "plugged in" to her phone as a guest at my son's birthday party.
14. Hannah complained of not feeling well. If Hannah truly didn't feel well, then Charlotte and Hannah should not have come to the party. No one forced them to come. I remember saying something to the effect that if Hannah didn't feel good, then Hannah shouldn't feel obligated to stay at the party—I said the same thing earlier in my text messages to Hannah. Exhibit F. I was polite and never raised my voice. Hannah stormed off to the bathroom with Charlotte in tow in one of Hannah's classic mood swings. When Hannah returned, Hannah was also mad with Charlotte. Hannah ruined my son's birthday party by acting out, and Charlotte didn't do anything to redirect Hannah's behavior.
15. By this time, I found Charlotte and Hannah's behavior embarrassing for themselves in front of my family and created unnecessary drama in my life in a toxic way. I no longer wanted my sons to feel alienated because of Charlotte and Hannah trying to take the spotlight away from my own family. By then, I felt and realized that Charlotte and Hannah wanted to create a surrogate family unit with me at the expense of alienating my sons.
16. On or around March 12, 2018, Charlotte terminated my mentorship of Hannah with Craig T. Collier on the email. Charlotte was referring to some examples of alleged incidents from month(s) ago brought up for the first time that were absolutely baseless and untrue. Charlotte was there for some of these alleged incidents. Specifically, Charlotte accused me of:

Your words to her at lunch yesterday were completely out of line. And we cannot allow Hannah to be treated that way a moment longer. Especially since it is not an isolated incident. I am aware of issues that occurred at Ty's birthday party, a lengthy discussion last week, something that happened at paper ball tag, and several others that you never wanted Hannah to discuss with me Exhibit G.

17. I responded to Craig and Charlotte that I did not feel that my relationship with Hannah was inappropriate. Then, I responded to Charlotte directly and rigorously disputed her accusations of me and her allegations of my treatment of Hannah. Exhibit G.
18. My mentorship of Hannah went on for around six (6) or seven (7) months, of which Charlotte was typically around and involved during that time. I even showed Charlotte some text messages between me and Hannah during that time, and Charlotte said she thought it was cute. If Charlotte and Hannah truly had an issue, then they are grown women and legal adults who can approach the issue with me like mature adults or just stop having anything to do with me at any time. But, neither of them did that before I got Charlotte's email on or around March 12, 2018. No one forced Charlotte or Hannah to have anything to do with me. If Charlotte and Hannah truly had an issue with me, then they did not need to come to my son's birthday party. Charlotte and Hannah both interacted with me in a consensual manner.
19. Charlotte and Hannah reported me as having an "inappropriate relationship" with Hannah to the Church on or around March 12, 2018. When Charlotte and Hannah accused me of having an "inappropriate relationship" with Hannah, even Barry thought I was being accused by Charlotte and Hannah per the stigma of an older man engaging in sexual activity with a minor and questioned Hannah accordingly. Neither Charlotte nor Hannah really liked Barry as a pastor or viewed Barry as their pastor. Exhibit D. Charlotte and Hannah usually left before the sermon during Church services. Charlotte and Hannah specifically went to Barry for the purpose of complaining about me to my supervisor.
20. Both Hannah and Charlotte had the maturity and full wherewithal to appreciate the enormity of their accusation for "inappropriate relationship" against me and the way that said accusation would be understood by others per the stigma of an older man engaging in sexual activity with a minor. Specifically, Hannah was particular in her use of words, she enjoyed wordplay, and she enjoyed using her father's status in law enforcement to retaliate cruelly against other men. Exhibit H.
21. On or around August 18, 2020, the attorney for Charlotte accused me of being a predator toward Hannah in the courtroom. Such a characterization of me is wildly inappropriate and uncalled for when no such crime of being a sexual predator occurred. Clearly, Charlotte and Hannah meant to paint me in the light as a sexual predator when reporting me to the Church perpetuating the stigma of an older man sexually assaulting an underage minor. Such a statement of being a (sexual) predator leaves no room to the imagination as to the meaning of "inappropriate relationship" that was meant to crucify me regarding my fitness in my profession as a musician, music director, and minister in the Baptist church. Such characterization was wholly unnecessary and unthinkable.
22. On or around March 13, 2018, I informed Barry and other staff with the Church that my mentorship of Hannah was terminated. I showed Barry the text message from Hannah on December 31, 2017, showing a

stark contrast from the holidays to March 12, 2018. Exhibit D. Barry never expressed any concern to me at that time.

23. On or around March 14, 2018, Barry and Laurel approached me. Barry had discussed with me that Craig had called to complain about me to him. Barry relayed his conversation with Charlotte and Hannah earlier that week, Charlotte and Hannah's accusation of me having an inappropriate relationship with Hannah, and Barry's line of questioning of a romantic or sexual nature between Hannah and myself. I was floored.
24. I showed Barry and Laurel the text message again refuting that anything romantic or sexual occurred between myself and Hannah. The text message clearly conveyed Hannah seeing me in the light of a surrogate father figure. Barry made the comment that he did not think my relationship with Hannah was inappropriate. Laurel made a snide, presumptuous comment that she thought the text message from Hannah to me was inappropriate without any frame of reference and completely out of context. That was the last conversation I had with either of them had before the Church fired me on April 10, 2018.
25. Charlotte and Hannah's accusation to the Church, and my supervisor Barry, made me severely distressed. I couldn't believe they would accuse me of having a sexual or romantic relationship with Hannah—because, that is how the Church, and my supervisor, perceived their accusation of me. I felt betrayed. No one informed me that I was subject to an investigation because of Charlotte and Hannah's accusation. No one questioned me further to challenge such an accusation. I was never disciplined for this situation before I was fired from the Church. I was never quarantined by the Church before I was fired.
26. On or around April 10, 2018, the Church forced me to resign. I went into Barry's office for a staff meeting only to find Barry, Laurel, and Warren Peden, who was just a member of the Church. Warren had no involvement as my supervisor or active in the personnel committee. As far as I knew, Warren was there for security purposes being a large man that towers over me. And, Warren was in the Worship Team that I was responsible for directing. As soon as I walked into that room, the door locked behind me. As I was taking my seat in between Barry and Warren, Barry and Warren just hammered me left and right with insults and shaming me for having anything to do with "young girls" in the Church. I remember Warren or Barry saying something along the lines of: "I can't believe you would do something like this!" and "How could you?!" They were yelling at me. Warren's face was beet red. I was in shock.
27. Laurel sat in front of me. She did nothing to stop Barry and Warren's onslaught of verbal diarrhea. Laurel and Barry portrayed Hannah as a child in the eyes of the Church. She then accused me of having "inappropriate contact" with young girl(s) in the Church. Laurel offered no explanation as to what she meant by the phrase "inappropriate contact." I felt sick to my stomach when I heard her accusation. I immediately thought Laurel was accusing me of either forcing nonconsensual physical touching onto young, underage girls, sexually assaulting young, underage girls in the Church, or any of the above.
28. Laurel mentioned two examples of texting Kelsey Todd during service and asking young girl(s) to go on a trip to New York City. Laurel also commented that my mentorship of Hannah was inappropriate from the beginning. Then, Laurel talked about parishioners who would leave the Church if I was not fired. That explanation was the extent and detail of Laurel's so-called "investigation" unquestioned by Barry or Warren.

29. Each time I tried to open my mouth, or try and finish a sentence, either Barry, Warren, or both would interrupt me and put me down. I couldn't even defend myself in Laurel's one-way monologue talking down to me. Kelsey, who was a legal adult, ran the sound board in the balcony with me during worship services. I had to coordinate the music program with her during services. That accusation was baseless. Exhibit I. But, asking young girl(s) to go on a trip to New York City like I am trying to arrange a romantic get-away was a grossly inaccurate portrayal of the situation. My trip to New York City was a family trip with my son Andrew and his childhood best friend Josie Allen. I never invited Hannah on that trip.
30. But, Laurel accusing me that my entire mentorship of Hannah was inappropriate from the beginning was sickening. Barry and Laurel knew about my mentorship of Hannah from the beginning and never said anything. Warren was in the Worship Team and often passing through during the Praise Team practices.. Warren would have been able to see Charlotte and Hannah when they came to practices. Barry had already told me that Hannah denied any romantic or sexual involvement with me. Barry had already said in front of Laurel that he didn't think the text message from Hannah to me was inappropriate. Essentially, Laurel was accusing me of forcing nonconsensual physical touching onto Hannah as if she were a minor, sexually assaulting Hannah as if she were a minor, or any of the above. I felt like I had walked into a nightmare. I was blindsided, floored, shocked, and in disbelief that anyone could be so cruel to accuse me physically touching young girls without their consent or sexually assaulting young girls—especially Hannah.
31. Laurel then presented to me with the Separation Agreement and Release of Claims ("Agreement"). She started talking about the separation amount, which we discussed changing to approximately two months severance pay. Laurel also discussed that the details of this meeting would be kept confidential by all in the room. I was feeling overwhelmed. I told Laurel that I wanted to leave and continue this meeting at another time. Laurel told me that I could not leave the premises without signing the Agreement. Warren was sitting closest to the door. I felt scared that, if I tried to leave, then Warren would physically stop me.
32. I felt overcome by not having the freedom to leave the room and take time to review the Agreement when I wasn't so emotionally overwhelmed. I began crying. I am not the kind of man to cry before my employer or supervisor in a professional setting. For me to cry in a situation like this, something is very wrong and I am emotionally overwhelmed and devastated. I really lost my mind when Barry then chimed in and threatened me. Barry threatened me that, if I did not sign the Agreement then and there, then he would place me before the congregation for the congregation to vote whether to fire me from my job for having "inappropriate contact" with young girl(s) in the congregation. That threat to expose me as if I am some sexual predator before the congregation was the straw that broke the camel's back for me.
33. After that, I was not in my right mind. I don't really remember much after that point but going through the motions. When I finally was allowed to leave the room, I sat down on a chair next to the Church secretary Tina Speakman. I was literally shaking so badly and still crying. The emotional distress from when the Church fired me was worse than when I lost my wife to cancer being a grieving widower and having lost the love of my life for over 24 years. Anyone who knew me would have known that my emotional state during and after the termination meeting was abnormal and highly uncharacteristic for me.

34. The next day, I confronted Warren about disclosing the details of the termination meeting publicly to singers in the Worship Team. Exhibit J.
35. The Church used Charlotte and Hannah's accusation as a pretext to of having inappropriate contact with young girl(s) in the congregation in efforts to cut payroll costs for the Church's multi-million-dollar fundraising campaign to renovate the church aesthetically.
36. Later, members of the community reached out to me and let me know Linda Smith was dragging my name through the mud as having an "inappropriate relationship" with Hannah in wildfire gossip.
37. Generally speaking, when I hear the term "inappropriate relationship," I think the term means something romantic or sexual occurred between two people. Generally speaking, when I hear the term "inappropriate contact," I think the term means physically or sexually touching someone without that person's consent like a child molester, rapist, or any form of sexual assault or sexual harassment. In this context, it is clear that Charlotte and Hannah accused me of being a sexual predator toward Hannah—or a crime—when nothing of the sort happened. When I was fired, Laurel failed to explain what inappropriate contact meant before Barry and Warren. Both Barry and Warren were clearly incensed as if I was a sexual predator toward young girl(s) in the Church. I was fired because of hearsay and a stigma—not because of the truth or facts.
38. I never wanted sex with Hannah.
39. I never had sex with Hannah.
40. I never had romantic feelings toward Hannah.
41. I never believed that Hannah wanted to have sex with me.
42. I never believed that Hannah had romantic feelings toward me.
43. Hannah admitted that she never had sex with me.
44. Hannah admitted that she never had romantic feelings toward me.
45. Hannah admitted that she never believed that I had romantic feelings toward her.
46. At all times, Hannah was a legal adult.
47. I am not the stigma of an older man having sex with an underage minor.
48. I am not a sexual predator.
49. I have not committed a crime toward Hannah.
50. I believed that Charlotte had romantic feelings toward me.
51. Hannah cannot condemn me without condemning herself. Hannah solicited me and consented to treating me like a surrogate father figure—right in front of Charlotte. Charlotte cannot condemn me without condemning herself or her daughter Hannah. Charlotte tried to date me. Charlotte was there when Hannah was around me. Charlotte was happy about Hannah treating me like a surrogate father.
52. At no point and time did Charlotte or Hannah tell me to stop contacting them or that there was an issue with me until I received an email from Charlotte on or around March 12, 2018. Before then, nothing—nothing was said by Charlotte or Hannah over a period of around seven (7) months. Certainly, Charlotte and Hannah never described my mentorship of Hannah as an inappropriate relationship beforehand. At no point were the interactions between myself and Hannah ever perceived by myself, Hannah, or Charlotte as

anything outside the context of a mentorship relationship between myself and Hannah, a surrogate father-daughter relationship between myself and Hannah (approved of by Charlotte), or any of the above.

53. By going to my supervisor Barry, Charlotte and Hannah knew that their portrayal of me to the Church would be presented out of context for the ulterior motive of retaliating against me. Because I was not interested in Charlotte, Charlotte and Hannah were upset that they wouldn't get their fantasy surrogate family unit through using and taking advantage of me. Charlotte and Hannah knew that such an accusation would destroy my reputation, hurt my chances for current and future employment, and emotionally devastate me.
54. One of the biggest ironies is that one of the devil's favorite playground is within the four walls of a church that manifested in the way Charlotte, Hannah, Barry, Laurel, and Warren handled this situation with me; this situation of my being accused of having an "inappropriate relationship" with Hannah, being a "predator" toward Hannah, or having "inappropriate contact" with young girl(s) in the Church by Charlotte, Hannah, Barry, Laurel, Warren, or any of the above had nothing to do with God or the Christian faith.
55. I was a broken man after I was fired from the Church because of Charlotte and Hannah. Their turn of the phrase "inappropriate relationship" traced all the way to the day I was terminated coming right out of Laurel's mouth and later Linda Smith's mouth. I lost my wages from the Church. My means of worship through music was corrupted by baseless accusations. I was depressed and sought counseling. I didn't play the piano for almost a year. My sons have been affected detrimentally because of this situation—both financially and emotionally. It took me around 2 years before I could find work again just as a pianist in another church. I do not deserve what Charlotte, Hannah, and the Church did to me.
56. I am innocent, and I deserve to have my name cleared.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

8-27-20

Date

James E. Tegeler
Affiant Signature

James E. Tegeler
Affiant Printed Name

STATE OF South Carolina

COUNTY OF Greenville

I, Christopher Manchester, the undersigned Notary Public, do hereby affirm that the affiant personally appeared before me on the 27 day of August 2020, and signed the above Affidavit as the affiant's free and voluntary act and deed.

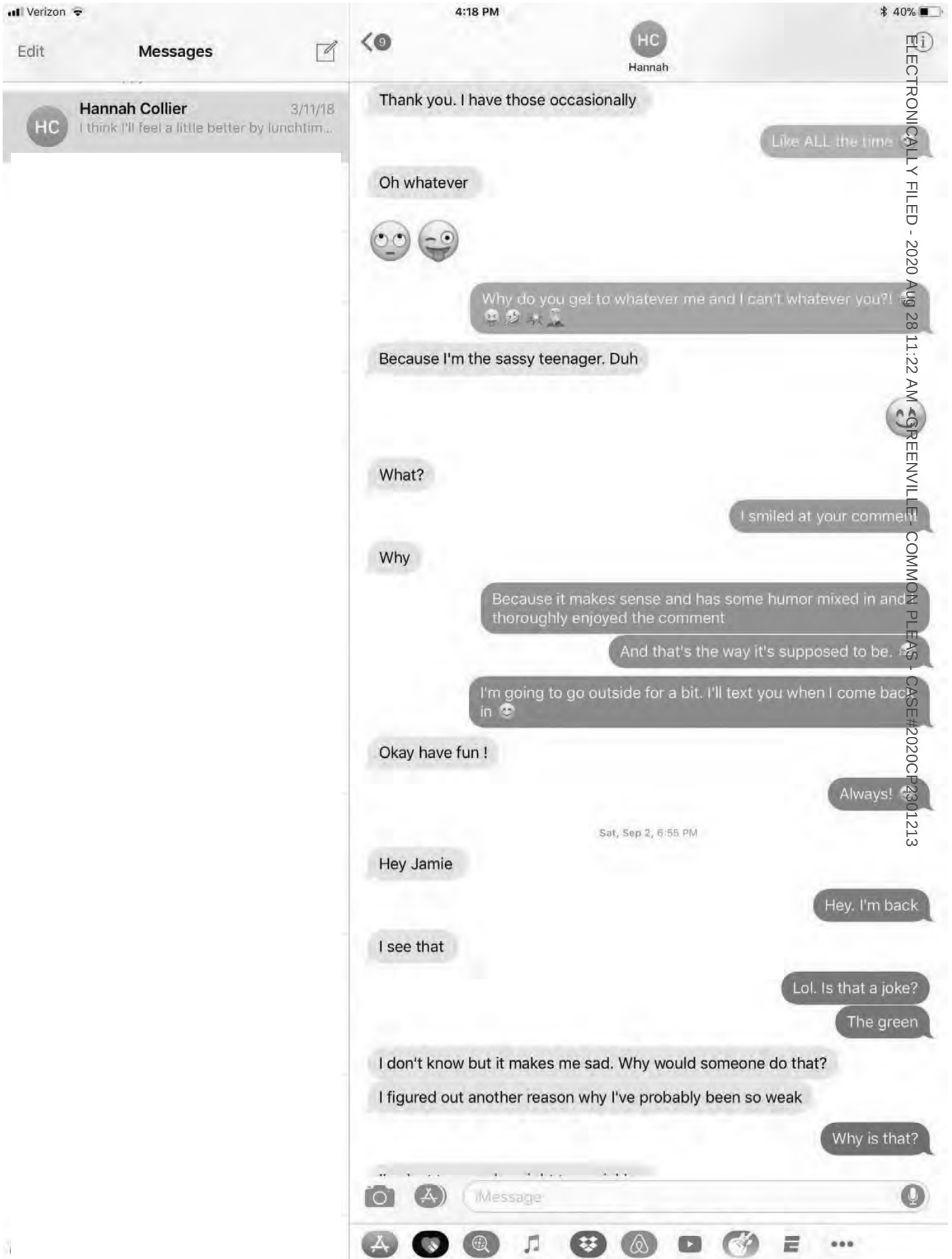


Christopher Manchester
NOTARY PUBLIC

My Commission Expires on:

My Commission Expires
October 11, 2027

EXHIBIT A



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE COMMON PLEAS - CASE#2020CP2301213

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

I've lost too much weight too quickly.

I wasn't trying to. But it happened.

I was 156.ish last Sunday, and I'm 148.ish today.

I'll be honest... as I always am... you're gonna lose weight with the walking you're gonna do. You have to make yourself eat at sane eating times to keep that from happening.

It's because of exercise. So you must replenish your body.

I haven't felt well enough to eat. Especially yesterday and today.

Well that's prob because of your metabolism.

So that should get better, you think?

I hope so.

Cuz this is unhealthy

I'm gonna bug you to eat

Not that it'll do any good

But

I'm not doing it on purpose James.

But

Do you know?

however I'm still gonna remind you

So don't get agitated at me

Just kind reminders

Or more like asking

Or pleading

Begging



I know you're not

But if it were me you'd bug me constantly

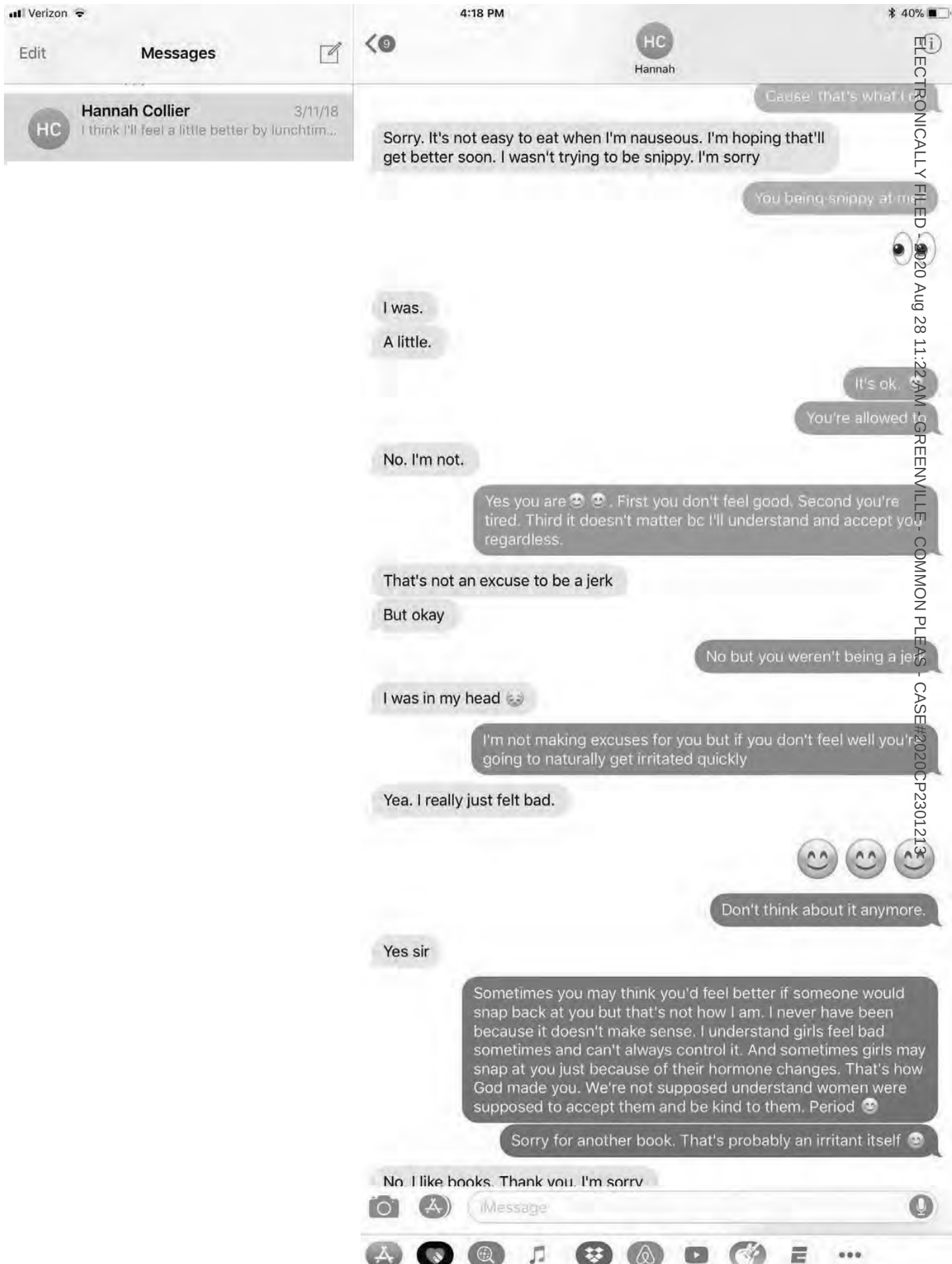
Okay it'll prob be more like encouragement

Cause' that's what I do



iMessage





Edit

Messages



HC

Hannah



i

ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE #2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

No, I like books. Thank you. I'm sorry

It's all good Hannah!
Did you rest any?

Yes sir. I slept from the time I got here to 7ish

Nice

Haha

Nice

Yea. So that was nice

I'm eating soup

That's good

Yes

I'm actually eating rotisserie chicken breast and sweet potato

Yum

And spinach

Do you spend a lot of time with your boys?

Not as much anymore because where they have their own lives now sorta. We had them really young so in later teenage years you want more time around friends. They have good friends so that makes me happy. We do still spend time together just not like when they were 10 🤔

Yea

And it's okay. I understand that. We have a lot of respect for each other and a very calm and fun household

Yea

Both had to grow up really fast so that has matured them far beyond their years

Yes

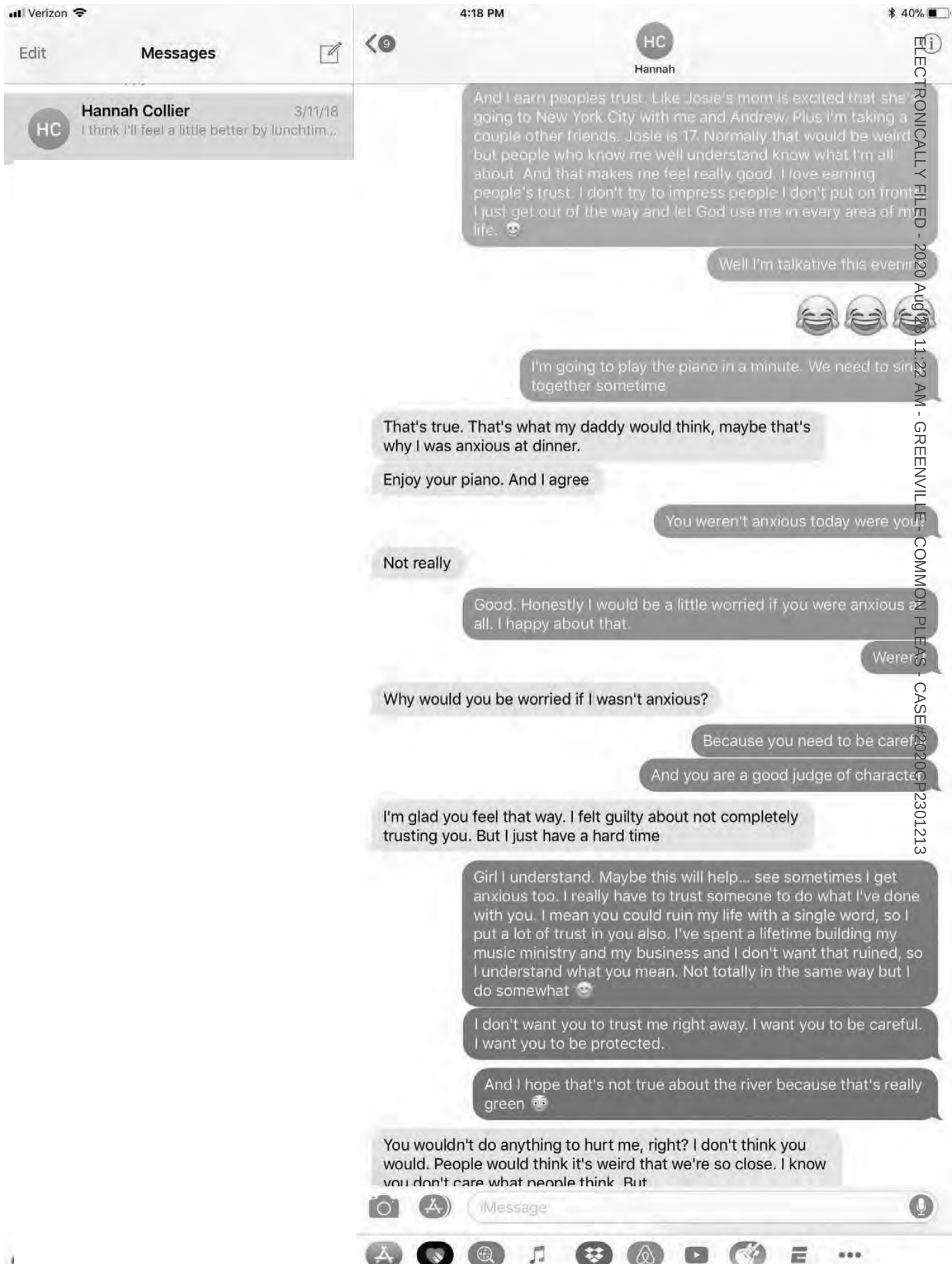
That's hard

And I earn peoples trust. Like Josie's mom is excited that she's going to New York City with me and Andrew. Plus I'm taking a couple other friends. Josie is 17. Normally that would be weird but people who know me well understand know what I'm all



iMessage





Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

You wouldn't do anything to hurt me, right? I don't think you would. People would think it's weird that we're so close. I know you don't care what people think. But.

And in other words. I trust you 100%

I hope it's not true either.

And you don't. But it's okay

I do. Absolutely do. And Hannah, I'll never hurt you in any form. Physically mentally emotionally spiritually. I'm here to build you up and help your life not detract from it. I mean that with all my heart and every fiber of my soul 😊

I'm here to see you smile. To laugh and to enjoy life. To go for your dreams and to surpass them!!!!

Why?

I don't mean that in a bad way. But why?

First because that's just how I am with everyone that knows me. Secondly I connect with you well. I prayed a lot about it and I know God caused our paths to cross for some reason. And it helps both of us. I've told you that before 😊

I care about you therefore I want to see you meet and surpass your dreams.

I know. But what is this supposed to be? And what did you pray for

I don't know who you hang around but I guess maybe I'm just totally different from most people because that's how I've been my whole life. It's how my dad is too

I have no idea what it's supposed to be. And I'm not going to question God. I'm just going to take today and make it the best I can and not worry about the rest

I feel like your big brother and when you need somebody talk to I'm here. You know that 😊

What do you think the answer is?

I know you like to plan things and figure things out and see your pathway clearly. But sometimes you just have to take one step at a time and see where God leads you

I've just been hurt before. There's always a motive. And I just don't know. I need a plan.

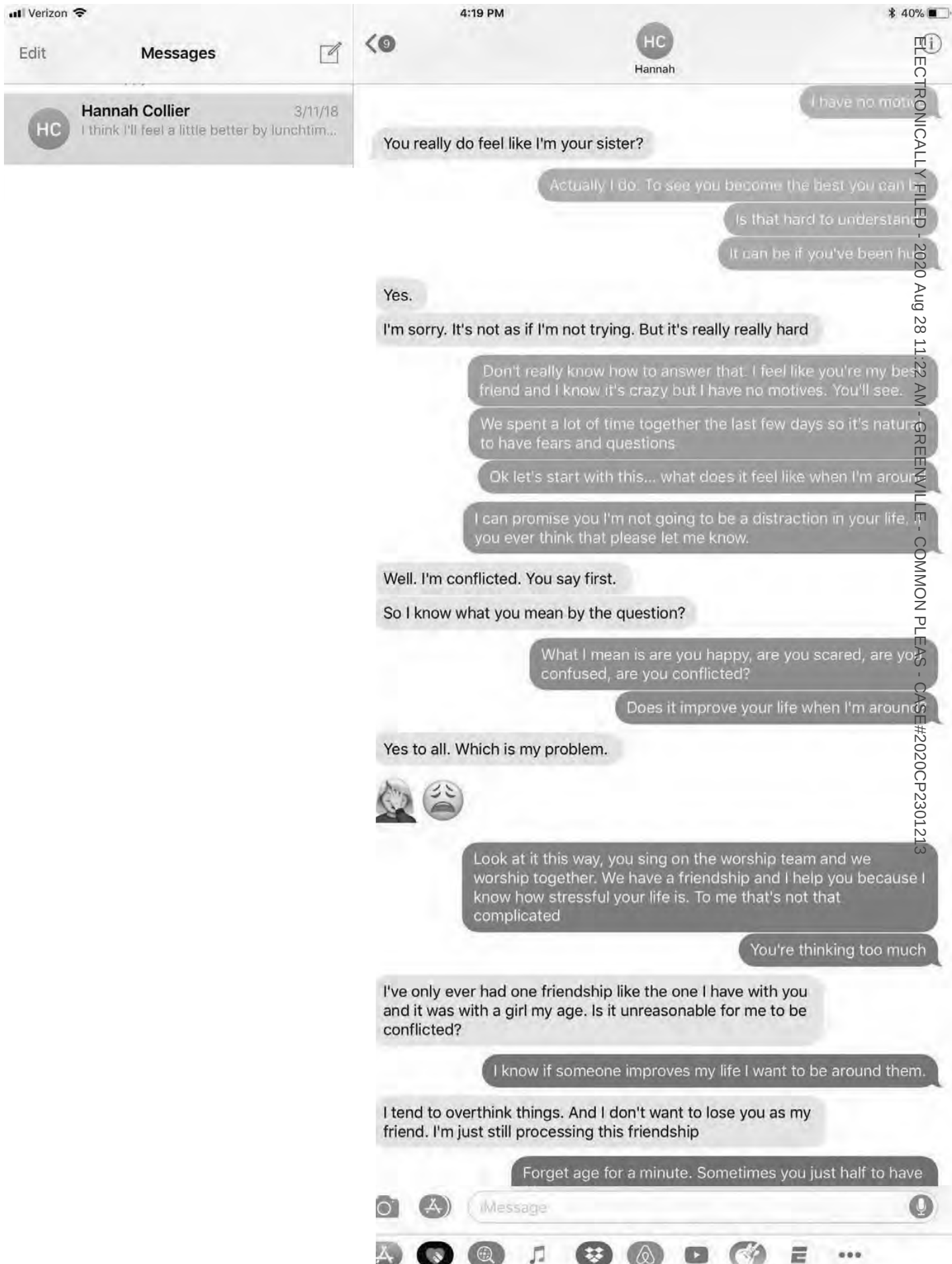
I have no motive

You really do feel like I'm your sister?



iMessage





ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

Edit

Messages



< 9

HC

Hannah

i

ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2000002301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Forget age for a minute. Sometimes you just have to have friends you relate to.

I'm sorry.

It's fine

I over complicate things.

And that's o

It's not okay. I do not like myself for this.

Follow your heart. If I improve your life then I don't let it scar you.

Easier said than done.

I don't have to hang around you if it confuses yo

You didn't realize that I was such a nutcase.

Haha

I'm being serious.

You're just fir

That's the thing though!! I do like to spend time with you! I'm happy around you. But I'm also still processing my thoughts and trying to handle my feelings.

With what you've been through I totally understand why you're having these feelings. I'm here to be your friend. I am here to be a positive influence on your life.

It's difficult for me.

Here's what I think is happening in your mind, you really opened up and shared your past with me and now you kind of feel vulnerable. Do you think that's it? Bc if so it'll pass

Life is confusing and it'll always be confusing. Ask yourself this question. Is your life better when I'm in it or not and go with that. Sometimes you have to look the fear in the face and say stay out of the way. Take some time and process this. I'm never gonna force friendship on anyone. But I really enjoy you being my friend. And I really enjoy your contribution to our worship

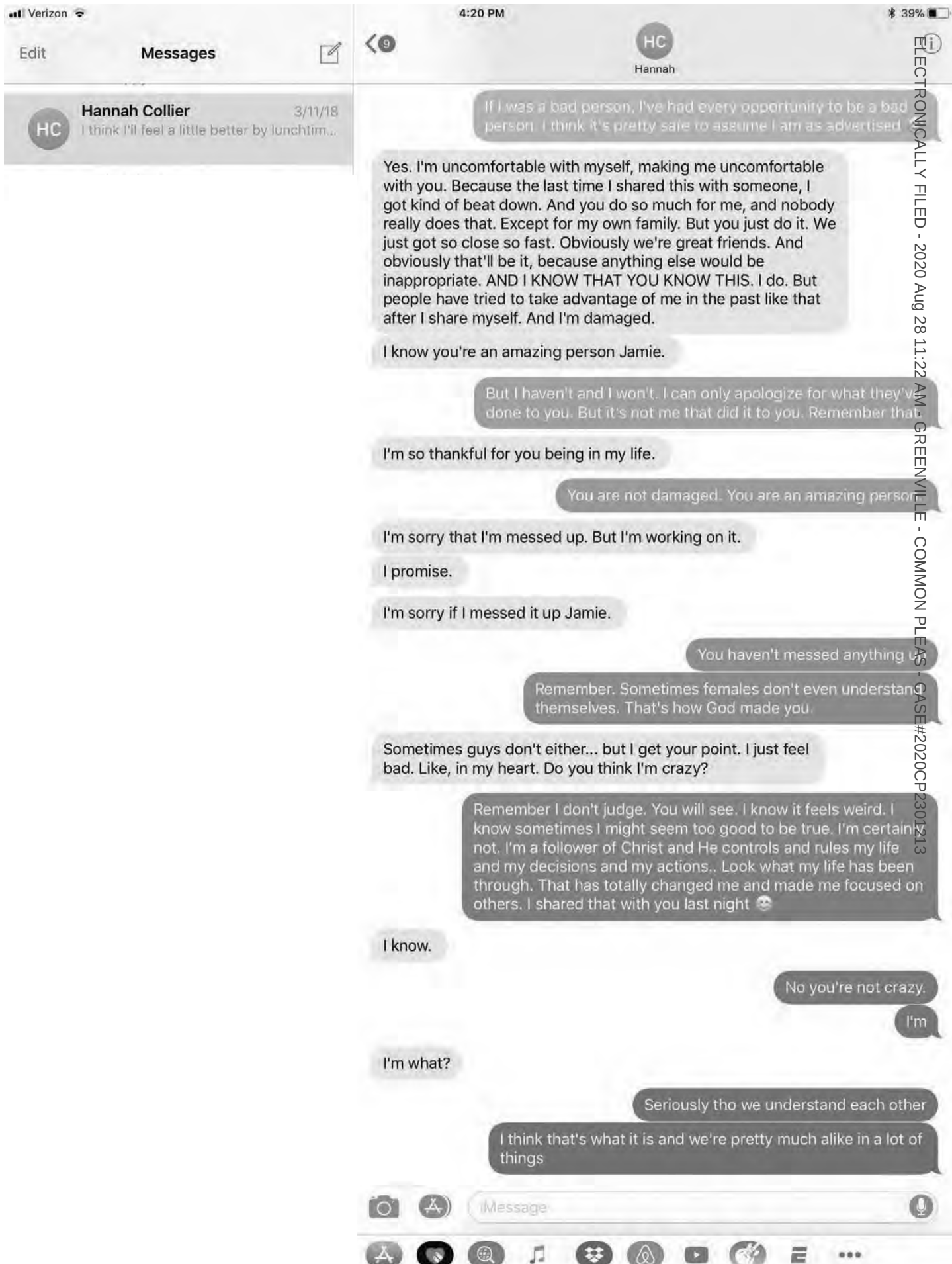
You have several years to digest your life and figure out what's best for you. You can't do it in one week. Remember that

If I was a bad person, I've had every opportunity to be a bad person. I think it's pretty safe to assume I am as advertised 🤖



iMessage





ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Ollie looks cute. That's a lot to process right now. I really appreciate your honesty. I also really appreciate your friendship. I was completely shocked when I read what you said about romance and whatnot. I've seen you as a father figure. My own daddy can't be here to take care of me, and you've done fatherly things. Buying me an umbrella, supporting me at my audition, etc. This puts a bit of stress on me, because I don't want things to be awkward between us. Honestly, I don't know what to do or say. I don't want to feel uncomfortable around you. I think you're a great person. I feel really awkward right now, which I know was not your intention. That's kind of where I'm at right now. I don't have any other words right now.

Fri, Sep 8, 6:19 PM

And I've seen myself as a father figure to you. I haven't felt anything else except friendship toward you. I know that no one will ever replace your daddy. But I knew me being in your life may help a little with that. 😊 Plus I'm a thoughtful person. I just want you to be yourself and I hope you can. 😊 I didn't know what you were feeling, and I just was guessing to try to ease your mind because you asked me point blank last week what my motive was. Therefore I felt I owed you an explanation. My motive is friendship because you help me too. 😊

Thank you for explaining.

You're not the first person I've been a father figure to. I could give you a list of ppl whom I've helped... who either lost their father, didn't have a father, or were away from him. It's so cool to see how their lives were changed. One in particular is now happily married. Not a week goes by that her mother doesn't send me a message to thank me for what I did for her. Do you realize when she was 16 her mother drove her here from Virginia to stay for almost a week to spend time with me and the boys? Her mom told me that changed her life because she got to see how real families should spend time together and do things together and have fun. That's it. I was like I was helping people before you came into my life and I'm always going to be that way. Also, when I mentioned the word romance, I was solely talking about myself and my life. I wasn't talking about you and I. I was just telling you that that was not my motive since you asked me several times last Saturday night what my motive was. I hope you didn't misunderstand that.

That's really how it came across, and it made your motives even more unclear to me. I understand now, though. I think. I know you help people, and it's great.

So you thought I had romantic feelings for you? How could you ascertain this? So I'm a little shocked now. Please keep in mind, I've never done anything except help you. Those thoughts have never once entered my mind. Never. They never would. I'm not sure why you would feel uncomfortable if you view me as a father figure. And here's how well I know you. And this is kinda funny... I knew yesterday that you would not come Saturday bc I knew you'd feel like this today. It's how you are bc of what



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000500



Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

So you thought I had romantic feelings for you? How could you ascertain this? So I'm a little shocked now. Please keep in mind I've never done anything except help you. Those thoughts have never once entered my mind. Never. They never would. I'm not sure why you would feel uncomfortable if you view me as a father figure. And here's how well I know you. And this is kinda funny... I knew yesterday that you would not come Saturday bc I knew you'd feel like this today. It's how you are bc of what you've been through. I don't fault you I just understand bc I try to understand people. It's my job. And then when your texts were short all morning I was just waiting for that one that said you couldn't come. And voilà. Lol. But romantic feelings? Uhmmm no. Never gonna happen. If my motive was a bf/gf kinda thing I would've been married before now. My wife passed away over four years ago. What I was trying to tell you... which obviously I miserably failed at... is I'm not even going to date ANYONE because my responsibility right now is my boys... and take that very seriously. Not quite sure what else to say. But I hope it helps. 😊

I just feel like I've let you down somehow. And for that I'm disappointed in myself. But honestly I don't know how I could've conducted myself differently to not make you think that way... but please let me know so that I don't do it in the future. I'm going to go to the gym and stuff to clear my mind and I'll be back later and maybe we can straighten this out because we have a beautiful friendship and I don't wanna ruin it. You should clear your mind also. I'm so very sorry for coming across wrong. 🙏

I was driving, I just got here.

I'm not sure how I was supposed to take that. Do you not see how it could've come across that way? You should read it again, but put yourself in my shoes. My responsiveness today had nothing to do with tomorrow. I've had a very busy day, I don't feel well, and I'm exhausted. I clearly understand you now. Thank you.

Okay

I'm sorry you're upset. Be careful at the gym.

I'm not upset. I'm just perplexed. And honestly I have reread it. Many times. And not a single time did I see where you should've gotten that I had feelings for you. At one point I did surmise that if you had them for me, they'd subside. I mean I have no idea how you feel or felt. But I would've hoped with the way I've conducted myself around you that you woulda taken it differently. And this is why we should've talked a week ago like I mentioned so I could have explained my motives, or rather the absence thereof. It's impossible to understand the full meaning of texts sometimes. So that's probably the issue here. I'm sorry you feel bad, Hannah. I do care 😊

I am very upset right now. For many reasons. And I know you



iMessage



Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000501

Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2000CP230121

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

I am very upset right now. For many reasons. And I know you care. I do too. That's the way it seemed to me, whether you meant it or not (obviously not). I realize that that's not actually how it is, and I was wrong. Which happens. I'm sorry. You have to understand that I don't spend time with people. I don't. So I didn't know how else I would've taken it. I do now. I was wrong. And I feel like an idiot. I knew that you wouldn't feel that way, but from what you said I thought that's what you were saying. And I was confused. But I get it now. I get it. I'm sorry I didn't understand it earlier.

It's okay Hannah. 😊. This stuff happens. I mean sometimes guys don't know how to word things and I obviously didn't. And especially since I don't have a female perspective to rely on, it's difficult for me to understand what it's like to be in your shoes. Remember I told you I'm not perfect. Well now you know for sure. 😊 I'm still learning every day. Last thing I'd ever wanna do is hurt you. Get feeling better. Clear your mind and let's start fresh! 😊

Okay. Thanks.

Fri, Sep 8, 9:18 PM

Are your boys coming Sunday?

I'm not sure if Andrew has to work yet or not. But Alexander said he was coming. I invited both Josie and Alexander's girlfriend to come over tomorrow so I'll see if his girlfriend can come Sunday too. 😊 I would like to be able to recognize him for the video. It always brings tears to my eyes when they come to church because I'm so proud of them

That's so nice. Hopefully they can all come.

Josie won't. She helps with a class at Newspring

Oh okay

That's nice of her.

Yes. I'd like you to meet her sometime. She's like a member of the family.

That'd be great.

Alexander has been building computers piece by piece since he was like 10 years old. No kidding. It amazes me

That's impressive

Did you see my announcement about Sunday on Facebook?



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000502

EXHIBIT B

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Thank you

Mon, Nov 13, 3:34 PM



Great service yesterday! I appreciate you so much! Here are this weeks songs:

Revelation

<https://youtu.be/D-zk-E55dRk>

What a Beautiful Name

<https://youtu.be/aX82DS45a2k>

Hymns

Thank You, Lord

https://youtu.be/blCfzF1_3oY

Give Thanks

https://youtu.be/Bk_7wUR2Wdg

Mon, Nov 13, 8:15 PM

Thanks for bringing mocha to see me

You're welcome! I knew you would like seeing her and she liked it too 😊

She did

??

Yes! ❤️❤️

Aw

I'm sorry still

Whenever I say your name she perks up

Me too

I love you so much. 😊❤️

I'm sorry you're sorry. And I love mocha and Ollie and you and Alex and Andrew. Thanks for accepting me into your family. I love you so much too 💕

Aww. Thank you for being in our family!! We all love you! 💕

I know you and the pups do. Maybe Alex and Andrew will in time!

They already do dear 😊

Not yet

Why you say that

Cuz they don't know me enough yet. And they probably think



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...

Revelation

ROA-000504



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Cuz they don't know me enough yet. And they probably think I'm a weirdo

Well now they definitely do not think of you as a weirdo. They think you are lots of fun really nice and funny

You may ask them to verify this 🤔

They told you that or you just made that up? And how am I supposed to ask them that? 🤔🤔 I never see them

We have talked and they think of you that way.

And the next time you're here to play games look him square in the eye and say, "hey do you think I'm a weirdo"?

Omg you talked to them about me 🤔🤔🤔 I will not

They'll say nope. You are nice and sweet and a cutie pie

I highly doubt they would say I was a cutie pie 🤔🤔

Well they take after me dear

I fell down the stairs and knocked over a candle while doing a ninja roll. That is NOT cute 🤔

That roll was very ninja esque.

That candle has been knocked over many times

Nope. It was not graceful at all

It was still kind of cute

Was it though? 🤔

I thought it was funny how Ty thought I might be upset about getting a Gatorade? That's what I have stuff here for. 🤔

He can have whatever he wants without asking

So can you

Makes me happy

Omg I know. I told him over and over again it was fine. He'd hide it in the cabinet whenever he'd hear you coming. And I told him that. And I know.

And yes.... CUTE

Not cute.

Terrifying



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000505



Edit

Messages



< 8

HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Hahahaha. Now that's hilarious. Hide in the cabinet? 🤖🤖🤖

I feared for my life 🤖

I just laughed out loud

Yes. He'd put it in the cabinet or behind something

I don't think that candle would take your life but that candlestick could do some damage

Yes I know. It almost hit me in the face

Oh no. I'll have to move them next time

Nah

I should've

I just won't roll in there

I'll roll down the stairs

Omg

Yah

May not be good for your back

No. I think that's what happened to my hip..

It's all part of the experience... Paper bowl tag

Ball



Those stupid things hurt.

Honestly, I'd have fun playing regular hide and seek tag

I can't hit anybody with the ball.... I always missed

They're supposed to hurt a little

So I just collected them

Otherwise you wouldn't know if you got tagged with one

I know. But if we played tag with no paper balls it would still be fun



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000506



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtime.

True. Very true

Yea. Andrew's giggle was cracking me up

Sun, Nov 19, 9:02 AM

I'm Otw

Sun, Nov 19, 12:55 PM

Hey do you have an extra headset for my mom

Yes it's at my house

Can I get it from you soon? And I still have that music for you

Are you okay?

Yes that would be good. And I'm fine dear

Okie dokie.

When do you want it?

I guess it depends when we can meet up or something

And yes you did sound great this morning and yes I do already miss you 🥺

What do you want to do? And I don't feel like it but thank you. I miss you too

It depends on what you're doing now and what you're going to be doing later and stuff. Are you out and about right now or do you want to meet later?

And you may not of felt like it but a lot of people told me they loved it and they mentioned you and I also have two ears 🙄❤️

I'm not out and about atm. I'll be going back to school tonight. They loved it because Amy crushed it. She did ask me to sing that verse with her so she could make sure she was on, and I thought that was nice of her. I was glad I could help.

She was good but they alsooooo mentioned you too so no more denying it dearest thank you. Would you like to meet a little bit later than after traffic dies down from lunch.

What time are you driving back to school

Nooo. I will deny til I die. OH NO. IM SPEAKING IN RHYMES blast those who's 🙄🙄🙄

Idk yet about school



iMessage



Charlotte

1/2/18

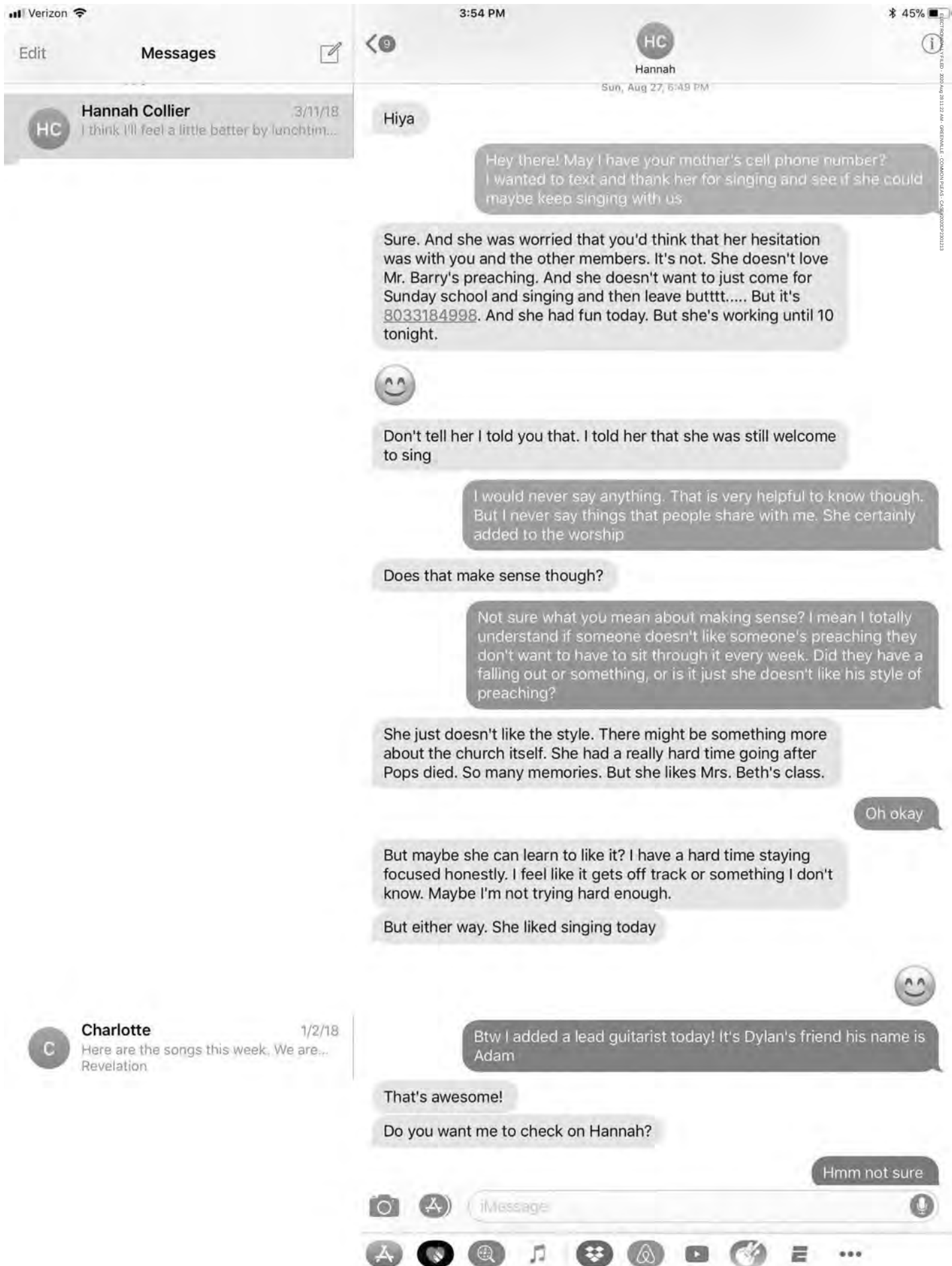
Here are the songs this week. We are...
Revelation

ROA-000507

EXHIBIT C

Verizon LTE 8:55 AM 100%
December 30, 2017 8:49 AM Edit
HANNAH
Wow. I don't have words. I just. I honestly don't know how God decided to give me you or why, but I am forever thankful. You are so beautiful. I promise to cherish your love and your heart forever and ever. I am so blessed to have you. I'm not usually so possessive, haha, but you are mine and I will love you always. Which is a long time. And I'll love you even longer than that. Forever and ever til the day I die. I'll be your little girl and your princess for as long as you'd have me. You just put into words what it means to be a father to a little girl. Keep my heart close and keep it safe. I'll trust you to help me make big decisions, just I trust my own Daddy. Just keep me safe. Let your arms always be a place I can come to and not be afraid. I love you. And that's that. Even when you're afraid that I don't anymore, that's when I love you most. I am so thankful for you. And for your family. I love you. 🍷🍷

EXHIBIT D



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

You might not have meant to.

But you still did.

Idk what else to say. You know I like you singing with us. But I'm also glad you got friends.

I know. And I still will sing. But I still don't connect with Mr. Barry. So I just thought I could try something new.

And you can 😊

Alright

How many times have you heard Mr. Barry preach?

As an adult

As a legal adult, probably 8-10 times. I matured a bit quicker than others my age though. And I've been going to Northgate since I was little.

Okay. Bc The last two months he's been going through the book of James which is difficult.

I personally will be glad when he's out of it

Gotcha.

I still plan on attending northgate.



I'm just thinking. After you said that. I wonder if that's why the church hasn't been growing bc it hasn't.

Probably

Not good. It gets discouraging because it's hard to keep worship team members and it makes my job tougher

I know

But I love what I do and I love the people there.

I know

I really don't even connect with him on a personal level

And this stuff we're talking about is just between you and I of course. You know I trust you 😊

But that helps me

How's Spanish??

HC

SY

Sara & Hannah

2/22/18

Haha thank you!

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000512



iMessage



Edit

Messages



HC

Hannah

Sun, Oct 15, 1:46 PM

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Hey Jamie

Hey



Whatcha doing

Getting lunch 🍴

What are you doing

Sitting on the floor.

Still at Lulus?

No

I'm at home.

Did you have fun?

Yes very much! Did you?

I did. She asked me... again... about our relationship 😊😊 I've told her twice now. And she asked mama. She told her the same thing.

Crazy lady

Lol

I'm glad you think is funny

How did Lulu ask the question?

She said "what is going on between you two, it seems odd"

Just forget it.

I handled it.

Thank you!

No problem

My whole life I've been surrounded by people who try to make things out of nothing. I just go about my merry happy way and don't pay them any attention. People are still going to think what they want to think in life but we can't let it affect our own lives. You obviously have to make the decisions for your life but I'm sure you want to make it based on what you want for your life and not what other people want for your life. Regardless of



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000513



Edit

Messages



< 8

HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

things out of nothing. I just go about my merry happy way and don't pay them any attention. People are still going to think what they want to think in life but we can't let it affect our own lives. You obviously have to make the decisions for your life but I'm sure you want to make it based on what you want for your life and not what other people want for your life. Regardless of who they are. That's just my philosophy and it helped me stay happy

I know.

Are you upset about it?

About what? Your philosophy?

No. Silly.

Like upset about her asking you

A little.

The only way something like that will affect you is if you let it. Don't let it affect you. I value you and your friendship so much and it means so much to me. People are going to be like that your entire life. It should be like water off a ducks back. They don't understand you they don't understand me and they don't understand us and it doesn't matter if they understand or not.

Alright.

To put it bluntly, just get used to it because no matter what decisions you make in your life Hannah, people are always going to question them and be like that. People want to rule other people's lives and make other people's lives as miserable as their own. Do not let them please Girl do not let them

I understand

Are you upset

No dear. And I don't want you to be upset.

I not

It's your life Hannah. You're an adult and we both view this relationship in a very healthy way. It helps us both. Especially me... it helps me a lot. I just want you to realize that people always try to be in your business.

I'm home 🏠

You're like my dad. I think our relationship is fine. So. And thank you. Thought you were already home

I decided instead of fixing lunch I would stop and get me something to eat so I stopped by Fire house subs



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000514



Edit

Messages



< 8

HC

Hannah

1

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

I know that.

I'm salty

I can see all the way through

I know that



GIF Keyboard via #images

So are you having fun or am I actually getting on your nerves. I need to know this for future reference

No you're fine. I'll tell you if I'm genuinely annoyed with you

Haha

Or send a really bad gif

How could you get annoyed of me. I'm just a barrel of fun 🤪

I thought it was funny. Granted I didn't watch it all the way through. Just the first 5 seconds.



Someone sent me that because he made a bad grade on the quiz and I didn't.

Don't be salty 🤪

I get to be as salty as I wanna be.



GIF Keyboard via #images



Sorry!

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000515



iMessage



Edit

Messages



HC

Hannah

Okay

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim..

Thanks Jamie

Always! 😊

Hey Jamie. I know you're sleeping. Just wanted to let you know that I'm headed to Columbia

Listen to the song until the whole world hears by casting crowns

Columbia? To see Eryn?

And i will

Sun, Oct 1, 7:26 PM

Call me please

Mon, Oct 2, 9:51 AM

This weeks songs!
Old Church Choir
<https://youtu.be/ECP8uhj-9D8>
Resurrecting
<https://youtu.be/vFQoUkWiZnY>
Just as I am/I come broken to be mended
<https://youtu.be/TGXDfxWM2r0>

Hymn?

Can I do the bridge on resurrecting? If it's in my range?

Since Jesus came into my heart

And yes please

YAY



Made my day



marlafanning

...

You can't always

iMessage



JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000516

Edit

Messages



< 8

HC

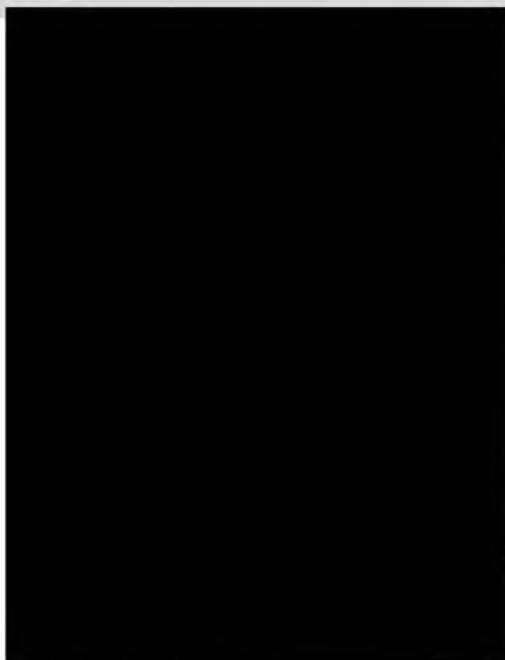
Hannah

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...



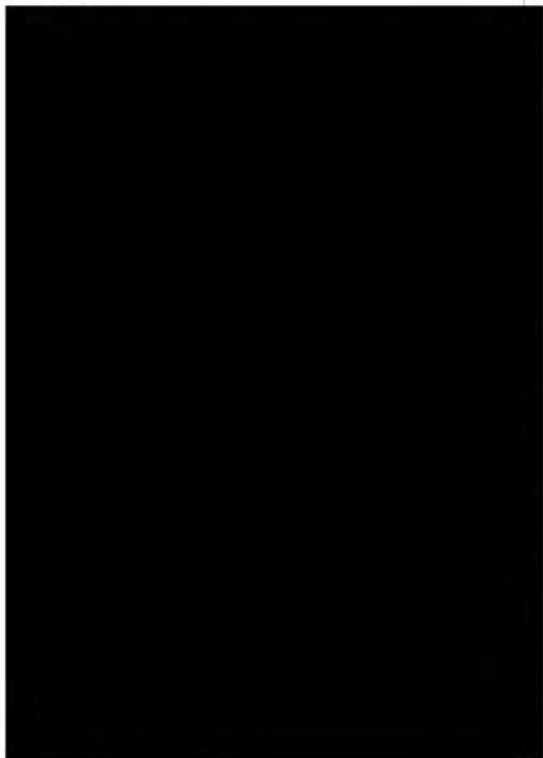
HC

SY

Sara & Hannah

2/22/18

Haha thank you!



JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000517



All this positivity 🤔🤔🤔🤔

Wow. I'm happy

Why??

Makes a difference for real

Because thinking like that changed my life

I know.

You inspire me.

Just btw

Aww. Really?

No.

Just kidding

Of course



Pfft 🤔



iMessage



Edit

Messages



HC

Hannah



Yes

Okay

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

D

Dad

3/10/18

Link: dlm.christianbook.com

Oh. Thanks for the invitation. The girls wanted us to hang out tomorrow night though!

Are you upset?

If they change their mind it would be a good chance to get to know them

And no not upset 😊

You're inviting all of us?

I don't think I'm understanding

I was inviting you. And I meant to say that if the girls decide not to hangout it would be a perfect chance for you to get to know Andrew and Josie

Oh.

You said they and them.

I was just confused

Yes sorry about that

What time are y'all leaving? I'll let you know if I can go

Probably around 5

It's my favorite thing to do all year

I'll let you know. But please don't be upset if I don't go.

I won't

Just don't not go because you feel uncomfortable around them. You'd have an absolute blast

James Earl.

I swear.

Hannah Elizabeth

No.

I'm not going to tell you again that I'm not uncomfortable around them. I'm not using it as an excuse. I already told my roommates I'd spend tomorrow with them. I know I'd have a great time. If anything, I'll go next year. But I'm not uncomfortable around you or any of your family.

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000518

Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Ouch okay. I am fake. I'm sorry.

Thank you

I'm glad I'm in your family. I already love them

I didn't mean to hurt your de

No you didn't.

You were right. I was being fake

Fake about what? Did you not enjoy yourself

I did enjoy myself.

Sat, Nov 11, 10:12 AM

Someone who has been mentally abused will:

- Constantly apologize
- Hide their feelings in fear of upsetting you
- Break down during small disagreements thinking it will explode
- Need a lot of reassurance

Please be patient, we are trying.



POSITIVE REMINDERS



7M Views

Hannah Collier



Like



Comment



Share

I love you

I love you

Sun, Nov 12, 12:20 AM

Home



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000519



Edit

Messages



Hannah



Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

grinch. We can watch it a million times

Yea it was kinda dumb 🤔

And I can't wait to watch it again with ya. Or anything 😊

I miss you

Sun, Dec 31, 6:51 PM

Hey. My snap is being weird.

Ha just like meeeee 🤖🤖



What's the last thing you sent me

HANNAH

Yes sir. I just love you so much

ME



HANNAH

How are you?

ME

I'm great dear!!

➤ Opened

HANNAH COLLIER TOOK A SCREENSHOT

Send a chat



I

Yes

I'm

Q W E R T Y U I O P

A S D F G H J K L

That's last last of it

I asked how your nap was.

It was great!



iMessage



SY

Sara & Hannah

2/22/18

Haha thank you!



Josie Allen

1/3/18

thanks for having me i had fun!!!

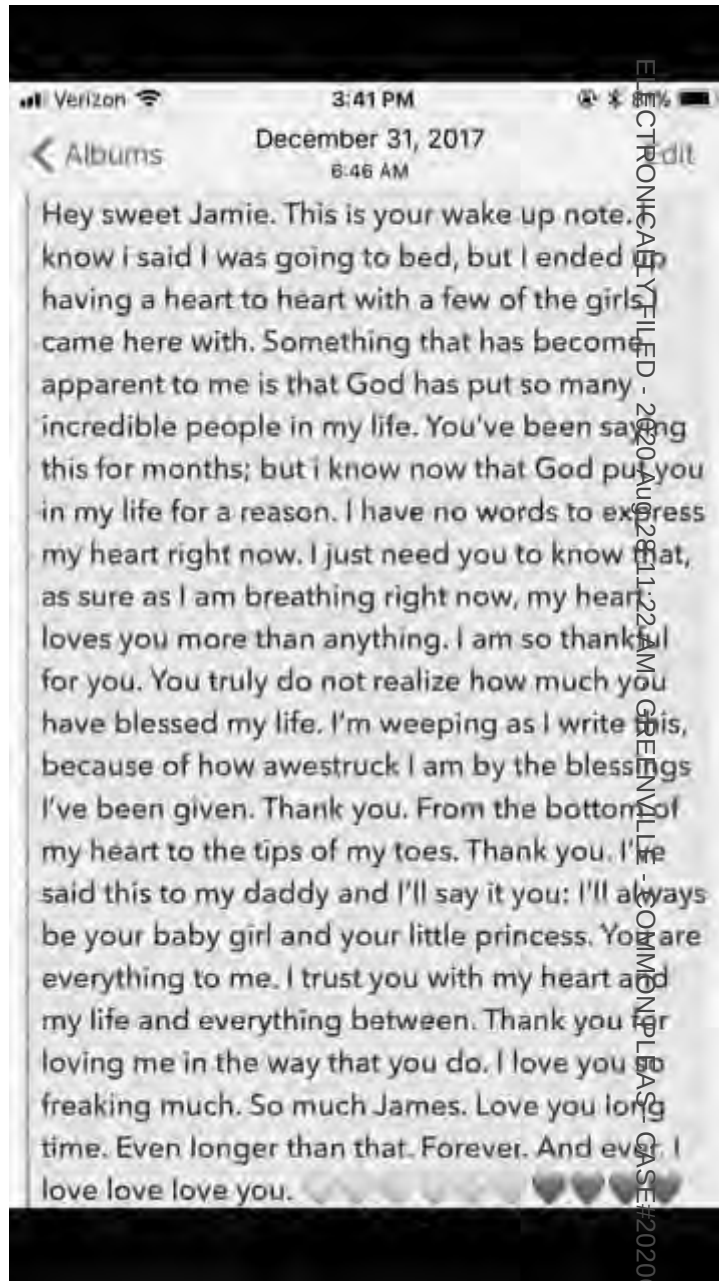


Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000520



Edit

Messages



HC

Hannah

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Snapchat may be having an issue my snaps don't look like they're getting to you. I'm sorry.

Thu, Feb 15, 2:55 PM

Snapchat seems to be acting up. I have sent you three messages. Two longer ones and one short. I hope they come through. It doesn't say you've read any of them. Anyways just wanted to let you know I am here. If you don't get them I can sent them another way. I love you!

I didn't get them. I'll wait until they come through. I love you

I'm sorry. I love you.

I love you too

Sun, Feb 25, 12:19 PM

I'm sorry.

It's okay. I should not have said anything. I'm sorry.

Why do you say that?

Because I should've kept my mouth shut and not hurt you and just dealt with it on my own.

I'd rather know so I can fix myself so I don't cause any more problems for you.

I just need to figure out myself. I clearly have some issues to work out. And I'm sorry that they've affected you.

Am I causing issues for you?

No.

I'm sorry for everything.

I just don't know what else to do.

It will be fine.

Ok

It simply seems like you say one thing to me and do something totally opposite with someone else, even though we are supposedly the same type of friend, and that hurts.

I know it hurts. I can't take it back. I didn't know. So. I can apologize again, but it doesn't seem to make any difference. But. I'm sorry. I hope you'll forgive me. And I don't know that I would be.

HC
SY

Sara & Hannah

2/22/18

Haha thank you!

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000522



iMessage





Hannah Collier
8h ago from Camera Roll



I know I post about him a lot, but 🙄

~~sorry~~ not sorry

I miss you babe

EXHIBIT E

Edit

Messages



Charlotte

iMessage
Sun, Aug 27, 6:57 PM

Hi Charlotte, thank you so much for singing with us this morning! You added so much to the harmony and the worship would like it very much if you could sing with us as much as you are able because it makes a huge difference with three parts. Plus I just added a lead guitarist today!

This is James Tegeler b

Sun, Aug 27, 10:49 PM

Sorry it's so late. Hope this doesn't disturb you. Thank you for letting me wing it! I haven't sung in a group like that in over 10 years. I do enjoy it and I do miss it. I have refrained from committing bc I can't seem to connect with Barry. I know it's not about "a man" but the one delivering the message impacts the message. I will pray about that and about singing when I can. Thanks again!

Sure thing!

Mon, Aug 28, 5:01 PM

Here are the songs for this week... that I'd send them just in case you can sing. You certainly added a lot to the worship. Plus I've added a lead guitarist starting this week!

Home Chris tomlin

<https://youtu.be/PtUTa5Nc-e0>

I saw the light/I'll fly away

David Crowder

<https://youtu.be/sXnTXfg9d94>

Come Holy Spirit

<https://youtu.be/OkTluCNidfl>

And since we'll have a full complement of lead, rhythm, bass and drums... If we have time to practice it, we'll also do this one. Depends on how quickly we learn "Come Holy Spirit", and how long the business meeting lasts. What a Beautiful Name



Thu, Aug 31, 8:36 AM



iMessage



Edit

Messages



C

Charlotte

Thu, Aug 31, 8:36 AM



Thank you for singing last night! Btw here is that PB I was referring to I get from Publix

I was more unsure about the music last night than Sunday. But I brought Hannah's music home so I can play it out. Thx for PB picture. I want to try it. See if it's as good as my Smuckers 🤔

I also wanted to thank you for being such a good friend to Hannah.

Thu, Aug 31, 12:52 PM

Prob won't be as good as your Smuckers but hey I tried! Lol. And I'm glad I can encourage Hannah and make her laugh. Not everyone relates to my type of humor but she has the same type 🤔🤔. My happiness comes from helping others. Most of the time it's just needing someone to listen. College life can be stressful bc it's more like "real life". If there's anything I can ever do please let me know! 😊

I am a firm believer in surrounding yourself with people that inspire and encourage. And for my kids to have kind, supportive adults in their lives besides their parents and extended family! I will not hesitate to call if she needs something 😊



iMessage



Edit

Messages



C

Charlotte

I am a firm believer in surrounding yourself with people that inspire and encourage. And for my kids to have kind, supportive adults in their lives besides their parents and extended family! I will not hesitate to call if she needs something 😊

Fri, Sep 1, 3:50 PM

Hey, do you happen to know Hannah's mailing address? I thought it would be neat to send her an encouraging note once in while through the mail. I remember in college it was always awesome when I got mail. 🥰

Which wasn't all that often

That would be great!! And that was a great time to get mail!

Sun, Sep 3, 7:59 PM

Great service today! Here's the songs for next week
Fierce
<https://youtu.be/5zE4bNa-b88>
Whom shall I fear
<https://youtu.be/qOkImV2cJDg>

Sun, Sep 3, 10:20 PM

Thank you for your talent and your leadership! And your encouragement. I have to work Wednesday night and won't know Sunday's schedule until Wednesday morning 🙄 BUT if all that works out and I can sing in Sunday... are you playing these songs in the keys of the YouTubes?

I will check. Usually not in the same key

And it's okay if you can't come Wednesday. I can practice with you for Sunday. You always pick it up quickly

And thank you! I enjoy what I do very much

Tue, Sep 5, 1:35 PM

The recording of whom shall I fear is in the original key of C. We'll be doing it in the key of G so it'll be a fourth lower. The original key for fierce is D, and we will be singing it a fifth lower in G, so there will be quite a bit a difference in the range. But it's still not difficult to pick up.

Sat, Sep 8, 5:48 PM

Do you get to come tomorrow? 🙌

Yep!

Yayy! 🥰



iMessage



Josie Allen

1/3/18

thanks for having me i had fun!!!

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll see what I can find out n

Edit

Messages



C

Charlotte

Sun, Sep 10, 11:31 AM

Thank you for singing. It was awesome!

You're welcome! It was a great service.

Mon, Sep 11, 8:49 PM

Here are this weeks songs.

This is Amazing Grace

<https://youtu.be/zPQKj2Zpt>

Jesus Messiah

<https://youtu.be/f4whBsh9o>

Worthy is The Lamb

https://youtu.be/LApIJ0_jDF

Mon, Sep 18, 10:17 PM

Songs for this week:

The Lion and the Lamb

<https://youtu.be/rMTfj4xQjZk>

Lord I Need You

<https://youtu.be/LuvfMDhTyM>

Mon, Sep 25, 8:19 PM

Here's the songs for Sunday

Shout to The Lord

<https://youtu.be/gwodt3Nhjm>

Oh Praise the Name

<https://youtu.be/LqBpifDpNK>

Mon, Sep 25, 10:20 PM

I'm sorry I routinely do not respond to your message. I will make an effort to do a better job. I know I am working Wednesday and I won't know until Wednesday morning what my schedule is for the weekend. I will try to remember to let you know before practice Wednesday Night

I save these songs on my YouTube and they make for nice reflective morning walk background music. 😊

lol it's fine! I understand you have a lot on your plate. I always enjoy it when you can sing, it adds so much! It was great to spend time with you all Sunday... Even if it was 125°. 🤗🤗

Thanks! My plate is full and most of the time my life runs me!
 😊 It leaves little time free time outside of my kids so I appreciate that I can hop in and sing anytime. Sunday was fun! We'll have to hang out again but in the A/C! 🌟🌟🌟



iMessage



Edit

Messages



C

Charlotte

Mon, Oct 2, 9:57 AM

This weeks songs!
 Old Church Choir
<https://youtu.be/ECP8uhj-9D8>
 Resurrecting
<https://youtu.be/vFQoUkWiZnY>
 Just as I am/I come broken to be mended
<https://youtu.be/TGXDFxWM2r0>

Mon, Oct 9, 9:55 AM

Songs for this week:
 No rehearsal Wednesday
 Lord I Lift Your Name on High
 Chain breaker
<https://youtu.be/JGYjKR69M6U>
 Hymn: Down at the Cross (Glory to His Name)
 How Great is Our God
<https://youtu.be/cKLQ1td3MbE>

Tue, Oct 17, 7:34 PM

So Hannah said she's thinking about telemarketing for you.
 From what she's told me it sounds like something I might be
 interested in. Definitely would like to know more.

Okay sounds good!

Definitely will talk about it after I get back from NYC. We are
 coming up on open enrollment and the parent company I
 represent has the only major medical product other than
 Obamacare. Therefore we stay extremely busy during that time
 and I don't really have time to make the number of calls I'd like
 So I to like to hire telemarketers to free up my time. It's a simple
 job, but it takes someone who is tenacious and can get through
 the no's on the phone to a yes. Basically its a numbers game. It
 can be done from home, but I have had Alexander out
 searching for office space this week, which will simplify things
 for everyone. I had an office here before, but kinda minimized
 things and worked from home for a while in order to spend
 more time with the boys when we lost their mom. But they're at
 the age now where I can expand again. I have a girl in Indiana
 going to start and if I can get some here it would be a great
 help. I usually hire females to tele-market because people
 respond more favorably to a female voice I've found. Funny but
 true. Sorry for the book and thank you for your interest! 🙌

Tue, Oct 17, 11:36 PM

I started this text last night but by the time I got back to finish it
 was way late. I know you're a night owl but I have my do I dare
 reply so late! After NY sounds good.

Haha!!! I just accidentally sent it. Oh well. It's way past my



iMessage



Edit

Messages



C

Charlotte

Haha!!! I just accidentally sent it. Oh well. It's way past my bedtime and clearly I need to sleep.

Lol it's all good! I just got home from the gym

Oh good!

Wed, Oct 25, 10:45 PM

Sorry I haven't sent these. This weeks been a whirlwind.
The Lion and the Lamb
<https://youtu.be/rMTfj4xQjZk>
Just as I am/I come broken to be mended
<https://youtu.be/TGXDFxWM2r0>
Come Holy Spirit
<https://youtu.be/OkTluCNidfl>

I had an epiphany earlier today (before Hannah gave me your message 🙄). I would like to sing Sunday. I'm not going to reduce myself because of Craig and Casey any more. 😊

I'm proud of you! And I agree 100%

I've tried for years to keep the peace and minimize the impact for the kids. Just not doing that anymore

And thanks!

You're a better person than I am bc I don't think I could have done that so well. Looking forward to Sunday!

Sun, Oct 29, 1:23 PM

Thank you for singing today! You did great!

Thank you! Idk about great but I enjoyed it. I appreciate you fostering and encouraging the music in Hannah! She amazes me every time!!

You're welcome! I enjoy bantering with her, and it's fun to watch young people become their own person. She did awesome today!

Sun, Oct 29, 8:48 PM

Hey my phone died so I'm plugging it up. James is here

Ok. lol! I just asked you if he was. And we're almost there.

Okie do joe

Dokie

Mon, Oct 30, 2:53 PM

Hey was wondering what time would be good for tomorrow to look at the telemarketing thing. Hannah had mentioned you could be here like 5 or so. That would be fine. I'd say as close to



iMessage



Edit

Messages



C

Charlotte

Mon, Oct 30, 2:53 PM

Hey was wondering what time would be good for tomorrow to look at the telemarketing thing. Hannah had mentioned you could be here like 5 or so. That would be fine. I'd say as close 5 as possible so we have enough time, bc if it gets too late the trick or treaters will start. Plus, I have an online appointment to do at like 6 so y'all could even watch what I do with clients. You could also help with trick or treaters for me while I'm making sales! Alexander will be showing you the dialer system. If you have a laptop computer, and/or a computer headset then bring it. The dialing system is done via a computer. 😊

Mon, Oct 30, 4:12 PM

Alexander is purchasing new headsets today for you. If you own a desktop, the dialing system can be downloaded to that as well

Hey! Tomorrow is good. I should be able to sneak away from work a little early and be there close to 5. I don't have a laptop or headset so I'll just bring me!

Sounds good

Tue, Oct 31, 4:46 PM

When you get here just come on in through the garage



Tue, Oct 31, 7:47 PM

My schedule
M-F 8:30-5 Insurance
M & W 5-10p and some weekend hours Publix (for now)
T & Th 5-8ish gym training
I have 30 mins for lunch every day. My work day is flexible and I frequently have time that I'm not busy. So if no one is working I can possibly jump in.

Wed, Nov 1, 4:32 PM

So are you saying that Monday through Friday from 8:30 AM to 5 PM is when you're available for calling?

No. I'm saying I work my full time job during that time. I sent you the times I am previously committed.

Gotcha. The word insurance threw me

Haha! I can see how that would happen.

Wed, Nov 1, 6:35 PM

Would you like me to mention to Baxter about Ty being in the youth Sunday?



iMessage



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

Edit

Messages



C

Charlotte

Wed, Nov 1, 8:06 PM

Thanks for thinking of that. I asked Ty earlier and he said no.

Sun, Nov 5, 10:42 PM

Here are the songs for this coming week.

Oh Praise the Name oct

<https://youtu.be/LqBpiDpNKc>

I Surrender

<https://youtu.be/ZFORjUcHkKU>

Mon, Nov 6, 12:30 PM

Can you make sure you got the dialer log in information from Alexander? Hannah said she didn't so he just re sent it to both of y'all 😊

Also, not sure what kind of insurance office you work at, but if you receive calls for health insurance and you all cannot help them, if you refer them to me I will pay you the split commission as well. Just an idea.

Mon, Nov 6, 2:47 PM

I did get the email! And we don't do health ins. It's always been so tedious 😊

OK good. What I'm saying is if someone calls in asking if you do health insurance just refer them to me and I will pay you for the referral

Oh! Gotcha!!

Tue, Nov 14, 10:40 PM

Not sure of your schedule this coming Sunday but here are the songs. Hope you are having a good week!

Revelation

<https://youtu.be/D-zk-E55dRk>

What a Beautiful Name

<https://youtu.be/aX82DS45a2k>

Hymns

Thank You, Lord

https://youtu.be/bICfzF1_3oY

Give Thanks

https://youtu.be/Bk_7wUR2Wdg

Since we will not be having practice next Wednesday, the day before Thanksgiving, we will need to run over these songs tomorrow night as well for the following Sunday.

This is Amazing Grace

<https://youtu.be/zPQKj2Zptr0>

Great are You Lord

<https://youtu.be/3jCnAAeEJSQ>

Wed, Dec 6, 10:16 AM

Wasn't sure of your schedule but here are the Songs for this



iMessage



Edit

Messages



C

Charlotte

Wed, Dec 6, 10:16 AM

Wasn't sure of your schedule but here are the Songs for the week:

I am

<https://youtu.be/cHLLGiE0f0>

Cornerstone

<https://youtu.be/QvLxZEU02ul>

Fri, Dec 15, 11:55 AM

You're welcome to go with Hannah this afternoon. Not that you need my permission. 😊 I'm going to try to leave work early to go too.

I was debating because Andrew mentioned it to me out of the blue and I didn't know if he wanted me there for like an approval kind of thing. I wasn't initially planning on going bc I figured that for Hannah it would kind of be like a girls thing. So we will see. 😊

I understand the conflict!

Fri, Dec 15, 9:56 PM

I meant to talk to you about this when I saw you and in all of the tattoo excitement I forgot. I am available on Sunday to be your assistant before the cantata. Just someone to be there to help with whatever may come up. If you need water, or copies, or a message given to the kids or a reminder of who's supposed to be there. I know when I did church productions I would have been lost without my right hand helper. Just let me know what time you need me there!

That would be awesome! I could've used you Wednesday. It was a mess! 😊😊 Anyways the choir and everyone is supposed to be there at 9 AM to practice. That is really nice of you! 😊

A bad rehearsal means a great performance! What time will YOU be there?

I'm usually there 8:45 to warm up my fingers 😊

I'll see you then!

Okay thank you!!

Yw! 😊

Sat, Dec 16, 3:51 PM

Thinking about this for Ty for cmas. Craig & casey would get a barbell and plate weights. Until then he could use dumbbells. As a fellow fitness buff what do you think?

Gold's Gym XR 10.1 Olympic Weight Bench
facebook.com



iMessage



Edit

Messages



HC
Hannah

C
Charlotte

iMessage
Fri, Dec 15, 11:50 AM

Charlotte

Ty's Christmas Wish List

- Crewneck sweatshirts
- Long sleeve gamecock shirts
- Neymar jr jersey long sleeve
- Khaki pants and shorts not cargo
- Long sleeve columbia silky shirt
- Under Armour running shorts
- Soccer pants/goalkeeper pants
- Fit bit
- Gift cards/ money

Which fit bit does he like? And find out if anyone else is getting it for him if you can

Charlotte

He hasn't said. Just put it on his list. I'll see what I can find out n

ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

HC
C

Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll
see what I can find out n



iMessage



Edit

Messages



C

Charlotte

Sat, Dec 16, 4:53 PM

I love it

Sat, Dec 16, 7:36 PM

Thanks! He says he wants to get into weight lifting so we'll see if he uses it!

Well that will definitely encourage him to get into it. Once he starts seeing changes in his body hopefully it will turn into a habit

He loves going to the gym with me and he is super excited to do another competition. This will help him get there!

Sun, Dec 17, 8:50 AM

Coffee?

I had some already! ☺️. Thank you

Yw. Otw and bringing mine. Didn't want to show up without a second if you were jonesing 😊

Sun, Dec 17, 12:56 PM

Thank you so much for being there and for helping me this morning! I really really appreciate it! Have a great day!

Sun, Dec 17, 5:16 PM

It was my pleasure! I didn't do much but I'm glad it helped. They sounded awesome! And having the nativity was (always is) special.

Sun, Dec 17, 6:51 PM

Still you were very helpful and the fact that I could relax because I knew the children were going to come in at the right spot was worth everything

I don't know how much of the performance you heard, but the sound of the choir during the performance was 100 percent better than the reversible. I was very proud of them

I'm so glad! The kids did great! I was able to stay until just after the kids came in. And I stayed in the sanctuary so I could listen. The choir sounded great! You have every reason to be proud!

Sun, Dec 17, 9:58 PM

I just remembered... I have your present from Hannah in the trunk of my car. I'll drop it off Wednesday

Oh right! I forgot about that. I'm working Wednesday til 830. I'm planning on coming to cmas eve service too.



iMessage



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

Josie Allen

1/3/18

thanks for having me i had fun!!!

JA

Charlotte

1/2/18

Here are the songs this week: We are... Revelation

C

Hannah & Charlotte

12/15/17

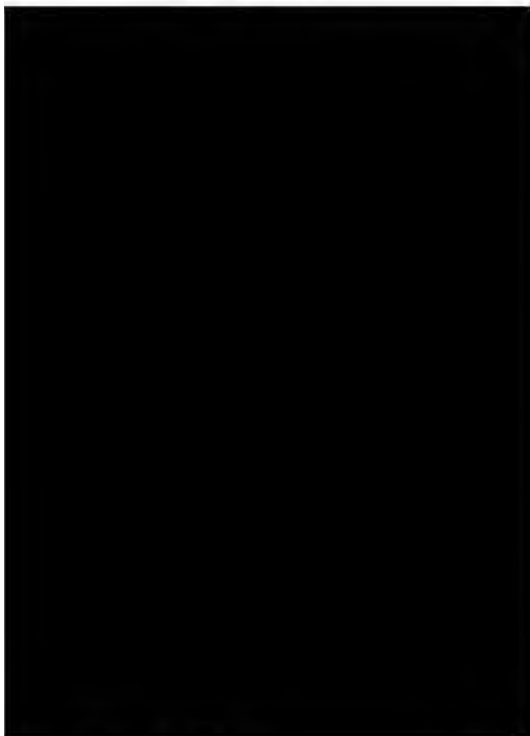
He hasn't said. Just put it on his list. I'll see what I can find out n

HC

C

Edit

Messages



JA

Josie Allen

1/3/18

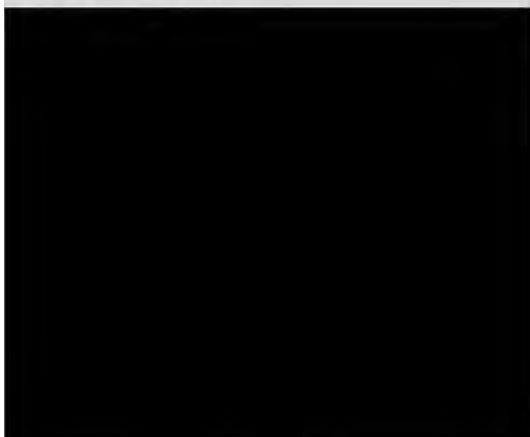
thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week: We are... Revelation

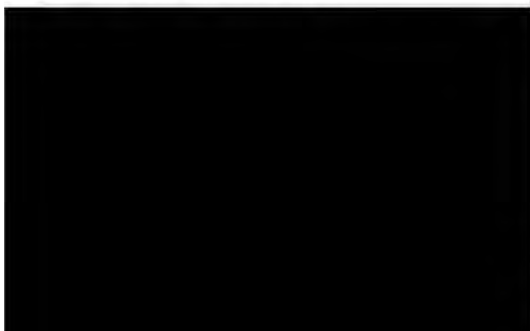


HC C

Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll see what I can find out n



C

Charlotte

Mon, Dec 18, 8:21 AM

Amazon's Choice

for "fitbit charge 2 small"

Color:
BlackSize:
Small (5.5 - 6.7 in)\$129⁰⁰ ~~\$149.95~~ Save \$20.95 (14%)

FREE Shipping

Arrives before Christmas.

In Stock

About this item

Features

- PurePulse continuous, automatic wrist-based heart rate tracking to better measure calorie burn all day
- Maximize your workouts using simplified heart rate zones (Fat Burn, Cardio and Peak)
- See call, text & calendar notifications on the OLED display; Automatically track how long and how well you sleep and wake with a silent vibrating alarm
- Get a better understanding of your fitness level and see how you can improve over time with a personalized Cardio Fitness Score; Use Connected GPS during run mode to see real-time stats like pace and distance on your wrist
- Track all-day activity like steps, distance, calories burned, floors climbed and active minutes; Find moments of calm throughout your day with personalized guided breathing sessions based on your



iMessage



Edit

Messages



C

Charlotte

Product

I ordered Ty a Fitbit and a three year extended warranty! I'm excited! 😊

Also last night, Anne was commenting what a great job you did and she said, "I'm gonna ask her to do that every time." So I thought that was a pretty good complement and you certainly did help a lot and I appreciate it!

Oh my! You are so generous! He will be excited!!

A complement from Anne?! We'll wonders never cease 🤔😂
I am happy to help in anyway. I realized yesterday how much I miss being involved in that sort of stuff. We had years of original productions for Easter and Christmas at our "before divorce" church. Super stressful and incredibly wonderful. I hope this year i won't be as busy and can work less to live life more.

Sun, Dec 24, 8:02 AM

Wasn't sure if you were planning on coming today but I wanted to let you know that someone hit a power pole near the church and knocked out the electricity. Currently Sunday school has been canceled and they will know by 10 AM if there will be services. So there's no need to come by 9 AM, and I will let you know if you should be there by 10:00 AM. If so we could run over songs then.

Update: I am at church and the power is now on

Sun, Dec 24, 10:17 AM

Thanks! I'm working today :(but I get off at 2 and will see you tonight!

Mon, Dec 25, 9:34 PM

Christmas dinner

Dutch Oven Chicken
Mashed potatoes
Mac & cheese
Roasted veggies
Green beans
Crescent rolls
Sara is making Dessert

- Chicken (duh)
- Potatoes (I like Yukon Gold for mashed)
- (I'd like to use butter and almond milk so they're vegan)
- 8 oz elbow noodles
- 13 oz can evaporated milk
- 1/4 cup butter
- 3 large eggs
- 4 cups grated cheddar
- 1/4 cup Parmesan cheese



iMessage



JA Josie Allen

1/3/18

thanks for having me i had fun!!!

C Charlotte

1/2/18

Here are the songs this week: We are...
Revelation

HC C Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll see what I can find out n

Edit

Messages



C

Charlotte

- Brussel sprouts
- Butternut squash or sweet potatoes
- Big can green beans (Hanover - White can)
- Crescent rolls

Tue, Dec 26, 9:56 PM

2-3 pounds boneless, skinless chicken breasts
8 cups water
3 tablespoons salt
2 garlic cloves, whole
1/2 tablespoon coconut aminos or homemade substitute
1 bay leaf
1 teaspoon whole coriander seeds
1 teaspoon whole cumin seeds
1 teaspoon whole black peppercorns
2-3 pounds boneless, skinless chicken breasts

BRINING DIRECTIONS:

- 1 Put water in a large ziplock bag and add the salt, garlic, coconut aminos, bay leaf, coriander seeds, cumin seeds, and peppercorns. Let the salt dissolve.
- 2 Add the chicken breasts to the bag. This will look gross; ignore it.
- 3 Put the bag in the fridge and forget about it for 2 hours.

Wed, Dec 27, 11:11 AM

I don't see Yukon gold potatoes. Only like Idaho russet

Do your mean instant?

Not instant. Russet are fine



iMessage



Edit

Messages



C

Charlotte

dissolve.

- 2 Add the chicken breasts to the bag. This will look gross; ignore it.
- 3 Put the bag in the fridge and forget about it for 2 hours.

Wed, Dec 27, 11:11 AM

I don't see Yukon gold potatoes. Only like Idaho russet

Do your mean instant

Not instant. Russet are fine



We are rich. I found gold

Potatoes that

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

LOL!

Excellent!

Do you mean shredded cheddar set of graded? I can't find it

Grate

Grated would be good. But we can grate it by hand if you can't find any.

Would it be in the deli

Should be with sandwich stuff. It comes in bags of 2-3 cups. Usually hanging.

I did happen to find 2 gallon Ziploc freezer bags

Good!

Tue, Jan 2, 9:53 PM

Here are the songs this week. We are practicing Wednesday night.
 Revelation
<https://youtu.be/D-zk-E55dRk>
 Death was arrested
<https://youtu.be/uMsMiluCUUJ>

Delivered



iMessage



EXHIBIT F

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtime.

I'm sorry. I'm sorry. I'm sorry.

Tue, Mar 6, 10:46 PM

Hi Princess, I didn't know your schedule but this is what I was thinking about for Sunday. The songs are more together like you suggested! 😊😊
Here in the Presence
<https://youtu.be/98vDl1ebJsw>
Thy will be done
https://youtu.be/iCR_Fa8YV2U
And at the end:
Draw me close to You
https://youtu.be/a_tdG9yM93A

Thank you! Songs look great, I will listen to them tomorrow!

Fri, Mar 9, 8:11 AM

Are you awake?

I have a question about work, please call me.

I have another question, so please give me a call when you can

Fri, Mar 9, 10:52 AM

pdf

March 11, 2018.pdf

Fri, Mar 9, 1:44 PM

I know you're driving. I just sent you two more worksheets.

And that bulletin looks good

And another one

Some people are RUDE 🙄

Another one

Sat, Mar 10, 10:29 PM

d1m.christianbook.com



d1m.christianbook.com



Yea. Sorry. It's giving me fits currently.

No worries. If anything, I'll bring in the CD from my car and we can sing over it. And divide t up

Sun, Mar 11, 8:54 AM



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000541

Edit

Messages



Hannah



Hannah Collier

3/11/18

I think I'll feel a little better by lunchtime.

Fri, Mar 9, 1:44 PM

I know you're driving. I just sent you two more worksheets.

And that bulletin looks good

And another one

Some people are RUDE 🙄

Another one

Sat, Mar 10, 10:29 PM

dln.christianbook.comdln.christianbook.com

Yea. Sorry. It's giving me fits currently.

No worries. If anything, I'll bring in the CD from my car and we can sing over it. And divide t up

Sun, Mar 11, 9:54 AM

Will you be upset if I don't come this morning? We can still meet you at lunch.

Sorry was singing. That's up to you and how you are feeling dear.

My mom and brother aren't going, and I don't feel great. I'm not going to come. I'm gonna hopefully eat something and I guess I'll talk to you after. If you still want us to come to lunch, just let me know and I'll be ready. Please don't be upset at me

Its okay. I'm sorry you don't feel well.

It doesn't seem okay but thank you

Well like he's coming to church and then going to eat on his birthday and I just wanted to make it special for him but if you don't feel well you don't feel well. I kind of wanted you to critique how we sounded and how the worship flowed today since you would be in the audience but it's fine and I'm not upset. Do you think you're still feel well enough to meet us for lunch?

Read 3/11/18

I think I'll feel a little better by lunchtime. Honestly, my anxiety is giving me a fit for some reason. I'd still like to come to lunch if you're okay with that. I have a really good feeling about the music today. I love the layout of the songs. I can always listen online.



iMessage



Charlotte

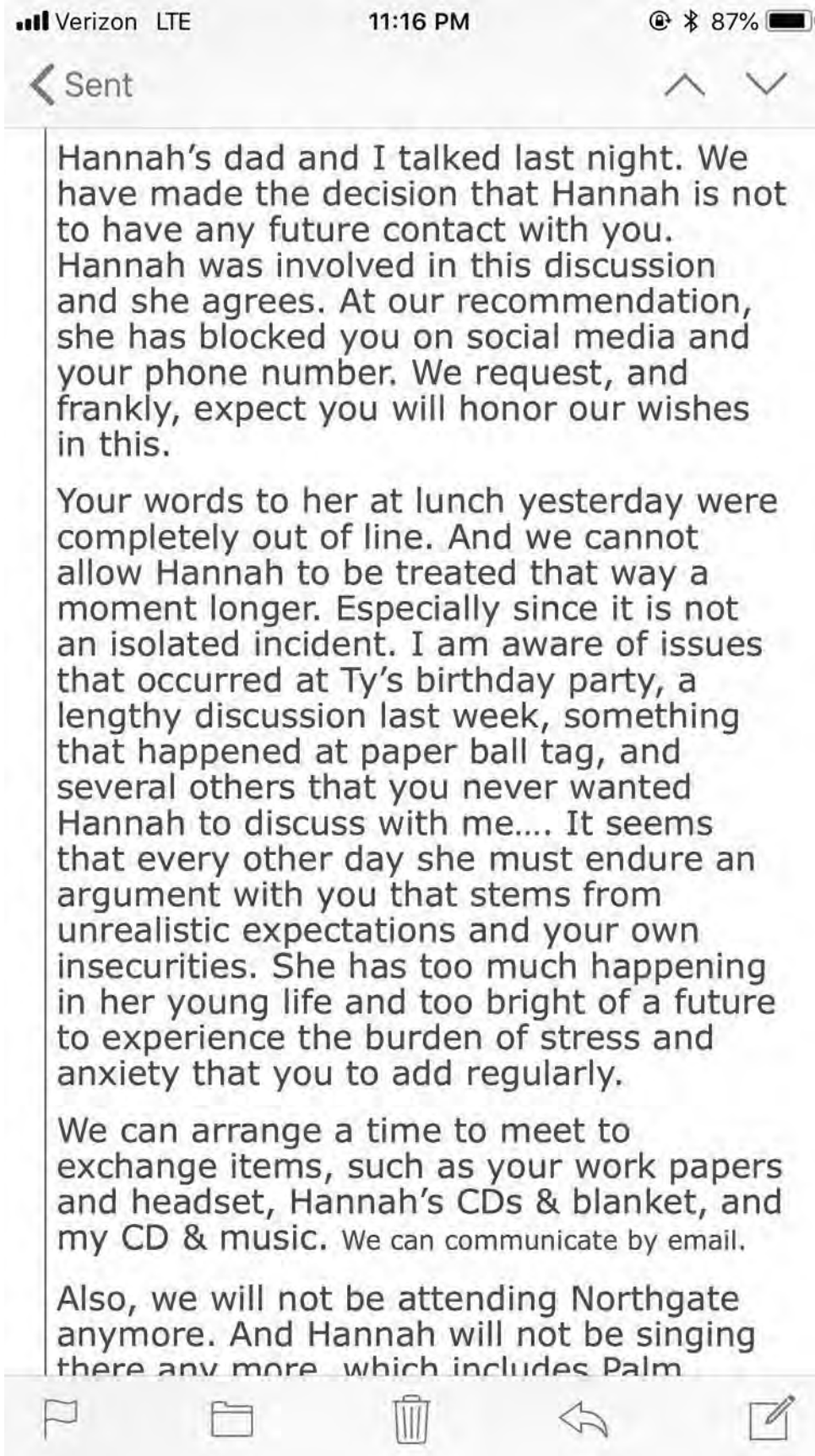
1/2/18

Here are the songs this week. We are...
Revelation

ROA-000542



EXHIBIT G



On Mar 12, 2018, at 10:40 AM, Charlotte Collier [REDACTED] wrote:

James,

Hannah's dad and I talked last night. We have made the decision that Hannah is not to have any future contact with you. Hannah was involved in this discussion and she agrees. At our recommendation, she has blocked you on social media and your phone number. We request, and frankly, expect you will honor our wishes in this.

Your words to her at lunch yesterday were completely out of line. And we cannot allow Hannah to be treated that way a moment longer. Especially since it is not an isolated incident. I am aware of issues that occurred at Ty's birthday party, a lengthy discussion last week, something that happened at paper ball tag, and several others that you never wanted Hannah to discuss with me.... It seems that every other day she must endure an argument with you that stems from unrealistic expectations and your own insecurities. She has too much happening in her young life and too bright of a future to experience the burden of stress and anxiety that you to add regularly.

We can arrange a time to meet to exchange items, such as your work papers and headset, Hannah's CDs & blanket, and my CD & music. We can communicate by email.

Also, we will not be attending Northgate anymore. And Hannah will not be singing there any more, which includes Palm Sunday.

Thanks,

Charlotte

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

From: James Tegeler [REDACTED]
Date: March 12, 2018 at 9:10:58 PM EDT
To: Charlotte Collier <[REDACTED]>
Subject: Re: your letter clarification

Charlotte,

I would like for you to clarify a few things. Because I didn't do anything to her during our paper ball tag game, or at Ty's birthday. At Ty's birthday I simply wanted to know why she was avoiding me and she wouldn't tell me and was very rude for no reason. Turned out she thought I was upset about something. If that's being insecure I'll take it. You have a lot of misinformation, and even though I don't really care anymore, just know that I take great offense to some of your accusations because they are simply not true. Honestly I'm glad this is over because I'm really tired of the high school antics and drama. All I have done for both of you from the day one is to do my best to make your lives better. I do not appreciate the accusations, and I will be more than happy to sit down with you and anyone else and go over exactly what occurred every single time. But to accuse me of wanting to hide things from you? Are you kidding me?? I'll show you every single message I have between us. Frankly I'm tired of this nonsense. Life is too short to act like she did yesterday. It would be nice to receive even a little bit of credit for what I did for her, as opposed to being berated and accused of doing things I did not do. I was going to just sit and

take it and let it go, but I can't because it's untrue and hurtful to me and my family. And I certainly have never had an insecurity problem before now.

I also take great offense to you saying that I used phone calls to yell at her and upset her. That is not all the case whatsoever. But all that gets lost in the fact that she has been very difficult to get along with, especially lately. If you were honest with yourself, and you looked in her past you would see that she has lost quite a few friends for similar reasons. She even told me this herself, and she was so afraid of losing me. And if you think blocking me from her life is best for her, fine. I don't agree based on her fragile state, but frankly I don't need that in my life. Based on what she has told me I know what most of her issues are, and they aren't me. But if you want to lay the blame for her issues on me and my insecurities, which I consider very rude from you, that's your prerogative. But I find it very offensive and I do not appreciate it. I have overlooked a lot of things just to be there for her when she had no one. But yet to blame me for being a huge part of her problems? I know what a lot of her problems are, and I even know what some solutions would be. I've been a very good single parent placed into a very difficult situation. But guess what, it's blame James for my daughter's rudeness so we all feel better about ourselves. Anyway it's none of my business and I don't really care anymore. Actually that's not true, I do care. I care for her more than myself and my heart is broken right now.

Just know I take offense to what you said in your letter because the majority of it is simply not true. I'll be glad to talk to you anytime, anyplace, and with anyone else listening. I don't need this kind of drama in my life or in my children's lives. We're not used to this negativity and moodiness. If anything I could've used a little more patience, but frankly I was spent and yesterday kind of broke the camels back. I only put up with it for as long as I did the sake of betterment of your daughter's life.

Some of the things she told me in confidence were shocking. That's why I wanted to make her life happier and more positive. I was in her life for one reason, and that was to improve it. Anyway, Take some time to look honestly within yourself, because if you do, you know what I'm telling you is true. I wish you the best.

James

EXHIBIT H

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Weren't

It's not too heavy.... and I walk a lot faster than that normally.

Give it a little bit and I bet you'll see a difference. You look great just like you are. Seriously. If you do anything with fitness, do it for yourself. Don't do it for others

Aw

Thank you.

That's a good reason.

You're adorkable

Get it?? Dorky?

Oh yes

I relate to that very very well 🤔🤔🤔

That's a really good word actually. I've never heard that before

Me too: the dork part. And really???

Yes. That's a Hannah word

I make them up. Because of the BFG

I love words. They are so powerful.

You are very good with words

Gracias señor!!

I thought it was very powerful when she prayed tonight between songs

I wonder if we shouldn't do something like that in the middle of come Holy Spirit. Something short at the very beginning of the ad Lib part

Me too. I can see what I can do.

Not good at public prayers

Gosh I'm still blown away by how sweet you are. You bought me an umbrella. You bought me dinner. You played for my audition and stayed here until almost 10, if not later. I'm so blessed to have you. Thank you so much. From the tips of my toes.



Message



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim..

Silly

That was a vocal text and I was actually laughing 🤣

That's classic Hannah. That picture

I'm just showing you where it is

Of that I am aware

Good it's glaringly obvious

Glaringly?

That must be pretty obvious

I was deliberate with my word choice james.

Did you know my dad started a Christian camp in Virginia? It's still going today. It's in the mountains of southwestern part of Virginia. It's beautiful. About 3 1/2 hours from here.

I know. I'm sharpening my vocabulary because of you 😊

That's awesome.

the "destinations" tab of the IVHQ website volunteerhq.org. This trip is for Honors students and members of Honors Societies only.

- ☐ Quito, Ecuador
- ☐ Marrakech, Morocco
- ☐ Ubud, Bali (Indonesia)
- ☐ Table View, South Africa
- ☐ Cordoba, Argentina

Submit Vote

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000551



iMessage



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Just noticed they didn't give me fvs co

It's okay. I have something he can drink

We can go to a vending machine and get him o

It's okay.

Sat, Sep 2, 2:36 PM

I made it home. But I'm going to run to the grocery store and get groceries for next week.

Okay have fun!

I know you said your kids go to their own church, but you should bring them by northgate soon!

They'll come on special occasions. Alexander goes with his girlfriend and Andrew goes with his friend Josie. She's like a sister. She's going to New York City with us. And yes I always have a blast in the grocery store. Who wouldn't? 🤪

And will you please be sure to get a nap. You don't need to be getting sick 🤒

You should bring them tomorrow. They can see how awesome their dad is at leading worship. I'm about to leave so don't worry

Well you should've stopped here for a min bc they're both here and so is Sara



What do you mean should've

They've been quite a few times. I understand what you are saying. But my thinking was since they'd already kinda had their lives ripped apart losing their mom and their grandma I didn't want to tear them away from their friends too at their churches, yk? . But I will ask them!! 🤔🤔

Oh yi haven't left yet 🤔

You 🤔

I do understand. I'm sorry. Not trying to be pushy. And no I haven't left yet

I don't want to intrude in your home. I appreciate it tho

Don't be sorry

You're not an intruder



iMessage



Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

eh

There's a difference between intruding and being invited. But you're also tired and worn out so you should probably rest and we plan it another time 😊

Lol I'm having typing issues

Oh and homework

Alright.

Headed home.

Are you okay?

Yep. I'm good.

I'll let you know when I get back.

Okay thank you

Yep

I'm here.

Yayy! Have fun

With what lol

Lol. I guess about the same kinda fun I had at the store

I enjoy the grocery store. As long as people don't follow me.

Follow you? Why would ppl follow you?

Last time I went to Walmart by myself an employee, about my age, followed me through the store and cornered me on an empty aisle. He was just hitting on me. It just freaked me out that he followed me around. It's because I put on real clothes and didn't look like a hobo. Hobo life works for me. 🤔

Wow. But you could terrorize him if you wanted to. 🤖🤖

Wym

I was terrified.

I'm sorry. I can shop for you bc Noone follows me

It's okay. And it was in lugoff so it's fine

I bet people do follow you

Pfft



iMessage



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Oh. Have fun. Do great! I'm about to go to the chiropractor.

Drive safely please let me know

Okay ok 🙄

Okay ok

Here

Okay ok 🙄 🙄

Thank you

You're welcome. 🙄

Tue, Sep 12, 4:43 PM

Back

How was your presentation? Or is still happening?

It was good. How is your back

It's okay 🙄

Is it improving from the treatment

I'm not sure honestly.

You're a crazy person

That's a given. 🙄 What makes you say that

You'll find out eventually.



I certainly hope so 🙄

Do you ever check your mail

Every once in a while. I haven't been lately. Why?

Are you trying to tell me something??

No

That was a question. If I was trying to tell you something I would've stated it in the form of a statement

Okay. I'm too tired to go right now. Maybe tomorrow. Or next week 🙄



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000554



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

Edit

Messages



HC

Hannah

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtime...



Not right now

So why am I crazy?

You just are. No specific reason.

Michael drives me up THE WALL

I like him

HE irritates me. It's like he thinks he's cute but it makes me want to jump out the window.

If I say "ok" signaling the end of a conversation, he'll say "ok"

Like?! DONT REPEAT WHAT I SAID

same with "yea"

He'll say something, and I'll say yes. He said well that's good. I say yep. He goes "yep". Why??

And he wants me to come "hang out" at SMC this week. Ummm I don't have time to sleep. Let alone hang out at SMC.

Drives me bonkers.

He means well. I know. But bless his heart.

Hahaha! Bless his heart! All I can say about it is, it's dang good thing your window doesn't open.

I'd kill him.

He knows better than that. He knows my daddy. He calls just to remind him "he's everywhere" scares the poor kid to death. It's hilarious.

He really is though. Some of the campus officers know him. Some of his agents live here in Spartanburg, they're watching out for me

That's nice! And as for Michael, you did tell me from the very beginning that he was a bit goofy so there you go

I know. He is. I think he's got some sort of mental or social thing that's not quite fully developed yet. I don't know but sometimes I just want to choke him



Message



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000555



Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

I know. He is. I think he's got some sort of mental or social thing that's not quite fully developed yet. I don't know but sometimes I just want to shake him.



I might be crazy but you're hilarious. Specially the way you w... things.

Shaking him might hel...



I'm not trying to be ugly! But maybe if I shake him, his brain will click and he'll be like, wow this annoying maybe I shouldn't repeat everything she says

Or it could further loosen something up and make it even wors...

Oh gosh.

He thinks he's cute. But then it's just annoying. He was all like, I'm gonna move to upstate so I can keep an eye on ya. Like no. I'll punch you in the face. Go away.

And to make you feel better, it is a fact that guys brains take longer to develop in the social skills area. So above average intelligent females have a difficult time dealing with that sometimes

Is that what I am? Above average? what if I was secretly a dude?

That's hilarious.

I'm not. But I don't know what that's so funny to me

I'm so tired

Well if you are a guy, then congratulations on developing your social skills so early. And yes, you are far above average in the intelligence category. I think we all know this.

I'm sorry... not to bug you, but did you eat dinner?



That's hilarious

What do you think?

Sorry. That sounds rude. No. I've not eaten yet.



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000556



EXHIBIT I

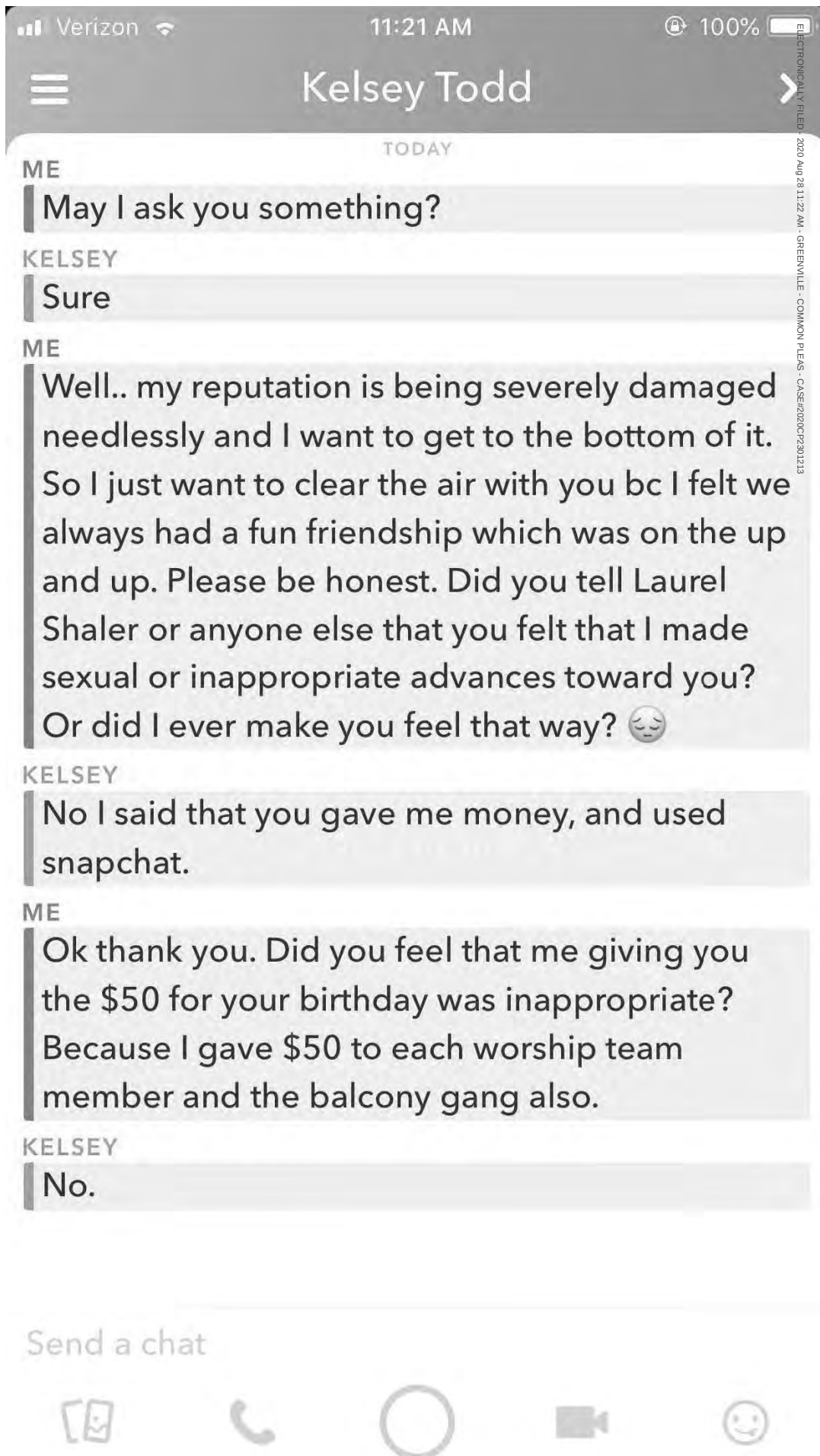
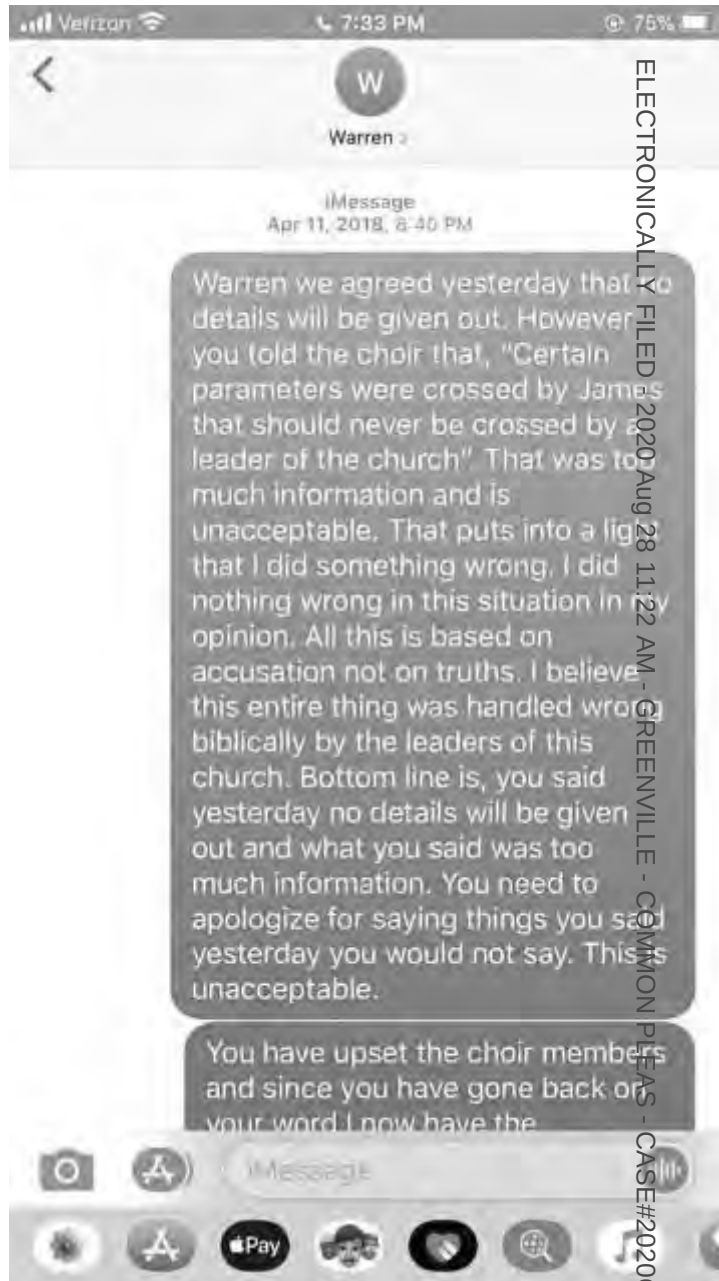
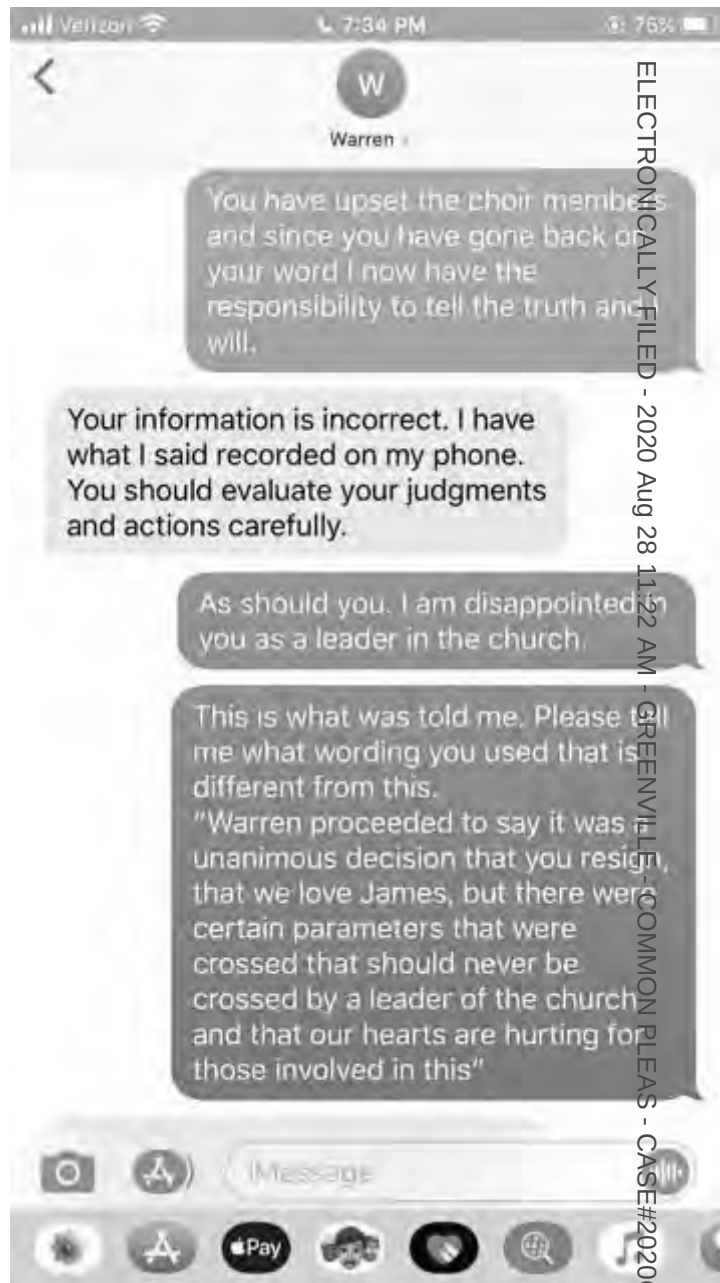
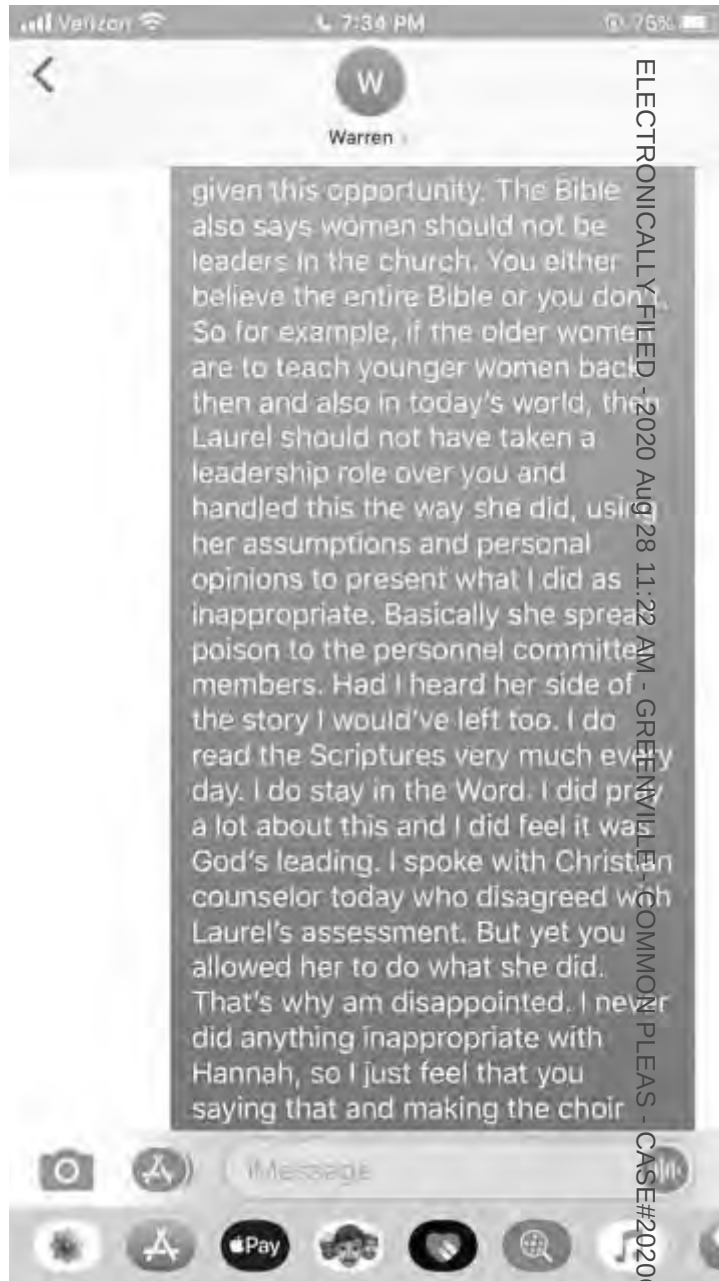


EXHIBIT J











ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#20200

RECEIVED

Apr 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-001525

JAMES EARL TEGELER,

Appellant,

v.

CHARLOTTE COLLIER,
HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST
CHURCH,

Respondents.

INITIAL BRIEF OF APPELLANT

DICKSON DAVIS LAW FIRM, LLC

Deborah D. Davis, Esq.
SC Bar No.: 102942
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal	1
Statement of the Case	2
Statement of Facts	5
Standard of Review	12
I. Motion to dismiss. Rule 12(b)(6), SCRCF.	12
II. Motion for judgment on the pleadings. Rule 12(c), SCRCF.	14
III. Motion for summary judgment. Rule 56(c), SCRCF.	15
IV. Motion for relief. Rule 60(b), SCRCF.	16
Arguments	17
I. The lower court erred dismissing Appellant James Earl Tegeler’s claims against Respondent Northgate Baptist Church because the severance agreement did not bar his claims. 18	
A. Appellant James Earl Tegeler provided a genuine disputed issue of a material fact that Respondent Northgate Baptist Church’s severance agreement was not legally binding. 19	
B. Appellant James Earl Tegeler provided a genuine disputed issue of a material fact that Respondent Northgate Baptist Church’s severance agreement did not bar his claims..	23
C. Respondent Northgate Baptist Church failed to recognize Appellant James Earl Tegeler’s notice of an implied offer to return the severance pay.	27
II. Appellant James Earl Tegeler provided a genuine disputed issue of material fact that respondents defamed him in the most reprehensible light that resulted in severe emotional distress to suffer utter, inescapable social ruin.	28
A. The lower court erred deciding on the meaning of the defamatory statement “inappropriate relationship” that was an issue of fact for the jury to decide.	30
1. The lower court erred dismissing Appellant James Earl Tegeler’ s defamation claim when the statement “inappropriate relationship” was susceptible to a defamatory meaning for the jury to decide.	31
2. The lower court erred when ruling that the defamatory statement “inappropriate relationship” was not slander as actionable per se.	36
3. The lower court improperly gave respondents the benefit of raising affirmative defenses without presenting them before a factfinder.	38
B. The lower court erred deciding that the conduct of Respondents Hannah Elizabeth Collier, Charlotte Collier, and Linda Smith’s conduct was not extreme or outrageous.	42
C. The lower court’s disavowment of naming Appellant James Earl Tegeler a predator does not align with the record that is a far more damaging defamatory statement than “inappropriate relationship” thereby abusing any qualified privilege therefrom.	44
III. Another legal theory under the cause of action for negligent infliction of emotional distress comes before the court as a question of undecided law.	45
Conclusion	46

TABLE OF AUTHORITIES

CASES

<i>Adams v. Daily Tel. Printing Co.</i> , 292 S.C. 273, 356 S.E.2d 118 (Ct. App. 1986)-----	passim
<i>Aldridge v. Watts Mill</i> , 131 S.C. 222, 127 S.E. 213 (1925)-----	24
<i>Baughman v. AT&T</i> , 306 S.C. 101, 410 S.E.2d 537 (1991)-----	16
<i>Bloom v. Ravoira</i> , 339 S.C. 417, 529 S.E.2d 710 (2000)-----	16, 19, 29
<i>Bowers v. Bowers</i> , 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991) -----	17
<i>Bray v. Marathon Corp.</i> , 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001) -----	46
<i>Brown v. Inv. Mgmt. & Research</i> , 323 S.C. 395, 475 S.E.2d 754 (1996)-----	13
<i>Brown v. Leverette</i> , 291 S.C. 364, 353 S.E.2d 697 (1987)-----	13
<i>Carolina Ceramics, Inc. v. Carolina Pipeline Co.</i> , 251 S.C. 151, 161 S.E.2d 179 (1968)-----	24
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 106 S. Ct. 2548 (1986) -----	15, 19, 29
<i>Charleston Cty. Sch. Dist. v. Laidlaw Transit, Inc.</i> , 348 S.C. 420, 559 S.E.2d 362 (Ct. App. 2001) -----	12
<i>Charleston Cty. Sch. Dist. v. State Budget & Control Bd.</i> , 313 S.C. 1, 437 S.E.2d 6 (1993)-----	46
<i>Chewning v. Ford Motor Co.</i> , 346 S.C. 28, 550 S.E.2d 584 (Ct. App. 2001)-----	17
<i>City of San Diego v. Roe</i> , 543 U.S. 77, 125 S. Ct. 521 (2004)-----	39, 41
<i>Connick v. Myers</i> , 461 U.S. 138, 103 S. Ct. 1684 (1983) -----	41
<i>Dawkins v. Fields</i> , 354 S.C. 58, 580 S.E.2d 433 (2003)-----	16, 19, 29, 39
<i>Diminich v. 2001 Enters., Inc.</i> , 292 S.C. 141, 355 S.E.2d 275 (Ct. App. 1987) -----	14
<i>Fay v. Total Quality Logistics, LLC</i> , 419 S.C. 622, 799 S.E.2d 318 (Ct. App. 2017)-----	16
<i>Fields v. Melrose P'ship</i> , 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993) -----	12
<i>Fisher v. Stevens</i> , 355 S.C. 290, 584 S.E.2d 149 (Ct. App. 2003)-----	25
<i>Flowers v. Price</i> , 192 S.C. 373, 6 S.E.2d 750 (1940)-----	30, 31, 32, 37
<i>Folkens v. Hunt</i> , 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986) -----	45
<i>Food Lion, Inc. v. United Food & Commer. Workers Int'l Union</i> , 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002)-----	12, 13
<i>Ford v. Hutson</i> , 276 S.C. 157, 276 S.E.2d 776 (1981) -----	40, 42, 43
<i>Gainey v. Gainey</i> , 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009)-----	21
<i>Garrard v. Charleston Cty. Sch. Dist.</i> , 429 S.C. 170, 838 S.E.2d 698 (Ct. App. 2019) -----	39, 41
<i>Gattison v. S.C. State Coll.</i> , 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995) -----	43, 46
<i>George v. Fabri</i> , 345 S.C. 440, 548 S.E.2d 868 (2001) -----	16
<i>Gregory v. Gregory</i> , 292 S.C. 587, 358 S.E.2d 144 (Ct. App. 1987)-----	14
<i>Hensley v. Heavrin</i> , 277 S.C. 86, 282 S.E.2d 854 (1981)-----	45
<i>Herring v. Lawrence Warehouse Co.</i> , 222 S.C. 226, 72 S.E.2d 453 (1952)-----	30, 31, 32, 39
<i>Hill v. Fotts</i> , 345 S.C. 304, 547 S.E.2d 894 (Ct. App. 2001) -----	28
<i>Holler v. Holler</i> , 364 S.C. 256, 612 S.E.2d 469 (Ct. App. 2005) -----	21
<i>Holtzscheiter v. Thomson Newspapers</i> , 332 S.C. 502, 506 S.E.2d 497 (1998) -----	31, 32, 37, 39
<i>Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.</i> , 386 S.C. 108, 687 S.E.2d 29 (2009)-----	15, 19, 29
<i>Hyman v. Ford Motor Co.</i> , 142 F. Supp. 2d 735 (D.S.C. 2001)-----	14, 16, 24
<i>In re Nightingale's Estate</i> , 182 S.C. 527, 189 S.E. 890 (1937)-----	20, 21
<i>Jones v. Massingale</i> , 251 S.C. 456, 163 S.E.2d 217 (1968) -----	27
<i>Kinard v. Augusta Sash & Door Co.</i> , 286 S.C. 579, 336 S.E.2d 465 (1985)-----	45, 46
<i>Lesesne v. Willingham</i> , 83 F. Supp. 918 (D.S.C. 1949) -----	37

<i>Lowery v. Callahan</i> , 210 S.C. 300, 42 S.E.2d 457 (1947) -----	24
<i>Mack v. S. Bound R.R. Co.</i> , 52 S.C. 323, 29 S.E. 905 (1898)-----	46
<i>McBride v. Sch. Dist. of Greenville Cty.</i> , 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010) -----	39
<i>McCaskey v. Shaw</i> , 295 S.C. 372, 368 S.E.2d 672 (Ct. App. 1988) -----	45
<i>McClain v. Arnold</i> , 275 S.C. 282, 270 S.E.2d 124 (1980) -----	16
<i>McCune v. Myrtle Beach Indoor Shooting Range, Inc.</i> , 364 S.C. 242, 612 S.E.2d 462 (Ct. App. 2005) -----	25
<i>McCurry v. Keith</i> , 312 S.C. 254, 439 S.E.2d 861 (Ct. App. 1994) -----	14
<i>McGill v. Moore</i> , 381 S.C. 179, 672 S.E.2d 571 (2009)-----	24
<i>Meehan v. Commercial Cas. Ins. Co.</i> , 166 S.C. 496, 165 S.E. 194 (1932) -----	27
<i>Metallo v. Torrington Bd. of Educ.</i> , 2010 Ct. Sup. 10762 (Conn. Super. Ct. 2010)-----	46
<i>Micronics, Inc. v. S.C. Dep't of Revenue</i> , 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001) -----	17
<i>Moore v. Weinberg</i> , 383 S.C. 583, 681 S.E.2d 875 (2009) -----	46
<i>Moshtaghi v. Citadel</i> , 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994) -----	37
<i>Padgett v. Colonial Wholesale Distrib. Co.</i> , 232 S.C. 593, 103 S.E.2d 265 (1958)-----	46
<i>Parrish v. Allison</i> , 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007) -----	31, 32, 37
<i>Patton v. Miller</i> , 420 S.C. 471, 804 S.E.2d 252 (2017)-----	17, 28
<i>Player v. Chandler</i> , 299 S.C. 101, 382 S.E.2d 891 (1989)-----	20
<i>Quality Towing, Inc. v. City of Myrtle Beach</i> , 340 S.C. 29, 530 S.E.2d 369 (2000) -----	14
<i>Raby Constr., L.L.P. v. Orr</i> , 358 S.C. 10, 594 S.E.2d 478 (2004) -----	17
<i>Rivers v. Florence Printing Co.</i> , 141 S.C. 364, 139 S.E. 781 (1927)-----	39, 40
<i>Rodrigues v. State</i> , 52 Haw. 156 (1970) -----	46
<i>Rouvet v. Rouvet</i> , 388 S.C. 301, 696 S.E.2d 204 (Ct. App. 2010) -----	17
<i>Russell v. Columbia</i> , 305 S.C. 86, 406 S.E.2d 338 (1991) -----	14
<i>S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc.</i> , 283 S.C. 182, 322 S.E.2d 453 (Ct. App. 1984) -----	25
<i>Sandifer v. Electrolux Corp.</i> , 172 F.2d 548 (4th Cir. 1949)-----	37
<i>Scoggins v. Honeywell Int'l, Inc.</i> , Civil Action No. 2:11-3028-PMD-BM, 2012 U.S. Dist. LEXIS 174302 (D.S.C. Dec. 10, 2012) -----	20
<i>Skydive Myrtle Beach v. Horry Cty.</i> , 426 S.C. 175, 826 S.E.2d 585 (2019)-----	13, 14, 15, 18
<i>Sloan Constr. Co. v. Southco Grassing, Inc.</i> , 377 S.C. 108, 659 S.E.2d 158 (2008)-----	12
<i>Smith v. Smith</i> , 194 S.C. 247, 9 S.E.2d 584 (1940)-----	37
<i>Snyder v. Phelps</i> , 562 U.S. 443, 131 S. Ct. 1207 (2011) -----	41
<i>SPAUGH v. A. C. L. R.R. CO.</i> , 158 S.C. 25, 155 S.E. 145 (1930)-----	46
<i>Spence v. Spence</i> , 368 S.C. 106, 628 S.E.2d 869 (2006) -----	14, 15
<i>Stroud v. Riddle</i> , 260 S.C. 99, 194 S.E.2d 235 (1973)-----	13
<i>Swinton Creek Nursery v. Edisto Farm Credit</i> , 334 S.C. 469, 514 S.E.2d 126 (1999) -----	39, 40
<i>Taylor v. Cummins Atl.</i> , 852 F. Supp. 1279 (D.S.C. 1994) -----	20
<i>Tobias v. Rice</i> , 386 S.C. 306, 688 S.E.2d 552 (2010)-----	17
<i>Toussaint v. Ham</i> , 292 S.C. 415, 357 S.E.2d 8 (1987)-----	12
<i>Tri-County Ice & Fuel Co. v. Palmetto Ice Co.</i> , 303 S.C. 237, 399 S.E.2d 779 (1990) -----	16
<i>Whitlock v. Creswell</i> , 190 S.C. 314, 2 S.E.2d 838 (1939)-----	21
<i>Woodward v. S.C. Farm Bureau Ins. Co.</i> , 277 S.C. 29, 282 S.E.2d 599 (1981) -----	37

RULES

Rule 12(b)(6), SCRCP-----	passim
Rule 12(c), SCRCP -----	passim
Rule 15(a), SCRCP -----	14, 15
Rule 408, SCRE -----	27
Rule 56(c), SCRCP -----	15, 16
Rule 56(e), SCRCP -----	13
Rule 56, SCRCP-----	passim
Rule 60(b)(1), SCRCP-----	passim
Rule 60(b)(3), SCRCP-----	17
Rule 60(b), SCRCP -----	passim
Rule 8, SCRCP -----	13
Rule 802(d)(2), SCRE -----	28

OTHER AUTHORITIES

Bernice A. Pescosolido et al., <i>Rethinking Theoretical Approaches to Stigma: A Framework Integrating Normative Influences on Stigma (FINIS)</i> , 67 Soc. Sci. Med. 3, Aug. 2008 -----	10
<i>Child Molestation Definition</i> , FARLEX, INC.-----	35
Dan Brennan, MD, <i>Signs of a Sexual Predator</i> , WEBMD.COM -----	45
<i>Inappropriate Contact Definition</i> , WORDHIPPO.COM -----	8
<i>Inappropriate Definition</i> , Merriam-Webster.com -----	8
<i>Inappropriate Definition</i> , Urbandictionary.com -----	8
<i>Inappropriate Definition</i> , Wordhippo.com -----	8
<i>Inappropriate Definition</i> , Yourdictionary.com -----	8
INAPPROPRIATE RELATIONSHIPS: THE UNCONVENTIONAL, THE DISAPPROVED, AND THE FORBIDDEN (Robin Goodwin & Duncan Cramer eds., 2005)-----	10, 35
Kenton Bell, OPEN EDUCATION SOCIOLOGY DICTIONARY (2013-2021 ed. 2013) -----	8, 10
Laura K. Murray, Ph.D, et al., <i>Child Sexual Abuse</i> , CHILD ADOLESC. PSYCHIATR. CLIN. N. AM., Apr. 2014 -----	9
Lorraine Green, <i>The Trouble with Touch? New Insights and Observations on Touch for Social Work and Social Care</i> , 47 BRITISH J. SOC. WORK, NO. 3, 2017-----	8
Matthew D. Lieberman, SOCIAL: WHY OUR BRAINS ARE WIRED TO CONNECT (2013)-----	10
<i>Pedophilia Definition</i> , MERRIAM-WEBSTER.COM -----	34
RESTATEMENT (SECOND) OF TORTS § 46 (1965)-----	43
Richard H. McAdams, <i>The Origin, Development, and Regulation of Norms</i> , 96 MICH. L. REV. 338 (1997)-----	10
<i>Sexual Assault Definition</i> , WORDHIPPO.COM -----	8
<i>Sexual Violence Definition</i> , WORLD HEALTH ORGANIZATION -----	9
Steven Finkelstein, <i>Learning to Recognize Predatory Behavior in Relationships</i> , BETTERHELP.COM-----	45

STATEMENT OF ISSUES ON APPEAL

- I. Whether the lower court erred granting a motion to dismiss Appellant's Complaint when the factual allegations in Appellant's Complaint were sufficient to form a cause of action for the following causes of action:**
 - a. Defamation**
 - b. Intentional Infliction of Emotional Distress**
 - c. Negligent Infliction of Emotional Distress**
 - d. False Imprisonment**
 - e. Fraud in the Inducement**
 - f. Negligent Misrepresentation**
 - g. Negligent Hiring, Supervision, and Retention of Employees**
 - h. Wrongful Termination**

- II. Whether the lower court erred granting a summary judgment when a genuine dispute of facts existed for the following causes of action:**
 - a. False Imprisonment**
 - b. Defamation**
 - c. Fraud in the Inducement**
 - d. Negligent Misrepresentation**
 - e. Negligent Hiring, Supervision, and Retention of Employees**
 - f. Intentional Infliction of Emotional Distress**
 - g. Wrongful Termination**

- III. Whether the lower court erred dismissing Appellant's Complaint when a severance agreement did not bar Appellant's claims at the time of signing the document and afterward related to the following causes of action:**
 - a. Defamation**
 - b. Fraud in the Inducement**
 - c. Negligent Misrepresentation**
 - d. Negligent Hiring, Supervision, and Retention of Employees**
 - e. Intentional Infliction of Emotional Distress**
 - f. Wrongful Termination**

- IV. Whether the lower court erred denying Appellant the opportunity to amend Appellant's Complaint when granting a motion for judgment on the pleadings.**

- V. Whether the trial court erred denying a motion to reconsider based on Respondents' misconduct under Rule 60 of the South Carolina Rules of Civil Procedure.**

STATEMENT OF THE CASE

Appellant James Earl Tegeler (“Appellant”) sued Respondents Charlotte Collier (“Mother”), Hannah Elizabeth Collier (“Hannah”), Linda Smith (“Grandmother”), and Northgate Baptist Church (“Northgate”) after James, who was employed as the director of the music program at Northgate, was fired from Northgate (R. pp. ____; Compl. ¶¶ 14-17, 54-62, 72, 74, 81, 83, 92-93, 95-97, 103, 113; Resp’ts Hannah Elizabeth Collier and Linda Smith’s Am. Answer ¶ 6; Resp’t Charlotte Collier Am. Answer ¶ 5). James requested a jury trial and pled the following causes of action: (1) false imprisonment against Northgate; (2) defamation against all respondents; (3) fraud in the inducement against Northgate; (4) negligent misrepresentation against Northgate; (5) negligent hiring, supervision, and retention of employees against Northgate; (6) intentional infliction of emotional distress against all respondents; (7) negligent infliction of emotional distress against all respondents; (8) wrongful termination against Northgate; and, (9) civil conspiracy against all respondents. (R. pp. ____; Compl. ¶¶ 124-215). Northgate responded with a motion to dismiss and a memorandum in support of its motion to dismiss that James’s claims against Northgate were barred at the time of executing a severance agreement during James’s termination from Northgate. (R. pp. ____; Resp’t Northgate Baptist Church’s Mot. Dismiss pp. 1-2; Resp’t Northgate Baptist Church’s Mem. Supp. Mot. Dismiss pp. 1-2, 4-5).

Hannah, Hannah’s mother, and Hannah’s grandmother filed an amended answer that denied James’s material allegations and asserted the following affirmative defenses: (1) their accusation of James having an inappropriate relationship with Hannah was true; (2) James could not prove damages from harm to his reputation because of the alleged defamatory statement; (3) James was responsible for the publication of the alleged defamatory statement; (4) James’s claim

for special damages was barred because the alleged defamatory statement was not defamatory per se; (5) James's claim for defamation was barred because their publication of the alleged defamatory statement was a privileged communication; (6) James's defamation claim was barred because they acted without malice toward James; (7) waiver, laches, release, estoppel, and unclean hands; (8) failure to mitigate James's damages; (8) James is barred from punitive damages; and, (9) sanctions against James. (R. pp. ____; Resp't Charlotte Collier's Am. Answer ¶¶ 60-93; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 55-81). Hannah, her mother, and her grandmother sought a motion for summary judgment on the pleadings. Rule 12(c), SCRPC. (R. pp. ____; Resp't Charlotte Collier's Mot. Dismiss p. 1; Resp't Charlotte Collier's Mem. Supp. Mot. Dismiss pp. 1, 6-8; Resp'ts Hannah Elizabeth Collier's Mot. Dismiss p. 1; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss pp. 1-3). Additionally, Hannah and her grandmother sought a motion to dismiss. Rule 12(b)(6), SCRPC. Resp'ts Hannah Elizabeth Collier's Mot. Dismiss p. 1; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss pp. 1-5, 9-10). Furthermore, Hannah admitted that no sexual relations occurred between Hannah and James in her affidavit. (R. pp. ____; Hannah Elizabeth Collier Aff. ¶ 4).

The Honorable Alex Kinlaw, Jr., heard all three motions. (R. pp. ____; Tr. 56:23-58:19). Judge Kinlaw granted all three motions and dismissed James's case. (R. pp. ____; Decision Grant Resp't Northgate Baptist Church's Mot. Dismiss p.1; Decision Grant Resp't Charlotte Collier's Mot. Summ. J. Pleadings p.1; Decision Grant Resp't Linda Smith Mot. Dismiss and Mot. J. Pleadings p. 1; Am. Decision Grant Resp'ts Hannah Elizabeth Collier and Linda Smith's Mot. Dismiss and Mot. Summ. J. Pleadings p.1). James moved to reconsider and filed supporting affidavits pursuant to Rule 60 of the South Carolina Rules of Civil Procedure. (R. pp. ____;

Appellant's Mot. Recons. pp. 1-3; James Earl Tegeler Aff.; Josie Allen Aff.; Anne Danciu Aff.; Caroline Jenkins Aff. Sue Lutz Aff.; Roy Sabean Aff.). Judge Kinlaw issued three separate formal orders granting respondents' motion to dismiss and motion for judgment on the pleadings (R. pp. ____; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss 1-2, 10; Order Grant Resp't Charlotte Collier's Mot. Summ. J. Pleadings pp. 1-2, 4, 6-11; Order Grant Resp'ts Hannah Elizabeth Collier and Linda Smith's Mot. Dismiss and Mot. Summ. J. Pleadings pp. 1, 4, 9-12). James amended his motion to reconsider. (R. pp. ____; Appellant's Am. Mot. Recons. p. 1). Judge Kinlaw denied that motion without a hearing. (R. pp. ____; Order Den. Appellant's Am. Mot. Recons. to Resp't Northgate Baptist Church pp. 2-3; Order Den. Appellant's Am. Mot. Recons. to Resp't Charlotte Collier pp. 2-3; Order Den. Appellant's Am. Mot. Recons. to Resp'ts Hannah Elizabeth Collier and Linda Smith p. 2).

This appeal followed.

STATEMENT OF FACTS

Context matters. Words matter. The sheer ludicrous behavior from three generations of women in the same family have set a chain of events in motion tarnishing the reputation of an upstanding widower, reporting baseless allegations to this man's employer that gets him fired, and turning that widower into a social pariah in the Christian community at best. Or, a sexual predator at worst. (R. pp. ____; Compl. ¶¶ 14-17, 20-35, 38-42, 45, 46-52, 54-68, 72, 74, 81-84, 86, 92-93, 95, 96, 97, 100-103, 106, 108-109, 112, 113, 115-118; Resp't Charlotte Collier Am. Answer ¶¶ 14, 20, 26, 28, 81; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 9, 10, 14, 23-24; Resp't Charlotte Collier's Mem. Supp. Mot. Dismiss pp. 4-5; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss p. 1-3; Tr. 27:7-29:21, 33:5-14, 54:22-24; Anne Danciu Aff. ¶¶ 3, 9, 21; Roy Sabeau Aff. ¶¶ 2, 7-9, 11-14; Sue Lutz Aff. ¶¶ 7, 14-16, 24). Hannah, her mother, and her grandmother reported James to Northgate that he had an "inappropriate relationship" with Hannah. (R. pp. ____; Compl. ¶¶ 59-62; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 24; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss pp. 1-3; Resp't Charlotte Collier's Mem. Supp. Mot. Dismiss pp. 4-5; Tr. 54:22-24; Hannah Elizabeth Collier Aff. ¶¶ 2-4). They painted James as committing one of the worst, most morally reprehensible crimes that will forever haunt James and taint his reputation. (R. pp. ____; Compl. ¶¶ 59-62, 117; Tr. 54:22-24; Sue Lutz Aff. ¶¶ 14-15; Anne Danciu Aff. ¶¶ 20-21; Roy Sabeau Aff. ¶¶ 17, 19).

James was a salaried employee of Northgate as a director of the music program at Northgate being a gifted pianist, musician, and choir director. (R. pp. ____; Compl. ¶¶ 13-17; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 6; Resp't Charlotte Collier Am. Answer ¶ 5). Hannah's grandmother, who is also the mother of Hannah's mother, asked

James to invite Hannah and have her sing at Northgate. (R. pp. ____; Compl. ¶¶ 20, 24, 25; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 9; Resp't Charlotte Collier Am. Answer ¶¶ 8, 11). Hannah was a college student and of legal age when she began singing intermittently at Northgate in James's Worship Team, or informal choir. (R. pp. ____; Compl. ¶¶ 21, 22, 25; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 10; Resp't Charlotte Collier Am. Answer ¶¶ 9, 11; Caroline Jenkins Aff. ¶¶ 4-6). Hannah came from a broken home and experienced emotional instability and immaturity. (R. pp. ____; Compl. ¶¶ 23, 38; Sue Lutz Aff. ¶¶ 4-6, 11-12; Roy Sabeen Aff. ¶ 15; Anne Danciu Aff. ¶¶ 11-12). Hannah's mother was usually present during practice and performances for the Worship Team that James directed when Hannah sang. (R. pp. ____; Compl. ¶¶ 25-26, 39, 41, 45; Sue Lutz Aff. ¶ 10; Anne Danciu Aff. ¶ 6; Caroline Jenkins Aff. ¶¶ 6-8). Hannah asked James to become her mentor. (R. pp. ____; Compl. ¶¶ 27-29; Caroline Jenkins Aff. ¶ 14; James Earl Tegeler Aff. ¶ 4). The boundaries of this mentorship were clearly set and understood by both Hannah and James. (R. pp. ____; Compl. ¶¶ 32-33; James Earl Tegeler Aff. ¶ 5). Hannah and her mother usually left and skipped the sermons because they did not like the pastor Dr. Barry Jimmerson at Northgate. (R. pp. ____; Anne Danciu Aff. ¶ 5; James Earl Tegeler Aff. ¶ 19).

Over time, Hannah and her mother spent time with James in a group or family setting. (R. pp. ____; Compl. ¶ 37; Josie Allen Aff. ¶¶ 3, 6, 8; Sue Lutz Aff. ¶ 11; James Earl Tegeler Aff. ¶¶ 4, 6, 10). Hannah's mother indicated a romantic interest in James to date. (R. pp. ____; Compl. ¶¶ 47-52; Sue Lutz Aff. ¶¶ 12-13; Anne Danciu Aff. ¶¶ 5-9; Roy Sabeen Aff. ¶ 16; Josie Allen Aff. ¶¶ 13-14, 16; Caroline Jenkins Aff. ¶ 16; James Earl Tegeler Aff. ¶ 4; Resp't Charlotte Collier Am. Answer ¶ 28). James, a widower and uninterested in dating, rejected Hannah's mother. (R. pp. ____; Compl. ¶¶ 50-51; James Earl Tegeler Aff. ¶ 4; Sue Lutz Aff. ¶¶ 12-13). James then

limited his interactions with Hannah, Hannah's mother, and Hannah's grandmother outside of work. (R. pp. ____; Compl. ¶ 52).

James hosted a family, social event outside of work that Hannah and her mother attended. (R. pp. ____; Compl. ¶¶ 54-58; James Earl Tegeler Aff. ¶¶ 12-15; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 23; Resp't Charlotte Collier Am. Answer ¶ 22). This event triggered Northgate terminating James (R. pp. ____; Compl. ¶ 59; James Earl Tegeler Aff. ¶¶ 16-18). The next day, Hannah, her mother, and her grandmother knowingly reported James to his employer and supervisor Dr. Jimmerson at Northgate that James had an "inappropriate relationship" with Hannah. (R. pp. ____; Compl. ¶ 59; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 24; Resp't Charlotte Collier Am. Answer ¶¶ 26, 81; Hannah Elizabeth Collier Aff. ¶ 3). Upon hearing the accusation "inappropriate relationship," Dr. Jimmerson immediately launched into questioning Hannah about any romantic or sexual involvement between James and Hannah. (R. pp. ____; Compl. ¶¶ 59-62). The insidious language "inappropriate relationship" tracked all the way to Northgate's termination of James. Dr. Shaler, who oversaw the Personnel Committee at Northgate, was responsible for investigating the claims of Hannah, her mother, and her grandmother. (R. pp. ____; Compl. ¶ 72). Dr. Laurel Shaler then accused James of having inappropriate contact with young girls in the congregation to the personnel committee. (R. pp. ____; Compl. ¶¶ 74, 81). Laurel obtained a vote of no confidence to recommend that Northgate fire James. (R. pp. ____; Compl. ¶ 81).

Laurel's investigation and recommendation to terminate James from Northgate did not follow Northgate's policies and procedures. (R. pp. ____; Compl. ¶¶ 66, 68-72, Ex. A pp. 2-9, Ex. B. pp. 2-26; Roy Sabean Aff. ¶¶ 4-8, 10, 18). Laurel held and directed the termination meeting with James along with Dr. Jimmerson, who was James's supervisor, and Warren Peden. (R. pp.

___; Compl. ¶¶ 86-89, 95, 97-98, 101-102). Warren was just an ordinary member of the church who held no supervisory role over James and his performance at Northgate. (R. pp. ___; Compl. ¶ 87; Caroline Jenkins Aff. ¶¶ 21-22). Laurel, Dr. Jimmerson, and Warren were aggressive toward James right at the outset of the termination meeting. (R. pp. ___; Compl. ¶¶ 92, 94, 95). They shamed James. (R. pp. ___; Compl. ¶¶ 92-96). When Dr. Jimmerson and Warren heard “inappropriate contact”¹ and “inappropriate relationship”² earlier from Laurel, those accusations triggered them into shaming James for making unwanted touching or advances, whether sexual or romantic in nature, with Hannah or other young girls (of whom some were minors) in the congregation at Northgate. (R. pp. ___; Compl. ¶¶ 59-62, 66-68, 74, 91, 93, 95-96).

As the basis for terminating James, Laurel then raised the allegation of James having “inappropriate contact” with young girls in the congregation in addition to having an

¹ Inappropriate contact is commonly defined as sexual assault, or commonly referred to as a sex crime, that can also mean other synonyms such as inappropriate touching, sexual abuse, unwanted touching, and sexual harassment. *Inappropriate Contact Definition*, WORDHIPPO.COM, https://www.wordhippo.com/what-is/another-word-for/inappropriate_contact.html#/ (last visited on Apr. 12, 2021); *Sexual Assault Definition*, WORDHIPPO.COM, https://www.wordhippo.com/what-is/another-word-for/sexual_assault.html (last visited on Apr. 12, 2021). “Touch [] refers to both intentional and unintentional person-to-person bodily contact, mediated either via the skin or more indirectly.” Lorraine Green, *The Trouble with Touch? New Insights and Observations on Touch for Social Work and Social Care*, 47 BRITISH J. SOC. WORK, no. 3, 2017, at 773, 774, available at <https://academic.oup.com/bjsw/article/47/3/773/2622329> (last visited on Apr. 12, 2021). “Sexual or physical violence, whether perpetrated by workers, family members or others, constitutes touch violation (bad touch).” Green, *supra*.

² The ordinary and popular meaning of an “inappropriate relationship” is commonly understood to mean a vulgar, or indecent, romantic or sexual involvement between two people in nature. Sociologists define “relationship” to include the meaning of a “[r]omantic or sexual involvement” between two persons. *Relationship Definition*, KENTON BELL, OPEN EDUCATION SOCIOLOGY DICTIONARY (2013-2021 ed. 2013), available at <https://sociologydictionary.org/relationship/> (last visited on Apr. 12, 2021) (emphasis added). Inappropriate is defined as “someone or something that is not within the bounds of what is considered appropriate or socially acceptable.” *Inappropriate Definition*, YOURDICTIONARY.COM, <https://www.yourdictionary.com/inappropriate> (last visited on Apr. 12, 2021). Inappropriate also refers to describing a person or thing as “[v]ulgar or indecent in nature or quality.” *Inappropriate Definition*, WORDHIPPO.COM, <https://www.wordhippo.com/what-is/another-word-for/inappropriate.html#/> (last visited on Apr. 12, 2021). Modern day popular language refers to the definition of inappropriate that has varied from “‘not suitable or proper in the circumstances’ [and] is used these days almost exclusively to mean anything that is sexually explicit, drug or alcohol related, violent, or otherwise obscene . . . [i]n the context of age in terms of children, rather than the traditional overall definition.” *Inappropriate Definition*, URBANDICTIONARY.COM, <https://www.urbandictionary.com/define.php?term=inappropriate&page=2> (last visited Apr. 12, 2021); cf. *Inappropriate Definition*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/inappropriate> (last visited on April 12, 2021).

“inappropriate relationship” with Hannah. (R. pp. ____; Compl. ¶¶ 59-62, 66-68, 74, 91, 93, 95-96). They blindsided James. (R. pp. ____; Compl. ¶¶ 66-67, 86-87, 99). They denied James the opportunity to leave and seek legal advice before signing a severance agreement with Northgate. (R. pp. ____; Compl. ¶¶ 100-102, 106). They detained James. (R. pp. ____; Compl. ¶¶ 87-110). Should James refuse to sign the severance agreement, Dr. Jimmerson threatened to have him placed before the congregation at Northgate like a social pariah for the congregation to decide whether James should be fired for having inappropriate contact and inappropriate relationships with young girls in the congregation, including Hannah. (R. pp. ____; Compl. ¶¶ 103). James became emotionally distraught and overwhelmed. (R. pp. ____; Compl. ¶¶ 104-105, 107-111).

Laurel formulated her investigation and recommendation that James had inappropriate contact and inappropriate relationships with young girls in the congregation based on the allegations made by Hannah, her mother, and her grandmother unrelated to James’s scope of employment with Northgate. (R. pp. ____; Compl. ¶¶ 59-62, 66-67, 72-74, 81, 84, 95-96). Both terminologies of inappropriate relationship and inappropriate contact are commonly understood to mean sex or sexual relations between two persons.³ The former being consensual.⁴ The latter being nonconsensual.⁵ To illustrate, the accusation of a man being in a relationship with a young

³ See *supra* text accompanying notes 1, 2.

⁴ Consent to a romantic or sexual relationship only occurs between two people who are the legal age of majority. See *supra* text accompanying note 2; see also Laura K. Murray, Ph.D, et al., *Child Sexual Abuse*, CHILD ADOLESC. PSYCHIATR. CLIN. N. AM., Apr. 2014, at 321-337, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4413451/pdf/nihms-666885.pdf> (last visited on Apr. 12, 2021) (“Because a legal age of majority is required for consent, all sexual acts between an adult and underage child (even with child assent) are, by definition, [Child Sexual Abuse].”).

⁵ Nonconsensual touching of another refers to a sexual perpetrator making unwelcome and unwanted touching, sexual advances such as requests for sexual favors, or sexual abuse, for example, toward a victim. See *supra* text accompanying note 1; *Sexual Violence Definition*, WORLD HEALTH ORGANIZATION, <https://apps.who.int/violence-info/sexual-violence> (last visited on Apr. 12, 2021) (“Sexual violence is any sexual act, attempt to obtain a sexual act, or other act directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.”).

woman who is “old enough to be her father” invokes the taboo⁶ of incest that may invite suspicion.⁷ (R. pp. ____; Compl. ¶¶ 21-22, 27, 59-62, 66-67, 72, 74, 81, 95-96; Resp’ts Hannah Elizabeth Collier and Linda Smith’s Am. Answer ¶ 24; Resp’ts Hannah Elizabeth Collier and Linda Smith’s Mem. Supp. Mot. Dismiss pp. 1-3; Resp’t Charlotte Collier’s Am. Answer ¶¶ 26, 81; Resp’t Charlotte Collier’s Mem. Supp. Mot. Dismiss pp. 1-4, 7-8; Tr. 27:7-29:21, 33:5-14). This stigma⁸ often blurs over into other examples such as alleging a teacher having a sexual relationship with a student that invokes scandal and social ruin resulting in ostracism, severe damage to one’s reputation, and reprimand as in the loss of a job.⁹ By contrast, the stigma then carries the popular meaning of characterizing an older man having sexual relations with a minor, or sexually abusing a minor, that invokes association with illegal conduct such as incest, pedophilia, sexual abuse, or rape that is reprehensible, taboo, illegal, and subject to legal punishment.¹⁰ Here, respondents transformed a stigma into one of the most reprehensible, taboo, and illegal conduct and projected it onto James similar to James being in a teacher role to Hannah as a student and minor.

6 According to sociologists, inappropriate is related to the definition of taboo that is defined as “[a] forbidden act considered so offensive to norms, particularly mores (moral norms) as to be reviled and unthinkable.” *Taboo Definition*, KENTON BELL, OPEN EDUCATION SOCIOLOGY DICTIONARY (2013-2021 ed. 2013), *available at* <https://sociologydictionary.org/?s=inappropriate> (last visited on Apr. 12, 2021).

7 INAPPROPRIATE RELATIONSHIPS: THE UNCONVENTIONAL, THE DISAPPROVED, AND THE FORBIDDEN 13, 17 (Robin Goodwin & Duncan Cramer eds., 2005) [hereinafter INAPPROPRIATE RELATIONSHIPS].

8 A stigma is a learned behavior that is formed through social interactions creating shortcuts to cognitive associations through symbols, practices, or conduct for individuals to relate to one another in a society or a community. *See generally* Bernice A. Pescosolido et al., *Rethinking Theoretical Approaches to Stigma: A Framework Integrating Normative Influences on Stigma (FINIS)*, 67 SOC. SCI. MED. 3, Aug. 2008, at 431-440, *available at* <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2587424/> (discussing the role of stigma in society). A negative stigma usually results in exclusion by shame for members of society or community associated with that stigma. Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 400-07 (1997). A powerful stigma may also arise from creating and reinforcing legislative schemes to reflect normative values as a means of social control. Matthew D. Lieberman, SOCIAL: WHY OUR BRAINS ARE WIRED TO CONNECT 7-70 (2013) (exploring the complex cognitive associations behind humans experiencing stigma in relation to humans’ basic need for social interaction and the evolution of the human brain for social intelligence).

9 INAPPROPRIATE RELATIONSHIPS, *supra* note 7, at 18.

10 INAPPROPRIATE RELATIONSHIPS, *supra* note 7, at 19.

Undeniably, the more serious consequences of social ruin or criminalization of conduct relate to sexual relations, whether voluntary or involuntary, between two persons. None of which occurred between James and Hannah. (R. pp. ____; Compl. ¶¶ 60-61; Hannah Elizabeth Collier Aff. ¶ 4). Yet, Hannah, her mother, and her grandmother still knowingly accused James of the same “inappropriate relationship” terminology as a bald-faced lie while knowing that no sexual relations, whether voluntary or involuntary, occurred between James and Hannah. Moreover, Laurel still knowingly accused James of the same “inappropriate relationship” and “inappropriate contact” terminology while knowing that no sexual relations, whether voluntary or involuntary, occurred between James and Hannah. (R. pp. ____; Compl. ¶¶ 59-62, 66). Both Dr. Jimmerson, who changed from his earlier position, and Warren perceived this terminology that James was guilty of these accusations. (R. pp. ____; Compl. ¶¶ 59-62, 66-68, 92-93). Therefore, the severance agreement is a meaningless piece of paper under these circumstances. (R. pp. ____; Compl. ¶¶ 86-111). Northgate used this pretext for firing James to save payroll costs on James as one of the highest paid employees at Northgate during a multi-million-dollar fundraising campaign for aesthetic renovations to Northgate. (R. pp. ____; Compl. ¶¶ 15, 155; Appellant’s Resp. Resp’ts Mot. Dismiss Ex. F pp. 3-13).

After James was fired from Northgate, Hannah’s grandmother contacted others outside of the congregation and re-published the same defamatory remarks that James had an “inappropriate relationship” with Hannah. (R. pp. ____; Compl. 83-84, 140, 191; Sue Lutz Aff. ¶¶ 4, 14-16; Roy Sabeen Aff. ¶¶ 11-14). Hannah’s grandmother was involved in the meeting when Hannah and Hannah’s mother reported James to his supervisor Dr. Jimmerson with Northgate. (R. pp. ____; Resp’t Charlotte Collier’s Mem. Supp. Mot. Dismiss pp. 4-5). Additionally, after James was fired from Northgate, Dr. Jimmerson and Warren also re-published defamatory

statements to other third parties that James had an inappropriate relationship with Hannah and inappropriate relationship with teenagers respectively. (R. pp. ____; Compl. ¶¶ 113, 138; Appellant's Resp. Resp'ts Mot. Dismiss pp. 21-22, Ex. H pp. 2-3; Caroline Jenkins Aff. ¶¶ 20-25, 29, 33-36, 38-39).

STANDARD OF REVIEW

I. Motion to dismiss. Rule 12(b)(6), SCRPC.

A Rule 12(b)(6) motion to dismiss a cause of action fails “if facts alleged and inferences reasonably deducible therefrom [the plaintiff’s complaint] would entitle the plaintiff to any relief on any theory of the case.” *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). If a moving party challenges the plaintiff’s cause(s) of action, then the lower court must view and admit the non-moving party’s factual allegations in the complaint on its face as true in favor of the non-moving party. *Food Lion, Inc. v. United Food & Commer. Workers Int'l Union*, 351 S.C. 65, 78-79, 567 S.E.2d 251, 257-58 (Ct. App. 2002) (citing *Fields v. Melrose P'ship*, 312 S.C. 102, 104, 439 S.E.2d 283, 284 (Ct. App. 1993)) (Stilwell, J., dissenting). Here, the analysis under a Rule 12(b)(6) motion to dismiss draws upon inferences from the plaintiff’s facts and conclusions of law therefrom in the complaint solely to determine whether the plaintiff sufficiently pled factual allegations that justify a cause of action. Rule 12(b)(6), SCRPC; *see Charleston Cty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001); *Toussaint*, 292 S.C. at 416.

If the non-moving party alleges the ultimate facts tracking the elements of a cause of action that states a valid claim of relief under a cause of action, then that cause of action survives and the Rule 12(b)(6) motion to dismiss fails. *See Food Lion, Inc.*, 351 S.C. at 69-78; *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112-21, 659 S.E.2d 158, 161-66 (2008).

Under Rule 8, the complaint must provide the opposing party fair notice by pleading the ultimate facts as alleged to support each cause of action—not all of the facts or mere legal conclusions. Rule 8, SCRCPP; *Food Lion, Inc.*, 351 S.C. at 78-79 (Stilwell, J., dissenting). The ultimate facts pertain to the plaintiff presenting “evidence [that] upon trial will prove, and not the evidence which will be required to prove those facts.” *Brown v. Inv. Mgmt. & Research*, 323 S.C. 395, 400 n.3, 475 S.E.2d 754, 756 (1996); *Stroud v. Riddle*, 260 S.C. 99, 102-103, 194 S.E.2d 235, 237 (1973). Moreover, the lower court may not jump ahead of the process to dismiss the case prematurely merely for doubting whether the cause of action will prevail. *Food Lion, Inc.*, 351 S.C. at 78-79 (Stilwell, J., dissenting); *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). In a Rule 12(b)(6) motion to dismiss, the lower court must stay within the four corners of the complaint to determine if a plaintiff would prevail under a cause of action based on the plaintiff’s allegations deemed as true—not on disputes from the underlying merits of the claim. *Food Lion, Inc.*, 351 S.C. at 69; *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 179-80, 826 S.E.2d 585, 587 (2019).

Additionally, transforming a Rule 12(b)(6) motion to dismiss into one of summary judgment and dismiss a case as a matter of law permits the introduction of matters outside of the pleadings that are construed in tandem with the totality of the pleadings, discovery, and affidavits under Rules 56(c) and 56(e) as to whether a genuine issue of any material fact exists. Rules 12(b)(6), 56(c), 56(e), SCRCPP; *Dawkins v. Fields*, 354 S.C. 58, 69-71, 580 S.E.2d 433, 438-39 (2003); *Brown v. Leverette*, 291 S.C. 364, 366-67, 353 S.E.2d 697, 698-99 (1987). Nonetheless, the proper remedy available to the non-moving party subject to a Rule 12(b)(6) motion to dismiss is for the non-moving party to amend the complaint rather than face a dismissal with prejudice. Rules 8(f), 15(a), SCRCPP (encouraging pleadings to be construed liberally “to do

substantial justice to all parties”); *Skydive Myrtle Beach*, 426 S.C. at 179-80, 189; *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006); Rule 15(a), SCRPC; *see Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 38, 530 S.E.2d 369, 373 (2000).

II. Motion for judgment on the pleadings. Rule 12(c), SCRPC.

If the plaintiff’s complaint raises an issue of fact that would be resolved in the plaintiff’s favor and entitle the plaintiff to judgment, then a moving party’s Rule 12(c) motion for judgment on the pleadings must fail when “it appears that the plaintiff is entitled to any relief whatsoever.” *Russell v. Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991); *McCurry v. Keith*, 312 S.C. 254, 255, 439 S.E.2d 861, 862 (Ct. App. 1994). Here, the lower court must “admit[] the well pleaded facts in the complaint and [] take those well pleaded factual allegations as true” *Firemen’s Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 236, 394 S.E.2d 855, 856 (Ct. App. 1990). The lower court may not draw legal conclusions or inferences based on underlying merits of the claims from the plaintiff’s factual allegations. *Id.* A plaintiff’s factual allegations must raise a genuine issue of fact similar to evidence “that a reasonable jury could return a verdict for plaintiff.” *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 737-38 (D.S.C. 2001). Therefore, a motion for judgment on the pleadings must fail when the plaintiff’s complaint sufficiently pled factual allegations for the plaintiff to recover under any legal theory of law—any cause of action or defense. *Russell*, 305 S.C. at 89; *see Diminich v. 2001 Enters., Inc.*, 292 S.C. 141, 142, 355 S.E.2d 275, 275 (Ct. App. 1987).

Any party may move for a Rule 12(c) motion for judgment on the pleadings to dismiss the case based on the pleadings “[a]fter the pleadings are closed but within such time as not to delay the trial” Rule 12(c), SCRPC (emphasis added); *Gregory v. Gregory*, 292 S.C. 587, 590, 358 S.E.2d 144, 147 (Ct. App. 1987). Under a Rule (12)(c) motion for a judgment on the

pleadings, the lower court “may not [usually] consider matters outside the pleadings.” *Firemen’s Ins. Co.*, 302 S.C. at 236; *but see Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009). In turn, when transforming a Rule 12(c) motion for judgment on the pleadings into one of summary judgment to dismiss a case as a matter of law, the lower court may allow the moving party to introduce other forms of admissible evidence outside of the pleadings together with affidavits. Rules 12(c), 56, SCRPC; *Hooper*, 386 S.C. at 114. Again, if the lower court finds any deficiencies in the plaintiff’s complaint, then the plaintiff is entitled a meaningful chance to amend the complaint instead of facing dismissal with prejudice. Rule 15(a), SCRPC (encouraging “leave shall be freely given [by the court] when justice so requires and does not prejudice any other party.”); *Skydive Myrtle Beach*, 426 S.C. at 179-80, 189; *Spence*, 368 S.C. at 129.

III. Motion for summary judgment. Rule 56(c), SCRPC.

A motion for summary judgment is, often, premature before preliminary discovery in litigation begins and pleadings are closed because the motion typically involves a variety of pleadings, including the complaint, answer, and preliminary discovery; affidavits; depositions; and, admissible evidence. Rule 56, SCRPC; *see Hooper*, 386 S.C. at 114. A motion for granting summary judgment under Rule 56(c) typically occurs “*after adequate time for discovery* and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S. Ct. 2548, 2552-53 (1986) (emphasis added). The moving party bears the burden to show the court the basis for a motion for summary judgment by identifying portions of the pleadings, discovery, and affidavits to “demonstrate the absence of a genuine issue of material fact.” *Id.* at 323; *Baughman v. AT&T*,

306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Therefore, a motion for “[s]ummary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Dawkins*, 354 S.C. at 69; *see George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *McClain v. Arnold*, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980)).

In a Rule 56(c) motion for summary judgment, the court must determine “whether any triable issues of fact exist.” *Bloom v. Ravoir*, 339 S.C. 417, 421-22, 529 S.E.2d 710, 712 (2000). Similar to the standard for a motion for directed verdict, the legal issue before the court is whether disposing a case as a matter of law against a non-moving party would be reasonably possible based on the facts of the case. *Id.* at 422. A Rule 56(c) motion for summary judgment must fail when the evidence and reasonable inferences therefrom construed in the light most favorable to the non-moving party shows a genuine disputed issue exists regarding any material fact for each essential element in the claim that “might affect the outcome of the lawsuit under governing substantive law.” *Hyman*, 142 F. Supp. at 737-38; *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 628, 799 S.E.2d 318, 322 (Ct. App. 2017). By contrast, even when no dispute of the evidentiary facts exists, a Rule 56 motion for summary judgment must fail when a dispute exists as to the legal conclusions “or inferences to be drawn from [the evidentiary facts].” *Bloom*, 339 S.C. at 422.

IV. Motion for relief. Rule 60(b), SCRPC.

An abuse of discretion standard applies to granting a motion under Rule 60(b) for relief from judgment or order whereby “the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support.” *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990); *Raby Constr.*,

L.L.P. v. Orr, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004) ; Rule 60(b)(1), cmt. ¶ 3, SCRCP (“Rule 60(b) [provides that] . . . there may be a motion for relief from other mistakes.”); *see also Patton v. Miller*, 420 S.C. 471, 489-93, 804 S.E.2d 252, 261-63 (2017) (finding the court’s failure to do legal analysis and ruling on unsubstantiated grounds is an abdication of exercising discretion). Rule 60(b) motion for relief from judgment or order provides that:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud, misrepresentation, or other misconduct of an adverse party . . .
The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. Rule 60(b), SCRCP; *Tobias v. Rice*, 386 S.C. 306, 310, 688 S.E.2d 552, 554 n.3 (2010).

Public policy favors “the disposition of issues on their merits rather than on technicalities.”

Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 510-12, 548 S.E.2d 223, 225-26 (Ct. App. 2001). Fraud, misrepresentation, or misconduct by the adverse party relates to subverting the court’s integrity that leads to a breakdown in the judicial machinery of adjudicating cases in a fair and impartial manner. *Chewning v. Ford Motor Co.*, 346 S.C. 28, 34, 550 S.E.2d 584, 587 (Ct. App. 2001) ; Rule 60(b)(3), SCRCP. The moving party has the burden of proof to show grounds under a Rule 60(b) for relief from judgment or order. *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010). The moving party typically relies upon affidavits with essential facts that entitle that party to relief. *Bowers v. Bowers*, 304 S.C. 65, 67-68, 403 S.E.2d 127, 129 (Ct. App. 1991).

ARGUMENTS

The lower court jumped the gun and prematurely decided upon genuinely disputed facts at issue based on undeveloped, underlying merits of the case. Rule 60(b)(1), SCRCP. The lower

court did not view James's factual allegations as true and in the light most favorable to James when considering the motions before it. *Id.* Thus, the lower court preemptively foreclosed James's case on issues that were expressly meant for the jury to decide by improperly ruling in respondents' favor in violation of James's rights to a jury trial and the right to be heard. *Id.* Ultimately, the lower court invaded the province of the jury to decide the issues before it. *Id.* If James had any defects in his complaint, then James should have been entitled to amend his complaint instead of face dismissal with prejudice as an overly drastic measure. *Skydive Myrtle Beach*, 426 S.C. at 179-80, 189.

I. The lower court erred dismissing Appellant James Earl Tegeler's claims against Respondent Northgate Baptist Church because the severance agreement did not bar his claims.

If the lower court erred ruling that James's factual allegations did not survive a Rule 12(b)(6) motion to dismiss, then the lower court erred transforming a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment. Nonetheless, the lower court improperly dismissed James's case against Northgate under either analysis. First, the lower court erred ruling on a Rule 12(b)(6) motion to dismiss when it failed to deem and admit the factual allegations in James's complaint as true, and in favor of James, and improperly dismissing James's claims against Northgate for: (1) false imprisonment; (2) defamation; (3) fraud in the inducement; (4) negligent misrepresentation; (5) negligent hiring, supervision, and retention of employees; (6) intentional infliction of emotional distress; and, (7) wrongful termination against Northgate. (R. pp. ____; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 2, 5-10; Order Den. Appellant's Am. Mot. Recons. to Resp't Northgate Baptist Church pp. 2-3). With respect to a Rule 12(b)(6) motion to dismiss, the lower court erred when it ruled on the underlying merits of the severance agreement as legally binding instead of finding that Northgate

did not provide any substantive legal arguments as to whether James sufficiently pled factual allegations that invalidated the formation and validity of the severance agreement or James's causes of action against Northgate. (R. pp. ____; Compl. ¶¶ 15, 17, 34, 59-62, 66-75, 81-84, 86-113, 124-136, 137-139, 142-143, 146-150, 151-166, 167-173, 174-182, 183-184, 186-188, 192-196, 197-200, 203-205, 206-210; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 2, 5-10). Consequently, the lower court's adoption of Northgate's legal arguments is not subject to this appeal. Rule 60(b)(1), SCRP.

Second, the lower court also erred ruling on a Rule 56 motion for summary judgment when it dismissed James's claims against Northgate based on the underlying merits of the claims because James presented a genuine disputed issue of material fact that the severance agreement in question did not bar James's claims against Northgate. (R. pp. ____; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 2, 5-10; Appellant's Resp. Resp'ts Mot. Dismiss pp. 7-18; Tr. 5:9-26:5). The lower court erred when it failed to take James's factual allegations as true and in his favor that the severance agreement: (1) was not legally binding under the circumstances; and, (2) did not bar James's claims arising from the day of and after signing the severance agreement. (R. pp. ____; Compl. ¶¶ 86-113, 124-136, 137-139, 142-143, 146-150, 151-166, 167-173, 174-182, 183-184, 186-188, 192-196, 197-200, 203-205, 206-210; Resp't Northgate Baptist Church's Mem. Supp. Mot. Dismiss, Ex. A ¶¶ 3(A), (D); Tr. 5:9-26:5). Instead, the lower court erred by invading the province of the jury because all of these genuine disputed issues of material facts are for a jury to decide after discovery had been developed in the case. Rules 56, 60(b)(1), SCRPC; *Hooper*, 386 S.C. at 114; *Dawkins*, 354 S.C. at 69; *Bloom*, 339 S.C. at 421-22; *Celotex Corp.*, 477 U.S. at 322-24.

A. Appellant James Earl Tegeler provided a genuine disputed issue of a material

fact that Respondent Northgate Baptist Church's severance agreement was not legally binding.

The lower court erred when transforming a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment the severance agreement was not legally binding because James signed the severance agreement under the totality of the circumstances that invalidated the formation of the severance agreement as a contract due to duress, lack of assent, and mental incapacity related to James's causes of action¹¹ against Northgate. (R. pp. ____; Compl. ¶¶ 86-112). Therefore, the severance agreement between James and Northgate is invalid and unenforceable. (R. pp. ____; Compl. ¶ 111). The elements of a contract include "offer, an acceptance, and valuable consideration." *Taylor v. Cummins Atl.*, 852 F. Supp. 1279, 1286 (D.S.C. 1994). Under the contract principles of mutual assent, a meeting of the minds is required to form a contract that objectively manifests an intent by the parties to enter a contract. *Player v. Chandler*, 299 S.C. 101, 104-05, 382 S.E.2d 891, 893-94 (1989).

At issue is the element of acceptance and lack of mutual assent. Duress is coercion that puts a person in such fear that he is bereft of the quality of mind essential to the making of a contract, and the contract was thereby obtained as a result of this state of mind. *In re Nightingale's Estate*, 182 S.C. 527, 545, 189 S.E. 890, 897 (1937). Duress is usually parasitic to a party's wrongful conduct, or torts, used to coerce or induce another party to sign a contract involuntarily rendering it voidable. *Scoggins v. Honeywell Int'l, Inc.*, Civil Action No. 2:11-3028-PMD-BM, 2012 U.S. Dist. LEXIS 174302, at *5-6 (D.S.C. Dec. 10, 2012); *Gainey v.*

¹¹ James pled factual allegations that invalidated the formation and validity of the severance agreement arising from: (1) false imprisonment; (2) fraud in the inducement; (3) negligent misrepresentation; (4) negligent hiring, supervision, and retention of employees; (5) intentional infliction of emotional distress; (6) negligent infliction of emotional distress; and, (7) wrongful termination. All of these causes of action invalidated James's entering into a contract voluntarily and of sound mind. (R. pp. ____; Compl. ¶¶ 86-113, 124-136, 137-139, 142-143, 146-150, 151-166, 167-173, 174-182, 183-184, 186-188, 192-196, 197-200, 203-205, 206-210).

Gainey, 382 S.C. 414, 428-29, 675 S.E.2d 792, 799-800 (Ct. App. 2009); *Holler v. Holler*, 364 S.C. 256, 266-67, 612 S.E.2d 469, 475-76 (Ct. App. 2005); *Whitlock v. Creswell*, 190 S.C. 314, 333-36, 2 S.E.2d 838, 846-47 (1939). Mental incapacity refers to “such insanity or mental weakness or unsoundness as amounts to an incapacity or occasions an inability to understand or co[m]prehend the subject of the contract or act and its nature and probable consequences.” *In re Nightingale's Estate*, 182 S.C. at 541-42. James was coerced by Northgate into resigning under the circumstances and entering the severance agreement involuntarily being not of sound mind. (R. pp. ____; Compl. ¶¶ 86-112).

James pled factual allegations supporting a genuine disputed issue of material fact existed because the formation of the severance agreement between James and Northgate was invalid due to Northgate’s wrongful conduct during the termination meeting.¹² (R. pp. ____; Compl. ¶¶ 86-112). James was restrained against his will under false imprisonment that removed his free will to enter a contract voluntarily. (R. pp. ____; Compl. ¶¶ 100-110). James was denied the opportunity to leave the room. (R. pp. ____; Compl. ¶¶ 100-110). James was denied time to review the document. (R. pp. ____; Compl. ¶¶ 100-110). James was denied the opportunity to seek legal counsel for review of the document or seek representation regarding this document. (R. pp. ____; Compl. ¶¶ 100-110). James signed the document under coercion and duress. (R. pp. ____; Compl. ¶¶ 100-110).

James was fraudulently induced to sign the document because Dr. Jimmerson threatened James that, if James refused to sign the document, then he would proceed with Northgate’s policies and procedures to place James before the members of the congregation and obtain a vote

¹² James refers to the following cause(s) of action against Northgate with respect to the severance agreement occurring on the termination date of April 10, 2018: false imprisonment; fraud in the inducement; negligent hiring, supervision, and retention of employees; and, wrongful termination.

of no confidence from them to fire James. (R. pp. ____; Compl. ¶ 103). At this future-would-be-meeting, Dr. Jimmerson threatened to humiliate James and expose the accusations of James having “inappropriate relationships” and “inappropriate contact” with young girls, or minors, in the congregation at Northgate. (R. pp. ____; Compl. ¶ 103). James did not know that Northgate’s policies and procedures do not allow for such a process when terminating employees. (R. pp. ____; Compl. ¶ 158-160). In the alternative, Northgate negligently misrepresented the actual policies and procedures for investigating and terminating an employee when Dr. Jimmerson and Laurel should have known or followed the actual process for employee termination. (R. pp. ____; Compl. ¶¶ 66-73, 75, 81-84, 86-112, 124-136, 138, 142-143, 151-166, 167-173, 182, Ex. A pp. 2-9, Ex. B. pp. 2-26; Roy Sabeen Aff. ¶¶ 4-8, 10, 18).

James experienced a total loss of free agency to voluntarily enter a contract and be of sound mind when he was overcome by Northgate being subjected to uneven handedness and unequal bargaining position in the employer-employee relationship with Northgate with little to no reasonable opportunity for other alternatives. (R. pp. ____; Compl. ¶¶ 86-112). Northgate should have ensured that its employees or agents on the premises did not engage in intentionally harming another during the scope of their employment or agency by exercising control over them to comply with Northgate’s personnel policies and procedures and exercise due diligence when terminating an employee. (R. pp. ____; Compl. ¶¶ 66-73, 75, 81-84, 86-112, 124-136, 138, 142-143, 151-166, 167-173, 182, Ex. A pp. 2-9, Ex. B. pp. 2-26; Roy Sabeen Aff. ¶¶ 4-8, 10, 18). Dr. Jimmerson, Laurel, and Warren intentionally engaged in wrongful termination by creating a hostile work environment—even as a singular incident—at the meeting based on offensive and harassing conduct that made conditions to remain at Northgate so intolerable that no one in James’s position could endure it. (R. pp. ____; Compl. ¶¶ 59-62, 66-68, 83-112).

Consequently, James suffered extreme and severe distress during the termination meeting and afterward. (R. pp. ____; Compl. ¶¶ 86-112). At the outset of the meeting, Dr. Jimmerson and Warren were aggressive, hostile, and shouting at James when shaming him for having anything to do with young girls in the congregation without explanation. (R. pp. ____; Compl. ¶¶ 86-94). Laurel accused James of having “inappropriate contact” and “inappropriate relationships” with young girls, including Hannah, in the congregation without any warning or explanation. (R. pp. ____; Compl. ¶¶ 59-62, 66-67, 72, 74, 95-96). James was not of sound mind when being accused by Northgate of one of the most reprehensible criminal and morally reprehensible conduct for having “inappropriate contact” and “inappropriate relationships” with young girls in the congregation at Northgate. (R. pp. ____; Compl. ¶¶ 59-62, 66-67, 74, 95-96, 99-100, 107-111). But, James absolutely broke down and became mentally incapacitated after being threatened by Northgate that Northgate would publicly humiliate him like a social pariah, pedophile, child molester, or chaser of young women before the congregation of Northgate. (R. pp. ____; Compl. ¶¶ 81, 84, 117, 146, 192). All of these factual allegations when construed as true in support James’s claims against Northgate present a genuine disputed issue that the severance agreement invalid, voidable, and an utterly meaningless piece of paper.

B. Appellant James Earl Tegeler provided a genuine disputed issue of a material fact that Respondent Northgate Baptist Church’s severance agreement did not bar his claims.

The lower court erred when transforming a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment because a genuine disputed issue of a material fact exists that the construction and interpretation of the severance agreement did not bar James’s claims against Northgate arising from the day of and after James signed the severance agreement under the circumstances due to the language in the severance agreement. (R. pp. ____; Compl. ¶¶ 86-113,

124-136, 137-139, 142-143, 146-150, 151-166, 167-173, 174-182, 183-184, 186-188, 192-196, 197-200, 203-205, 206-210; Resp't Northgate Baptist Church's Mem. Supp. Mot. Dismiss, Ex. A ¶¶ 3(A), (D); Appellant's Resp. Resp'ts Mot. Dismiss pp. 7-18; Tr. 5:9-26:5; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 5-10; Appellant's Am. Mot. Recons. pp. 25-32). The severance agreement is essentially a release that is subject to garden-variety contract law and defenses as previously discussed. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 492, 649 S.E.2d 494, 498 (Ct. App. 2007) (defining a release as a contractor discharging a duty owed to the maker of the release); *Hyman*, 142 F. Supp. 2d at 741-46; *Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947); *Aldridge v. Watts Mill*, 131 S.C. 222, 231-32, 127 S.E. 213, 216-17 (1925). Whether the construction of the contract between the parties is ambiguous as matter of contractual interpretation is a question of law. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

The court will give plain, unambiguous language the ordinary meaning intended when reading the contract as a whole document. *Id.* A contract is ambiguous when it is construed with more than one meaning, the meaning is unclear, the meaning is obscure through indefiniteness of expression, or having a double meaning. *Ecclesiastes Prod. Ministries*, 374 S.C. at 499-500; *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997) (permitting extrinsic, parol evidence "to ascertain the true meaning and intent of the parties."); *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968). The courts construe ambiguity strictly against the drafter of the contract in favor of the non-drafter. *Ecclesiastes Prod. Ministries*, 374 S.C. at 499-500. Overly broad exculpatory clauses in waivers and releases contravene public policy and are generally unenforceable and against public policy. *McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 248-52, 612 S.E.2d 462,

465-67 (Ct. App. 2005); *Fisher v. Stevens*, 355 S.C. 290, 295, 584 S.E.2d 149, 152 (Ct. App. 2003) (subjecting exculpatory to strict scrutiny). A party is prohibited to use exculpatory contracts and exempt that party from that party's own negligence, gross negligence, reckless conduct, willful or wanton conduct, or, intentional acts in the absence of explicit, clear language indicating doing so was the parties' consent. *Id.* at 248-52; *Fisher*, 355 S.C. at 297; *S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc.*, 283 S.C. 182, 191, 322 S.E.2d 453, 458 (Ct. App. 1984).

The severance agreement did not bar James's claims against Northgate on the day of his termination. The severance agreement was a release and covenant not to sue under Section 3:

In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company. (R. pp. ____; Resp't Northgate Baptist Church's Mem. Mot. Dismiss, Ex. A, ¶ 3(A)).

Specifically, the severance agreement provided that James did not waive or release his claims against Northgate on the day of his termination under Section 3(A) because the severance agreement only barred claims against Northgate "*prior to the date of this Separation Agreement and Release . . .*" (R. pp. ____; Resp't Northgate Baptist Church's Mem. Supp. Mot. Dismiss, Ex. A, ¶ 3(A)). Moreover, under Section 3.D. of the severance agreement, James never "release[ed] or waiv[ed] any rights or claims which may arise *after this Agreement is executed*, any claims for the sole purpose of enforcing [James]'s rights under this Agreement, or any claims which by law cannot be waived." (R. pp. ____; Resp't Northgate Baptist Church's Mem. Mot. Dismiss, Ex. A, ¶ 3(D)). Therefore, the severance agreement did not bar any of James's prospective claims against Northgate after he signed the severance agreement at his termination. Sections 3(A) and 3(D) appear clear and unambiguous that these provisions operated for James to bring his claims against Northgate arising from the day of and after signing the severance

agreement. (R. pp. ____; Resp't Northgate Baptist Church's Mem. Supp. Mot. Dismiss, Ex. A, ¶¶ 3(A), (D)). But, if the Court were to find the construction ambiguous, then ambiguity is construed against Northgate as the drafter of the severance agreement. Nevertheless, James pled factual allegations supporting his claims occurring on the day of and after signing the severance agreement. (R. pp. ____; Compl. ¶¶ 86-113).

Additionally, the exculpatory provisions of the release in the severance agreement, whether in part or in full, were also overly broad, unenforceable, and against public policy:

This [Section 3(A)] specifically includes, but is not limited to, a release of any and all rights, claims, and causes of action of any sort arising under . . . any other legal theory or cause of action, regardless of type, character or form, he may have; any and all causes of action, whether in law and/or in equity, for any expense, reinstatement, loss, mental or physical injury, costs, attorneys' fees, mental anguish, pain and suffering, medical bills or costs, physical or mental impairment, damage to reputation, loss of enjoyment of life, loss of consortium, lost earnings or profits, lost wages of commissions, lost bonuses, lost seniority or retirement benefits, other lost employment benefits including, but not limited to, vacation, or holiday pay and long or short term disability, or any other damage (whether actual, compensatory, punitive, treble or otherwise) suffered or which may be suffered by Employee due to any event which occurred prior to the date of this Separation Agreement and Release . . . (R. pp. ____; Resp't Northgate Baptist Church's Mem. Mot. Dismiss, Ex. A, ¶ 3(A); Appellant's Resp. Resp'ts Mot. Dismiss pp. 12-15; Tr. 5:9-7:12-18, 19:6-21:12; 23:22-24:2).

In Section 3.D. of the severance agreement, the language stating “[t]he intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable” does not clearly and explicitly indicate a meeting of the minds for both parties to release specifically cause(s) of action for negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct. (R. pp. ____; Resp't Northgate Baptist Church's Mem. Mot. Dismiss, Ex. A, ¶ 3(D); Appellant's Resp. Resp'ts Mot. Dismiss pp. 12-15; Tr. 5:9-7:12-18, 19:6-21:12; 23:22-24:2). Therefore, this provision is unenforceable as void against public policy because no escape hatch exists for Northgate to avoid liability from

committing the aforementioned torts.

C. Respondent Northgate Baptist Church failed to recognize Appellant James Earl Tegeler's notice of an implied offer to return the severance pay.

On or around April 26, 2018, James placed Northgate on notice in a timely manner within ten (10) business days after his termination from Northgate concerning an implied offer to return the severance payment in exchange for James returning to work during preliminary settlement negotiations:

Reinstatement of my client's former position provided that Charlotte Collier, Hannah Collier, and Linda Smith are not permitted to remain as members of the congregation along with a signed affidavit from Dr. Laura Shaler as the chair of the personnel committee renouncing the allegations against my client concerning Charlotte Collier, Hannah Collier, and Linda Smith as baseless and unfounded. (R. pp. ____; Appellant's Am. Mot. Recons. pp. 30-31, Ex. A, p. 5).

This correspondence during settlement negotiations is admissible for the purpose of showing that Northgate was placed on notice that James made an implied offer to return the severance pay. *See Meehan v. Commercial Cas. Ins. Co.*, 166 S.C. 496, 503-04, 165 S.E. 194, 197 (1932); *cf.* Rule 408, SCRE. If James received a severance pay in exchange for executing a release, and he wants to unwind the release agreement, then he may either return or make an offer to return the severance pay to Northgate. *Jones v. Massingale*, 251 S.C. 456, 461, 163 S.E.2d 217, 219 (1968). Common sense dictates that, if James returned to work for Northgate, then Northgate would have to adjust James's compensation upon resuming his position.

Therefore, the lower court's ruling on this matter should be set aside under mistake or excusable neglect when the issue was raised promptly for relief; counsel for James must correct and clarify the legal argument presented before the lower court based on failure to distinguish between two separate settlement negotiations that occurred between James and Northgate; James does have a meritorious defense of making an implied offer to return the severance pay; and,

Northgate is not prejudiced because it is in the possession of the same documents prior to litigation. Rule 60, SCRCP; *Hill v. Fotts*, 345 S.C. 304, 309, 547 S.E.2d 894, 897 (Ct. App. 2001). (R. pp. ____; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 9-10; Tr. 18:17-19:5; Appellant's Am. Mot. Recons. pp. 30-31, Ex. A, p. 2-10).

II. Appellant James Earl Tegeler provided a genuine disputed issue of material fact that respondents defamed him in the most reprehensible light that resulted in severe emotional distress to suffer utter, inescapable social ruin.

If the lower court erred ruling that James's factual allegations did not survive a Rule 12(c) motion for judgment on the pleadings, then the lower court erred transforming a Rule 12(c) motion for judgment on the pleadings into a Rule 56 motion for summary judgment. Rule 60(b), SCRCP. After considering facts outside the pleadings, the lower transformed a Rule 12(c) motion for judgment on the pleadings into a Rule 56 Motion for Summary Judgment.¹³ (R. pp. ____; Hannah Elizabeth Collier Aff. ¶ 4, Ex. A pp. 2-12; Tr. 40:24-48:24, 56:23-58:19).

Nonetheless, the lower court improperly dismissed James's case against Hannah, her mother, and her grandmother under either analysis. Rule 60(b), SCRCP. First, the lower court erred ruling on a Rule 12(c) motion for judgment on the pleadings when it failed to deem and admit the factual allegations in James's complaint as true, and in favor of James, and improperly dismissing James's claims against Hannah, her mother, and her grandmother for: (1) defamation; and, (2)

¹³ The lower court erred by failing to substantiate any grounds for dismissing James's claims for defamation and intentional infliction of emotional distress against Hannah and her grandmother under the Rule 12(b)(6) motion to dismiss. *See Patton*, 420 S.C. at 489-93. (R. pp. ____; Order Grant Resp'ts Hannah Elizabeth Collier and Linda Smith's Mot. Dismiss pp. 1-12). The lower court misstated the effect of dismissing a case under a Rule 12(c) motion for judgment on the pleadings standing alone when the lower court did permit facts outside of the pleadings. (R. pp. ____; Order Grant Resp't Charlotte Collier's Mot. Dismiss pp. 10-11; Tr. 40:24-48:24, 56:23-58:19; Hannah Elizabeth Collier Aff. pp. 2-12). Hannah presented an affidavit. (R. pp. ____; Hannah Elizabeth Collier Aff. pp. 1-2, Ex. A pp. 3-12). Hannah's mother presented no admissible evidence or affidavits. James presented affidavits and admissible evidence from statements by party opponents. Rule 802(d)(2), SCRE. (R. pp. ____; Appellant's Resp. Resp'ts Mot. Dismiss pp. 3-5, 11, 17, 20-22, Ex. A pp. 2-13, Ex. B pp. 2-16, Ex. C p. 2, Ex. D pp. 2-6, Ex. E p. 2).

intentional infliction of emotional distress. Rule 60(b), SCRCP. (R. pp. ____; Order Grant Mot. Dismiss to Charlotte Collier p. 3-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 3-12). With respect to a Rule 12(c) motion for judgment on the pleadings, the lower court erred when it ruled on the underlying merits of the claims before the pleadings have closed because James's factual allegations in his complaint were sufficient to warrant relief under different theories of law, including defamation and intentional infliction of emotional distress, against Hannah, her mother, and her grandmother. Rule 60(b), SCRCP. (R. pp. ____; Order Grant Mot. Dismiss to Charlotte Collier p. 3-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 3-12).

Second, the lower court also erred ruling on a Rule 56 motion for summary judgment when it dismissed James's claims against Hannah, her mother, and her grandmother based on the underlying merits of the claims because James presented a genuine disputed issue of material fact that arose from: (1) the meaning ascribed to the defamatory statement of "inappropriate relationship;" and, (2) James suffered severe distress because the conduct of Hannah, her mother, and her grandmother was extreme and outrageous. Rule 60(b), SCRCP. (R. pp. ____; Order Grant Mot. Dismiss to Charlotte Collier p. 3-8, 10; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 4-10). Instead, the lower court erred by invading the province of the jury because all of these genuine disputed issues of material facts are for a jury to decide after the pleadings were closed and discovery was developed in the case.¹⁴ Rules 56, 60(b)(1), SCRCP; *Hooper*, 386 S.C. at 114; *Dawkins*, 354 S.C. at 69; *Bloom*, 339 S.C. at 421-22; *Celotex Corp.*, 477 U.S. at 322-24.

¹⁴ The only pleadings in question are James's complaint and answers from Hannah, her mom, and her grandmother. No preliminary discovery has occurred at this time.

Third, James requested for the remedy of amending his complaint in his prayer for relief if a defect was noted. (R. pp. ____; Compl. p. 22; Appellant's Resp. Resp'ts Mot. Dismiss pp. 6, 24; Appellant's Mot. Recons. pp. 1-3, 5, 10, 19-20, 25, 32-33). Under a Rule 12(c) motion for judgment on the pleadings, the lower court erred when denying James the remedy to amend his complaint in lieu of dismissing his case with prejudice when the pleadings were not closed and discovery had not been done. (R. pp. ____; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 57-81; Resp't Charlotte Collier Am. Answer ¶ 61; Order Grant Mot. Dismiss to Charlotte Collier p. 3-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 3-12).

A. The lower court erred deciding on the meaning of the defamatory statement “inappropriate relationship” that was an issue of fact for the jury to decide.

Under a Rule 56 motion for summary judgment, the lower court erred dismissing James's cause of action defamation when deciding the meaning of “inappropriate relationship” because the lower court may only decide as to *whether a defamatory statement is capable of*: (1) a susceptible defamatory meaning in the mind of a reasonable listener under the circumstances subject to defamation per quod; or, (2) an offensive meaning in the mind of a listener subject to defamation per se. *See Parrish v. Allison*, 376 S.C. 308, 321-23, 656 S.E.2d 382, 389-90 (Ct. App. 2007); *Adams v. Daily Tel. Printing Co.*, 292 S.C. 273, 279, 356 S.E.2d 118, 122 (Ct. App. 1986) (citations omitted); *Herring v. Lawrence Warehouse Co.*, 222 S.C. 226, 234-35, 72 S.E.2d 453, 455 (1952) (citations omitted); *Flowers v. Price*, 192 S.C. 373, 377-78, 6 S.E.2d 750, 751-52 (1940). For a defamation cause of action, the plaintiff must prove: “(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or

the existence of special harm caused by the publication.” *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 518, 506 S.E.2d 497, 501-03 (1998) (Toal, A.J., concurring). Spoken defamation published to a third party is slander. *See id.* at 508-13. A defamatory communication is presumed false under common law. *Parrish*, 376 S.C. at 326.

At issue is the element of actionability for the slanderous statement “inappropriate relationship.” The analysis is twofold as to whether the statement is defamation per quod or defamation per se. *Parrish*, 376 S.C. at 321-23. . However, slander per se that is actionable only applies to statements made regarding certain categories. *Id.*; *Holtzscheiter*, 332 S.C. at 510-11. If a defamatory statement is actionable per se, then common law malice and general damages are presumed. *Holtzscheiter*, 332 S.C. at 509-10. Ultimately, under either analysis, the lower court may not unilaterally decide on the meaning ascribed to a slanderous statement to justify dismissing a cause of action for defamation accordingly. *Parrish*, 376 S.C. at 321-23; *Adams*, 292 S.C. at 279; *Herring*, 222 S.C. at 234-35; *Flowers*, 192 S.C. at 377-78. Here, the lower court blatantly admitted to improperly deciding the legal meaning of the defamatory statement “inappropriate relationship” before submitting this issue of fact to a jury: “Plaintiff’s Complaint accurately pleads the statement he contends to be defamatory. This statement fails to meet the legal standard for defamation.” (R. pp. ____; Order Den. Appellant’s Am. Mot. Recons. to Resp’t Charlotte Collier p. 3). Therein lies the dispute. Only the jury decides on the meaning ascribed to the defamatory statement. *Adams*, 292 S.C. at 279.

- 1. The lower court erred dismissing Appellant James Earl Tegeler’s defamation claim when the statement “inappropriate relationship” was susceptible to a defamatory meaning for the jury to decide.**

The lower court erred when dismissing James’s claim of defamation when transforming a Rule 12(c) motion for judgment on the pleadings into a Rule 56 motion for summary judgment

because a genuine disputed issue of a material fact exists that “inappropriate relationship” could be possibly construed as susceptible to a defamatory meaning in the mind of a reasonable listener. *See Adams*, 292 S.C. at 279; *Flowers*, 192 S.C. at 377-78. (R. pp. ____; Compl. ¶¶ ; Hannah Elizabeth Collier Aff. ¶¶ 3-4). In the first element for defamation, “[a] communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” *Holtzscheiter*, 332 S.C. at 518. Whether a statement is defamatory is objectively determined by the effect that the statement has on the listener (i.e., the impression in the minds of those who hear the statement). *Flowers*, 192 S.C. at 377-78. Whether the defamatory statement is actionable per se permits the “contemplation of the context and circumstances under which words are spoken when determining if the words have a defamatory meaning or are actionable per se” *Parrish*, 376 S.C. at 321-23. Defamatory statements susceptible of two meanings in which one is defamatory and the other is innocent are not actionable per se because reasonable minds might differ on the meaning of the statement as defamation per se. *Parrish*, 376 S.C. at 321-23; *Adams*, 292 S.C. at 279. Under a Rule 56 motion for summary judgment, the lower court may only decide whether a statement is capable of one possible defamatory meaning when that defamatory statement is susceptible to two different meanings. *See Parrish*, 376 S.C. at 321-23. If the defamatory statement is susceptible to two different meanings, then the jury must determine the meaning under the circumstances and how the witnesses understood the words. *Herring*, 222 S.C. at 234-35.

Under a Rule 12(c) motion for judgment on the pleadings, the lower court erred dismissing James’s defamation case against Hannah, her mother, and her grandmother because James pled factual allegations that the defamatory statement “inappropriate relationship”

supported at least one possible defamatory meaning:

Because of the action(s) or omission(s) of Defendant(s), whether acting individually or collectively, Defendant(s) destroyed Plaintiff's reputation by portraying Plaintiff a social pariah within the congregation of Defendant CHURCH akin to negative stereotypes of a child molester, pedophile, an older man pursuing a romantic or sexual interest(s) in a young girls, or any of the above associated with a man in Plaintiff's position in a Christian church. (R. pp. __; Compl. ¶ 117).

James pled that "inappropriate relationship" meant a mentor-mentee relationship being characterized as a romantic or sexual relationship. (R. pp. __; Compl. ¶¶ 21, 27, 32-33, 60-62, 81, 84, 92-93, 95-96, 103, 113, 117, 140, 144-146, 187). When Hannah, her mother, and her grandmother reported to Dr. Jimmerson that James was having an "inappropriate relationship" with Hannah, Dr. Jimmerson perceived "inappropriate relationship" to mean in his mind that James was accused of being in a romantic or sexual relationship with Hannah. (R. pp. __; Compl. ¶¶ 59-62). Almost a month before Northgate fired James, both Dr. Jimmerson and Laurel were present in the same meeting with James when Dr. Jimmerson told James that Hannah had accused him of having an "inappropriate relationship" with her. (R. pp. __; Compl. ¶¶ 66-67). The effect of hearing "inappropriate relationship" in the mind of James was that Hannah accused him of a having romantic or sexual relationship with her. (R. pp. __; Compl. ¶ 67). In his defense, James showed Dr. Jimmerson and Laurel a text message, or snapchat, from Hannah expressing daughterly affection and respect toward James to demonstrate that his relationship with Hannah outside the scope of his employment with Northgate was nothing more than a strictly a mentor-mentee or surrogate father-daughter characterization. (R. pp. __; Compl. ¶ 27, 32, 33, 41, 42, 54-58, 64; Appellant's Resp. Resp'ts Mot. Dismiss, Ex. E p. 2).

James pled that "inappropriate relationship" meant an adult being characterized as a

pedophile and attracted to young children.¹⁵ (R. pp. ____; Compl. ¶¶ 21, 81, 84, 92-93, 95-96, 103, 117). The effect of hearing “inappropriate relationship” in the mind of Laurel was that James was being accused of having “inappropriate contact” with Hannah whom she characterized as a child (akin to a minor). (R. pp. ____; Compl. ¶¶ 21, 59-62, 66-67, 72, 74, 95-96, 103, 117). Prior to James’s termination meeting, Laurel informed both Dr. Jimmerson and Warren that James had “inappropriate contact” with young girls in the congregation at Northgate, including Hannah. (R. pp. ____; Compl. ¶¶ 74, 81, 84, 86-87, 82-97, 117). Despite Hannah denying any romantic or sexual relationship with James earlier when talking with Dr. Jummerson, Dr. Jimmerson perceived “inappropriate contact” with such repugnance that he was clearly incensed to the point of shouting and shaming James for having anything to do with young girls in the congregation at James’s termination meeting. (R. pp. ____; Compl. ¶¶ 59-62, 74, 81, 84, 92-96, 103, 117).

At James’s termination meeting, Warren echoed the same impression when hearing “inappropriate contact” as Dr. Jimmerson with respect to James and young girls in the congregation, including Hannah. (R. pp. ____; Compl. ¶¶ 74, 81, 84, 86-87, 82-97, 117). Moreover, the day after James was fired, Warren announced to the choir at Northgate’s choir practice that James was let go because he had “inappropriate relationships with teenagers.” (R. pp. ____; Compl. ¶ 113; Caroline Jenkins Aff. ¶¶ 20-23, 33-34). Clearly, Warren perceived “inappropriate contact” in his mind that was interchangeable or similar with “inappropriate relationships with teenagers” and in line with Hannah’s accusation. Caroline Jenkins, who was a member of the choir and sang with Hannah, perceived “inappropriate relationships with

¹⁵ A pedophile is one who is affected with “a sexual perversion in which children are the preferred sexual object.” *Pedophilia Definition*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/pedophilia> (last visited on Apr. 22, 2021).

teenagers” to mean in her mind that James was accused of being “a criminal, or predator, for being some kind of child molester in church setting.” (R. pp. ____; Compl. ¶ 113; Caroline Jenkins Aff. ¶¶ 20-23, 33-34). Caroline further perceived “inappropriate relationships with teenagers” in her mind characterizing James because of “an age difference [with Hannah] that had the stigma of an older man pursuing a minor in a sexual manner.” (R. pp. ____; Compl. ¶ 113; Caroline Jenkins Aff. ¶¶ 20-23, 33-34).

James pled that “inappropriate relationship” meant an older man pursuing a romantic or sexual interest(s) in young girls.¹⁶ (R. pp. ____; Compl. ¶¶ 81, 84, 117, 146). When Hannah’s grandmother informed Judy Butchert, a mutual friend with Sue Lutz, that James had an “inappropriate relationship” with Hannah, Judy shared the same with Sue Lutz, a member of Northgate. (R. pp. ____; Compl. ¶¶ 83-84, 117; Sue Lutz Aff. ¶¶ 4, 14-15). Sue perceived “inappropriate relationship” in her mind that James was being accused of “chasing Hannah like an older man chasing young girls in a perverted sense” when she observed Hannah behaving toward James as a surrogate father figure and Hannah and her mother started spending time with James and his family outside of church. (R. pp. ____; Compl. ¶¶ 83-84, 117; Sue Lutz Aff. ¶¶ 4, 10-11, 14-15). When Hannah’s grandmother informed Roy Sabeen, a former long-standing deacon of Northgate, that James had an “inappropriate relationship” with Hannah, Roy perceived “inappropriate relationship” in his mind that James was being accused of “acting sexually inappropriate toward Hannah” in a church setting where James was in charge of music program at Northgate and supervising the Worship Team in which Hannah sang (R. pp. ____; Compl. ¶¶ 17, 25, 27; Roy Sabeen Aff. ¶¶ 13, 15).

¹⁶ INAPPROPRIATE RELATIONSHIPS, *supra* note 7, at 17 (characterizing an older man in a relationship with a young woman who is “old enough to be her father” invokes the stigma and taboo of incest).

James pled that “inappropriate relationship” meant an adult being characterized as a child molester, which is a crime.¹⁷ (R. pp. ____; Compl.). Josie Allen, who is a long-standing family friend of the Tegeler family, attended the motion to dismiss hearing in this case on August 18, 2020. (R. pp. ____; Josie Allen Aff. ¶ 19). When Hannah’s mother alleged that James was in a predatory relationship with Hannah because he was older than Hannah, Josie perceived “predatory relationship” in her mind that James was accused of being a sexual predator toward Hannah in the way “a person sexually preys on another person—usually in the context of an adult molesting an underage child.” (R. pp. ____; Tr. 54:22-24; Josie Allen Aff. ¶ 19; James Earl Tegeler Aff. ¶¶ 21, 37). Hence, a variety of susceptible defamatory meanings apply.

Therefore, the lower court may not dismiss James’s cause of action for defamation because one possible meaning of the statement “inappropriate relationship” is capable of a defamatory meaning: James engaged in a romantic or sexual involvement with Hannah, or he made unwanted romantic or sexual advances toward Hannah, when Hannah was characterized as a minor instead of as a legal adult.¹⁸ (R. pp. ____; Compl. ¶¶ 21, 59-62, 66-67, 72, 74, 95-96, 103, 117; Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabeau Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Caroline Jenkins Aff. ¶¶ 31-38, 45; Josie Allen Aff. ¶¶ 17-20; Tr. 54:22-24).

2. The lower court erred when ruling that the defamatory statement “inappropriate relationship” was not slander as actionable per se.

Upon transforming a Rule 12(c) motion for judgment on the pleadings into a Rule 56 motion for summary judgment, the lower court erred dismissing James’s defamation cause of action against Hannah, her mother, and her grandmother because James presented a genuine

¹⁷ “Child molestation is a crime involving a range of indecent or sexual activities between an adult and a child, usually under the age of 14.” *Child Molestation Definition*, FARLEX, INC., <https://legal-dictionary.thefreedictionary.com/Child+Molestation> (last visited on Apr. 22, 2021).

¹⁸ See *supra* and accompanying text notes 2, 4, 6, 8.

disputed issue of material fact that the defamatory statement “inappropriate relationship” is capable of an offensive meaning in the mind of a reasonable listener as slander per se. *See Adams*, 292 S.C. at 279. In this case, slander per se that is actionable applies to defamatory statements charging the plaintiff with a commission of a crime, a crime of moral turpitude,¹⁹ and unfitness in one’s profession.²⁰ *Parrish*, 376 S.C. at 321-23; *Holtzscheiter*, 332 S.C. at 510-11. For these slander per se categories, the legal analysis for defamation per se versus defamation per quod is not applicable because the damage may be the same when the third party listener understood the charge made. *Lesesne v. Willingham*, 83 F. Supp. 918, 921 (D.S.C. 1949) (citations omitted). Any words, whether standing alone, or by reference to extraneous circumstances, are capable of attributing an offensive meaning is a defamatory statement that is actionable per se. *Adams*, 292 S.C. at 279; *lowers*, 192 S.C. at 377 . For defamation per se, “words are to be given their ordinary and popular meaning.” *Parrish*, 376 S.C. at 325 (emphasis added).

The defamatory statement “inappropriate relationship” published by Hannah, her mother, and her grandmother as slander per se when reporting James to his employer and supervisor implicated that: (1) James was culpable of committing a crime toward minors in the congregation at Northgate during his scope of employment with Northgate; (2) James was culpable of committing a crime of moral turpitude towards young girls in the congregation at Northgate, including Hannah, during his scope of employment with Northgate; (3) James lacked a sense of

¹⁹ A crime of moral turpitude is an accusation based on “an act of baseness, vileness, or depravity in private and social duties that a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man” *Smith v. Smith*, 194 S.C. 247, 251, 9 S.E.2d 584, 586 (1940).

²⁰ A slanderous statement inferring a plaintiff’s impropriety or lack of integrity when performing plaintiff’s job is actionable per se as plaintiff being unfit for plaintiff’s profession. *Moshtaghi v. Citadel*, 314 S.C. 316, 316-24, 443 S.E.2d 915, 915-20 (Ct. App. 1994); *Woodward v. S.C. Farm Bureau Ins. Co.*, 277 S.C. 29, 31, 282 S.E.2d 599, 600 (1981).

propriety in his profession while in charge of the music program at Northgate; or (4) any of the above.²¹ (R. pp. ____; Compl. ¶¶ 15-16, 21, 27, 32-33, 59-62, 66-67, 72, 74, 81, 84, 92-96, 103, 117; Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabeau Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Caroline Jenkins Aff. ¶¶ 31-38, 45; Josie Allen Aff. ¶¶ 17-20; Tr. 54:22-24). As discussed in the previous section, James made factual allegations of “inappropriate relationship” as defamatory statement according to the ordinary, popular meaning of those words that are clearly capable of an offensive meaning.²² Sexual involvement or misconduct is the major theme. Coincidentally, the term “inappropriate relationship” is capable of the offensive meaning ascribed to it concerning a romantic or sexual relationship between two people, or an adult with a minor, that is considered taboo.²³ Therefore, the statement “inappropriate relationship” is capable of the offensive meaning ascribed to it in James’s complaint as slander per se that portrays James as a social pariah, pedophile, child molester, chaser of young women, or any of the above during James’s scope of employment Northgate. (R. pp. ____; Compl. ¶¶ 81, 84, 117, 146, 192). Ultimately, the effect on the listener from this defamatory statement “inappropriate relationship” is that James has been characterized as vile, predatory, and morally reprehensible in one of the worst ways. (R. pp. ____; Compl. ¶¶ 21, 27, 32-33, 59-62, 66-67, 72, 74, 81, 84, 92-96, 103, 117; Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabeau Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Tr. 54:22-24). What Hannah, her mother, or her grandmother thought the defamatory statement meant is irrelevant because the effect on the listener is objective—not subjective.

3. The lower court improperly gave respondents the benefit of raising affirmative defenses without presenting them before a factfinder.

²¹ See *supra* and accompanying text notes 2, 4, 6, 8.

²² See *supra* and accompanying text notes 2, 4, 6, 8.

²³ See *supra* and accompanying text notes 2, 4, 6, 8.

The lower court erred dismissing James's claims of defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress against Hannah, her mother, and her grandmother based on their affirmative defenses that was improper for disputing the underlying merits of the claims and premature before any discovery had taken place or the pleadings were closed. *See Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 195-202, 838 S.E.2d 698, 711-15 (Ct. App. 2019) (opinion); *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 562, 698 S.E.2d 845, 852 (Ct. App. 2010) (privileged communication); *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484-85, 514 S.E.2d 126, 134 (1999) (privileged communication); *Herring*, 222 S.C. at 232-35 (truth). (R. pp. ____; Order Grant Mot. Dismiss to Charlotte Collier p. 3-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 3-12). These affirmative defenses dispute an issue of fact that must be properly submitted to the factfinder or jury before the plaintiff faces a dismissal. *Garrard.*, 429 S.C. at 95-202 (opinion); *City of San Diego v. Roe*, 543 U.S. 77, 78-85, 125 S. Ct. 521, 522-26 (2004) (opinion); *Dawkins*, 354 S.C. at 69 (truth, privileged communication); *Adams*, 292 S.C. at 279 (truth); *Rivers v. Florence Printing Co.*, 141 S.C. 364, 370, 139 S.E. 781, 782 (1927) (privileged communication). First, for reasons previously discussed, the lower court erred by invading the province of the jury and unilaterally deciding that James having an "inappropriate relationship" with Hannah was true. Rule 60(b)(1), SCRCPP. And, James did not need to plead damages or malice because damages and malice are presumed when the factual allegations in James's complaint alleged slander per se that is actionable at law. *Holtzscheiter*, 332 S.C. at 509-10.

Second, the lower court erred by invading the province of the jury and deciding that a privileged communication existed. (R. pp. ____; Order Grant Mot. Dismiss to Charlotte Collier p. 3-7, 10-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 8-9).

James presented a genuine disputed issue of fact that no privilege existed or, if one did, then the privilege was lost for Hannah, her mother, and her grandmother. (R. pp. ____; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 14, 24; Resp't Charlotte Collier Am. Answer ¶ 26; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6; Appellant's Am. Mot. Recons pp. 3, 11-12, 20-25; Tr. 12:16-19, 30:11-23, 45:19-24, 55:8-56:11). The defendant cannot benefit from prematurely by raising the affirmative defense of a privileged communication and shifting the burden of proof on the plaintiff to rebut the presumption that the defendant acted with malice. *Rivers*, 141 S.C. at 370. For defamatory statements published to a third party, the issue must be submitted to a jury when a conflict raises susceptible inferences as to: (1) whether a privilege existed; or, (2) whether a privilege was lost or abused. *See Swinton Creek Nursery*, 334 S.C. at 484-85; *Ford v. Hutson*, 276 S.C. 157, 166, 276 S.E.2d 776, 780 (1981). Here, James disputed the existence of a conditional or qualified privilege for Hannah, her mother, and her grandmother when they reported him to his supervisor for conduct unrelated to and outside the scope of his employment with Northgate. (R. pp. ____; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6).

While Hannah claims reporting James to his supervisor, Hannah's mother claims reporting James to the church because the church is the "source" of Hannah's relationship with James, yet they never raised an issue concerning James's job performance related to his scope of employment with Northgate. (R. pp. ____; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 24; Resp't Charlotte Collier Am. Answer ¶ 26). James alleged that Hannah, her mother, and Linda reported James to his supervisor in bad faith and outside the scope of Northgate's interest in the matter as James's employer: they engaged in supercilious retaliation against James; James rejected Charlotte's attempts to date him; and, James had a falling out with

Hannah and her mother from a social engagement. (R. pp. ____; Compl. ¶¶ 46-51, 54-58; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 14, 24; Resp't Charlotte Collier Am. Answer ¶ 26; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6; Appellant's Am. Mot. Recons pp. 3, 11-12, 20-25; Tr. 7:17- 14:6, 30:11-23, 45:19-24, 55:8-56:11).

Third, the lower court erred by invading the province of the jury when deciding that Hannah, her mother, and her grandmother's publication of James having an "inappropriate relationship" with Hannah was an opinion because the court's decision is premature and without any legal foundation. Rule 60, SCRCF. The lower court never did the preliminary analysis as to whether Hannah, her mother, and her grandmother's opinion is protected speech as a public or private concern. *Id.* (R. pp. ____; Order Grant Mot. Dismiss to Charlotte Collier p. 3-7, 10-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 8-9). Regarding opinions as being protected speech, the proper legal analysis is whether a statement is a matter of public concern or private concern that warrants more or less protection respectively under the First Amendment. *Garrard*, 429 S.C. at 195-202; *Connick v. Myers*, 461 U.S. 138, 146-48, 103 S. Ct. 1684, 1690 (1983) (public concern); *Snyder v. Phelps*, 562 U.S. 443, 453, 131 S. Ct. 1207, 1216 (2011) (private concern). Opinions are unprotected under the First Amendment when it conveys false, defamatory statement of facts that may be actionable. *Garrard*, 429 S.C. at 198-99. A private statement does not concern a public issue that is done solely for the speaker's personal interest and told in confidence to the speaker's specific audience such as an employer regarding an employee's conduct outside the scope of employment; because, such a statement does not inform the public about the aspects of the employer's function or operations. *Snyder*, 562 U.S. at 453; *see also City of San Diego*, 543 U.S. at 78-85.

Here, James presented a genuine disputed issue of fact that Hannah, her mother, and her

grandmother's statement of "inappropriate relationship" was not an opinion, a matter of public concern, or protected speech. (R. pp. ____; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6; Tr. 7:17- 14:6, 30:11-23, 45:19-24, 55:8-56:11). Hannah, her mother, and her grandmother reporting that James had an "inappropriate relationship" with Hannah to his supervisor and employer was merely a private concern and wholly subject to the state laws of defamation. Moreover, their private concern related to matters outside of James's scope of employment that did not reflect on James's role in the mission and purpose of Northgate's music program. (R. pp. ____; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6; Tr. 7:17- 14:6, 30:11-23, 45:19-24, 55:8-56:11).

B. The lower court erred deciding that the conduct of Respondents Hannah Elizabeth Collier, Charlotte Collier, and Linda Smith's conduct was not extreme or outrageous.

The lower court erred when transforming a Rule 12(c) motion to dismiss into a Rule 56 motion for summary judgment because James presented a genuine disputed issue of a material fact exists that Hannah, her mother, and her grandmother's conduct was extreme and outrageous. (R. pp. ____; Order Grant Mot. Dismiss to Charlotte Collier p. 7-8; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 9-10). If the "evidence is in conflict and susceptible of more than one reasonable inference, [then] it is the province of the jury to make a factual determination." *Ford*, 276 S.C. at 166. For an intentional infliction of emotional distress cause of action, the plaintiff must prove: "(1) the defendant intentionally or recklessly inflicted severe emotional distress, or knew that distress would probably result from his conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress

suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.” *Gattison v. S.C. State Coll.*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (Ct. App. 1995).

Of these elements, Hannah, her mother, and her grandmother only disputed that their conduct did not rise to the level of extreme and outrageous conduct. (R. pp. ____; Resp’t Charlotte Collier’s Mot. Dismiss ¶ 5; Resp’t Charlotte Collier’s Mem. Supp. Mot. Dismiss pp. 11-13; Resp’ts Hannah Elizabeth Collier and Linda Smith’s Mot. Dismiss ¶ g; Resp’ts Hannah Elizabeth Collier and Linda Smith’s Mem. Supp. Mot. Dismiss p. 7). Extreme and outrageous conduct exceeds all possible bounds of decency that amounts to being “‘atrocious, and utterly intolerable in a civilized community.’” *Ford*, 276 S.C. at 162 (citing RESTATEMENT (SECOND) OF TORTS § 46, cmt. d (1965)). James presented a genuine disputed issue of material fact that the conduct of Hannah, her mother, and her grandmother was extreme and outrageous because they portrayed him committing one of the worst morally and criminally reprehensible conduct in today’s society²⁴ by characterizing his relationship with Hannah as if she was a child, or minor, even though they knew nothing sexual or romantic occurred between Hannah and James. (R. pp. ____; Compl. ¶¶ 21, 27, 32-33, 59-62, 66-67, 72, 74, 81, 84, 92-96, 103, 117; Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabeau Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Tr. 54:22-24).

The behavior of Hannah, her mother, and her grandmother is susceptible of one or more findings as to whether their conduct was extreme and outrageous. One possible susceptible finding is that no reasonable person would report James to his supervisor for having an “inappropriate relationship” with Hannah knowing full well nothing romantic or sexual occurred between James and Hannah. The implication of such an accusation, as understood by its ordinary and popular meaning, would have devastating effects on a man’s livelihood, personal

²⁴ See *supra* and accompanying text notes 2, 4, 6, 8, 26.

relationships, and reputation. This accusation traveled from Hannah, her mother, and her grandmother to Northgate and beyond like wildfire destroying James's peace of mind that was reasonably foreseeable to occur at the moment Hannah, her mother, and her grandmother opened their mouths. They invoked a scandalous affair in the extreme: James lost his job; James was ostracized by Northgate and members of the community; they drove him into social ruin; they devastated him; and, they tainted his reputation forevermore. Former members, or visitors, of Northgate are outraged by their intolerable, indecent behavior. (R. pp. ____; Compl. ¶¶ 59-61, 83-84, 117, Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabeau Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Caroline Jenkins Aff. ¶¶ 31-38, 45; Josie Allen Aff. ¶¶ 17-20). Therefore, the lower court erred ruling on an issue of material fact that was for a jury to decide.

C. The lower court's disavowment of naming Appellant James Earl Tegeler a predator does not align with the record that is a far more damaging defamatory statement than "inappropriate relationship" thereby abusing any qualified privilege therefrom.

On or around August 18, 2020, Hannah's mother alleged in the lower court: "If this [case] is allowed to go forward, then a parent has no ability to protect their child against somebody they consider to be in a predatory relationship. . . [t]hat's not what the law envisions. That's not what the law says." (R. pp. ____; Tr. 54:22-24; James Tegeler Aff. ¶ 21; Josie Allen Aff. ¶ 19; Order Den. Appellant's Am. Mot. Recons. to Resp't Charlotte Collier p. 3). By contrast, the lower court disavows Hannah's mother calling James a predator at the hearing:

Lastly, Plaintiff attempts to raise a new claim in his post hearing motions. He alleges in the course of the August 18, 2020 hearing on these motions, counsel for Charlotte Collier referred to him in her argument before the Court as a predator. I have reviewed the record in this case find this argument to be wholly without merit. Ms. Collier's counsel did not call the Plaintiff a predator and all arguments made by counsel were appropriately within the context of the matters before the Court. (R. pp. ____; Tr. 54:22-24; James Tegeler Aff. ¶ 21; Order Den. Appellant's Am. Mot. Recons. to Resp't Charlotte Collier p. 3).

The logical connection and reasonable inference between accusing James of being in a predatory

relationship²⁵ with Hannah clearly alleges James as the “predator” and Hannah as the childlike “victim.” The lower court’s disavowment of naming James as a “predator” is logically absurd. Hannah’s mother confirmed that the terminology “inappropriate relationship” was akin to sexual violence against a child that did not occur.²⁶ Hannah is a legal adult—not a child. (R. pp. ____; Compl. ¶¶ 21, 96; Resp’t Charlotte Collier’s Am. Answer ¶¶ 9, 11, 13, 14, 20, 26, 28, 81; Resp’ts Hannah Elizabeth Collier and Linda Smith’s Am. Answer ¶¶ 10, 24; Tr. 54:22-24). Moreover, Hannah’s mother had knowledge that Hannah filed an affidavit stating the contrary that Hannah’s relationship with James was not sexual in nature. (R. pp. ____; Hannah Elizabeth Collier Aff. ¶ 4). Therefore, the lower court’s ruling on this matter should be set aside due to misconduct. Rule 60, SCRPC.

III. Another legal theory under the cause of action for negligent infliction of emotional distress comes before the court as a question of undecided law.

The cause of action for negligent infliction of emotional distress beyond the bystander theory is an undeveloped area of law in South Carolina.²⁷ Other jurisdictions have defined and expanded this cause of action under the direct victim theory: (1) the defendant has a duty to not create an unreasonable risk of causing another emotional distress; (2) the defendant breached that

²⁵ In relation to the subject matter of this case as James has pled the meaning of “inappropriate relationship” and “inappropriate contact,” a predatory relationship is generally described as a perpetrator who plans to harm someone by way of unwanted sexual assault, an act of violence, rape, touch, or fondling, for example. Steven Finkelstein, *Learning to Recognize Predatory Behavior in Relationships*, BETTERHELP.COM, available at <https://www.betterhelp.com/advice/behavior/learning-to-recognize-predatory-behavior-in-relationships/> (last updated on Jan. 28, 2021).

²⁶ A sexual predator is defined as one who seeks sexual contact with another in a predatory or abusive way such as sex crimes like sexual harassment, rape, pedophilia, assault, or some form of “inappropriate contact in one way or another.” Dan Brennan, MD, *Signs of a Sexual Predator*, WEBMD.COM, available at <https://www.webmd.com/sex-relationships/signs-sexual-predator> (last visited on Apr. 13, 2021).

²⁷ In South Carolina, the cause of action for the negligent infliction of emotional distress is a relatively new cause of action subject to expanding the application to other factual settings. *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582 n.2, 336 S.E.2d 465, 467 (1985); see *McCaskey v. Shaw*, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988); *Folkens v. Hunt*, 290 S.C. 194, 204-05, 348 S.E.2d 839, 845 (Ct. App. 1986) (citing *Hensley v. Heavrin*, 277 S.C. 86, 87-88, 282 S.E.2d 854, 855 (1981)).

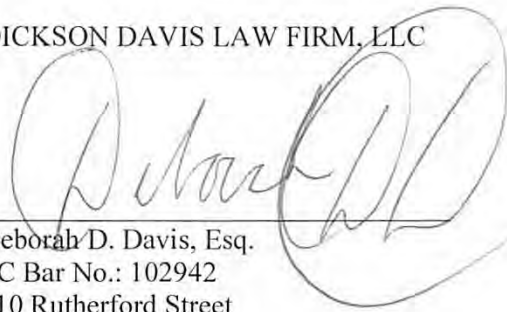
duty; (3) the defendant's breach of duty was the actual and proximate cause of the plaintiff's injury; and, (4) the plaintiff suffered damages.²⁸ See *Metallo v. Torrington Bd. of Educ.*, 2010 Ct. Sup. 10762, 10764 (Conn. Super. Ct. 2010). Whether James's cause of action for negligent infliction of emotional distress against all respondents should survive is a question of undecided law as to whether the Court will recognize this cause of action under the direct victim theory.²⁹

CONCLUSION

For the reasons previously stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted this 23 day of April , 2021 .

DICKSON DAVIS LAW FIRM, LLC



Deborah D. Davis, Esq.
SC Bar No.: 102942
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

²⁸ The capstone to limiting this cause of action under the direct victim theory from going unchecked is foreseeability under proximate causation. Also, the emotional distress must be foreseeable and severe enough to physically manifest in illness or bodily harm including depression and anxiety. See *Metallo*, 2010 Ct. Sup. at 10764; *Rodriguez v. State*, 52 Haw. 156, 518-19 (1970); see also *Moore v. Weinberg*, 383 S.C. 583, 588-89, 681 S.E.2d 875, 878 (2009); *Bray v. Marathon Corp.*, 347 S.C. 189, 118, 553 S.E.2d 477, 480 (Ct. App. 2001); *Gattison*, 318 S.C. at 151; *Kinard*, 286 S.C. at 581; *SPAUGH v. A. C. L. R.R. CO.*, 158 S.C. 25, 29-32, 155 S.E. 145, 146-48 (1930); *Mack v. S. Bound R.R. Co.*, 52 S.C. 323, 329-38, 29 S.E. 905, 907-11 (1898).

²⁹ *Bray*, 347 S.C. at 118-19; *Kinard*, 286 S.C. at 582 n.2; *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 604-08, 103 S.E.2d 265, 270-72 (1958); *Mack*, 52 S.C. at 329-38; see also *Charleston Cty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 7-8, 437 S.E.2d 6, 9 (1993).

**PROOF OF SERVICE OF INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-001525

JAMES EARL TEGELER,

Appellant,

v.

CHARLOTTE COLLIER,
HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST
CHURCH,

Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on Respondents **CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, LINDA SMITH, and NORTHGATE BAPTIST CHURCH** electronically and by depositing a copy of it in the United States Mail, postage prepaid, or by South Carolina Supreme Court Order 2020-05-29-02, on April 23, 2021, addressed to the attorney of record, to the following address(es):

Northgate Baptist Church
c/o Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Charles E. McDonald & S. Michael Nail
300 North Main Street
P.O Box 2757

RECEIVED
Apr 23 2021
SC Court of Appeals

Greenville, SC 29602

Charlotte Collier

c/o Clawson and Staubes, LLC

Amy S. Snyder

1000 East North Street

Suite 200

Greenville, SC 29601

Hannah Elizabeth Collier and Linda Smith

c/o Duggan & Hughes, LLC

Daniel R. Hughes

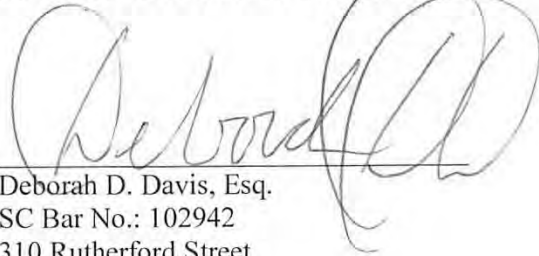
457-B Pennsylvania Avenue

P.O. Box 449

Greer, SC 29652

Respectfully submitted this 23 day of April , 2021 .

DICKSON DAVIS LAW FIRM, LLC



Deborah D. Davis, Esq.
SC Bar No.: 102942
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT



DICKSON DAVIS LAW FIRM

**NOTICE OF MOTION INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL**

April 23, 2021

Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
P.O. Box 11629
Columbia, SC 29211

RECEIVED

Apr 23 2021

SC Court of Appeals

VIA EMAIL CTAPPFILINGS@SCCOURTS.ORG

Re : Tegeler v. Collier et al.
Case No. : 2020-CP-23-01213
Appellate Case No. : 2020-001525
File Id. : 2018-01-123

Dear Clerk of Court:

Please see the enclosed the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal.

Please let me know what further you require from me at this time. Thank you for assistance with this matter.

Respectfully submitted this

23 day of April, 2021.

Deborah D. Davis, Esq.
SC Bar No.: 102942
Attorney for Appellant

cc: Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Charles E. McDonald & S. Michael Nail
300 North Main Street
P.O. Box 2757
Greenville, SC 29602
(864) 241-1813

Clawson and Staubes, LLC
Amy S. Snyder
1000 East North Street
Suite 200

DICKSON DAVIS LAW FIRM, LLC ■ 310 RUTHERFORD STREET ■ GREENVILLE, SOUTH CAROLINA ■ 29609
864.729.3428 TEL ■ 864.752.1424 FAX ■ WWW.DICKSONDAVISLAW.COM ■ INFO@DICKSONDAVISLAW.COM

Greenville, SC 29601
(864) 331-8940

Duggan & Hughes, LLC
Daniel R. Hughes
457-B Pennsylvania Avenue
P.O. Box 449
Greer, SC 29652
(864) 334-2500

ATTORNEYS FOR THE RESPONDENTS

/ddd

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-001525

RECEIVED
May 21 2021
SC Court of Appeals

JAMES EARL TEGELER,..... Appellant,

v.

CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, LINDA SMITH, NORTHGATE
BAPTIST CHURCH,..... Respondents.

INITIAL BRIEF OF RESPONDENT NORTHGATE BAPTIST CHURCH

Charles E. McDonald III
S. Michael Nail
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
300 North Main Street, Suite 500
Greenville, South Carolina 29601
(864) 271-1300 (telephone)
(864) 235-8806 (facsimile)
charles.mcdonald@ogletree.com
michael.nail@ogletree.com

Attorneys for Respondent Northgate Baptist Church

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	1
A. Procedural History Relevant to Northgate	1
B. Appellant Released His Claims Against Northgate	3
STANDARD OF REVIEW	4
I. Judicial Review of a Settlement Agreement is a Question of Law.....	4
II. Motion to Dismiss.....	5
III. Motion for Summary Judgment	5
ARGUMENT	6
I. THE TRIAL COURT PROPERLY CONCLUDED THAT THE AGREEMENT IS A VALID AND ENFORCEABLE CONTRACT AND THE APPELLANT’S CLAIMS AGAINST NORTHGATE ARE BARRED PURSUANT TO THE RELEASE CONTAINED IN THE AGREEMENT	6
A. Appellant’s claims against Northgate are barred.	6
B. The lower court correctly determined appellant has not met the conditions precedent for asserting duress because he executed the Agreement by his own free will and further ratified the Agreement by retaining the severance payment.	10
CONCLUSION.....	14

TABLE OF AUTHORITIES

CASES

<i>Anselmo v. Manufacturers Life Ins. Co.</i> , 771 F.2d 417 (8th Cir. 1985)	13
<i>Baughman v. American Telephone and Telegraph Co.</i> , 306 S.C. 101, 410 S.E.2d 537 (1991)	5, 6
<i>Brown v. Leverette</i> , 291 SC 364, 353 S.E.2d 697 (1987)	3, 6
<i>Brown v. Santander Consumer USA, Inc.</i> , 2013 WL 4017162 (D.S.C. Aug. 5, 2013)	11
<i>Byrd v. Livingston</i> , 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012)	4
<i>C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm'n</i> , 296 S.C. 373, 373 S.E.2d 584 (1988)	8
<i>Carolina Winds Owners' Ass'n, Inc. v. Joe Harden Builder, Inc.</i> , 297 S.C. 74, 374 S.E.2d 897 (S.C. Ct. App. 1988)	5
<i>Carrington v. City of Spartanburg</i> , 283 S.C. 298, 322 S.E.2d 28 (S.C. Ct. App. 1984)	5
<i>Cherry v. Shelby Mut. Plate Glass & Cas. Co.</i> , 191 S.C. 177, 4 S.E.2d 123 (1939)	11
<i>Dawkins v. Fields</i> , 354 S.C. 58, 580 S.E.2d 433 (2003)	5
<i>Dunaway v. United Ins. Co. of America</i> , 239 S.C. 407, 123 S.E.2d 353 (1962)	12
<i>Farr v. Duke Power Co.</i> , 265 S.C. 356, 218 S.E.2d 431 (1975)	9
<i>Felts v. Richland County</i> , 303 S.C. 354, 400 S.E.2d 781 (1991)	4
<i>Food Lion, Inc. v. United Food & Commercial Workers Int'l Union</i> , 351 S.C. 65, 567 S.E.2d. 251 (S.C. Ct. App. 2002)	5
<i>Gainey v. Gainey</i> , 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009)	11
<i>Gardner v. Columbia Police Dep't</i> , 216 S.C. 219, 57 S.E.2d 308 (1950)	7, 8
<i>George v. Fabri</i> , 345 S.C. 440, 548 S.E.2d 868 (2001)	5
<i>Gray v. Petoseed Co.</i> , 1997 WL 716454, 129 F.3d 1259 (4th Cir. 1997) (table)	12
<i>Hause v. AstraZeneca, LP</i> , 2015 WL 1524409 (D.S.C. 2015)	8
<i>Hyman v. Ford Motor Co.</i> , 142 F. Supp. 2d 735 (D.S.C. 2001)	7, 12, 13

<i>In re Nightingale's Estate</i> , 182 S.C. 527, 189 S.E. 890 (1937)	11
<i>Lowery v. Callahan</i> , 210 S.C. 300, 42 S.E.2d 457 (1947).....	7
<i>Matsushita Electric Industrial Co. v. Zenith Radio Corp.</i> , 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)	6
<i>McCall v. Batson</i> , 285 S.C. 243, 329 S.E.2d 741 (S.C. 1985)	5
<i>McCarty v. Kendall Co.</i> , 242 F.Supp. 495 (W.D.S.C. 1965).....	12
<i>Pee Dee Stores, Inc. v. Doyle</i> , 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009).....	4
<i>Pruitt v. S.C. Med. Malpractice Liability Joint Underwriting Ass’n</i> , 343 S.C. 335, 540 S.E.2d 843 (2001)	4
<i>Scoggins v. Honeywell Int’l, Inc.</i> , 2012 WL 6102031 (D.S.C. 2012).....	8
<i>Silver v. Abstract Pools & Spas, Inc.</i> , 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008)	4
<i>State Farm Mut. Auto. Ins. Co. v. Turner</i> , 303 S.C. 99, 399 S.E.2d 22 (1990)	12
<i>Townes Assocs. v. City of Greenville</i> , 266 S.C. 81, 221 S.E.2d 773 (1976).....	4
<i>Virginia Impression Products Corp. v. SCM Corp.</i> , 448 F.2d 262 (4th Cir. 1971).....	8
<i>Woodell v. Marion Sch. Dist. ONE</i> , 307 S.C. 297, 414 S.E.2d 794 (S.C. 1992).....	5
<i>Yarborough v. Phoenix Mut. Life Ins. Co.</i> , 266 S.C. 584, 225 S.E.2d 344 (1976).....	8

RULES

Rule 12(b)	10
Rule 12(b)(6), SCRCP	3, 5, 6
Rule 56, SCRCP.....	10
Rule 56(c), SCRCP	3, 5, 6
Rule 56(e), SCRCP	3, 6, 10
Rule 60(b), SCRCP	14

STATEMENT OF ISSUES ON APPEAL

1. **WHETHER THE TRIAL COURT ERRED IN CONCLUDING THAT THE AGREEMENT BETWEEN THE PARTIES IS VALID AND ENFORCEABLE AND THE APPELLANT’S CLAIMS AGAINST NORTHGATE ARE BARRED PURSUANT TO THE RELEASE CONTAINED IN THE AGREEMENT.**

STATEMENT OF THE CASE

A. Procedural History Relevant to Northgate.

On February 25, 2020, Appellant James Earl Tegeler (“Appellant”) filed a Complaint against Respondents Northgate Baptist Church (“Northgate”), Charlotte Collier, Hannah Elizabeth Collier, and Linda Smith.¹ (See Complaint.). In the Complaint, Appellant asserted the following claims against Northgate: false imprisonment; defamation; fraud in the inducement; negligent misrepresentation; negligent hiring, supervision, and retention of employees; intentional infliction of emotional distress; negligent infliction of emotional distress; wrongful termination; and civil conspiracy. (Complaint ¶¶ 124–215.). On March 25, 2020, Northgate filed a Motion to Dismiss (“Northgate’s Motion”), which attached a copy of Appellant’s Separation Agreement and Release of Claims (“Agreement”) with Northgate. (Northgate’s Motion to Dismiss and Exhibit A – Separation Agreement and Release of Claims.). The Agreement contains a waiver of all claims stemming from Appellant’s employment with Northgate. Accordingly, Northgate argued dismissal was proper under either a motion to dismiss or motion for summary judgment standard. (Northgate’s Motion to Dismiss, FN1.). On August 13, 2020, Northgate filed its Memorandum in Support of its Motion to Dismiss. (Defendant Northgate Baptist Church’s Memorandum in Support of Its Motion to Dismiss (“Northgate Memo”).) On August 17, 2020, Appellant filed his response to Northgate’s Motion to Dismiss,

¹ Charlotte Collier, Hannah Elizabeth Collier, and Linda Smith are collectively hereinafter referred to as “Co-Respondents.”

which included a number of affidavits and exhibits. (Plaintiff's Response to Defendant Northgate Baptist Church's Motion to Dismiss and Memorandum in Support of Its Motion to Dismiss, Defendant Charlotte Collier's Motion to Dismiss, Defendants Hannah Elizabeth Collier and Linda Smith's Motion for Judgment on the Pleadings and Motion to Dismiss ("Plaintiff's Opposition").).

On August 18, 2020, a hearing was held before the Honorable Alex Kinlaw, Jr. Counsel for Appellant, Northgate, and Co-Respondents were all present and presented oral argument. The same day, Judge Kinlaw entered a Form 4 Order Granting Northgate's Motion and indicating that a formal order would follow within twenty (20) days. ("Form 4 Order"). Before the Form 4 was entered, on August 28, 2020, Appellant filed a Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment ("Motion for Reconsideration"), which also included a number of untimely affidavits and exhibits – even one from Appellant himself – wherein he inappropriately attempts to provide testimony refuting Northgate's position it asserted at the hearing. Appellant's Motion for Reconsideration also contained a number of untimely arguments that were not presented at the hearing, and thereby waived. Those arguments are also not properly before this Court. Northgate's Response to Appellant's Motion for Reconsideration to Alter or Amend a Judgment and Motion, which it filed on September 3, 2020, addressed these deficiencies. (See Northgate's Response to Appellant's Motion for Reconsideration, pp. 2-5.).

On September 8, 2020, Judge Kinlaw issued the formal, written Order Granting Northgate's Motion. ("Order Granting Defendant Northgate Baptist Church's Motion to Dismiss"). Nevertheless, on September 14, 2020, Appellant filed an Amended Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment

(“Amended Motion for Reconsideration”), which contained even more untimely exhibits² and waived arguments. On September 15, 2020, Northgate filed its response to Appellant’s Amended Motion for Reconsideration, only addressing the newly-formed and untimely arguments asserted by Appellant. (“Defendant Northgate Baptist Church’s Response to Plaintiff’s Amended Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment”, pp. 2-6.). On November 9, 2020, Judge Kinlaw issued an Order Denying Appellant’s Amended Motion for Reconsideration. (“Order Denying Plaintiff’s Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment”).

On November 19, 2020, Appellant filed a Notice of Appeal (“Notice”). Following an Order Granting Appellant’s Motion to File Appellant’s Initial Brief Out of Time, Appellant filed his Initial Brief of Appellant (“Appellant’s Brief”) on April 23, 2021. Northgate now submits this response to Appellant’s Brief as to the matters related to Northgate.

B. Appellant Released His Claims Against Northgate.

Before Appellant’s separation from Northgate, he entered into a written and enforceable Agreement³ with Northgate wherein he released all claims against Northgate related to his employment or separation from Northgate in exchange for valuable monetary consideration (severance):

² What is more is Appellant’s inclusion of confidential pre-suit settlement communications between counsel. Accordingly, Northgate requested that those exhibits be disregarded by the court and stricken from the record. Northgate respectfully issues the same request to this Court.

³ While the Agreement was referenced in multiple paragraphs of the Complaint, it was not attached. The trial court had the option of treating a motion under SCRCP 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, since the parties were afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the Rules of Civil Procedure. *Brown v. Leverette*, 291 SC 364, 353 S.E.2d 697 (1987).

In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company.

See Separation Agreement and Release of Claims ("Agreement"), Exhibit A to Defendant Northgate Baptist Church's Memorandum in Support of Its Motion to Dismiss, filed August 13, 2020, at ¶ 3(A).

Appellant even negotiated the terms of the Agreement, requesting and receiving an increase to the original severance amount offered by Northgate which is evident from the face of the Agreement.⁴ Appellant signed the Agreement and kept the severance payment. Appellant has released his claims against Northgate that are the subject of the claims brought in the lawsuit.

STANDARD OF REVIEW

I. Judicial Review of a Settlement Agreement is a Question of Law.

Settlement agreements "are viewed as contracts" under South Carolina law. *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 621-22 (Ct. App. 2012) (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)). "An action to construe a contract is an action at law." *Id.* at 241, 727 S.E.2d at 622 (citing *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 541 (Ct. App. 2008)). Because it is an action at law, this Court is to review the Court's Order enforcing the Settlement Agreement "under an 'any evidence' standard." *Pruitt v. S.C. Med. Malpractice Liability Joint Underwriting Ass'n*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (citing *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991)). Accordingly, "the judge's findings will not be disturbed unless they are without evidentiary support." *Byrd*, 398 S.C. at 241, 727 S.E.2d at 622 (citing *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)).

⁴ See Separation Agreement at ¶ 1(A), wherein the proposed consideration is doubled from \$2,600.00 to \$5,200.00.

II. Motion to Dismiss

A motion to dismiss under Rule 12(b)(6), SCRCP is the usual and proper method of testing the legal sufficiency of the Complaint and is directed to the factual and legal sufficiency of the Complaint. *See Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 567 S.E.2d 251 (S.C. Ct. App. 2002); *Woodell v. Marion Sch. Dist. ONE*, 307 S.C. 297, 414 S.E.2d 794 (S.C. 1992). “[A] motion under Rule 12(b)(6) . . . admits the well pleaded facts in the Complaint, but it does not admit the inferences drawn by the Plaintiff from such facts, nor does it admit conclusions of law.” *Carolina Winds Owners’ Ass’n, Inc. v. Joe Harden Builder, Inc.*, 297 S.C. 74, 76, 374 S.E.2d 897, 899 (S.C. Ct. App. 1988); *Carrington v. City of Spartanburg*, 283 S.C. 298, 322 S.E.2d 28 (S.C. Ct. App. 1984), overruled on other grounds, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (S.C. 1985).

III. Motion for Summary Judgment

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citing to *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRCP 56(c).

The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The moving party may discharge this responsibility by pointing out to the trial court that there is an absence of evidence to support the nonmoving party’s case. *Id.* It

is not necessary for the moving party to “support its motion with affidavits or other similar materials negating the opponent’s claim.” *Id.* (emphasis in original). “Once the moving party carries its initial burden, the opposing party must . . . do more than simply show that there is some metaphysical doubt as to the material facts, but must come forward with specific facts showing that there is a genuine issue for trial.” *Id.* (citing *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986)) (emphasis in original) (internal quotations omitted).

Courts may treat a motion under SCRCP 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the Rules of Civil Procedure. *Brown*, 291 S.C. at 353 S.E.2d at 697. This clearly occurred in the case as the Appellant had a copy of the Agreement and Appellant was provided opportunity to brief legal arguments and attend a hearing with trial judge.

ARGUMENT⁵

1. THE TRIAL COURT PROPERLY CONCLUDED THAT THE AGREEMENT IS A VALID AND ENFORCEABLE CONTRACT AND THE APPELLANT’S CLAIMS AGAINST NORTHGATE ARE BARRED PURSUANT TO THE RELEASE CONTAINED IN THE AGREEMENT.

A. Appellant’s claims against Northgate are barred.

Appellant’s primary claims and arguments are not really directed toward Northgate but, rather, to the other Respondents and focus on the underling allegations and not the issue on

⁵ Northgate only addresses Appellant’s arguments directed to his claims against Northgate: Section I, subparts A through C. Appellant’s other assertions are irrelevant to Northgate, and have no bearing on whether Appellant’s claims against Northgate, alone, survive. However, Northgate incorporates the Co-Respondents’ arguments herein to the extent they are not inconsistent with Northgate’s position on appeal.

appeal as to Northgate. This is clear from a review of how Appellant begins his Statement of Facts:

“Context matters. Words matter. The sheer ludicrous behavior from three generations of women in the same family have set a chain of events in motion tarnishing the reputation of an upstanding widower, reporting baseless allegations to this man’s employer that gets him fired, and turning that widower into a social pariah in the Christian community at best. Or, a sexual predator at worst.”

(Initial Brief of Appellant, p. 5.) Because Appellant begins the substantive portion of his brief with this sentence, Northgate presumes Appellant finds it important. This statement is one of many, however, that are superfluous and simply have no bearing on the issues in this appeal as they relate to Appellant’s claims against Northgate.

The sole issue before this Court (as was the issue before the trial court) regarding Northgate is simple: are Appellant’s claims against Northgate barred by the terms of the Agreement? The trial court properly concluded the answer is “Yes.” And because the answer is “yes,” then all of Appellant’s claims against Northgate are extinguished and barred as a matter of law and Appellant’s appeal as to his claims against Northgate must be dismissed. Indeed, the evidence in the record clearly shows that the trial court correctly answered in the affirmative and as a matter of law, Appellant’s claims against Northgate fail and should be dismissed and this appeal denied.

A release is a contract, and releases are governed by same principles of adequacy of consideration that apply to other contracts. *See Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 741 (D.S.C. 2001); *see also Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947) (wrongful death settlement of \$500 enforced). No set form of words is necessary to constitute a release. *Gardner v. Columbia Police Dep’t*, 216 S.C. 219, 223, 57 S.E.2d 308, 309-10 (1950)

(construing terms of release of tortfeasor "of any trouble whatsoever" in consideration of cash payment exonerated tortfeasor from all liability). Further, words and expressions in releases are given their ordinary meaning unless the context of the instrument indicates that the words are being used in a different sense. *Id.*

In construing the terms of a contract, a court must first look at the language of the contract to determine the intentions of the parties. *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When a contract unambiguously sets forth the contracting parties' intent, a court is bound by that clearly expressed intent without resort to extrinsic evidence. *Id.* "Extrinsic evidence giving the contract a different in meaning from that indicated by its plain terms is inadmissible." *Id.* at 377-78, 373 S.E.2d at 586.

It is well established that a broad and general release of all claims, which is executed in exchange for valid consideration, acts as a bar to any claim covered by the time period of the release. *Virginia Impression Products Corp. v. SCM Corp.*, 448 F.2d 262, 265 (4th Cir. 1971) (a general release indicates that "the parties desire to settle all matters forever . . . not only enumerated specific differences, but claims of every kind or character, known and unknown") (internal citations omitted); *see also Hause v. AstraZeneca, LP*, 2015 WL 1524409 (D.S.C. 2015); *Scoggins v. Honeywell Int'l, Inc.*, 2012 WL 6102031 (D.S.C. 2012).

The trial court correctly determined that the release in the Agreement meets the requirements of South Carolina law: it unambiguously⁶ represents a voluntary and bargained-for

⁶ In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: "[O]ne may not, by pointing out a single sentence or clause, create an ambiguity." *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976).

exchange whereby Appellant released Northgate and all of its employees and agents from any liability arising out of his employment. The plain terms of the Agreement unambiguously reveal Appellant's intent to release all claims against Northgate:

In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company. . .

See Agreement, at ¶ 3(A).

Employee further expressly agrees that this Agreement may be treated as a complete defense to any action or proceeding that may be brought by Employee . . . against the Company . . . for relief or damages of any kind arising from Employee's employment or termination from employment with the Company. . .

Id. at ¶ 3(B).

The intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable. . .

Id. at ¶ 3(D).

Indeed, all of the allegations against Northgate contained in Appellant's Complaint contain allegations relating to his employment with Northgate and/or circumstances surrounding his termination therefrom. Accordingly, all claims related to his employment are covered by the release in the Agreement. As such, Appellant released all such claims against Northgate when he signed the Agreement and accepted the monetary consideration in exchange for signing the release, which cannot now be the basis of a lawsuit.

"Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract." *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975). So, despite Appellant's attempt to isolate only a certain provision of the Agreement to cast doubt on its validity, the trial court properly determined it is enforceable based on a review of the Agreement as a whole.

The trial court considered all of the Appellant's plethora of arguments and documents, but correctly determined that the Agreement was enforceable and that all of Appellant's claims against Northgate are barred. To hold otherwise would (1) require the parties and the Court to waste time and resources litigating matters and determining issues that have already been released by way of an unambiguous and enforceable contract, and (2) taking Appellant's arguments seeking to challenge the validity of the Agreement after the fact to their logical conclusion, nearly every release agreement in this state would be unenforceable, subject to challenge by simply purporting to argue after the fact that the individual was induced to sign the release. At the least, allowing Appellant's claims against Northgate to proceed would essentially mandate every contractual dispute of its kind to reach trial, which would discourage resolutions and lead to absurd results. Indeed, the issue of the enforceability of a contract is a legal claim and thus properly suited for determination at Rule 12(b) or converted Rule 56 motion for summary judgment. This is a simple and straightforward issue before this Court, but one that Appellant attempts to complicate in order to make a last-ditch effort to salvage his claims against Northgate. However, as the trial court correctly determined, Appellant's efforts miss the mark, and they cannot be fixed through any amendment of the Complaint.

B. The lower court correctly determined appellant has not met the conditions precedent for asserting duress because he executed the Agreement by his own free will and further ratified the Agreement by retaining the severance payment.

Nearly two years after he executed the Agreement, Appellant's appeal (and his Complaint) is improperly riddled with the notion that Northgate somehow forced him to execute the Agreement. However, it is undisputed that Appellant voluntarily executed the Agreement

(even actively negotiating⁷ an increase in the amount of consideration he received from Northgate for his release of claims against Northgate) and retained the monetary benefit thereof without raising the issue of duress until he filed the Complaint—two years after his termination. As such, his duress argument fails.

Under South Carolina law, duress has been defined as coercion that puts a person in such fear that he is “bereft” of the quality of mind essential to the making of a contract and the contract was thereby obtained as a result of this state of mind. *In re Nightingale's Estate*, 182 S.C. 527, 545, 189 S.E. 890, 897 (1937); *Cherry v. Shelby Mut. Plate Glass & Cas. Co.*, 191 S.C. 177, 4 S.E.2d 123 (1939) (duress is defined as “a condition of the mind produced by improper external pressure of influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition”). As noted in *Nightingale's Estate*, the fear which makes it impossible for a person to exercise his own free will is not so much to be tested by the means employed to accomplish the act, as by the state of mind produced by the means invoked. 182 S.C. at 547, 189 S.E. at 898. Whether duress exists in a particular case is a question of fact to be determined according to the circumstances of each case, such as the age, sex, and capacity of the party influenced. *See Gainey v. Gainey*, 382 S.C. 414, 428–29, 675 S.E.2d 792, 799 (Ct. App. 2009). However, there is no question of fact of duress in this case as

⁷ An agreement is unconscionable if there is an absence of meaningful choice on the part of one party due to onesided contract provisions, and if there are “terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Brown v. Santander Consumer USA, Inc.*, No. CA 0:12-2825-CMC-PJG, 2013 WL 4017162, at *4 (D.S.C. Aug. 5, 2013) (internal citations omitted). Thus, to the extent Plaintiff’s argument is guised as unconscionability, the argument still falls flat because Appellant negotiated the terms of his release, rendering it impossible to claim that the Agreement was “oppressive.”

it is undisputed Appellant clearly negotiated the terms of the severance amount and kept the severance amount and did not challenge the validity of the Agreement for over two years.

As stated *supra*, Appellant cannot demonstrate that he had no other alternative but to sign the Agreement. Indeed, his suggestion that he was under duress is deflated by his active negotiation for an increased severance payment in exchange for his release of all claims against Northgate. Additionally, the general rule in South Carolina is that when a party seeks to set aside a release, he must first return any consideration received by him for the release. *Hyman*, 142 F. Supp. 2d at 747–48 (citing *Gray v. Petoseed Co.*, 1997 WL 716454, 129 F.3d 1259 (4th Cir. 1997) (table) (affirming dismissal of fraud because under South Carolina law when a party to a compromise settlement wishes to avoid a valid release and be restored to his original rights, he must restore the other party to his original position by returning or offering to return the consideration received under the compromise); *McCarty v. Kendall Co.*, 242 F.Supp. 495 (W.D.S.C. 1965) (action to avoid a release allegedly induced by fraud dismissed due to plaintiff's failure to return or tender consideration given for settlement); *Dunaway v. United Ins. Co. of America*, 239 S.C. 407, 410, 123 S.E.2d 353, 354 (1962) (failure to tender or return consideration given for settlement precluded recovery in action for fraudulent inducement of settlement); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 102, 399 S.E.2d 22, 23 (1990) (“it is well settled that one who seeks to avoid the effects of a release must first return or tender consideration paid thereof”).

In *Hyman*, a former automobile dealer insisted upon retaining the benefits which he received under the contract releasing manufacturer from liability, and, at the same time, insisted upon escaping the obligations imposed by the release. *Hyman*, 142 F. Supp. 2d at 748 (D.S.C. 2001). Thus, the court noted that the condition precedent to avoiding the release (the return or

tender of consideration for the release), had not been complied with. *Id.* The court took issue with the fact that the dealer knew of the alleged “duress” at the time he signed the release but did not raise the issue for over three years. *Id.* Thus, the court held that the dealer “clearly waived his right to avoid the release on claims of duress and has affirmed the release.” *Id.*

Importantly, the *Hyman* court also recognized that a release which is procured by duress is not void, but merely voidable and is capable of being ratified. *Id.* The person claiming duress must act promptly to repudiate the contract or release, or he will be deemed to have waived his right to do so. *Id.* It is a well-established proposition that a voidable contract may be ratified by a party's failure to act promptly to repudiate the contract. *Id.* (citing *Anselmo v. Manufacturers Life Ins. Co.*, 771 F.2d 417, 420 (8th Cir. 1985) (plaintiff signed a release under threat of losing severance pay, then sued to rescind, claiming duress, and court held for defendant on ground that employee accepted and thereby ratified the contract)). A party may ratify an agreement entered into under duress in a number of different ways: by intentionally accepting benefits under the contract; by remaining silent or acquiescing in the contract for a period of time after he has the opportunity to avoid it; or by recognizing its validity by acting upon it, performing under it or affirmatively acknowledging it. *Id.* (internal citations omitted). Thus, one seeking to repudiate an agreement allegedly entered into under duress must promptly complain of the circumstances under which the document was signed. *Id.* The *Hyman* court concluded as follows: “The undisputed facts indicate that [the dealer] ratified the release by retaining the benefits of the release for over three years. [The dealer] seeks to have it both ways—to retain the benefits of the buy back privilege and to sue [the manufacturer] —and that is something which this court cannot allow.” *Id.* at 749.

Here, it is undisputed that Appellant retained the monetary consideration he received from Northgate in exchange for his agreement to release all claims against Northgate in the Agreement. However, nearly two years later when he filed the Complaint, he then claimed that he was under “duress” when he signed the Agreement. Finally, while Appellant now alleges that he “impliedly offered” to return the consideration, the document which purports to support the notion reveals nothing of the sort.⁸ (Initial Brief of Appellant, p. 27, which cites to Exhibit A to Appellant’s Amended Motion for Reconsideration, at p. 5, specifically the language in paragraph (2).) Similar to *Hyman*, Appellant has not met the conditions precedent to asserting his new proposition of “duress” and it cannot be used to circumvent the valid and enforceable Agreement. Further, by his extreme delay in raising the issue, he has nevertheless ratified the Agreement.

CONCLUSION

There is sufficient evidence to support the trial court’s conclusion that the Agreement is a valid and enforceable contract that was not executed under the guise of duress. Indeed, the trial

⁸ The argument on page 27 of the Initial Brief of Appellant continues to display Appellant’s far-reaching attempts to keep his claims alive. In his Amended Notice and Motion for Consideration to Alter or Amend a Judgment and Motion for Relief from Judgment, he stated that he offered to return the severance payment: “For example, Defendant CHURCH was placed on notice of Plaintiff’s offer to return back to the status quo when expressing a desire to reinstate Plaintiff’s employment operating as an offer to reconcile funds received upon termination of Plaintiff’s employment when reinstated. Ex. A; see also Rule 60(b). Clearly, if Plaintiff were reinstated by Defendant CHURCH, said funds from the termination agreement would have been reconciled with payroll accordingly to place the parties at status quo. Defendant CHURCH was fully aware of these correspondences when claiming Plaintiff never made an offer to return the consideration and return the parties’ status back to status quo prior to the Agreement.” Indeed, Appellant has morphed the allegation of returned consideration (all after the trial court hearing) into an “implied” offer. A review of the record reveals neither an actual offer or implied offer to return the severance payment, and the argument is nevertheless waived because he did not timely present it to the trial court.

court rightly concluded that Appellant waived all of his claims against Northgate by way of his execution of the valid and enforceable Agreement and retention of the severance payment. Accordingly, Respondent Northgate Baptist Church requests that the Court affirm the decision of the trial court.

Respectfully submitted,

s/Charles E. McDonald III
Charles E. McDonald III
S. Michael Nail
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
300 North Main Street, Suite 500
Greenville, South Carolina 29601
(864) 271-1300 (telephone)
(864) 235-8806 (facsimile)
charles.mcdonald@ogletree.com
michael.nail@ogletree.com

Attorneys for Respondent Northgate Baptist Church

May 21, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 21 2021

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-001525

JAMES EARL TEGELER,..... Appellant,

v.

CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, LINDA SMITH, NORTHGATE
BAPTIST CHURCH,..... Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent Northgate Baptist Church the Appellant and Co-Respondents by sending their attorneys of record a copy of the same via electronic mail and first class mail, properly addressed, postage prepaid at the following addresses:

Deborah D. Davis, Esq.
Dickson Davis Law Firm, LLC
310 Rutherford Street
Greenville, SC 29609
d.davis@dicksondavislaw.com
Attorneys for Appellant

Amy S. Snyder
Clawson and Staubes, LLC
1000 East North Street
Suite 200
Greenville, SC 29601
asnyder@clawsonandstaubes.com
Attorneys for Respondent Charlotte Collier

Daniel R. Hughes
Duggan & Hughes, LLC

457-B Pennsylvania Avenue
P.O. Box 449
Greer, SC 29652
dhughes@dugganhughes.com
Attorneys for Respondents Hannah Elizabeth
Collier and Linda Smith

May 21, 2021

s/Charles E. McDonald III

RECEIVED

May 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Circuit Court Judge

Case No.: 2020-001525

James Earl Tegeler Respondent/Appellant

v.

Charlotte Collier, Hannah Elizabeth Collier, Linda Smith, Northgate Baptist Church
.....Appellant/Respondent

INITIAL BRIEF OF THE RESPONDENT CHARLOTTE COLLIER

Amy M. Snyder
CLAWSON and STAUBES, LLC
Bar No.: 7968
1000 E North Street, Suite 200
Greenville, South Carolina 29601-3106
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: asnyder@clawsonandstaubes.com
Attorney for Respondent Charlotte Collier

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF ISSUES ON APPEAL	1
STANDARD OF REVIEW	1
FACTS	2
ARGUMENT.....	6
I. The record in this case with regard to the Respondent Charlotte Collier's Motion to Dismiss is limited to the pleadings in this case.....	6
II. The respondent Charlotte Collier did not make any defamatory statements to her Pastor.....	9
III. All statements made by the Respondant Collier to her Pastor were privileged.	13
IV. The trial court correctly ruled that the Appellant failed to state a claim for outrage under the facts as pled.	15
V. South Carolina does not recognize a cause of action for negligent infliction of emotional distress under the facts as plead.	16
VI. The Complaint fails to state a claim for civil conspiracy.	17
VII. The trial court properly dismissed the case with prejudice since amendment would be futile.....	18
CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<u>Andrews v. Piedmont Air Lines</u> , 297 S.C. 367, 377 S.E.2d 127 (Ct. App. 1989).....	15
<u>Arnold v. State</u> , 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)	2
<i>Biospherics, Inc. v. Forbes, Inc.</i> , 151 F.3 rd 180 (4 th Cir. 1998)	11
<u>Budinich v. Becton Dickinson and Co.</u> , 486 U.S. 196, 200, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988)	2
<u>Collins Music Co. v. Igt</u> , 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002)	2
<u>Doe v. Erskine Coll.</u> , No. 8:04-23001RBH, 2006 U.S. Dist. LEXIS 35780, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006).....	20
<i>Doe v. Marion</i> , 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)	1
<i>Erickson v. Jones Street Publishers, LLC</i> , 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006)	9
<i>Falk v. Sadler</i> , 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).....	1
<i>Fleming v. Rose</i> , 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).....	10, 15
<u>Ford v. Hutson</u> , 276 S.C. 157, 276 S.E.2d 776 (1981).....	15
<i>Fountain v. First Reliance Bank</i> , 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012).....	10
<i>Garrard v. Charleston Cty. Sch. Dist.</i> , 429 S.C. 170, 190-91, 838 S.E.2d 698, 708-09 (Ct. App. 2019)	10
<u>Gattison v. South Carolina State College</u> , 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995);	15

<u>Hackworth v. Greywood at Hammett, LLC</u> , 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct. App. 2009).	18, 21
<i>Hambrick v. GMAC Mortg. Corp.</i> , 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006) ..	1
<i>Harris v. Tietex Int'l, Ltd.</i> , 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016)	14
<i>Holtzscheiter v. Thomson Newspapers, Inc.</i> , 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998).	9
<u>James v. Pratt & Whitney</u> , 126 Fed. Appx. 607, 613 (D.S.C. 2005)	20
<u>Jennings v. Jennings</u> , 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010)	18
<u>Kinard v. Augusta Sash & Door Co.</u> , 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985)	16
<u>Kuznik v. Bees Ferry Assocs.</u> , 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) .	20
<i>Lucas v. Rawl Family Ltd. P'shp</i> , 359 S.C. 505, 598 S.E.2d 718((2004)	11
<i>Manley v. Manley</i> , 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987).....	13
<u>McSwain v. Shei</u> , 304 S.C. 25, 402 S.E.2d 890 (1991)	15
<i>Murray v. Holnam, Inc.</i> , 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001).....	14
<i>Paradis v. Charleston Cty. Sch. Dist.</i> , No. 28030, 2021 S.C. LEXIS 56, at *16-17 (May 19, 2021)	17
<i>Phantom Touring, Inc. v. Affiliated Publications</i> , 953 F.2d 724, 730-31 (1st Cir. 1992)	12
<u>Robinson v. Wix Filtration Corp. LLC</u> , 599 F.3d 403, 412, 2010 U.S. App. LEXIS 6298, *23, 15 Wage & Hour Cas. 2d (BNA) 1781.....	2
<u>Skydive Myrtle Beach v. Horry Cty.</u> , 426 S.C. 175, 182-83, 826 S.E.2d 585, 589 (2019)	18

<u>Small v. Hunt</u> , 98 F.3d 789, 797 (4th Cir. 1996)	2
<i>Standing Comm. on Discipline v. Yagman</i> , 55 F.3d 1430, 1439 (9th Cir. 1995)	11
<u>Stewart v. State Farm Mut. Auto. Ins. Co.</u> , 341 S.C. 143, 154, 533 S.E.2d 597, 603 (Ct. App. 2000)	16
<i>Swinton Creek Nursery v. Edisto Farm Credit, ACA</i> , 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999).	13
<u>Todd v. S.C. Farm Bureau Mut. Ins. Co.</u> , 276 S.C. 284, 278 S.E.2d 607 (1981)	20
<i>Toussaint v. Ham</i> , 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).....	1
<u>Vaughan v. Murray</u> , No. 95-6081, 1995 U.S. App. LEXIS 31288, 1995 WL 649864, at *3 n.3 (4th Cir. Nov. 6, 1995)	2
<i>West v. Morehead</i> , 396 S.C. 1, 7, 720 S.E.2d 495, 498 (Ct. App. 2011).....	9
<i>Wright v. Sparrow</i> , 298 S.C. 469, 474, 381 S.E.2d 503, 506 (Ct. App. 1989)	14, 15

Rules

Rule 12(b)(6), SCRCP	5
Rule 12(c), SCRCP	5, 11
Rule 12, SCRCP	11
Rule 56.....	11
Rule 59(e)	5, 6, 15
Rule 60.....	5
Rule 60(b)	5

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT CORRECTLY GRANT RESPONDENT CHARLOTTE COLLIER'S MOTION FOR JUDGMENT ON THE PLEADINGS ON THE BASIS THAT THE APPELLANT'S COMPLAINT FAILED TO STATE ANY CLAIMS FOR WHICH RELIEF COULD BE GRANTED?
2. WERE THE STATEMENTS CLAIMANT ALLEGES WERE DEFAMATORY SUBJECT TO QUALIFIED PRIVILEGE?
3. DID THE COURT APPROPRIATELY DISMISS THE APPELLANT'S COMPLAINT WITH PREJUDICE?

STANDARD OF REVIEW

An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6) or Rule 12(c), SCRPC. See *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (discussing the standard of review of a motion to dismiss under Rule 12(b)(6), SCRPC); *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006) (discussing the standard of review of a motion for judgment on the pleadings). A ruling on a Rule 12(b)(6) motion must be based solely on the allegations set forth on the face of the complaint. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). When considering a motion for judgment on the pleadings under Rule 12(c), SCRPC, the court must regard all properly pleaded factual allegations as admitted. *Falk v. Sadler*, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

While Appellant argues that Rule 60 has application to his case, it does not. A motion filed under both Rule 59(e) and Rule 60(b) should be analyzed only under Rule 59(e) if it was filed no later than 10 days after entry of the adverse judgment

and seeks to correct that judgment. Small v. Hunt, 98 F.3d 789, 797 (4th Cir. 1996); see also Vaughan v. Murray, No. 95-6081, 1995 U.S. App. LEXIS 31288, 1995 WL 649864, at *3 n.3 (4th Cir. Nov. 6, 1995) Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412, 2010 U.S. App. LEXIS 6298, *23, 15 Wage & Hour Cas. 2d (BNA) 1781. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment[,] is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)(quoting Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988)). Collins Music Co. v. Igt, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002)

FACTS

The Respondent Charlotte Collier is the mother of the Respondent Hannah Collier. The Respondent Charlotte Collier has been sued as a result of meeting with her Pastor to discuss concerns she had regarding the relationship between her 18 year old daughter Hannah and a 50+ year old Appellant who represented to Ms. Collier that his relationship with her daughter was part of his employment with their Church. All of the claims against the Respondent Charlotte Collier arise from this meeting. During the course of that meeting Charlotte Collier and her daughter referred to the relationship between Appellant and Hannah Collier as inappropriate but specifically stated it was not physical or sexual in nature. (Complaint P. 60 – 61) The Appellant later received a vote of "no confidence" from the church as a result of texts between Hannah Collier and himself that Appellant presented to Church authorities. (Complaint P. 74) The no

confidence vote was also a result of decisions he had made regarding other young girls in the church. (Id.) Appellant resigned with a negotiated severance payment made to him under a separation agreement and release between himself and the Church. (Transcript p. 6 ll 7 – 11)

The Appellant James Tegeler was hired by Northgate Baptist Church in July of 2015. (Complaint. P. 14) He was later promoted to worship leader. (Complaint P. 15) This was a part time position. (Complaint P. 15) Appellant did not serve as a youth pastor or youth director at the Church. (Complaint P. 16) Appellant who is in his 50's alleges that Respondent Hannah Collier, a member of the church who had just turned 18, requested that he be her "mentor." (Complaint P. 21 and 27) The Appellant considered Hannah Collier to be a troubled youth from a broken home. (Complaint P. 23) The Appellant "assisted with gift giving" for Hannah Collier. (Complaint P. 31) He invited her to his family gatherings and on trips. (Complaint P. 31) The Appellant in his Complaint published the following very personal details from Hannah's life that she had shared with Appellant, including but not limited to

- Difficulties with her parents;
- That her father committed adultery;
- That she had personal issues regarding mental illness, self-development, self-esteem, self-perception, maturity, anger management, anxiety, separation anxiety or abandonment issues, eating disorders, self-inflicting physical harm and disorders from coping with a sexual assault; and
- Details regarding her psychological counseling;

(Complaint P. 38)

The Appellant alleges that his “mentoring” was done in his capacity as an employee of Northgate Baptist Church and was authorized by Dr. Barry Jimmerson, the Pastor of Northgate Baptist Church.. (Complaint p. 35) Over the course of this “mentorship” the Appellant perceived Hannah Collier being expressive and affection toward him “akin to daughterly affection.” (Complaint P. 41) Most importantly Appellant admits that this was noticed by her mother Respondent Charlotte Collier and Pastor Jimmerson. (Complaint P. 41 and 43) The Appellant would attempt to “redirect” behaviors by Hannah Collier and when he attempted to do so she became “unreasonably angry.” (Complaint P. 44) This would occur in the presence of Hannah’s mother Respondent Charlotte Collier. (P. 45) This all came to a head on March 11, 2018 when Hannah Collier was “playing on her phone at the table” during Appellant’s son’s birthday party. Appellant notes that the Colliers were aware that it was against Appellants “rules” to have a cell phone at the table and that Hannah did not put the phone away when he asked her to and did not respond well to Appellants “redirection.” (Complaint P. 56 – 58) This interaction is described by Appellant’s counsel in great detail during the course of the hearing in this case. Counsel for Appellant describes this interaction between her client and Hannah Collier as follows:

[S]o what happened with -- there was -- my client had a birthday party for his son on March 11th. At that time, Hannah Collier had complained of throwing up at the table during a meal and then, simultaneously, was playing on her phone and texting. So my client disputes the allegation that he told Hannah to go throw up if that made her feel better. So that's -- we dispute that.

In addition, my client's comment was, if you feel good enough to text, then you should feel good enough to talk to us, instead of being on the phone.

This is a common issue now with the younger generation of bringing phones to the table.
(Transcript p. 8 ll. 1 – 12)

The next day both Hannah and her mother Respondent Charlotte Collier went to speak with Pastor Jimmerson regarding Appellant's relationship with Hannah Collier. Appellant concedes that Pastor Jimmerson was the Appellant's supervisor with regard to all things related to the church. Charlotte Collier told Pastor Jimmerson that she considered the Appellant's relationship with her daughter to be inappropriate. (Complaint P. 59) During that meeting Hannah Collier specifically told Pastor Jimmerson that she did not believe the Appellant had any romantic interest, feelings or aspirations toward her and that they had not had any sexual or intimate relations. (Complaint P. 60 – 61)

Subsequent to that meeting the Appellant met with Pastor Jimmerson to tell him that the mentorship was at an end. (Complaint P. 64) At that meeting Appellant shared texts between him and Hannah Collier with Pastor Jimmerson. (Complaint P. 65) Appellant had a second meeting with Pastor Jimmerson and the chairman of the Church personnel committee Laurel Shaler where Pastor Jimmerson told Appellant of his conversation with the Colliers. At this meeting the Appellant showed texts between himself and Hannah Collier to both Jimmerson and Shaler. (Complaint p. 66 – 67) In that meeting Pastor Jimmerson stated that it was not his understanding that the Appellant had engaged in "improper relations" with Hannah Collier (Complaint P. 68) The Appellant alleges that Ms. Shaler concluded that the Appellant had had "inappropriate relations" with Hannah Collier based upon the texts that the Appellant

showed Ms. Shaler. (Complaint P. 72) Shaler then stated that in addition to the Hannah Collier situation, Appellant had texted another young girl during the church service and asked a different young girl to go on a vacation. (Complaint P. 74)

On April 10, 2018 Appellant attend a staff meeting at the Church where he was accused by Pastor Jimmerson, Ms. Shaler and a Warren Paden of having inappropriate contact with young girls (plural) in the congregation. (Complaint P. 93) The Church asked the Appellant resign and presented him with a separation agreement. (Complaint P. 97) The Appellant has negotiated the check representing payment pursuant to the separation agreement and has not returned that payment. (Transcript p. 19 ll. 2 - 5).

ARGUMENT

I. THE RECORD IN THIS CASE WITH REGARD TO THE RESPONDENT CHARLOTTE COLLIER'S MOTION TO DISMISS IS LIMITED TO THE PLEADINGS IN THIS CASE.

Much of the Appellant's recitation of facts is from affidavits replete with gossip opinions and hearsay some of which were not before the court when it heard Respondent's Motion to Dismiss.¹ While these additional filings may have bearing as

¹ In response to Respondent Charlotte Colliers Motion to Dismiss, Appellant filed the following with the court:

- A series of texts between Appellant and Hannah Collier,
- An affidavit of Roy Sabean, criticizing church leaders and opining as to the character of all parties to this litigation,
- An affidavit of Sue Lutz another church member who sets forth her opinions as to the character of all the parties in this litigation,
- An affidavit of Anne Danciu who knew Appellant's parents. She stated scathing opinions as to the Respondents ranging from her belief that mental illness runs in their family that Hannah's father was intimidating and had not used good

to whether or not amendment of the Complaint would be futile, they are not within the trial court's scope of review under SCRCP 12(c) which provides as follows:

c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 12, SCRCP

In this instance the court chose not to consider matters outside the pleadings and the Respondent's motion was decided under Rule 12(c).² Therefore the question before the court was whether the extremely detailed Complaint in this case stated a claim and whether the legal defenses raised by the Respondent barred those claims.

manners in failing to let her to pass first through a doorway, that Respondent Charlotte Collier wore provocative clothes to church and that certain church employees were self-righteous and entitled,

- Texts between Hannah Collier and another church member where Hannah states she had nothing to do with Appellant being "fired,"
- Rule 11 correspondence between Respondent's prior counsel Daniel Hughes and counsel for Appellant,
- An email from Respondent Charlotte Collier to the Appellant requesting he have no further contact with her daughter and Appellant's response,
- Emails between Laurel Shaler and Appellant regarding hiring a worship intern.
- Cease and desist letters from Appellant's counsel to the Respondents,
- Texts between unknown persons discussing a meeting at the church, and
- Texts between Appellant and Warren Peden discussing a church meeting where Appellant notes biblically Laurel Shaler as a woman should not be in authority over men.

² Appellant states several time in his brief that the court converted Respondent Charlotte Colliers motion to a Rule 56 motion. This is not the case as is reflected in the trial court's order in this case.

The affidavits and texts would have not been properly received in evidence had the court broadened its scope of review. The affidavits contain hearsay and opinion. None of the affiants were witnesses to the discussion between Respondent Charlotte Collier and her pastor upon which this action is based. Several of the affidavits relate to the way that Respondent Charlotte Collier dressed for church and the opinion of affiants that she was romantically interested in Appellant and thus behaved as “woman scorned.” The affidavits are merely sworn statements of uncharitable gossip to the extent they pertain to the claims against the Respondent Charlotte Collier.

The Appellant additionally filed text messages between himself and Hannah Collier with no authentication or foundation. However a review of those text messages is disturbing. In what purports to be a text message from Appellant to Hannah Collier he writes:

And I earn peoples trust. Like Josie’s mom is excited that she is going to New York City with me and Andrew. Plus I’m taking a couple other friends. Josie is 17. Normally that would be weird but people who know me well understand know what I’m all about and that makes me feel really good. I love earning people’s trust.....
(Exhibit A, Plaintiff’s Response in Opposition to Motion to Dismiss)

Throughout these texts selected and submitted by Appellant, Respondent Charlotte Collier’s daughter Hannah expresses that she is uncomfortable with the relationship with Appellant and is confused as to whether it is romantic or not. Appellant never attempts to break off the “mentorship” but in these texts is insistent that the relationship continue reminding the Hannah Collier how much he cares for her. These texts do not help the Appellant’s case. Appellant is the beneficiary of the court’s decision to exclude the matters outside the pleadings in his decision.

Lastly, Appellant argues that he has pled “actual allegations that the defamatory statement “inappropriate relationship” supported at least one defamatory meaning. However, the paragraphs of the Complaint Appellant sets forth in support of this are all conclusory or opinion, not factual. Additionally, Appellant seeks to hold Charlotte Collier responsible for statements made by others as regarding the relationship between Appellant and Hannah Collier using the words “inappropriate relationship,” ignoring the undisputed fact that the Colliers specified the relationship was not sexual. If others made statements taken out of the context admitted in the Complaint, i.e. that the relationship was non sexual, that is not actionable against Charlotte Collier.

II. THE RESPONDENT CHARLOTTE COLLIER DID NOT MAKE ANY DEFAMATORY STATEMENTS TO HER PASTOR.

"The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." *Id.* "To establish a defamation claim, a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm." *West v. Morehead*, 396 S.C. 1, 7, 720 S.E.2d 495, 498 (Ct. App. 2011); *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006); *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860

(2002). *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 190-91, 838 S.E.2d 698, 708-09 (Ct. App. 2019)

The alleged defamatory statement made by Respondent Charlotte Collier was made to her Pastor in a meeting concerning what is alleged to have been a “mentorship” approved by her pastor between the 50 year old Appellant and her 18 year daughter was that the relationship was inappropriate. The question before the trial court was whether Respondent’s statement was defamatory. Appellant argues this is a jury question. However our courts do not require a jury determination where a reasonable interpretation of the statement is that it is not defamatory. The Appellant cannot rely on “purely conjectural” interpretations to avoid dismissal. *Fountain v. First Reliance Bank*, 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012)

In this instance the Appellant cannot rely on innuendo since Appellant pleads that the Respondents told their pastor specifically that the relationship was not sexual or physical. Appellant’s argument requires the court to cherry pick the word “inappropriate” out of the conversation and to interpret it outside it’s meaning in the context of the conversation.

Appellant relies upon numerous “authorities” such as “Word Hippo.com” in in support of his argument that the only kind of inappropriate relationship is a sexual one. Any validity this argument is negated by the allegations of the Complaint that allege the Respondents informed their pastor the relationship was not sexual. The allegations of the Complaint, taken as a whole indicate the Respondent Charlotte Collier told her pastor she was concerned that the nonsexual relationship between the Appellant and

her daughter was inappropriate. Any reading of Complaint and certainly the texts submitted by Appellant would lead any parent to that same conclusion.

Furthermore Respondent Collier's statement that the relationship was inappropriate is opinion. The Appellant is required to establish the alleged defamatory statement was false. However, when a statement is opinion it cannot be proven true or false.³ The facts Appellant pled that were given in support of the opinion --- that a relationship existed and that the relationship was not sexual or physical ---- are true and thus not defamatory.

Appellant's focus is on the characterization of the non-sexual relationship as "inappropriate." There are no South Carolina cases directly on point. The Fourth Circuit has addressed this issue in *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3rd 180 (4th Cir. 1998). The court concluded that when "the bases (sic) for the . . . conclusion are fully disclosed, no reasonable reader would consider the term anything but the opinion of the author drawn from the circumstances related." *Chapin*, 993 F.2d at 1093; see also *Standing Comm. on Discipline v. Yagman*, 55 F.3d 1430, 1439 (9th Cir. 1995) ("A statement of opinion based on fully disclosed facts can be punished only if the stated facts are themselves false and demeaning."); *Moldea*, 15 F.3d at 1144-45 ("Because the reader understands that such supported opinions represent the writer's interpretation of the facts presented, and because the reader is free to draw his or her

³ Appellant argues that the court failed to do a "required preliminary analysis" as to whether the statement constitutes protected opinion. This matter was not raised by Appellant in his Rule 59 (e) motion and thus is waived. *Lucas v. Rawl Family Ltd. P'shp*, 359 S.C. 505, 598 S.E.2d 718((2004)

own conclusions based upon those facts, this type of statement is not actionable in defamation."); *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 730-31 (1st Cir. 1992) (when statement provides factual bases for its conclusion, it is a "personal conclusion" rather than a statement of fact subject to a defamation claim). *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3d 180, 185 (4th Cir. 1998).

The Appellant pleads in his Complaint the following regarding the relationship between himself and Respondent's daughter.

- He is an adult male who has placed himself in a supervisory position over an 18 year old Defendant (P. 17)
- He was giving the 18 year old Defendant financial gifts (P. 18)
- Plaintiff alleges the 18 year old Defendant was vulnerable (P. 23)
- Plaintiff alleges he decided to form a mentoring relationship with an 18 year old female (P. 27)
- Plaintiff invited the 18 year old to social gatherings and on trips (P. 31)
- Plaintiff reported on observations, assessments and issues of an 18 year old girl to church staff (P. 36)
- Plaintiff became a confidant to 18 year old girl for her personal issues and family issues (P. 38)
- Others noticed the vulnerable 18 year old Defendant being expressive and affectionate toward the Plaintiff. (PP. 42 and 43)
- Plaintiff attempted to "redirect" the anger of the 18 year old Defendant in a public setting and the Defendant did not respond well to this. (P. 45)
- After the Plaintiff alleges that the mentorship was not working and was "reduced and limited," (P. 53) he invited the 18 year old Plaintiff to a family birthday party then corrected her behavior with regard to her cell phone usage at the table.

These facts are not in dispute. The facts upon which the opinion are based are pled in the Complaint. Clearly under these facts “appropriateness,” like beauty, is in the eye of the beholder. Hannah Collier’s mother considers this relationship to be inappropriate. Appellant undoubtedly considers this type of relationship to be hunky-dory. This conflict merely underscores that the characterization of the relationship as “inappropriate” is opinion. It is not for a jury to decide whose opinion it agrees with.

Appellant’s argument taken to its logical conclusion would require a trial, the goal of which would be to determine whether the relationship between Appellant and Hannah Collier was appropriate or not. This is not the function of a jury in a claim for defamation. This is why opinion under the facts as pled cannot be defamatory.

III. ALL STATEMENTS MADE BY THE RESPONDANT COLLIER TO HER PASTOR WERE PRIVILEGED.

A defendant in a defamation action may assert the affirmative defense of conditional or qualified privilege. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). "Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused." *Id.* The party asserting a qualified privilege must prove the following elements: (1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only. *Manley v. Manley*, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987). Whether an occasion gives rise to a qualified or conditional privilege is generally

a question of law for the court. *Murray v. Holnam, Inc.*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001). This court has previously found the qualified privilege applies "to situations in which an employee's job performance is properly evaluated." *Wright v. Sparrow*, 298 S.C. 469, 474, 381 S.E.2d 503, 506 (Ct. App. 1989) *Harris v. Tietex Int'l, Ltd.*, 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016).

Appellant alleges he was the participant in a church approved mentorship of Hannah Collier. Appellant alleges that Pastor Jimmerson was his supervisor. Appellant alleges that Pastor Jimmerson was aware of the mentorship and that Appellant had discussed Hannah Collier with Pastor Jimmerson. Appellant alleges that Pastor Jimmerson was Respondent Charlotte Collier's pastor. Appellant alleges that the only participants in the meeting where his relationship with Hannah Collier was discussed were Pastor Jimmerson, Charlotte Collier and Hannah Collier. Appellant alleges that in this meeting Hannah Collier denied that the relationship was romantic, intimate or sexual. If a parent cannot have this conversation under the facts as pled, how can they ever have their concerns addressed? The comments by the Colliers were limited, private, circumspect and to the point. They did not gossip within the church regarding their concerns but took them privately to their pastor, the Appellant's supervisor. Under the factors set out in *Murray v. Holnam, Inc.*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001) these statements are to afforded qualified privilege. Furthermore, the application of the privilege is a question of law for the court, not a question for a jury.

IV. THE TRIAL COURT CORRECTLY RULED THAT THE APPELLANT FAILED TO STATE A CLAIM FOR OUTRAGE UNDER THE FACTS AS PLED.

To recover for the intentional infliction of emotional distress, a plaintiff must establish (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 defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981). Fleming v. Rose, 338 S.C. 524, 536-37, 526 S.E.2d 732, 739 (Ct. App. 2000).

The court determines, from the materials before it, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. See McSwain v. Shei, 304 S.C. 25, 402 S.E.2d 890 (1991). See also Andrews v. Piedmont Air Lines, 297 S.C. 367, 377 S.E.2d 127 (Ct. App. 1989) (question of whether defendant's conduct may be reasonably regarded as so extreme and outrageous as to allow recovery for outrage is question for court to determine). The majority of cases finding outrageous conduct generally require "hostile or abusive encounters" or "coercive or oppressive conduct." See Gattison v. South Carolina State College, 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995); Wright v. Sparrow, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989).

Here, there is no evidence of any hostile or abusive encounter with Respondent Charlotte Collier or any suggestion of coercive or oppressive conduct. There are no facts to establish the conduct of Charlotte Collier was so extreme and outrageous as to constitute intentional infliction of emotional distress. Instead, Charlotte Collier did as any good mother would do in a civilized society; she noted the inappropriateness of the relationship between her daughter and a much older man and did what she could to protect her child. The facts alleged fall short of conduct that exceeds all possible bounds of decency.

V. SOUTH CAROLINA DOES NOT RECOGNIZE A CAUSE OF ACTION FOR
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS UNDER THE FACTS AS
PLEAD.

The seminal case in South Carolina regarding negligent infliction of emotional distress is Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985). In Kinard v. Augusta Sash & Door Co., the South Carolina Supreme Court adopted the cause of action for negligent infliction of emotional distress with the following elements: (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony. Stewart v. State Farm Mut. Auto. Ins. Co., 341 S.C. 143, 154, 533 S.E.2d 597, 603 (Ct. App. 2000) (citing Kinard v. Augusta Sash & Door Co., 286 S.C.

579, 582–83, 336 S.E.2d 465, 467 (1985)). The South Carolina Supreme Court has strictly limited this cause of action to the “bystander liability” scenario. Id.

The Plaintiff in this case cannot meet any of the elements of this cause of action and this is far from the “bystander liability” scenario. The trial court correctly dismissed this claim.

VI. THE COMPLAINT FAILS TO STATE A CLAIM FOR CIVIL CONSPIRACY.

The Appellant pled that Charlotte Collier individually and collectively with the other Respondents were joint and several tortfeasors conspiring together to injure the Appellant. The Appellant does not include any allegations of fact or damages in support of his purported civil conspiracy cause of action that are different from the elements that he attempts to establish for his other purported causes of action.

To state a claim for civil conspiracy the Appellant must show:

(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. See *Charles II*, 199 S.C. at 176, 18 S.E.2d at 727; *Charles I*, 192 S.C. at 101, 5 S.E.2d at 472; see also 16 Am. Jur. 2d *Conspiracy* § 53 (2020) (enumerating the prevailing elements of a claim for civil conspiracy recognized in most jurisdictions); 15A C.J.S. *Conspiracy* § 4 (2012) (same). By doing so, we are returning not only to our historical roots, but also to the traditional elements of a civil conspiracy claim as they have been similarly defined by the majority of jurisdictions.

Paradis v. Charleston Cty. Sch. Dist., No. 28030, 2021 S.C. LEXIS 56, at *16-17 (May 19, 2021)

The Appellant does not allege any facts in connection with this cause of action. The Appellant has failed to allege an unlawful act by the Respondent Charlotte Collier. Even

if Appellant were to plead this cause of action properly, if her defamation claim fails so does her civil conspiracy claim. As “In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009).⁴

The Appellant does not plead any actions apart from the actions giving rise to his other claims. He does not plead any damages different from what he alleges in relation to his other claim. The fact that there are multiple Defendants does not in and of itself give rise to a claim for Civil Conspiracy.

VII. THE TRIAL COURT PROPERLY DISMISSED THE CASE WITH PREJUDICE
SINCE AMENDMENT WOULD BE FUTILE.

The Appellant has not filed a motion to amend in this case. This argument addresses whether amendment if requested would have been appropriate in lieu of dismissal of the Complaint with prejudice.⁵ [A] trial court may deny a motion to amend if the amendment would be clearly futile. See Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) (“Although leave to amend should generally be ‘freely given,’ . . . it may be denied where the proposed amendment would be futile.”),

⁴ The court in *Paradis*, decided since this order, has done away with the requirement of special damages. It does not address the requirement of separate wrongful acts.

⁵ Appellant argues that he has in fact requested leave to amend his Complaint because it is in the prayer for relief of his Complaint. Respondent submits this is not a substitute for a written or oral motion.

rev'd on other grounds, 401 S.C. 1, 736 S.E.2d 242 (2012); Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 182-83, 826 S.E.2d 585, 589 (2019)

While the court's consideration of Respondent Charlotte Collier's 12(c) motion is limited to the pleadings, the consideration of a Motion to Amend does not have the same constraints. The Appellant has filed three lengthy memoranda in opposition to dismissal without ever making any mention of how an amendment could cure a defect in the pleadings, or why that amendment would not be futile. Additionally Plaintiff has filed 76 pages of exhibits and six affidavits with exhibits with numerous emails and texts as attachments since the filing of the Motion to Dismiss. Nothing in the volumes of documents filed has would change or expound upon the allegations in the complaint as they pertain to Charlotte Collier. The Defendant contends that even if this information --- most of which consists of irrelevant insults to the character of Ms. Collier and her daughter Hannah --- were true, Appellant's Complaint would still fail to state a claim.⁶ Appellant's Complaint accurately pleads the statement he contends to be defamatory. This statement fails the legal test.

Plaintiff's other claims also fail on legal grounds. The Plaintiff's claims do not meet the legal criteria for outrage or intentional infliction of emotional distress. These are questions of law for the court. There are no facts set forth in the hundreds of pages of documents filed by the Plaintiff that would change this. Amendment would be futile and is not required.

⁶ Most of the affidavits as they pertain to Charlotte Collier insult her apparel and refer to his daughter as awkward and immature. None of them advance the Plaintiff's claims.

The only amendment suggested by the Appellant is in reference to his claim for civil conspiracy. (Plaintiff's Motion to Reconsider filed August 28, 2020 p. 14) Appellant requests the court allow him to amend to insert the word "special" in his Complaint with regard to damages. Appellant's claim for civil conspiracy cannot be cured with this amendment. In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim. Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981) (dismissing plaintiff's civil conspiracy claim because "the [civil conspiracy] action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy [were] plead"); Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) ("Because [the third party plaintiff] . . . merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."); Doe v. Erskine Coll., No. 8:04-23001RBH, 2006 U.S. Dist. LEXIS 35780, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (granting defendant's motion for summary judgment on plaintiff's civil conspiracy action because "the Complaint does not plead specific facts in furtherance of the conspiracy; instead the Complaint simply restates alleged wrongful acts pled in relation to the plaintiff's other claims for damages."); James v. Pratt & Whitney, 126 Fed. Appx. 607, 613 (D.S.C. 2005) ("If appellant failed to allege facts for his civil

conspiracy claim separate and distinct from his other two claims, then his civil conspiracy claim would fail under Todd."). Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct. App. 2009).

The Complaint in this case contains 215 allegations. As is evident, it contains a plethora of detail most of which is irrelevant and negatively impacts Appellant's claims. The before the trial court was not whether there were insufficient facts to support the causes of action plead. The trial court dismissed the Appellant's claims because under the abundance of facts pled, those claims failed on legal grounds.

While the Respondent Charlotte Collier did not file any documents or request her motion be heard beyond the scope of the pleadings the Appellant and Hannah Collier filed documents. As stated, the content of the text messages Appellant filed would be disconcerting to any parent. The most disconcerting of the text messages was not filed by Appellant but by Hannah Collier. This text message purports to be from Appellant to Hannah Collier and states as follows:

Here is your letter to wake up to, Princess [heart emoji] Btw, you fell asleep on my shoulder tonight which was really special to me. I can't tell you how much you mean to me. I had one of the best days of my life. I really enjoyed just getting to ride with you, and chat with you and laugh with you. I enjoyed that so much. And then to get to hold your hand, and go ice-skating and eat dinner with your family, and have you fall asleep on my shoulder crated some really special memories for me. But tomorrow, (which is actually today now [smile emoji]) Is going to create even more special memories that I will remember and cherish forever. I can honestly say without a doubt that you are the most amazingly special person to ever by in my live. I love you **even longer**, Sweet Princess! Forever **and ever**! Sweet dreams! [love and smiley and heart and tree and kiss blowing emojis] (Emphasis in original)

There is no way to amend the Complaint to state a claim for defamation, outrage, negligent infliction of emotional distress or civil conspiracy under the facts as pled in the Complaint. The documents outside the pleadings that appellant and others have submitted to the court put an exclamation point on the conclusion that there is no legal cognizable claim for Appellant under these facts regardless of amendment.

CONCLUSION

The Respondent Charlotte Collier requests that this court affirm the dismissal with prejudice of Appellant's Complaint.

CLAWSON and STAUBES, LLC

s/ Amy M. Snyder
Amy M. Snyder
Bar No.: 7968
1000 E North Street, Suite 200
Greenville, South Carolina 29601-3106
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: asnyder@clawsonandstaubes.com
Attorney for Respondent Charlotte Collier

May 21, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Alex Kinlaw, Circuit Court Judge

Case No.: 2020-CP-23-01213
Appellate Case No: 2020-001525

RECEIVED

Jul 08 2021

SC Court of Appeals

James Earl Tegeler.....Appellant

v.

Charlotte Collier, Hannah Elizabeth Collier, Linda Smith, Northgate Baptist
Church..... Respondents

**INITIAL BRIEF OF THE RESPONDENTS, HANNAH ELIZABETH COLLIER AND
LINDA SMITH**

Daniel R. Hughes
DUGGAN & HUGHES, LLC
(SC Bar #72547)
457-B Pennsylvania Avenue
P. O. Box 449
Greer, SC 29652-0449
Telephone: (864) 334-2500
Facsimile: (864) 879-0149
ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

Table of Authorities	iv
Statement of Issue on Appeal	1
I. THE TRIAL COURT PROPERLY GRANTED RESPONDENT HANNAH ELIZABETH COLLIER'S AND LINDA SMITH'S MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(C) BECAUSE APPELLANT'S COMPLAINT FAILS TO RAISE ANY ISSUES OF FACT THAT WOULD ENTITLE HIM TO RELIEF IF RESOLVED IN HIS FAVOR.	
Statement of the Case	1
Facts	2
Standard of Review	5
Argument	7
Conclusion	16

TABLE OF AUTHORITIES

CASES

<i>Williams v. Condon</i> , 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct.App.2001)	5
<i>Doe v. Marion</i> , 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)	5
<i>Chestnut v. AVX Corp.</i> , 413 S.C. 224, 776 S.E.2d 82 (2015)	6
<i>Sapp v. Ford Motor Co.</i> , 386 S.C. 143, 687 S.E.2d 47 (2009)	6
<i>Russell v. City of Columbia</i> , 305 S.C. 86, 406 S.E.2d 338 (1991)	6
<i>Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.</i> , 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013)	6
<i>Falk v. Sadler</i> , 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000)	6
<i>Erickson v. Jones St. Publishers, L.L.C.</i> , 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006)	8
<i>Garrard v. Charleston Cty. Sch. Dist.</i> , 429 S.C. 170, 198, 838 S.E.2d 698, 713 (Ct. App. 2019)	8
<i>Parrish v. Allison</i> , 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007)	10, 12
<i>Holtzscheiter v. Thomson Newspapers, Inc.</i> , 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998) ...	11, 12
<i>Constant v. Spartanburg Steel Products, Inc.</i> , 316 S.C. 86, 447 S.E.2d 194, 196 (1994)	13
<i>Johns v. Amtrust Underwriters, Inc.</i> , 996 F. Supp. 2d 413, 420 (D.S.C. 2014)	13
<i>Hansson v. Scalise Builders of S.C.</i> , 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007)	14
<i>Cowburn v. Leventis</i> , 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005)	14
<i>Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp.</i> , 358 S.C. 460, 470, 596 S.E.2d 51, 56–57 (2004)	14
<i>Lyon v. Sinclair Refining Co.</i> , 189 S.C. 136, 200 S.E. 78 (1938)	15
<i>Lee v. Chesterfield General Hosp., Inc.</i> , 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986)	15
<i>Island Car Wash, Inc. v. Norris</i> , 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987)	15
<i>Pye v. Estate of Fox</i> , 369 S.C. 555, 566–67, 633 S.E.2d 505, 511 (2006)	15
<i>Kinard v. Augusta Sash & Door Co.</i> , 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985)	16

RULES

Rule 12(c), <i>SCRCP</i>	1, 6, 7, 14, 15, 16
Rule 12(b)(6), <i>SCRCP</i>	1, 6
Rule 56, <i>SCRCP</i>	6
Rule 59(e), <i>SCRCP</i>	1
Rule 60(b), <i>SCRCP</i>	1

RECEIVED

Jul 08 2021

SC Court of Appeals

STATEMENT OF ISSUES ON APPEAL

- I. **DID THE TRIAL COURT PROPERLY GRANT RESPONDENT HANNAH ELIZABETH COLLIER'S AND LINDA SMITH'S MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(C) BECAUSE APPELLANT'S COMPLAINT FAILS TO RAISE ANY ISSUES OF FACT THAT WOULD ENTITLE HIM TO RELIEF IF RESOLVED IN HIS FAVOR? YES**

STATEMENT OF THE CASE

On February 25, 2020, Appellant James Earl Tegeler ("Appellant") filed a Complaint against the Respondents Charlotte Collier ("C. Collier"), Hannah Elizabeth Collier ("H. Collier"), Linda Smith ("Smith"), and Northgate Baptist Church ("Northgate"). In the 215 paragraph Complaint, Appellant asserts the following four (4) causes of action against the Respondents, C. Collier, H. Collier, and Smith: defamation, negligent infliction of emotional distress, intentional infliction of emotional distress, and civil conspiracy. On March 30, 2020, H. Collier and Smith filed their initial Answer. On April 27, 2020, H. Collier and Smith filed an Amended Answer and Motion to Dismiss pursuant to Rule 12(c), *SCRPC* and/or Rule 12(b)(6), *SCRPC*. On August 17, 2020, H. Collier and Smith filed a Memorandum in Support of their Motion to Dismiss.

On August 18, 2020, a hearing was held before the Honorable Alex Kinlaw, Jr. Counsel for all parties appeared and presented oral arguments. By Form 4 Order filed August 18, 2020, and by formal Order filed September 8, 2020, this Court dismissed the Complaint against H. Collier and Smith pursuant to Rule 12(c), *SCRPC*. Prior to the issuance of the formal Order, Appellant filed a Motion for Reconsideration on August 28, 2020 along with numerous affidavits that were untimely filed and an Amended Motion for Reconsideration on September 14, 2020 pursuant to Rule 59(e) and Rule 60(b), *SCRPC* asserting arguments not raised at the hearing.

On September 14, 2020, Appellant filed an Amended Motion for Reconsideration to Alter or Amend the Judgment and Motion for Relief from Judgment which contained additional untimely exhibits and waived arguments. On October 9, 2020, H. Collier and Smith filed a Reply to Appellant's Amended Motion to Reconsider. On November 10, 2020, the lower court issued an Order denying Appellant's Amended Motion for Reconsideration as to H. Collier and Smith.

On November 19, 2020, Appellant filed a Notice of Appeal. H. Collier and Smith submit their response to Appellant's Brief as to the matters related to H. Collier and Smith.¹

FACTS

H. Collier, an eighteen (18) year old student, was a member of a worship team led by the Appellant, a 50+ year old male and an employee of Northgate Baptist Church. (Pl.'s Comp. ¶¶ 21, 25). Appellant formed a mentor relationship with H. Collier, (Pl.'s Comp. ¶ 27), and the following is a summary of Appellant's action pursuant to this so-called mentor relationship as described by the Complaint: (1) giving financial gifts and presents to H. Collier and her family (Pl.'s Comp. ¶ 18 and 31); (2) inviting H. Collier and her family to family gatherings and activities (Pl.'s Comp. ¶ 31); (3) discussing with her deeply personal issues regarding her mental illness, self-development, self-esteem, self-perception, anger management, anxiety, separation anxiety, eating disorder, self-inflicting physical harm, coping with a previous sexual assault, and ongoing psychological treatment (Pl.'s Comp. ¶ 38); (4) having others in the Church notice H. Collier being expressive and affectionate toward the Appellant. (Pl.'s Comp. ¶ 42, 43); (5) attempting to "redirect" the anger of H. Collier (Pl.'s Comp. ¶ 45); (6) receiving text messages from H. Collier "expressing daughterly affection" toward Appellant (Pl.'s Comp. ¶ 64); and, (7)

¹ The legal issues, arguments, and interests of H. Collier, Smith and Charlotte Collier have been the same through the course of this litigation. H. Collier and Smith hereby incorporate the legal issues and arguments raised in Charlotte Collier's Initial Brief to the extent they are not inconsistent with their legal issues and arguments.

inviting H. Collier to a family birthday party and correcting a violation of Appellant's cell phone rules (Pl.'s Comp. ¶ 59).²

On March 12, 2018, after the foregoing events, H. Collier and her mother, C. Collier, met in private with the head pastor of Northgate Baptist Church, Dr. Barry Jimmerson. (Pl's Comp. ¶ 63). H. Collier informed Dr. Jimmerson that she believed Appellant's conduct and relationship with her was "inappropriate." (Pl.'s Comp. ¶ 59) (hereinafter the "Statement"). According to Appellant's Brief, it was this "insidious language," which was made in private with the pastor of Northgate, that caused Appellant to be terminated from his position as a music minister and ruin his life.

In response to Dr. Jimmerson's questions about the relationship, H. Collier denied that the relationship was sexual or romantic. (Pl's Comp. 60-61). H. Collier denied to Dr. Jimmerson that (1)...she had any romantic interest, romantic feelings, romantic aspirations, or any of the above toward Appellant; (2) that she did not believe Appellant had any romantic interest, romantic feelings, romantic aspirations toward, or any of the above toward her; and, (3) that she never had any sexual, or intimate relations with Appellant. (Pl's Comp. ¶¶ 60-61).

On March 13, 2018, Appellant met with Jimmerson and other staff members at a staff meeting and reported that his mentorship role with H. Collier had deteriorated in a drastically short period of time. (Pl's Comp. ¶ 63). At this meeting, Appellant shared a text message from H. Collier with Dr. Jimmerson and other staff members in which H. Collier expressed daughterly affection and respect towards Appellant as a mentor. (Pl's Comp. ¶ 64). On March 14, 2018, Appellant had a meeting with Dr. Jimmerson and Laurel Shaler, the chairman of Northgate's personnel committee, in which Dr. Jimmerson shared with Appellant his previous conversations

² If the Court were to allow consideration of the Appellant's Affidavit filed after the lower Court's order in this case, said Affidavit and the accompanying Exhibits, including the text messages attached thereto, provide further proof that the relationship was inappropriate. (See Tegeler Aff. filed August 28, 2020).

with H. Collier and C. Collier. (Pl.’s Comp. ¶ 66). Dr. Jimmerson admitted to Appellant and Shaler that he did not believe Appellant’s mentorship of H. Collier or the text message from H. Collier to Appellant supported or warranted the allegation that Appellant had an inappropriate relationship with H. Collier. (Pl.’s Comp. ¶ 68). However, according to the Appellant, Laurel Shaler perceived the text message from Appellant to H. Collier that Appellant showed to Shaler, was indicative of Appellant having a sexual relationship with H. Collier. (Pl.’s Comp. 72).

Ms. Shaler also alleged that Appellant had inappropriate contact with young girls *other than* H. Collier. (Pl.’s Comp. ¶ 74). Based upon Shaler’s accusation that the Appellant had inappropriate contact with young girls, Dr. Jimmerson and a parishioner of the Church also believed Appellant had inappropriate contact with young girls in the congregation and Shaler presented Northgate’s view of H. Collier as a “child, minor or both outright accusing [Appellant] being akin to a pedophile and child molester on baseless grounds (Pl.’s Comp. ¶ 93, 96). Subsequent to a vote of “no confidence” by the Church, Ms. Shaler asked for Appellant’s resignation and presented a separation agreement for Appellant to sign. (Pl.’s Comp. ¶¶ 95, 97).

As to Smith, Appellant’s allegation against her was that on March 12, 2018, Smith “promulgated to third parties inside and outside the congregation of Defendant CHURCH the allegations of C. Collier and H. Collier” that Appellant had an inappropriate relationship with H. Collier based upon Appellant’s inappropriate behavior at a family-friendly social event. (Pl.’s Comp. ¶ 83). And then, based upon this portrayal by H. Collier, C. Collier, and Smith, Shaler and other church members shunned the Appellant. (Pl.’s Comp. ¶ 84).³

Appellant’s Complaint fails to identify the actual statement(s) made by Smith or any of the alleged third parties. Appellant attempted to rescue his failure to identify who or what was

³ Appellant’s Brief (p. 11, 2nd ¶) says that Smith was involved in the meeting between H. Collier, C. Collier, and Jimmerson, citing Pl.’s Comp. ¶ 83-84. That is not what ¶ 83 and 84 allege. Furthermore, Appellant’s Brief (p. 5, 1st ¶) says Smith reported Appellant to Northgate, citing ¶59-62 of the Complaint. Again, that is not what the Complaint states and is not supported by any other statements or documents.

said by Smith by filing Affidavits after the issuance of the Order dismissing his case. Notwithstanding that these Affidavits are not properly before the Court, none of the Affidavits indicate that what was said by H. Collier or Smith led to Appellant's termination. The Affidavit of Roy Sabean says that Linda Smith called him after Appellant was fired to tell him Appellant had an inappropriate relationship with H. Collier. (Sabean Aff. ¶¶ 11-12). The Affidavit of Sue Lutz says that her friend, "Judy," told her that Linda Smith said that Appellant had an inappropriate relationship with H. Collier after Appellant was fired. (Lutz Aff. ¶ 14). Both Affidavits indicate that neither Affiant believed Smith nor put any credibility in Smith's statement. Also, neither Affidavit says that Smith stated nor even implied that the relationship was sexual.

As a result of the foregoing, there is no factual dispute that H. Collier ever told or even insinuated to Dr. Jimmerson that Appellant had an inappropriate sexual relationship with H. Collier and there is no factual dispute that Jimmerson ever believed the nature of the relationship was sexual. Additionally, there is no factual dispute that Smith told anyone that the relationship was sexual in nature and there is no factual dispute that the people she told believed the relationship was sexual. Rather, according to Appellant, the Church misinterpreted the Statement, and failed to properly investigate the Statement, which led to his termination. H. Collier and Smith cannot be held liable for others misinterpretation of the Statement.

STANDARD OF REVIEW

On review of a motion to dismiss on the pleadings, the appellate tribunal applies the same standard of review that was implemented by the trial court as to Rule 12(b)(6) or Rule 12(c), SCRCF. *See Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct.App.2001); *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

On appeal from the grant of a motion to dismiss for failure to state facts sufficient to constitute a cause of action, appellate courts are concerned only with whether the allegations of the complaint, which must be accepted as true, state a cause of action. Rule 12(b)(6), *SCRCP*; *Chestnut v. AVX Corp.*, 413 S.C. 224, 776 S.E.2d 82 (2015).

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Rule 12(c), *SCRCP*. A judgment on the pleadings shall be granted “where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff’s favor.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). *Home Builders Ass’n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

Rule 56, SCRCP

Appellant devotes an entire section of his brief to Rule 56, *SCRCP*; however, Rule 56, *SCRCP* does not apply because the Court made its ruling pursuant to Rule 12(c), only, and did not consider any evidence outside of the Complaint.

Rule 60, SCRCP

Appellant devotes another section of his brief to Rule 60, *SCRCP*. While Appellant did file a Motion to Alter or Amend the Judgment pursuant to Rule 60 along with its Motion to Reconsider pursuant to a Rule 59(e) motion, the Rule 59(e) motion is the proper rule when timely filed because it allows the Court to reconsider all matters considered in its decision on the merits. A review pursuant to Rule 60(b) is limited to one of the five (5) reasons listed under

Rule 60(b). None of the five (5) reasons apply, but in any event, a review under Rule 60(b) would be limited to a review of Rule 60, only. Since the Court did not review the motion pursuant to Rule 60, this argument is moot, and furthermore, such limited review would actually be to Appellant's detriment.

Amendment of the Appellant's Pleadings

Appellant discusses at length how he should be entitled to Amend his Pleadings. Appellant never filed a Motion to Amend his Complaint, and therefore, the issue is waived and not properly before this Court. Furthermore, as set forth in the Brief of C. Collier, Appellant has been allowed to submit voluminous briefs, exhibits, and affidavits in support of his Complaint and in opposition to the Respondents' motions. If there was any error on the part of the lower court to not allow the Appellant *sua sponte* to amend his pleadings, any error was harmless. The Appellant has had his opportunity to fully plead his case, and he failed.

ARGUMENT

I. THE TRIAL COURT PROPERLY GRANTED RESPONDENT HANNAH ELIZABETH COLLIER'S AND LINDA SMITH'S MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(C) BECAUSE APPELLANT'S COMPLAINT FAILS TO RAISE ANY ISSUES OF FACT THAT WOULD ENTITLE HIM TO RELIEF IF RESOLVED IN HIS FAVOR.

The Appellant's asserted causes of action for (A) Defamation, (B) Intentional Infliction of Emotional Distress, (C) Negligent Infliction of Emotional Distress, and (D) Civil Conspiracy fail pursuant to Rule 12(c), SCRCF. Each cause of action fails under Rule 12(c), *SCRCF*.

(A) Defamation

To recover for defamation, the Appellant must prove, that there was: (1) a false and defamatory statement made; (2) the unprivileged publication was made to a third party; (3) the

publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006).

The allegations of Plaintiff’s Complaint fail to meet the elements of defamation. The statement was true and not defamatory; the statement was privileged; there was no fault in publishing the statement; and, the statement is not actionable itself or special harm caused by the publication.

Furthermore, Appellant’s allegations as to Smith was that she told unidentified third parties that Appellant had an inappropriate relationship with H. Collier. The Complaint fails to allege what Smith said, who the “hearers” of the statement(s) were, or that what Smith did caused any damage to Appellant.

Opinion Statement

As an initial matter, the Court must address whether or not the Statement was fact or opinion. An opinion statement cannot be defamatory. Our courts have held that facts are statements that can be proven true or false; by contrast, opinions are matters of belief or ideas that cannot be proven one way or the other. Moreover, because a statement must be false to be defamatory, a statement of opinion cannot form the basis of a defamation claim because it cannot be proven true or false. Specifically, under the First Amendment, there is no such thing as a false idea. *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 198, 838 S.E.2d 698, 713 (Ct. App. 2019).

H. Collier’s and Smith’s statement that they believed the relationship described in the Complaint between an 18 year old and 50+ year old worship leader to be inappropriate is an opinion. It can be neither true nor false and thus cannot form the basis of a defamation claim.

Nevertheless, even if the statement were deemed to be factual, it does not qualify as a defamatory statement.

True Statement

If the Statement was not an opinion, then it was true. H. Collier's statement to Dr. Jimmerson and Smith's alleged statement to a third party that Plaintiff had an inappropriate relationship with her were true. As set forth above in Respondents' statement of facts, the following is a summary of what actions Appellant took pursuant to this so-called mentor relationship as described by the Complaint: (1) giving financial gifts and presents to H. Collier and her family (Pl.'s Comp. ¶ 18 and 31); (2) inviting H. Collier and her family to family gatherings and activities (Pl.'s Comp. ¶ 31); (3) discussing with her deeply personal issues regarding her mental illness, self-development, self-esteem, self-perception, anger management, anxiety, separation anxiety, eating disorder, self-inflicting physical harm, coping with a previous sexual assault, and ongoing psychological treatment (Pl.'s Comp. ¶ 38); (4) having others in the Church notice H. Collier being expressive and affectionate toward the Appellant. (Pl.'s Comp. ¶ 42, 43); (5) attempting to "redirect" the anger of H. Collier (Pl.'s Comp. ¶ 45); (6) receiving text messages from H. Collier "expressing daughterly affection" toward Appellant (Pl.'s Comp. ¶ 64); and, (7) inviting H. Collier to a family birthday party and correcting a violation of Appellant's cell phone rules (Pl.'s Comp. ¶ 59).

H. Collier filed an Affidavit on August 17, 2020 with attached text messages from the Appellant. These texts, along with the texts filed by the Appellant on August 28, 2020, provide additional proof outside of the four (4) corners of the Complaint that the relationship was inappropriate. For example, Appellant texted H. Collier as follows:

Hey Princess. While I'm falling asleep I was thinking of you and how thankful I am to have you in my life....I love you so much and I can't wait for our first family Christmas together! You're a sweetie pie and a cutie pie all mixed into

one amazing person. I'm so proud to have you in my life, and I can't get enough of ya!! I'll snap you in the Am! I love you my sweet, awesome Ninja Princess Daughter!!!

Here is my letter to wake up to, Princess (heart emoji) Btw, you fell asleep on my shoulder tonight which was really special to me. I can't tell you how much you mean to me. I had one of the best days of my life. I really enjoyed just getting to ride with you, and chat with you and laugh with you. I enjoyed that so much. And then to get to hold your hand, and go ice-skating, and eat dinner with your family, and have you fall asleep on my shoulder created some really special memories for me....

Hannah. Princess. Sweetie Pie. I love you....I promise to never stop loving you. Ever. You are the sweetest, most precious thing that's ever happened in my life, other than my children being born. That's you baby girl. I hope you know how special you are to me. Sometimes I hold your blanket that here and close my eyes and smell your smell, and hope that when I open my eyes you are here.

Based upon the foregoing, and the texts from Appellant to H. Collier, the relationship was inappropriate and the statement was true.

Not a Defamatory Statement

The Statement does not qualify as a defamatory statement. A defamatory statement is (1) either defamatory *per se* or defamatory *per quod* and (2) actionable *per se* or not actionable *per se*. A defamatory statement *per se* has a defamatory meaning apparent on its face, and therefore, susceptible to only one meaning. A defamatory statement *per quod* has a defamatory meaning through referring to facts or circumstances beyond the statement itself or innuendo. *Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007).

Plaintiff's entire Complaint is premised on the Statement meaning that Appellant had a sexual relationship with H. Collier. Appellant cites numerous definitions in her Complaint about the definition of "inappropriate contact" and "inappropriate relationship." However, Appellant concedes that the Statement is not a defamatory statement on its face because he admits that H. Collier denied that the relationship was sexual, but when the Statement was conveyed by Dr. Jimmerson to Shaler, it was then misinterpreted to mean something worse. (Pl's Comp. ¶ 72, 74,

93, and 96). Therefore, “[i]f the defamatory meaning is not clear unless the hearer knows the facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*.”

In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself to prove a defamatory meaning on innuendo. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998). A statement is classified as "defamatory per quod" when the defamatory meaning is not clear unless the hearer knows facts or circumstances not contained in the statement itself, and the plaintiff must introduce extrinsic facts to prove the defamatory meaning. *Erickson v. Jones Street Publishers, L.L.C.*, 629 S.E.2d 653 (S.C. 2006).

Plaintiff cannot get around his admission in his Complaint that Dr. Barry Jimmerson, the “hearer” of the statement, did not believe Plaintiff engaged in a sexual or romantic relationship with Hannah Collier and his admission that Hannah Collier denied to Dr. Jimmerson that the relationship was romantic sexual. The Appellant’s cause of action for defamation ends here – even before you analyze the defenses of opinion, truth, and qualified privilege. If Dr. Jimmerson did not believe the Statement meant that the Plaintiff had a sexual relationship with H. Collier, then Plaintiff cannot prove that Dr. Jimmerson knew facts or circumstances to support the alleged defamatory meaning.

Furthermore, based upon the foregoing, the Court correctly decided this issue as a matter of law, and it was not necessary for this issue to go before a jury.

Defamatory Statement Not Actionable *Per Se*

In addition to being defamatory *per se* or *per quod*, “[a] separate issue is whether the statement is ‘actionable *per se*’ or not. This issue is one of pleading and proof, and is always a question of law for the court.” *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502. If the

defamation is actionable *per se*, the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice and special damages. *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502.

“Slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession.” *Id.* at 511, 506 S.E.2d at 502. “In all other cases-namely, when slander does not fall into the above-named categories-special damages must be established.” *Id.* at 526, 506 S.E.2d at 510 (Toal, J., concurring). *Parrish v. Allison*, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007).

Therefore, if the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice, that is “the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff's reports.” *Holtzscheiter*, 332 S.C. 502, 510, 506 S.E.2d 497, 502.

By Appellant's own admission, subsequent to March 12, 2018, the Statement was misinterpreted by the Church to mean that Appellant had a sexual relationship with Appellant. A statement's meaning based upon a misinterpretation of the same cannot be actionable *per se* because it does not directly charge the Appellant with one of the five characteristics or acts. Therefore, since the Statement is not actionable *per se*, the Appellant must prove actual malice.

Appellant fails to present facts that support a finding of actual malice. By Appellant's own admission, the Statement was made in private by a member of the Church, H. Collier, to the head pastor, Dr. Jimmerson. As to Smith, even if the Court were to consider the Affidavits submitted after the Court's Order, the Statement was made to two individuals after Appellant

was terminated who did not believe that Appellant had a sexual relationship with H. Collier. The facts pled do not provide evidence of ill will by H. Collier or Smith, a desire to purposely injure the Appellant with the Statement, or to publish the Statement with reckless disregard towards Appellant.

In summary, the Statement is not defamatory. It is not defamatory *per se* or *per quod*, neither was it actionable *per se* or made with malice. And the lower Court properly made this determination as a matter of law. This is not an issue for the jury.

Qualified Privilege and No Fault in Publication

The Statement is subject to a qualified privilege. If the qualified privilege exists, the claim will fail unless the plaintiff can prove actual malice. *Constant v. Spartanburg Steel Products, Inc.*, 316 S.C. 86, 447 S.E.2d 194, 196 (1994). A qualified privilege is defined as “[a] communication made in good faith on any subject matter in which the person communicating has an interest or duty ... if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable.” *Id.* To maintain the privilege, “[t]he publisher must not wander beyond the scope of the occasion.” *Id.* *Johns v. Amtrust Underwriters, Inc.*, 996 F. Supp. 2d 413, 420 (D.S.C. 2014).

In this case, the Statement was made in good faith, with proper motives, in private, and to the proper party – Appellant’s supervisor, Dr. Jimmerson. Therefore, it qualifies as a privileged communication. It is reasonable that a member of the Church would go to the pastor or other authority within the Church to report behavior they believed was inappropriate, especially when Appellant was in position of authority over H. Collier.

Therefore, because the alleged defamatory statement is privileged, Appellant must prove the statement was made with actual malice. As set forth above, Appellant fails to plead facts sufficient to meet the standard that the Statement was made with actual malice.

Based upon the foregoing, Appellant's cause of Defamation must be dismissed pursuant to Rule 12(c), *SCRCP*.

(B) Intentional Infliction of Emotional Distress

To recover for intentional infliction of emotional distress, the complaining party must establish that (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 and outrageous" so 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 the defendant caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007).

H. Collier made the Statement to Dr. Jimmerson in private and advised Dr. Jimmerson that she did not want Appellant to get in trouble. Again, according to Appellant, Dr. Jimmerson did not believe that the relationship was sexual. Smith allegedly made the Statement to third parties. Smith did not state or imply that the relationship was sexual.

Accordingly, Appellants fails to present facts necessary to support that the Statement constitutes conduct that "exceeds all bounds of decency" or was "utterly intolerable." This cause of action also fails pursuant to Rule 12(c), *SCRCP*.

(C) Civil Conspiracy

The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005); see also *Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 56–57 (2004) ("A civil conspiracy is a combination of two or more

parties joined for the purpose of injuring the plaintiff and thereby causing special damage.”) (citation omitted). It is essential that the plaintiff prove all of these elements in order to recover. *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938).

The “essential consideration” in civil conspiracy “is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff.” *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986).

“[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987); accord *Cowburn*, 366 S.C. at 49, 619 S.E.2d at 453. *Pye v. Estate of Fox*, 369 S.C. 555, 566–67, 633 S.E.2d 505, 511 (2006).

According to the Appellant’s Complaint, “Defendant(s), and each Defendant individually and collectively as joint and several tortfeasors, have conspired together to injure Plaintiff.” (Pl’s Comp. ¶ 213). Appellant’s Complaint then states that “each Defendant individually and collectively as joint and several tortfeasors, have caused Appellant damages.” (Pl’s Comp. ¶ 214). Appellant’s blanket statements of a civil conspiracy do not constitute facts sufficient to create such a cause of action. Appellant’s allegations do not specify how Smith and H. Collier conspired with each other or any other party for the purpose of injuring Appellant. Therefore, this cause of action must be dismissed pursuant to Rule 12(c).

(D) Negligent Infliction of Emotional Distress

To prove a cause of action for negligent infliction of emotional distress with the following elements, the Appellant must prove that (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity

to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985).

This cause of action is limited to bystander recovery involving some type of accident, which does not apply to the facts of this case. Therefore, this cause of action must be dismissed pursuant to Rule 12(c), *SCRCP*.

CONCLUSION

Based upon the foregoing, Respondents Hannah Elizabeth Collier and Linda Smith ask this Court to affirm the lower court's decision.

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes

Daniel R. Hughes (SC Bar #72547)

457-B Pennsylvania Avenue

P. O. Box 449

Greer, SC 29652-0449

Telephone: (864) 334-2500

Facsimile: (864) 879-0149

Attorney for Respondents, Hannah E. Collier and
Linda Smith

July 8, 2021

PROOF OF SERVICE OF RECORD ON APPEAL FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-CP-23-01213

RECEIVED
Aug 13 2021
SC Court of Appeals

JAMES EARL TEGELER,

Appellant,

v.

CHARLOTTE COLLIER,
HANNAH ELIZABETH
COLLIER, LINDA SMITH,
NORTHGATE BAPTIST
CHURCH,

Respondents.

PROOF OF SERVICE

I certify that I have served Appellant's Record on Appeal on Respondents
CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, LINDA SMITH,
NORTHGATE BAPTIST CHURCH electronically and by depositing a copy of it in the
United States Mail, postage prepaid, or by South Carolina Supreme Court Order 2020-05-29-02,
on August 13, 2021, addressed to the attorney of record, to the following address(es):

Northgate Baptist Church
c/o Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Charles E. McDonald & S. Michael Nail
300 North Main Street
P.O Box 2757
Greenville, SC 29602

Charlotte Collier
c/o Clawson and Staubes, LLC
Amy S. Snyder
1000 East North Street
Suite 200
Greenville, SC 29601

Hannah Elizabeth Collier and Linda Smith
c/o Duggan & Hughes, LLC
Daniel R. Hughes
457-B Pennsylvania Avenue
P.O. Box 449
Greer, SC 29652

Respectfully submitted this 13 day of August , 2021 .

DICKSON DAVIS LAW FIRM, LLC

/s/ Deborah D. Davis, Esq.
Deborah D. Davis, Esq.
SC Bar No.: 102942
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT



DICKSON DAVIS LAW FIRM

NOTICE OF RECORD ON APPEAL FOR APPELLANT

August 13, 2021

Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
P.O. Box 11629
Columbia, SC 29211

RECEIVED

Aug 13 2021

SC Court of Appeals

VIA EMAIL CTAPPFILINGS@SCCOURTS.ORG

Re : Tegeler v. Collier et al.
Case No. : 2020-CP-23-01213
Appellate Case No. : 2020-001525
File Id. : 2018-01-123

Dear Clerk of Court:

Please see the enclosed Record on Appeal for Appellant.

Please let me know what further you require from me at this time. Thank you for assistance with this matter.

Respectfully submitted this 13 day of August, 2021.

/s/ Deborah D. Davis, Esq.

Deborah D. Davis, Esq.
SC Bar No.: 102942
Attorney for Appellant

cc: Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Charles E. McDonald & S. Michael Nail
300 North Main Street
P.O. Box 2757
Greenville, SC 29602
(864) 241-1813

Clawson and Staubes, LLC
Amy S. Snyder
1000 East North Street
Suite 200
Greenville, SC 29601

(864) 331-8940

Duggan & Hughes, LLC
Daniel R. Hughes
457-B Pennsylvania Avenue
P.O. Box 449
Greer, SC 29652
(864) 334-2500

ATTORNEYS FOR THE RESPONDENTS

/ddd