STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS
John Doe #1, individually, and now over the age of eighteen (18), and James Roe #1 and Jane Roe #1, as the parents and natural guardians, individually, and as the parents and natural guardians of John Doe #1 while he was under the age of eighteen (18), Plaintiffs, v. Morningstar Fellowship Church, Richard Joyner, David Yarns, Douglass Lee, Erickson Lee, Chase Portello, and unidentified defendants James Smith 1-10, Defendants.	Civil Action No. 2024-CP-46-03171 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS MORNINGSTAR FELLOWSHIP CHURCH, RICHARD JOYNER, DAVID YARNES, AND DOUGLAS LEE**

Defendants MorningStar Fellowship Church, Richard Joyner, David Yarnes (incorrectly referenced in the Complaint as "David Yarns") and Douglas Lee (incorrectly referenced in the Complaint as "Douglass Lee") (collectively, "these Defendants"), through their undersigned counsel, submit the following memorandum in support of their motion to dismiss.

INTRODUCTION

This is a sexual abuse case based on allegations of inappropriate conduct by Erickson Lee—a former volunteer leader in the youth program at MorningStar Fellowship Church ("MorningStar") in Fort Mill—toward Plaintiff John Doe #1. The Complaint alleges that Erickson Lee used his position to provide alcohol and pornography to John Doe #1 and, ultimately, to sexually exploit John Doe #1. The Complaint asserts six causes of action: (1) negligence, gross negligence, and recklessness; (2) civil conspiracy; (3) violation of Restatement

of Torts 323[1]; (4) assault and battery[2]; (5) outrage/intentional or reckless infliction of emotional distress; and (6) necessaries claim.

On October 24, 2024, these Defendants filed two documents in response to the Complaint: (1) Motion to Dismiss of Defendants MorningStar Fellowship Church, Richard Joyner, David Yarnes, and Douglas Lee (the "Motion"); and (2) Answer of Defendants MorningStar Fellowship Church, Richard Joyner, David Yarnes, and Douglas Lee. For the reasons set forth in the Motion, and as further detailed below, the Complaint should be dismissed as against these Defendants in whole or in part.

APPLICABLE LAW

"Under Rule 12(b)(6), a defendant may move to dismiss a complaint due to its failure to state facts sufficient to constitute a cause of action." Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 74, 753 S.E.2d 846, 850 (2014) (citation and quotation marks omitted). See also Green v. Richland Cty. Sch. Dist. Two, 2019-CP-40-00213, 2019 S.C. C.P. LEXIS 3029 at *2 (S.C. Com. Pl. filed Jun. 20, 2019) ("A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the nonmoving party, fail to allege sufficient facts to state a cause of action.").

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1 This cause of action is asserted only against these Defendants.

2 This cause of action is asserted only against Erickson Lee.

ARGUMENT

I. THE CAUSE OF ACTION FOR NEGLIGENCE, GROSS NEGLIGENCE, AND RECKLESSNESS SHOULD BE DISMISSED TO THE EXTENT IT PURPORTS TO ALLEGE NEGLIGENT HIRING, SUPERVISION OR TRAINING OR VIOLATES THE ECCLESIASTICAL DOCTRINE.

A. The cause of action does not properly allege a claim for negligent hiring, supervision, or training.

"In circumstances where an *employer* knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the *employer* was itself negligent in hiring, supervising, or training the employee[.]" James v. Kelly Trucking Co., 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008) (emphasis added). Pursuant to James, a cause of action for negligent hiring, supervision, or training is only available against the alleged wrongdoer's employer. In this case, however, the Complaint does not allege that an employment relationship existed between Erickson Lee and these Defendants. Accordingly, the Complaint's first cause of action should be dismissed to the extent it purports to allege negligent hiring, supervision, or training. See, e.g., Sanders v. Callender, No. 8:17-cv-01721-DKC, 2018 U.S. Dist. LEXIS 3488, at *25 (D. Md. Jan. 9, 2018) (dismissing a negligent hiring claim because "Plaintiffs have failed to allege the existence of an employment relationship"); Pierson v. Orlando Reg'l Healthcare Sys., 619 F. Supp. 2d 1260, 1286 (M.D. Fla. 2009) (dismissing a negligent hiring or supervision claim because "[t]he Amended Complaint falls short of alleging an employment relationship between [the defendant] and those whom it allegedly negligently hired and supervised").

B. The cause of action may violate the ecclesiastical doctrine.

Pursuant to the ecclesiastical doctrine, civil courts "may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration." Pearson v. Church

of God, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996). See also All Saints Par. Waccamaw v. Protestant Episcopal Church, 385 S.C. 428, 445, 685 S.E.2d 163, 172 (2009) ("[W]here a civil court is presented an issue which is a question of religious law or doctrine masquerading as a [civil] dispute . . . , it must defer to the decisions of the proper church judicatories in so far as it concerns religious or doctrinal issues."). The Complaint's first cause of action should be dismissed to the extent it violates the ecclesiastical doctrine.

II. THE COMPLAINT DOES NOT PROPERLY ALLEGE A CAUSE OF ACTION FOR CIVIL CONSPIRACY.

A claim for civil conspiracy is comprised of the following elements: "(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." Paradis v. Charleston Cty. Sch. Dist., 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). In this case, the Complaint does not allege particularized facts regarding a "combination" by these Defendants, nor does it allege particularized facts in support of a finding that these Defendants committed an unlawful act or committed a lawful act by unlawful means. See, e.g., Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 455, 814 S.E.2d 643, 656 n.9 (Ct. App. 2018) (citing Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (Ct. App. 1986), for the proposition that "even under the liberal standard applicable on a motion to dismiss, a mere conclusory allegation, unsupported by any particularized allegations of fact, is insufficient"). Moreover, the civil conspiracy cause of action merely reiterates and/or summarizes the allegations of the Complaint's other causes of action and labels them as a conspiracy. "Because [the Plaintiffs] merely realleged the prior acts complained of in [their] other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, [they are] not entitled to maintain [their] conspiracy cause of action." Kuznik v.

Bees Ferry Assocs., 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000). For these reasons, the Complaint's second cause of action should be dismissed.

III. RESTATEMENT (SECOND) OF TORTS § 323 DOES NOT CREATE A SEPARATE CAUSE OF ACTION, BUT RATHER SERVES AS A POTENTIAL BASIS FOR FINDING THAT THESE DEFENDANTS OWED A DUTY TO THE PLAINTIFFS.

In a negligence action, one of the critical elements the plaintiff must establish is the existence of a duty of care owed by the defendant. See, e.g., Chastain v. Hiltabidle, 381 S.C. 508, 519, 673 S.E.2d 826, 831 (Ct. App. 2009) ("An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff, and absent such a duty, no actionable negligence exists."). "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Hendricks v. Clemson Univ., 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). One such special circumstance is when the defendant voluntarily undertakes a duty. See, e.g., id. at 457, 578 S.E.2d at 714 ("Where an act is voluntarily undertaken, however, the actor assumes the duty to use due care.").

In Madison v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (2006), the Supreme Court quoted and adopted Section 323 of the Restatement (Second) of Torts.

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

Id. at 136, 638 S.E.2d at 657 (2006) (quoting Rest. (2d) of Torts § 323 (1965)). The court found that, under Section 323, Babcock Center owed a duty to a special needs client it had admitted

into its care and could be sued for negligently breaching that duty. See id. at 137, 638 S.E.2d at 657 ("Babcock Center voluntarily undertook the duty of supervising and caring for [Plaintiff]").

Section 323 does not create a separate cause of action, but rather serves as a potential basis for finding that a duty of care was owed. Accordingly, the Complaint's third cause of action (violation of Restatement of Torts 323) is not a discrete claim, but rather an assertion regarding the source of a duty purportedly owed to the Plaintiffs, which is an element of the Complaint's first cause of action (negligence, gross negligence, and recklessness). If the first cause of action is dismissed, the third cause of action should likewise be dismissed. To the extent the first cause of action survives, the third cause of action should be dismissed with a finding that it is subsumed within the first cause of action.

IV. THE COMPLAINT DOES NOT PROPERLY ALLEGE A CAUSE OF ACTION FOR OUTRAGE / INTENTIONAL OR RECKLESS INFLICTION OF EMOTIONAL DISTRESS, AND RECKLESS INFLICTION OF EMOTIONAL DISTRESS IS NOT RECOGNIZED IN SOUTH CAROLINA.

> [I]n order to recover for intentional infliction of emotional distress, the complaining party must establish that:
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> (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
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> (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) (citation omitted). Such claims are limited to "egregious conduct toward a plaintiff proximately caused by a defendant." Upchurch v. N.Y. Times Co., 314 S.C. 531, 536, 431 S.E.2d 558, 561 (1993)

(citation omitted). "It is not enough that the conduct is intentional and outrageous. It must be conduct *directed at the plaintiff*, or occur in the presence of a plaintiff of whom the defendant is aware." Id. (citations omitted) (emphasis added).

In this case, the Plaintiffs allege wrongful conduct by these Defendants (which these Defendants deny), but they do not allege that these Defendants targeted them or that the misconduct of these Defendants was directed specifically at or toward them. Accordingly, the Complaint's fifth cause of action should be dismissed. See, e.g., Mother Doe A v. Citadel, No. 2017-282, 2017 S.C. App. Unpub. LEXIS 314, at *3 (Ct. App. July 12, 2017) (affirming summary judgment for the defendant on the plaintiff's outrage claim because the plaintiff "did not present any evidence that [the defendant] directed any tortious conduct specifically toward her"); Roberts v. Simmons, No. 2:14-cv-02252-MGL-WWD, 2014 U.S. Dist. LEXIS 171612, at *9-10 (D.S.C. Oct. 7, 2014) ("The undersigned recommends dismissal of [the plaintiff's outrage] claim. As a preliminary matter, it is not clear that Defendant's alleged conduct was directed at the Plaintiff.").

The cause of action for outrage / intentional or reckless infliction of emotional distress also suffers from a similar deficiency as the cause of action for civil conspiracy in that it simply repackages the allegations of the Complaint's other causes of action and characterizes them as outrage. See, e.g., DeCecco v. Univ. of S.C., 918 F. Supp. 2d 471, 520 n.53 (D.S.C. 2013) (noting that "a number of [the plaintiff's] allegations of improper conduct cannot properly be relied on in support of an outrage claim because they would be actionable under another tort such as assault, battery, or defamation" and quoting Todd v. S.C. Farm Bureau Mut. Ins. Co., 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984) (for the proposition that "[t]he tort of outrage was designed

not as a replacement for the existing tort actions" but "as a remedy for tortious conduct where no remedy previously existed"). It should be dismissed on this basis as well.

Finally, to the extent the Complaint's fifth cause of action asserts a claim for reckless infliction of emotional distress, it must be dismissed because such a claim is not recognized in South Carolina. See, e.g., Awkard v. Rammelsberg, No. 4:17-cv-01542-RBH-KDW, 2018 U.S. Dist. LEXIS 168067, at *32 n.13 (D.S.C. Mar. 13, 2018) ("South Carolina does not recognize the tort of Reckless Infliction of Emotional Distress."); Smith v. Blanton, No. 8:09-cv-00789-HFF-BHH, 2009 U.S. Dist. LEXIS 34819, at *7 (D.S.C. Apr. 16, 2009) ("[A]ssuming Plaintiff is attempting to assert a claim for reckless infliction of emotional distress rather than intentional infliction, such claim must also be dismissed because the state of South Carolina does not recognize the tort of reckless infliction of emotional distress.") (citation omitted); Hernandez-Martinez v. Pyatt, No. 6:07-cv-01036-GRA-WMC, 2007 U.S. Dist. LEXIS 102436, at *14 (D.S.C. Dec. 7, 2007) ("[I]f the plaintiff's complaint is construed to assert a claim for reckless infliction of emotional distress rather than intentional infliction, such claim must also be dismissed because the state of South Carolina does not recognize the tort of reckless infliction of emotional distress.") (citation omitted).

V. THE VIABILITY OF THE CAUSE OF ACTION ENTITLED "NECESSARIES CLAIM" IS DEPENDENT ON THE VIABILITY OF OTHER CAUSES OF ACTION AND MUST BE LIMITED TO MEDICAL EXPENSES.

In Hughey v. Ausborn, 249 S.C. 470, 154 S.E.2d 839 (1967), the Supreme Court held that, in a personal injury action brought by a minor child, "the amount paid for medical care and treatment by the parent is not an element of damage and the parent has a cause of action for the recovery of the medical expenses which he has incurred for the care and treatment of such minor." Id. at 475, 154 S.E.2d at 841. However, a parental claim for medical expenses is viable

under Hughey only "[w]hen a minor receives personal injuries proximately caused by the actionable negligence, recklessness and willfulness of another[.]" Id. at 475, 154 S.E.2d at 841. In other words, it is dependent on the viability of causes of action belonging to the minor child. Accordingly, if none of John Doe #1's causes of action survive, this cause of action must be dismissed. To the extent this cause of action survives, it must—pursuant to Hughey—be limited to the recovery of medical expenses, and any claim for other damages (such as time off work, transportation costs, and other economic damages) should dismissed.

CONCLUSION

For the reasons explained above, Defendants MorningStar Fellowship Church, Richard Joyner, David Yarnes, and Douglas Lee respectfully request that the Complaint be dismissed as against them in whole or in part.

s/Curtis W. Dowling

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