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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 **MOTION TO ALTER OR AMEND OF DEFENDANTS MORNINGSTAR FELLOWSHIP CHURCH, RICHARD JOYNER, DAVID YARNES, AND DOUGLAS LEE**

TO: THE HONORABLE MARTHA M. RIVERS

TO: THE PLAINTIFFS AND THEIR ATTORNEYS, S. RANDALL HOOD, ESQUIRE AND CHAD A. MCGOWAN, ESQUIRE

YOU WILL PLEASE TAKE NOTICE that 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, hereby move for an order altering or amending the "PROPOSED ORDER DENYING DEFENDANTS MORNINGSTAR FELLOWSHIP CHURCH, RICHARD JOYNER, DAVID YARNES, AND DOUGLAS LEE'S MOTION TO DISMISS" (the "Order"), which was entered by the court and received by the undersigned on January 30, 2025. This motion is made pursuant to Rules 52(b) and 59(e), SCRCP, and on the grounds set forth herein. These Defendants believe a hearing on this motion would be beneficial and, therefore, specifically request a hearing.

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ARGUMENT

I. NEGLIGENT HIRING, SUPERVISION, AND TRAINING CLAIMS ARE LIMITED TO THE EMPLOYMENT CONTEXT.

The Order treads new legal ground in South Carolina by finding that negligent hiring, supervision, and training claims may be brought outside the employment context. The only South Carolina authority cited for this finding is Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992). The Order states that, in Degenhart, the Supreme Court "chose to take the elements of South Carolina's version of the tort directly out of the Restatement [(2d) of Torts § 317]."). Order at 8. But the Degenhart court did *not* take the elements "directly" from the restatement. To the contrary, when quoting Section 317, the court replaced all instances of the word "master" with "employer" and all instances of the word "servant" with "employee."

Restatement (2d) of Torts § 317	**Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992) (brackets in original)**
A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if (a) the servant (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or (ii) is using a chattel of the master, and (b) the master (i) knows or has reason to know that he has the ability to control his servant, and (ii) knows or should know of the necessity and opportunity for exercising such control.	Under certain circumstances, an employer is under a duty to exercise reasonable care to control an employee acting outside the scope of his employment. An employer may be liable for negligent supervision if the employee intentionally harms another when: (a) [the employee] (i) is upon the premises in possession of the [employer] or upon which the [employee] is privileged to enter only as his [employee], or (ii) is using a chattel of the [employer], and (b) [the employer] (i) knows or has reason to know that he has the ability to control his [employee], and (ii) knows or should know of the necessity and opportunity for exercising such control.

This was entirely consistent with our state's longstanding recognition that "[t]he words 'employer' and 'employee' are outgrowths of the older terms 'master' and 'servant.'" Allen v. Columbia Fin. Mgmt., Ltd., 297 S.C. 481, 488, 377 S.E.2d 352, 356 (Ct. App. 1988).

Nearly two decades after Degenhart, the Supreme Court found that a negligent supervision claim failed *specifically because the offending individual was not an employee* of the moving defendant. See Bank of N.Y. v. Sumter Cty., 387 S.C. 147, 156, 691 S.E.2d 473, 478 (2010) ("[T]his claim [negligent supervision] fails since we affirm the trial judge's ruling that [the offending individual] was not an employee of [the moving defendant]."). South Carolina law is, therefore, clear that the phrase "master-servant relationship" is synonymous with the phrase "employer-employee relationship"—the latter simply representing a modern update to older, anachronistic terminology—and that an employment relationship is a critical element of negligent hiring, supervision, and training claims. The Order should be altered or amended accordingly, resulting in dismissal of the Complaint's cause of action for negligence, gross negligence, and recklessness to the extent it alleges negligent hiring, supervision, or training because the Complaint does not allege Erickson Lee was employed by these Defendants.

II. *RESPONDEAT SUPERIOR* LIABILITY CANNOT ARISE FROM ALLEGATIONS OF SEXUAL ABUSE OR EXPLOITATION OF MINORS.

The Order finds that the Complaint asserts a viable claim for *respondeat superior* liability, citing South Carolina Insurance Co. v. James C. Greene & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986), for the proposition that the doctrine "makes a master liable to a third party for injuries caused by the tort of his servant[.]"[1] Order at 10. However, this statement of the doctrine of *respondeat superior* is incomplete. The full statement of the doctrine is that it "makes a master liable to a third party for injuries caused by the tort of his servant *committed*

[1] This is where the quote cuts off in the Order. As set forth below, the quote is incomplete.

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within the scope of the servant's employment." S.C. Ins. Co., 290 S.C. at 179, 348 S.E.2d at 621 (italics added). The italicized language—which is not included in the Order—is key. "It is well settled that the liability of the master for the torts of his servant arises only when the servant is acting about the master's business, within the scope of his employment; if he is upon his own business acting outside of his employment the master is not liable." Lane v. Modern Music, Inc., 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964). "If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time." Id. "An act falls within the scope of the servant's employment if it was reasonably necessary to accomplish the purpose of the servant's employment, and it was done in furtherance of the master's business." Wade v. Berkeley Cty., 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App. 1988).

In this case, the types of misconduct alleged against Erickson Lee—sexual abuse and exploitation of minors—were outside the scope of any employment[2] as a matter of law. Such behavior is never "reasonably necessary to accomplish the purpose of the servant's employment" or "done in furtherance of the master's business." Rather, it is "wholly disconnected with [the servant's] employment" and furthers only the servant's personal gratification. Judge Herlong so held less than eighteen months ago in a major sexual abuse case brought against parties associated with the competitive cheer industry, noting that South Carolina courts have *uniformly* held that sexual abuse is outside the scope of employment. See Doe v. Varsity Brands, LLC, No. 6:22-cv-02957-HMH, 2023 U.S. Dist. LEXIS 161233, at *19 (D.S.C. Sep. 11, 2023) ("South Carolina state courts and courts within the District of South Carolina have uniformly held that an

[2] Erickson Lee is not alleged to have been employed by any of these Defendants.

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employee's sexual misconduct falls outside the scope of employment."). Countless other courts across the country, including in South Carolina and the Fourth Circuit, have likewise so held. See, e.g.,; Lee v. Dorsey, No. 3:21-cv-04137-MGL, 2023 U.S. Dist. LEXIS 105063, at *8 (D.S.C. June 15, 2023) ("Under South Carolina law, sexual assaults fail to give rise to vicarious liability."); Doe-4 v. Horry Cty., No. 4:16-cv-03136-AMQ, 2018 U.S. Dist. LEXIS 110036, at *10 (D.S.C. July 2, 2018) ("Plaintiff's allegations relating to sexual assault and the facts presented in support of those allegations are outside the scope of [the employee's] employment."); Anderson v. United States, No. 8:12-cv-3203-TMC, 2016 U.S. Dist. LEXIS 9225, at *31 (D.S.C. Jan. 27, 2016) ("South Carolina courts have specifically considered whether an employee was acting within the scope of his employment when he commits a sexual assault. In all four cases, South Carolina courts have found that the sexual advances were outside the scope of employment.") (citing Frazier v. Badger, 361 S.C. 94, 603 S.E.2d 587 (2004); Doe v. S.C. State Budget & Control Bd., 329 S.C. 214, 494 S.E.2d 469 (Ct. App. 1997); Loadholt v. S.C. State Budget & Control Bd., 339 S.C. 165, 528 S.E.2d 670 (Ct. App. 2000); Padgett v. S.C. Ins. Reserve Fund, 340 S.C. 250, 531 S.E.2d 305 (Ct. App. 2000)); Lee v. Jones, No. 1:14-cv-04159-JMC, 2015 U.S. Dist. LEXIS 78325, at *19 (D.S.C. June 17, 2015) ("[P]ursuant to South Carolina agency law, [the employee] was not furthering his employer's interest in sexually assaulting Plaintiff."); Brockington v. Pee Dee Mental Health Ctr., 315 S.C. 214, 218, 433 S.E.2d 16, 18 (Ct. App. 1993) ("Clearly, [the employee] was acting in his individual capacity and not as an agent for the defendants when he sexually assaulted [the victim]."); Doe v. United States, 769 F.2d 174, 175 (4th Cir. 1985) (holding an employer not liable for the sexual misconduct of an Air Force social worker because he "clearly was acting for his personal gratification rather than within the scope of his employment"); Thigpen v. United States, 618 F.

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Supp. 239, 245 (D.S.C. 1985) ("[The employee's] duties did not include assaults and batteries on children. He was not furthering his master's employment when he sexually assaulted [the victims]. Instead, he was furthering his own self-interest. . . . Therefore, plaintiffs' claims are barred because his conduct was not within the scope of his employment."); Doe v. United States, 618 F. Supp. 71, 74 (D.S.C. 1985) ("[T]he [sexually inappropriate] acts of the government employee herein were far beyond the scope of his employment[.]"); Andrews v. United States, 732 F.2d 366, 370 (4th Cir. 1984) ("[I]t is clear that [the employee] was furthering his self-interest, not his employer's business, at the time he seduced his patient."); Rabon v. Guardsmark, Inc., 571 F.2d 1277, 1279 (4th Cir. 1978) ("The [sexual] assault by [the employee] was manifestly not in furtherance of [the employer's] business[.] . . . The assault was to effect [the employee's] independent purpose, and it was not within the scope of his employment.").[3]

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[3] See also, e.g., Doe v. Villa Marie Educ. Ctr., 2017 Conn. Super. LEXIS 4066, at *8-9 (Conn. Super. Ct. July 20, 2017) ("The alleged criminal assault and sexual molestation of a child is a complete abandonment of any employer's business and is performed, as the defendants argue, only to satisfy the employee's personal and deviant sexual needs."); Doe v. Medeiros, 266 F. Supp. 3d 479, 491 (D. Mass. 2017) ("Applying common law principles of agency, the Supreme Judicial Court has reasoned that rape and sexual assault do not serve the interests of the employer and are not motivated by a purpose to serve the employer. Moreover, sexual abuse can never be services of the kind employees are employed to perform.") (citations and quotation marks omitted); Evans v. Tacoma Sch. Dist. No. 10, 380 P.3d 553, 559 (Wash. Ct. App. 2016) ("[A]s a matter of law . . . an employee's intentional sexual misconduct is not within the scope of employment."); W. Va. Reg'l Jail & Corr. Facility Auth. v. A. B., 766 S.E.2d 751, 769-70 (W. Va. 2014) ("There is overwhelming majority support in other jurisdictions concluding that sexual assaults committed on the job are not within the employee's scope of employment.") (collecting numerous cases); Smyre v. Amaral, No. 1:13-cv-00387-SLR-MPT, 2013 U.S. Dist. LEXIS 90850, at *40 (D. Del. June 28, 2013) ("[S]exual abuse is not within the scope of employment."), report and recommendation adopted, No. 1:13-cv-00387-SLR-MPT, 2013 U.S. Dist. LEXIS 101369 (D. Del. July 19, 2013); Goss v. Human Servs. Assocs., Inc., 79 So. 3d 127, 132 (Fla. Dist. Ct. App. 2012) ("[D]espite the fact that at least one of the sexual assaults occurred at [the employee's] place of work, the sexual assault was not within the course and scope of her employment because the act was not in furtherance of her employment with [her employer]."); Bloomer v. Becker Coll., No. 4:09-cv-11342-FDS, 2010 U.S. Dist. LEXIS 82997, at *24-25 (D. Mass. Aug. 13, 2010) ("As to plaintiff's claim for assault and battery, the Court finds that the acts alleged could not have been committed within the scope of [the employee's] employment.

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The acts alleged—touching plaintiff's hands, thighs, and breasts—go far beyond the scope of [the employee's] employment duties. . . . [The employee] clearly engaged in the torts alleged for his own personal motives, and was not in any way motivated by a desire to serve [the employer]."); Roe v. City of Spokane, No. 2:06-cv-00357-FVS, 2008 U.S. Dist. LEXIS 52212, at *3-4 (E.D. Wash. July 9, 2008) ("[A]n employee necessarily acts outside the scope of his or her employment in pursuing sexual gratification."); Am. Mfrs. Mut. Ins. Co. v. Stallworth, 433 F. Supp. 2d 767, 771 (S.D. Miss. 2006) ("[T]here is no allegation, or any arguable basis for an inference that when sexually assaulting [the victim], [the employee] was acting within the scope of his employment by the [employer], performing duties related to the conduct of the [employer's] business or performing duties as clergy. On the contrary, it is quite clear that his actions and motivations were purely personal."); Doe v. Norwich Roman Catholic Diocese, 909 A.2d 983, 986 (Conn. Super Ct. 2006) ("Clearly, [the priest's] sexual assaults on the plaintiff were repugnant to his employer's business and in utter contravention of the employer's aims and rules. . . . [T]he molestation of children is a total abdication of the master's work so that the pedophile priest can satisfy personal lust."); Graham v. McGrath, 363 F. Supp. 2d 1030, 1034 (S.D. Ill. 2005) ("[S]exual misconduct of employees is outside the express or implied authority of their employment, relieving the employer of any liability under the doctrine of respondeat superior."); Simms v. Christina Sch. Dist., 2004 Del. Super. LEXIS 43, at *22 (Del. Super. Ct. Jan. 30, 2004) ("While [the employee] was clearly taking advantage of his position as a residential advisor during work hours and at the workplace, no employment related activity was even remotely taking place when [the employee] was sexually abusing the plaintiff."); Sanborn v. Methodist Behavioral Resources Partnership, 866 So.2d 299, 305 (La. Ct. App. 2004) (holding that the alleged sexual assault of a client by a substance abuse counselor was not within the course and scope of the counselor's employment, and therefore there was no vicarious liability on the part of employer); Juarez v. Boy Scouts of Am., Inc., 97 Cal. Rptr. 2d 12, 23 (Ct. App. 2000) ("[U]nder the doctrine of respondeat superior, sexual misconduct falls outside the course and scope of employment and should not be imputed to the employer."); Daugherty v. Legros, 2000 Mich. App. LEXIS 1920, at *5 (Mich. Ct. App. Apr. 25, 2000) ("The trial court correctly ruled that defendant [employer] was not vicariously liable under a theory of respondeat superior for [the employee's] sexual assaults during class because the assaults were outside the scope of his employment and his apparent authority."); Canty v. Old Rochester Reg'l Sch. Dist., 54 F. Supp. 2d 66, 71 n.6 (D. Mass. 1999) ("Sexual misconduct, especially sexual assault and rape, by an employee is not considered an act performed within the scope of his or her employment."); Godar v. Edwards, 588 N.W.2d 701, 707 (Iowa 1999) ("We conclude that any alleged sexual abuse by [the employee] would be conduct so far removed from his authorized duties as curriculum director that the question of whether any alleged sexual abuse by [the employee] was within the scope of his employment was properly determined by the court. We further conclude that the [trial] court properly decided as a matter of law that [the employee] was acting outside the scope of his employment during any alleged incidents of sexual abuse."); Judith M. v. Sisters of Charity Hosp., 715 N.E.2d 95, 96 (N.Y. 1999) ("Assuming plaintiff's allegations of sexual abuse are true, it is clear that the employee here departed from his duties for solely personal motives unrelated to the furtherance of the [employer's] business."); N.H. v. Presbyterian Church (U.S.A.), 998 P.2d 592, 599-600 (Okla. 1999) ("No reasonable person would conclude that [the employee's] sexual misconduct was within the scope of employment or in furtherance of the national organization's business. . . . [The employee] abused his position and exploited his

special relationship with the children. It is inconceivable that [his] acts were of the nature of those which he was hired to perform. Because [he] was acting outside the scope of his employment as a matter of law when the molestation occurred, we hold that liability may not be imposed under the doctrine of *respondeat superior*."); Alpharetta First United Methodist Church v. Stewart, 472 S.E.2d 532, 535 (Ga. Ct. App. 1996) ("[I]t is well settled under Georgia law that an employer is not responsible for the sexual misconduct of an employee."); Deloney v. Bd. of Educ., 666 N.E.2d 792, 797 (Ill. Ct. App. 1996) ("[A]cts of sexual assault are outside the scope of employment.") (citing cases); Smith v. American Exp. Travel Related Services Co., Inc., 876 P.2d 1166, 1170 (Ariz. Ct. App. 1994) ("[The employee's] conduct in sexually assaulting and harassing [the plaintiff] was outside the scope of his employment. [The employee's] sexual misbehavior and assaultive conduct was neither the kind of activity for which he was hired nor was it actuated, even in part, by a desire to serve [the employer]."); Debbie Reynolds Prof. Rehearsal Studios v. Superior Court, 30 Cal. Rptr. 2d 514, 516-17 (Cal. Ct. App. 1994) ("[T]he only inference to be drawn from the facts as pleaded is that real party's assailant was not acting in the course and scope of his employment at the time of the sexual assaults. His wrongful conduct was so divorced from his duties and work that, as a matter of law, it was outside the scope of his employment. He was hired to teach dance, not to molest, abuse, or threaten minors. Sexual abuse simply is not typical of or broadly incident to the enterprise undertaken by petitioner."); Guzel v. State of Kuwait, 818 F. Supp. 6, 10 (D.D.C. 1993) ("As solely a question of common sense, it is difficult to comprehend how any sexual assault could be committed for a purpose other than that of the individual. Sexual assault is, by its nature, a crime committed for personal reasons. . . . [T]he assault [the employee] is alleged to have committed could not have been committed even partially in furtherance of any duties he owed [his employer]."); Medlin v. Bass, 398 S.E.2d 460, 464 (N.C. 1990) ("The [sexual] assault could advance no conceivable purpose of [the employer]; [the employee] acted for personal reasons only, and his acts thus were beyond the course and scope of his employment as a matter of law."); Birkner v. Salt Lake Cty., 771 P.2d 1053, 1058 (Utah 1989) ("[The employee's sexual misconduct] was not intended to further his employer's interest. On the contrary, it served solely the private and personal interests of [the employee]. . . . [The employee's] conduct arose from his own personal impulses, and not from an intention to further his employer's goals. Nor did his conduct in any way, inappropriately or otherwise, further those goals."); Hunter v. Countryside Ass'n For the Handicapped, Inc., 710 F.Supp. 233, 239 (N.D.Ill. 1989) ("[The employee's] alleged sexual assault can in no way be interpreted as furthering [the employer's] business."); Valdez v. Church's Fried Chicken, Inc., 683 F.Supp. 596, 610 (W.D.Tex. 1988) ("[T]here can be no question that the sexual assault [the employee] committed on [the plaintiff] was purely personal and had nothing to do with the business of [the employer]."); Randi F. v. High Ridge YMCA, 524 N.E.2d 966, 969 (Ill. Ct. App. 1988) ("[A]s a matter of law, [the employee] was not acting within the scope of her employment but solely for her own benefit when she assaulted and sexually molested plaintiffs' daughter."); Boykin v. D.C., 484 A.2d 560, 563 (D.C. 1984) ("The sexual assault here arose out of [the employee's] assignment only in the sense that [the employee's] walks with the student afforded him the opportunity to pursue his personal adventure. This is insufficient to make the [employer] vicariously liable for [the employee's] act.").

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The two out-of-jurisdiction cases cited in the Order—Trinity Lutheran Church, Inc. v. Miller, 451 N.E.2d 1099 (Ind. App. 1983), and Rozmus v. Wesleyan Church of Hamburg, 77 N.Y.S.3d 245 (App. Div. 2018)—are wholly inapposite. Trinity Lutheran involved allegations regarding an alleged agent's irresponsible driving, and Rozmus involved allegations of an injury suffered during a residential painting project. While driving and painting can be within the scope of employment, the law is clear that sexual abuse cannot. The Order should be altered or amended accordingly, resulting in dismissal of the Complaint's cause of action for negligence, gross negligence, and recklessness to the extent it is based on the doctrine of *respondeat superior*.

III. THE ORDER DOES NOT ADDRESS THESE DEFENDANTS' ARGUMENT THAT THE COMPLAINT'S CIVIL CONSPIRACY CAUSE OF ACTION FAILS TO ALLEGE THE COMMITMENT OF AN UNLAWFUL ACT OR A LAWFUL ACT BY UNLAWFUL MEANS.

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). The Complaint does not contain particularized facts alleging that these Defendants committed an unlawful act or committed a lawful act by unlawful means. These Defendants pointed this out and argued that the Complaint's cause of action for civil conspiracy should be dismissed on this basis. 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

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any particularized allegations of fact, is insufficient"). However, the Order does not address this argument. It should be altered or amended accordingly.

IV. THE ORDER DOES NOT ADDRESS TWO OF THESE DEFENDANTS' ARGUMENTS REGARDING THE COMPLAINT'S CAUSE OF ACTION FOR OUTRAGE / INTENTIONAL OR RECKLESS INFLICTION OF EMOTIONAL DISTRESS.

Claims for intentional infliction of emotional distress (also referred to as "outrage") 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). However, "[i]t 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) (italics added). In this case, the Complaint does not allege that these Defendants targeted the Plaintiffs or that the alleged misconduct of these Defendants was directed specifically at or toward the Plaintiffs. These Defendants pointed this out and argued that the Complaint's cause of action for outrage / intentional or reckless infliction of emotional distress should be dismissed on this basis. 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.").

These Defendants also argued that the Complaint's cause of action for outrage / intentional or reckless infliction of emotional distress is legally deficient in that it repackages the allegations of the Complaint's other causes of action and characterizes them as outrage. See, e.g.,

Todd v. S.C. Farm Bureau Mut. Ins. Co., 283 S.C. 155, 173, 321 S.E.2d 602, 613 (Ct. App. 1984) ("The tort of outrage was designed not as a replacement for the existing tort actions. Rather, it was conceived as a remedy for tortious conduct where no remedy previously existed.") (quashed in part on other grounds by Todd v. S.C. Farm Bureau Mut. Ins. Co., 287 S.C. 190, 191, 336 S.E.2d 472, 473 (1985)). See also, 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").

The Order does not address either of these arguments. It should be altered or amended accordingly.

V. NECESSARIES CLAIMS ARE LIMITED TO RECOVERY OF MEDICAL EXPENSES.

In their Motion to Dismiss, these Defendants asserted that South Carolina law does not recognize a separate and independent cause of action for "necessaries." However, in their supporting memorandum and at the hearing, these Defendants acknowledged the Supreme Court's holding in Hughey v. Ausborn, 249 S.C. 470, 154 S.E.2d 839 (1967), that in a personal injury action brought by a minor child "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. Hughey plainly limits a parent's recovery to "medical expenses which he has incurred for the care and treatment of such minor." Id. The Order should be altered or amended to clarify that only medical expenses are recoverable under this cause of action.

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VI. IF THE COURT DECIDES TO STAND BY ITS RULINGS, THE ORDER SHOULD BE REPLACED WITH A FORM 4 ORDER.

Pursuant to Rule 52(a), SCRCP, "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56[.]" The Supreme Court specially highlighted and called attention to this rule in Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379 (1994), writing: "We also take this opportunity to remind the trial bench that it is unnecessary to make findings of fact and conclusions of law in denying motions for summary judgment." Id. at 478, 443 S.E.2d at 380 n.1 (citing Rule 52, SCRCP). The Court of Appeals did the same in Kinghorn v. Sakakini, 426 S.C. 147, 825 S.E.2d 748 (Ct. App. 2019), writing: "[P]ursuant to Rule 52(a), SCRCP, the circuit court is not required to state its findings of fact and conclusions of law in decisions on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal." Id. at 151, 825 S.E.2d at 750. The obvious reason for this rule is that the denial of a motion to dismiss or for summary judgment is not immediately reviewable. See, e.g., Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) ("[T]his Court does not allow immediate appellate review of the *denial* of any Rule 12(b), SCRCP motion.") (italics in original); Silverman v. Campbell, 326 S.C. 208, 211, 486 S.E.2d 1, 2 (1997) ("[I]t is well-settled that the denial of summary judgment is not directly appealable[.]").

In light of Rule 52(a) and the fact that the Order is not immediately reviewable, its lengthy and detailed findings, and conclusions serve no practical purpose. Even though the Order does not establish the "law of the case," it may be problematic because: (1) it contains superfluous, advisory discussions of issues not raised by these Defendants; (2) it inaccurately characterizes certain arguments made by these Defendants; and (3) therefore, it could potentially

prejudice these Defendants' subsequent attempts to reassert certain arguments later in the litigation. The following are two non-exclusive examples of these Defendants' concerns.

- In Sections 1.b.ii, 1.b.iii, and 1.b.iv on pages 11-16, the Order contains superfluous discussions of issues—special relationship to victim, voluntary undertaking, and premises liability—not raised by these Defendants. As to the Complaint's cause of action for negligence, gross negligence, and recklessness, these Defendants made only three arguments: (i) the Plaintiffs did not properly allege a claim for negligent hiring, supervision, or training; (ii) the cause of action may be barred in part by the ecclesiastical doctrine; and (iii) the Plaintiffs did not properly allege the doctrine of *respondeat superior*. These Defendants did not seek complete dismissal of the cause of action or raise the aforementioned other issues. The Order's discussion of those issues, therefore, amounts to issuance of an advisory opinion. See, e.g., State v. Harrison, 432 S.C. 448, 464, 854 S.E.2d 468, 476 (2021) ("Courts do not give advisory opinions or answer questions that are not asked.").

- The Order mischaracterizes these Defendants' arguments regarding the ecclesiastical doctrine. It states on page 16 that "Defendants' subject-matter jurisdiction arguments are essentially claims for immunity" and that these Defendants claim "the U.S. Constitution immunizes them from liability because Morningstar is a religious entity." On page 17, it states that "Defendants argue the claims against them are purely ecclesiastical matters." These are inaccurate descriptions of these Defendants' arguments which have already been repeated by the press.[4] But these Defendants did not argue for a broad grant of ecclesiastical immunity or assert that the Plaintiffs' claims are "purely" ecclesiastical. These Defendants simply asserted that the Plaintiffs' cause of action for negligence, gross negligence, and recklessness "may" violate the ecclesiastical doctrine and sought its dismissal "to the extent" it violates the doctrine. See Memorandum in Support of Motion to Dismiss of Defendants MorningStar Fellowship Church, Richard Joyner, David Yarnes, and Douglas Lee (filed Dec. 12, 2024) at 3-4. See also Causey v. Horry Cty., No. 2022-UP-002, 2022 S.C. App. Unpub. LEXIS 4, at *13 (Ct. App. Jan. 5, 2022) (noting mischaracterizations in an appealed order); Douglas v. State, No. 2016-UP-316, 2016 S.C. App. Unpub. LEXIS 384, at *18 (Ct. App. June 22, 2016) (same).

[4] See generally Dys, Andrew. "Fort Mill church claimed religious freedom in sex abuse lawsuits. SC judge says no." *The Herald*. 3 Feb. 2025, https://www.heraldonline.com/news/local/article299498674.html.

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These and other concerns regarding the Order can be resolved by the simple replacement of the Order with a Form 4 Order generally[5] denying these Defendants' Motion to Dismiss without elaboration. This would not alter the outcome of the court's rulings or the net effect of the Order, nor would it prejudice the Plaintiffs, as the case would remain in the exact same procedural posture as it currently stands. All it would do is ensure that the Order cannot be used against these Defendants in later stages of this litigation. Accordingly, if the court decides to stand by its rulings, these Defendants respectfully request that the Order be replaced with a Form 4 Order.

CONCLUSION

For the reasons explained above, Defendants MorningStar Fellowship Church, Richard Joyner, David Yarnes, and Douglas Lee respectfully request that the court hold a hearing on the issues presented herein and alter or amend the "PROPOSED ORDER DENYING DEFENDANTS MORNINGSTAR FELLOWSHIP CHURCH, RICHARD JOYNER, DAVID YARNES, AND DOUGLAS LEE'S MOTION TO DISMISS" as set forth herein.

This motion is supported by the pleadings in this action, any affidavits which may be subsequently submitted, any memoranda of law which may be subsequently submitted, all applicable statutes and case authority, all completed discovery, the applicable Rules of Civil Procedure, and such other evidence and authority as the court may find acceptable.

The undersigned counsel certifies, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, that there is no duty of consultation on a motion to alter or amend pertaining to a motion to dismiss and that, in any event, a consultation would serve no useful purpose.

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[5] As stated in Footnote 1 of the Order, the Complaint's third cause of action—violation of Restatement of Torts 323—was dismissed with the Plaintiffs' consent. This dismissal should be recognized in any replacement Form 4 Order.

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February 6, 2025

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