STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS
Jane Doe #5, individually, and now over the age of eighteen (18) and Jane Roe #5, as the parent and natural guardians of Jane Doe #5 while she was under the age of eighteen (18), Plaintiffs, v. Morningstar Fellowship Church, Richard Joyner, David Yarnes, Douglas Lee, Comenius School for Creative Leadership ("CSCL") and Sandra Woods, Defendants.	Civil Action No. 2025-CP-46-00583 **MOTION TO DISMISS**

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

YOU WILL PLEASE TAKE NOTICE that the Defendants, through their undersigned counsel, hereby move for dismissal of this action as against them, in whole or in part, pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6), SCRCP. In support of this motion, the Defendants would show the following.

1. To the extent it is asserted against MorningStar Fellowship Church ("MorningStar"), Richard Joyner ("Joyner"), David Yarnes ("Yarnes"), Douglas Lee ("Lee"), or Comenius School for Creative Leadership ("CSCL"),[1] the Complaint's cause of action for outrage / intentional or reckless infliction of emotional distress should be dismissed because it fails to allege all of the elements of the cause of action against these Defendants. See, e.g., Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007) (listing the elements of a cause of action for intentional infliction of emotional distress).

[1] This cause of action is labeled as being asserted solely against Defendant Sandra Woods. However, beginning in paragraph 254 it makes allegations against "Defendants."

2. The Complaint's cause of action for outrage / intentional or reckless infliction of emotional distress should be dismissed because it fails to allege that Sandra Woods ("Woods") or any other Defendant targeted the Plaintiffs or that the alleged misconduct of Woods or the other Defendants was directed specifically at or toward the Plaintiffs. See, e.g., Upchurch v. N.Y. Times Co., 314 S.C. 531, 536, 431 S.E.2d 558, 561 (1993) ("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.") (citations omitted) (emphasis added).

3. The Complaint's cause of action for outrage / intentional or reckless infliction of emotional distress should be dismissed because it merely 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").

4. Necessaries claims are limited to recovery of medical expenses. See, e.g., Hughey v. Ausborn, 249 S.C. 470, 475, 154 S.E.2d 839, 841 (1967) (holding 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.") (emphasis added). Accordingly, the cause of action for necessaries should be dismissed as against these Defendants to the extent it seeks recovery of damages beyond medical expenses.

5. One or more of the causes of action asserted against the Defendants may be barred by the ecclesiastical doctrine. See, e.g., Pearson v. Church of God, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996) ("[C]ourts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration[.]").

6. Rule 10(a), SCRCP, provides, in part, that "the title of the action shall include the names of all parties[.]" "This requirement, through seemingly pedestrian, serves the vital purpose of facilitating public scrutiny of judicial proceedings and therefore cannot be set aside lightly." Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 188-89 (2nd Cir. 2008). See also, e.g., Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058,

1067 (9th Cir. 1999) (stating that the "use of fictitious names runs afoul of the public's common law right of access to judicial proceedings and Rule 10(a)'s command that the title of every complaint include the names of all the parties") (citations and quotation marks omitted).[2]

7. As the United States District Court for the District of South Carolina has held, "the identity of the parties in an action [generally] should not be concealed." Richard S. v. Sebelius, 3:12-cv-00007-TMC, 2012 WL 1909344, at *1 (D.S.C. May 25, 2012). "Courts have long held that the First Amendment protections of freedom of speech and press safeguard the public's right to attend trials, which must be open to the public absent an overriding and clearly articulated interest to the contrary. A plaintiff seeking to proceed anonymously must show that he or she has a substantial privacy right that outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings. This presumption of openness is firmly rooted in our nation's law." Id. (citations and quotation marks omitted).

8. The Complaint identifies the Plaintiffs solely as "Jane Doe #5, individually, and now over the age of eighteen (18) and Jane Roe #5, as the parent and natural guardians of Jane Roe #5 while she was under the age of eighteen (18)." Yet the Plaintiffs have not moved for or received the court's permission to proceed anonymously, nor have they demonstrated any exceptional circumstances justifying what the Fourth Circuit has called a "rare dispensation." James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993).

9. Because the Plaintiffs have not divulged their identity as required by Rule 10(a), SCRCP, or received the court's permission to proceed anonymously, the court lacks jurisdiction over them. See, e.g., Nat'l Commodity & Barter Ass'n, Nat'l Commodity Exch. v. Gibbs, 886 F.2d 1240, 1245 (10th Cir. 1989) ("Absent permission by the district court to proceed anonymously, and under such other conditions as the court may impose (such as requiring disclosure of their true identity under seal), the federal courts lack jurisdiction over the unnamed parties, as a case has not been commenced with respect to them.").

[2] Because the South Carolina Rules of Civil Procedure are based on the Federal Rules of Civil Procedure, our courts may look to the construction given to the federal rules. See Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). See also Dalon v. Golden Lanes, Inc., 320 S.C. 534, 541, 466 S.E.2d 368, 372 (Ct. App. 1996) ("[T]his court has resorted to treatment of the federal rules for guidance in interpreting our rules.").

This motion is supported by the pleadings in this action, any memoranda or affidavits which may be submitted, all applicable statutes and case authority, the applicable Rules of Civil Procedure, and such other evidence and authority as the court deems it appropriate to consider.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, the undersigned counsel certifies that there is no duty of consultation on a motion to dismiss and that, in any event and upon information and belief, a consultation would serve no useful purpose.

s/Curtis W. Dowling

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