

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**RECEIVED**

MAY 28 2013

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**S.C. Supreme Court**

Edward W. Miller, Circuit Court Judge

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Appellate Case No. 2012-210888

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Ex parte TLC Laser Eye Centers (Piedmont/Atlanta) LLC;  
TLC The Laser Center (Institute), Inc. . . . . Appellants,

In re:

John Hollman . . . . . Respondent,

v.

Dr. Jonathan Woolfson, Individually;  
Dr. Michael A. Campbell, Individually;  
Optical Solutions, Inc.; and Optical  
Solutions of Bluffton, LLC . . . . . Defendants.

Danielle Hollman . . . . . Respondent,

v.

Dr. Jonathan Woolfson, Individually;  
Dr. Michael A. Campbell, Individually;  
Optical Solutions, Inc.; and Optical  
Solutions of Bluffton, LLC . . . . . Defendants.

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APPELLANTS' MOTION TO ENFORCE STAY OF  
PROCEEDINGS IN CIRCUIT COURT RELATING  
TO THE ORDERS AT ISSUE IN THIS APPEAL

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W. Howard Boyd, Jr. (SC Bar No. 826)  
Steven Edward Buckingham (SC Bar No. 75089)  
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*Counsel for Appellants  
TLC Laser Eye Centers (Piedmont/Atlanta), LLC  
and TLC The Laser Center (Institute), Inc.*

**TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA  
SUPREME COURT**

COME NOW the Appellants, TLC Laser Eye Centers (Piedmont/Atlanta) LLC and TLC The Laser Center (Institute), Inc. (collectively referred to as "TLC"), by and through their undersigned counsel, and pursuant to Rule 241 of the South Carolina Appellate Court Rules, respectfully submit this motion to enforce the automatic stay as to the issues presented in the orders of August 17, 2010, (App. p. 62), and January 12, 2012, (App. 160). In support of this motion, TLC would respectfully show unto the Court as follows:

1. This matter is before the Court on appeal from the Greenville County Court of Common Pleas and the Orders of the Honorable Edward M. Miller, Circuit Judge, dated August 17, 2010 and January 12, 2012. These orders, and in particular, the August 17 Order, involve Respondents' attempts to use and disclose confidential health information from the Hollman litigation in other cases and for other purposes, which is expressly prohibited by the protective order that was issued in Hollman, (App. p. 25). Oral arguments were heard in this case on May 2, 2013, and the case is pending for decision by the Court.

2. As the Court is aware, Respondents' counsel, along with James W. Fayssoux, Jr. and Paul S. Landis, represent the plaintiffs in Charles Benjamin "Ben" Dickerson and Gale M. Dickerson v. TLC The Laser Center (Institute), Inc., f/k/a TLC The Laser Center (Piedmont), Inc. et al., C.A. No. 2010-CP-23-9954, and Michael "Chad" Luce v. TLC The Laser Center (Institute), Inc. f/k/a TLC The Laser Center (Piedmont), Inc., et al., C.A. No. 2010-CP-23-9956.

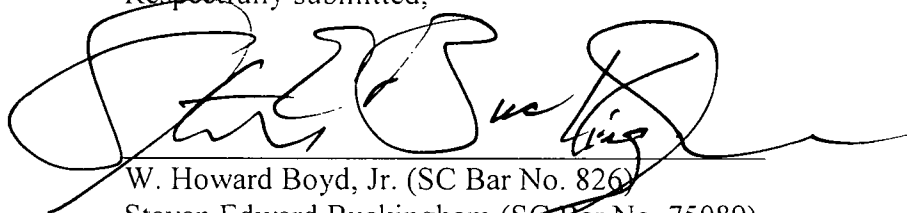
3. By letter dated May 2, 2013, the same day as oral arguments in In re: Hollman, Mr. Fayssoux wrote counsel for TLC under the captions of Dickerson and Luce asking that TLC immediately produce the same database information and third-party medical records that are at issue in this appeal. A copy of this letter, marked as Exhibit A, is attached to this motion and is incorporated herein by reference.

4. By letter dated May 14, 2013, counsel for TLC responded to Mr. Fayssoux's letter, declining to provide the discovery requested pending the Supreme Court's decision of In re: Hollman. It is TLC's position that discovery related to the database and third-party medical records is stayed under Rule 241, SCACR, because the use and disclosure of such information is involved in the orders from which the appeal was taken. Furthermore, TLC contends that this Court's decision in Hollman v. Woolfson, 384 S.C. 571, 683 S.E.2d 495 (2009), is dispositive of the issues regarding the discoverability of the database and third-party medical records, as well as information based on, containing, or derived from such information. TLC believes that the Court's decision of In re: Hollman precludes the discovery presently sought by plaintiffs' counsel in Dickerson and Luce. In any event, a copy of TLC's letter of May 14, marked as Exhibit B, is attached to this motion and is incorporated herein by reference.

5. By letter dated May 17, 2013, Mr. Landis responded to TLC's letter, again demanding the production of the database and third-party medical records, and threatening to file a motion to compel if such information is not promptly produced. A copy of this letter, marked as Exhibit C, is attached to this motion and is incorporated herein by reference.

6. In light of these recent developments, TLC respectfully requests an order from this Court enforcing the automatic stay and confirming that any and all matters involving discovery relating to the database and third-party medical records, which are the subject of the appeal in this case by virtue of the August 17 and January 12 Orders, are stayed pending the Court's decision and final disposition of the appeal, all as provided by Rule 241, SCACR.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'W. Howard Boyd, Jr.', is written over a horizontal line.

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Greenville, SC

May 23, 2013

*Counsel for Appellants*  
*TLC The Laser Center (Institute), Inc. and*  
*TLC Laser Eye Centers (Piedmont/Atlanta) LLC*

# EXHIBIT A

JAMES W. FAYSSOUX, SR.  
JAMES W. FAYSSOUX, JR.



PAUL S. LANDIS  
T. HUNT REID

May 2, 2013

W. Howard Boyd, Jr., Esq.  
Gallivan White & Boyd, P.A.  
PO Box 10589  
Greenville, SC 29603

RE: Charles Benjamin "Ben" Dickerson and Gale M. Dickerson v. TLC The Laser Center (Institute), Inc., f/k/a TLC The Laser Center (Piedmont), Inc.; Jonathan Woolfson, M.D.; Jeffery Machat, M.D.; Derek P. Van Veen, O.D.; Cynthia Wike Yeager, O.D.; John Potter, M.D.; and David Kohler, O.D.

Of Whom TLC The Laser Center (Institute), Inc. f/k/a The Laser Center (Piedmont), Inc.; John Potter, M.D.; and Cynthia Wike Yeager, O.D. are Appellants

and

Michael "Chad" Luce v. TLC The Laser Center (Institute), Inc. f/k/a TLC The Laser Center (Piedmont), Inc.; Jonathan Woolfson, M.D.; Derek P. Van Veen, O.D.; Cynthia Wike Yeager, O.D.; John Potter, M.D.; and David Kohler, O.D.

Of Whom TLC The Laser Center (Institute), Inc. f/k/a The Laser Center (Piedmont), Inc. Cynthia Wike Yeager, O.D. are Appellants

Appellate Case No. 2013-000065

Dear Howard:

Now that the Supreme Court has denied TLC's Petition and the Court of Appeals has dismissed TLC's appeal and issued a Remittitur, I am writing to ask that TLC respond in full to the discovery requests that were the subject of the controversy within fifteen (15) days from the date of this letter.

For your ease of reference, the requests are as follows:

#### Discovery Request No. 8

*Produce all documents in your possession that relate to the plaintiff, his claims, or his medical treatment. This includes, but is not limited to, the Plaintiff's entire medical file in your possession and all information stored separately in internal files and/or databases, including, but not limited to, the "Complex Case," "Advocacy," and "ARMS" databases.*

POST OFFICE BOX 10207 • GREENVILLE, SC 29603  
209 EAST WASHINGTON STREET • GREENVILLE, SC 29601  
864.233.0445 • 864.233.4781 FAX • WWW.FAYSSOUXLAW.COM

**Discovery Request No. 9**

*Provide all medical information in whatever form retained by this Defendant that applies to the Plaintiff in this action. By way of illustration, but not limitation, this would include the Plaintiff's entire medical chart, medical information stored in other locations, and/or e-mails, notes, writings, memorandums, or similar documents produced by or in the possession of the Defendant physicians and/or employees of the Defendant that in any way relate to the Plaintiff and/or the Plaintiff's medical conditions.*

**Discovery Request No. 24**

*Produce any and all documents, correspondence, e-mail, or other electronic communication which in any way relate to the Plaintiff, whether internal between employees or independent contractors or external to third parties. This includes, but is not limited to, documents, etc. involving the Plaintiff's inclusion in the advocacy group or designation as a complex case.*

**Discovery Request No. 29**

*Produce any and all documents relating in any way to Plaintiff's inclusion into the "Complex Case" and/or "Advocacy Group" database.*

**Discovery Request No. 30**

*Produce any and all documents or information contained in the above-referenced database(s) which relate to or refer to Plaintiff.*

**Discovery Request No. 2**

*Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.*

**Discovery Request No. 25**

*Produce a copy of the entire database referred to as the "Complex Case" and/or the "Advocacy" database created and maintained by TLC. This production should include but not be limited to the following databases and/or spreadsheets: a) Advocacy; b) Advocacy Contact History; c) Assess; d) clinical findings; e) Complex Case; f) Complex Case Contact History; g) DX TX Rec; h) Pre; i) Procedure.*

**Discovery Request No. 26**

*Provide the following information and documents relating to the "advocacy group":*

- a. *When it was originally formed and why;*
- b. *The purpose for its formation and its operation, inclusive of*

*producing all procedures, SOPs, guidelines, and regulations together with all revisions, changes, or alterations;*

- c. The identity and curriculum vitae of each employee and independent contractor who was involved in its formation or operation;*
- d. The criteria for inclusion in the advocacy group (also known as the clinical advocacy group) or placement on an advocacy list;*
- e. Produce all documents and forms normally used or prepared for use;*
- f. Produce all documents relevant to the issues raised in this discovery request.*

**Discovery Request No. 27**

*Provide the following information and documents relating to the designation of cases as "complex cases":*

- a. When the designation was formed and why;*
- b. The purpose for its formation and its use, inclusive of producing all procedures, SOPs, guidelines, and regulations together with all revisions, changes, or alterations;*
- c. All employees and independent contractors who were involved in the assignment of the designation or operation of cases under this designation;*
- d. The criteria for inclusion as a complex case or designation as a complex case;*
- e. Produce all documents and forms normally used or prepared for use;*
- f. Produce all documents relevant to the issues raised in this discovery request.*

**Discovery Request No. 28**

*Identify each patient who has been assigned to, placed in, associated with, or designated by the "advocacy group" from its inception to the present. For each patient, provide the following:*

- a. Date assigned to the advocacy group;*
- b. Reason for assignment;*
- c. Identify all employees or independent contractors who were*

*involved with the patient as a result of the assignment and the duties of each;*

- d. The date the patient was notified of his/her inclusion in the "advocacy group";*
- e. Produce all medical records of each patient; and,*
- f. Produce all documents relevant to or relating to the patient and the "advocacy group" including internal correspondence, e-mails, or other notes or memoranda.*

**Discovery Request No. 31**

*Provide the VANTIVE Application and/or access thereto for the documents and information contained in the SEQUAL Server database platform identified on pages 25-28 of Allen Webb's deposition (attached hereto).*

**Discovery Request No. 32**

*Identify each patient whose case has been designated as a "complex case" from the inception of the "complex case" designation system to the present. For each patient, provide the following:*

- a. Date designated as complex case;*
- b. Reason(s) for designation;*
- c. Identify all employees or independent contractors who were involved with the patient as a result of the designation and the duties of each;*
- d. The date the patient was notified of his/her designation as complex case;*
- e. Produce all medical records of each patient; and,*
- f. Produce all documents relevant to or relating to the patient and the "complex case" designation, including internal correspondence, e-mails, or other notes or memoranda.*

**Discovery Request No. 33**

*For each patient identified in the complex case database, advocacy database and/or combined ARMS database, provide the following:*

- a. Complete identification of patient;*
- b. The most current and/or last known address and telephone number;*

- c. *Produce all documents in the patient's medical records in which patient information relative to identity, location, personal information, social security number and like or similar information were recorded or stored. This would include documents designated;*
- d. *Patient Data Sheet;*
- e. *Patient Medical Release of Information;*
- f. *TLC's "Tell Us About Yourself" / TLC Patient Registration;*
- g. *Patient Authorizations.*

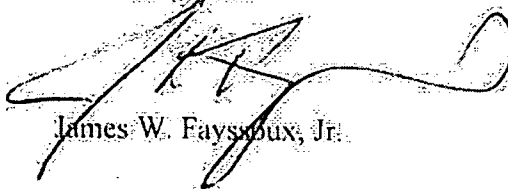
**Discovery Request No. 34**

*Produce any subsequent changes or modifications made to the database produced in response to Request #27 above.*

Please let me know if you have any questions, and we look forward to moving forward with discovery in an efficient manner.

With kindest regards, I am

Sincerely yours,



James W. Fayssoux, Jr.

PSL/lmf

Cc: E. Brown Parkinson, Jr., Esq.  
Bradford W. Cranshaw, Esq.  
Danielle F. Payne, Esq.  
Ashby W. Davis, Esq.  
Steven Edward Buckingham, Esq.  
Douglas F. Patrick, Esq.  
Stephen R.H. Lewis, S.C. Esq.

# EXHIBIT B

W. Howard Boyd, Jr.  
Direct 864.271.5343  
hboyd@gwblawfirm.com



Gallivan, White & Boyd, P.A.  
ATTORNEYS AT LAW

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Facsimile: 864.271.7502  
www.gwblawfirm.com

May 14, 2013

*Via Electronic and U.S. Mail*

Mr. James W. Fayssoux, Jr.  
Mr. Paul S. Landis  
Fayssoux Law Firm, P.A.  
Post Office Box 10207  
Greenville, SC 29603

Re: Michael "Chad" Luce v. TLC The Laser Center (Institute), Inc. f/k/a TLC  
The Laser Center (Piedmont), Inc.; Jonathan Woolfson, M.D.; Derek P.  
Van Veen, O.D.; Cynthia Wike Yeager, O.D.; John Potter, M.D.; and  
David Kohler, O.D.  
C.A. No.: 2010-CP-23-9956  
GWB File No.: 3792/0008

Charles Benjamin "Ben" Dickerson and Gale M. Dickerson v. TLC The  
Laser Center (Institute), Inc. f/k/a TLC The Laser Center (Piedmont), Inc.;  
Jonathan Woolfson, M.D.; Jeffery Machat, M.D.; Derek P. Van Veen,  
O.D.; Cynthia Wike Yeager, O.D.; John Potter, M.D.; and David Kohler,  
O.D.  
C.A. No.: 2010-CP-23-9954  
GWB File No.: 3792/0009

Dear Wally and Paul:

I am writing in response to your letter of May 2, through which you requested that  
TLC supplement its production with nonparty database information and medical records  
for the above-referenced cases. We do not believe production of this information is  
appropriate, and therefore, respectfully decline to comply with your request.

Mr. James W. Fayssoux, Jr.  
Mr. Paul S. Landis  
May 14, 2013  
Page | 2

Our first objection to your request is procedural. As you know, when an appeal is filed, all matters related to the substance of the orders appealed from, as well as the forms of relief granted, are stayed automatically until the final disposition of the appeal. In this case, all issues related to the protective order are subject to the automatic stay, including the orders of the circuit court in Dickerson and Luce that require the production of confidential health information, which are based on orders appealed from in In re: Hollman. If you disagree with our analysis, please let us know immediately and we will consider whether to take appropriate protective action in the circuit or appellate courts.

Our second objection is more practical. On May 2—the same day that your demand letter was sent—we were before the Supreme Court arguing whether confidential health information obtained in the course of In re: Hollman had been used and disclosed in furtherance of Dickerson, Luce, and the federal class action, all in violation of Hollman's protective order. As you know, it is impossible to predict the Court's decision based on the types of questions asked at oral argument. That being said, you would surely concede that the Court was concerned about the use of nonparty confidential health information in furtherance of other litigation, even going so far as to address the types of remedies that may be appropriate. In light of these circumstances, the more prudent approach would be to wait on the Supreme Court to issue its decision for In re: Hollman, to see whether and to what extent the decision affects the discoverability of nonparty confidential health information. Again, if you disagree with our analysis, please let us know and we will consider whether protective action is necessary.

Our final objection is based on Hollman v. Woolfson. As you may recall, at the hearing before the Supreme Court, I made the argument that Hollman v. Woolfson is dispositive of all the issues regarding the discoverability of nonparty confidential health information. Specifically, with regard to the causes of action alleged in Dickerson, Luce, and Hollman, the Supreme Court has previously and clearly held that nonparty confidential health information is neither relevant nor necessary. The Supreme Court noted my argument with approval, and as I recall, the Chief Justice openly questioned whether Hollman left any uncertainty as to the non-discoverability of the confidential health information at issue.

In any event, it is our opinion that TLC does not have any present obligation to supplement its discovery responses with nonparty confidential health information. To the contrary, we believe that the Supreme Court will clarify through In re: Hollman that the nonparty confidential health information at issue is, in fact, neither relevant nor necessary to the matters in dispute, and will restrain all attempts to use such information in furtherance of Dickerson's and Luce's individual medical malpractice claims.

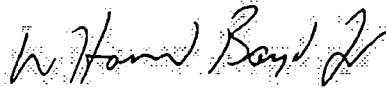
Mr. James W. Fayssoux, Jr.  
Mr. Paul S. Landis  
May 14, 2013  
Page | 3

Please let me know if you have any questions concerning this.

With kind regards,

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



W. Howard Boyd, Jr.  
Direct Dial: (864) 271-5343  
E-mail: [hboyd@gwblawfirm.com](mailto:hboyd@gwblawfirm.com)

WHB, Jr/seb

cc: Mr. Douglas F. Patrick (Via E-mail)  
Mr. Stephen R.H. Lewis (Via E-mail)  
Mr. J. Edward Bell, III (Via E-mail)  
Mr. J. Ryan Heiskell (Via E-mail)  
Mr. E. Brown Parkinson, Jr. (Via E-mail)  
Mr. Bradford W. Cranshaw (Via E-mail)

# EXHIBIT C

JAMES W. FAYSSOUX, SR.  
JAMES W. FAYSSOUX, JR.

**FAYSSOUX**  
L A W     P I E D M O N T     P A

PAUL S. LANDIS  
T. HUNT-REID

May 17, 2013

RECEIVED

5-20-13

W. Howard Boyd, Jr., Esq.  
Gallivan White & Boyd, P.A.  
PO Box 10589  
Greenville, SC 29603

**RE: Charles Benjamin "Ben" Dickerson and Gale M. Dickerson v. TLC The Laser Center (Institute), Inc., f/k/a TLC The Laser Center (Piedmont), Inc.; Jonathan Woolfson, M.D.; Jeffery Machat, M.D.; Derek P. Van Veen, O.D.; Cynthia Wike Yeager, O.D.; John Potter, M.D.; and David Kohler, O.D.**

**Of Whom TLC The Laser Center (Institute), Inc. f/k/a The Laser Center (Piedmont), Inc.; John Potter, M.D.; and Cynthia Wike Yeager, O.D. are Appellants**

**and**

**Michael "Chad" Luce v. TLC The Laser Center (Institute), Inc. f/k/a TLC The Laser Center (Piedmont), Inc.; Jonathan Woolfson, M.D.; Derek P. Van Veen, O.D.; Cynthia Wike Yeager, O.D.; John Potter, M.D.; and David Kohler, O.D.**

**Of Whom TLC The Laser Center (Institute), Inc. f/k/a The Laser Center (Piedmont), Inc. Cynthia Wike Yeager, O.D. are Appellants**

**Appellate Case No. 2013-000065**

Dear Howard:

TLC is under a discovery order in the Dickerson and Luce cases which requires a response to our discovery request immediately. The Hollman litigation does not stay any action in these unrelated and factually different cases. When the Dickerson and Luce discovery order was filed, TLC filed an appeal (Court of Appeals) and a writ of certiorari, mandamus, and prohibition (Supreme Court) seeking a stay and review of the discovery order. All attempts at appellate review were rejected and, as the Court of Appeals' Remittitur establishes, the case is back before the Circuit Court for implementation of the discovery order. The only matter left open is whether the court needs to rule on TLC's motion for reconsideration of the Protective Order filed in this case. If you believe this is necessary we can discuss how to move forward, but this is the only remaining issue. Our clients have been attempting to engage in discovery for over a year and have been blocked at every turn. They have even been denied their own medical information which TLC is hiding from them. I might add, although it should not be necessary,

that we know their information has been fraudulently withheld not because of our examination of the database but because of an entry in their medical records showing that their files were transferred to Dr Potter who maintains and uses the database to protect TLC against its own patients. This is not nor has it ever been protected information.

Our position is simple, either produce the information that TLC has been ordered to produce or we will be forced to file a motion to compel and seek immediate action.

As to your other position relative to the In Re Hollman matter, we disagree. Of the possible outcomes of that litigation, we do not believe the Supreme Court will deny other litigants their due process rights. The facts and issues in Dickerson and Luce are substantially different. There will be a full record developed in these cases that will shed the light of day on TLC's actions in placing these patients in a corporate fraud scheme. If we are wrong, you will be given full opportunity to establish that through the discovery of relevant evidence. Each side should and will have its day in court. Given the status of oral argument in Hollman, we do not believe that the Supreme Court will sanction the behavior of TLC by declaring its wrongful conduct to be off limits forever to any party who may have been harmed.

We would request TLC reconsider its position and comply with the discovery order filed in Dickerson and Luce.

With kindest regards, I am

Sincerely yours,



Paul S. Landis

PSL/lmf

Cc: E. Brown Parkinson, Jr., Esq.  
Bradford W. Cranshaw, Esq.  
Danielle F. Payne, Esq.  
Ashby W. Davis, Esq.  
Steven Edward Buckingham, Esq.  
Douglas F. Patrick, Esq.  
Stephen R.H. Lewis, S.C. Esq.

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY  
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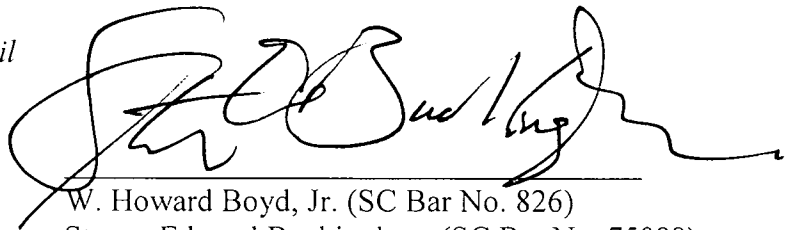
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**PROOF OF SERVICE**

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I certify that on the 23<sup>rd</sup> day of May, 2013, I served a copy of Appellants' Motion to Enforce Stay of Proceedings in Circuit Court Relating to the Orders at Issue in This Appeal on counsel of record in the above-entitled matters by sending a copy of same by the methods of delivery specified below:

Douglas F. Patrick, Esq.  
Stephen R.H. Lewis, Esq.  
Covington, Patrick, Hagins, Stern & Lewis, P.A.  
P.O. Box 2343  
Greenville, SC 29602  
*Counsel for Respondents – Via U.S. Mail*



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Greenville, SC  
May 24, 2013

23

Counsel for Appellants  
TLC Laser Eye Centers (Piedmont/Atlanta) LLC  
and TLC The Laser Center (Institute), Inc.