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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Spartanburg County
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Cases No. 2019-CP-42-03708 and 2019-CP-42-03709

Appellate Case No. 2022-001059

Kenneth Pace,
Individually and as Personal Representative of
the Estate of Earl E. Pace,

Respondent,

v.

Lake Emory Post Acute Care; THI of South Carolina at Camp
Care, LLC; THI of South Carolina, LLC; THI of Baltimore, Inc.;
Fundamental Administrative Services, LLC; Fundamental
Clinical and Operational Services, LLC; Fundamental Clinical
Consulting, LLC; Fundamental Long Term Care Holdings, LLC;
and Kerry L. Wheeler, DO,

Defendants,

Of which Lake Emory Post Acute Care; THI of South Carolina at
Camp Care, LLC; THI of South Carolina, LLC; THI of
Baltimore, Inc.; Fundamental Administrative Services, LLC;
Fundamental Clinical and Operational Services, LLC; and
Fundamental Long Term Care Holdings, LLC, are

Appellants.

**RECORD ON APPEAL
VOLUME I
PAGES 1 - 239**

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INDEX

Page

Volume I

Orders

Order, filed April 8, 2021[3708 ¹]	1
Order, filed April 8, 2021[3709 ²]	8
Order, filed June 23 2022 [3708].....	15
CEN and NEF, filed June 23, 2022 [3708]	25
Order, filed June 27, 2022 [3709].....	27

Pleadings

Summons and Complaint, filed October 21, 2019 [3708]	37
Summons and Complaint, filed October 21, 2019 [3709]	46
The Facility's ³ Answer, filed November 25, 2019 [3708]	55
FAS's ⁴ Answer, filed November 25, 2019 [3708]	65
FCOS's ⁵ Answer, filed November 25, 2019 [3708]	75

¹ “3708” refers to Circuit Court Case No. 2019-CP-42-03708.

² “3709” refers to Circuit Court Case No. 2019-CP-42-03709.

³ The “Facility” refers to both the Defendant/Appellant identified as Lake Emory Post Acute Care (“LEPAC”) and Defendant/Appellant THI of South Carolina at Camp Care, LLC (“Camp Care LLC”), collectively. (Note: LEPAC and Camp Care LLC are misidentified in the caption as separate entities, which they are not. Rather, LEPAC is the name under which Camp Care LLC does business.)

⁴ “FAS” refers to Defendant/Appellant Fundamental Administrative Services, LLC.

⁵ “FCOS” refers to Defendant/Appellant Fundamental Clinical and Operational Services, LLC.

HVH’s ⁶ Answer, filed November 25, 2019 [3708]	85
THIB’s ⁷ Answer, filed November 25, 2019 [3708]	95
THISC’s ⁸ Answer, filed November 25, 2019 [3708]	105
The Facility’s Answer, filed November 25, 2019 [3709]	115
FAS’s Answer, filed November 25, 2019 [3709]	124
FCOS’s Answer, filed November 25, 2019 [3709]	134
HVH’s Answer, filed November 25, 2019 [3709]	144
THIB’s Answer, filed November 25, 2019 [3709]	154
THISC’s Answer, filed November 25, 2019 [3709]	164

Transcript

Hearing held January 20, 2021	174
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Other Material

The Facility’s Motion to Compel Arbitration, filed April 13, 2020 [3708]	213
<u>Exhibit A</u> , Arbitration Agreement	216
FAS’s Motion to Stay, filed April 13, 2020 [3708]	217
FCOS’s Motion to Stay, filed April 13, 2020 [3708]	219
HVH’s Motion to Stay, filed April 13, 2020 [3708]	221

⁶ “HVH” refers to Defendant/Appellant Hunt Valley Holdings, LLC f/k/a Fundamental Long Term Care Holdings, LLC.

⁷ “THIB” refers to Defendant/Appellant THI of Baltimore, Inc.

⁸ “THISC” refers to Defendant/Appellant THI of South Carolina, LLC.

THIB’s Motion to Stay, filed April 13, 2020 [3708]	223
THISC’s Motion to Stay, filed April 13, 2020 [3708]	225
The Facility’s Motion to Compel Arbitration, filed April 13, 2020 [3709].....	227
<u>Exhibit A</u> , Arbitration Agreement.....	(see 216)
FAS’s Motion to Stay, filed April 13, 2020 [3709]	230
FCOS’s Motion to Stay, filed April 13, 2020 [3709].....	232
HVH’s Motion to Stay, filed April 13, 2020 [3709].....	234
THIB’s Motion to Stay, filed April 13, 2020 [3709]	236
THISC’s Motion to Stay, filed April 13, 2020 [3709]	238

Volume II

Plaintiff’s Memorandum in Opposition to the Motion to Compel Arbitration, filed November 30, 2020 [3708]	240
<u>Exhibit A</u> , Family Court Summons and Complaint.....	259
<u>Exhibit B</u> , Family Court Order.....	265
<u>Exhibit C</u> , DSS Letter and Final Family Court Order.....	268
<u>Exhibit D</u> , Admission Agreement.....	271
<u>Exhibit E</u> , Arbitration Agreement	(see 216)
<u>Exhibit F</u> , <i>CL SNF, LLC v. Fountain</i> , 355 Ga. App 176 (Ga. Ct. App. 2020).....	283
<u>Exhibit G</u> , <i>Scott v. Heritage Healthcare of Estill, LLC</i> , 2014- UP-317 (S.C. Ct. App., filed Aug 6, 2014).....	291

<u>Exhibit H</u> , <i>Wilson v. NHC Healthcare/Mauldin Order</i>	293
<u>Exhibit I</u> , <i>THI of South Carolina at Magnolia Manor – Inman, LLC v. Gilbert</i> , Order and Opinion	299
Plaintiff’s Memorandum in Opposition to the Motion to Compel Arbitration, filed November 30, 2020 [3709]	305
<u>Exhibit A</u> , Family Court Summons and Complaint.....	(see 259)
<u>Exhibit B</u> , Family Court Order.....	(see 265)
<u>Exhibit C</u> , DSS Letter and Final Family Court Order.....	(see 268)
<u>Exhibit D</u> , Admission Agreement	(see 271)
<u>Exhibit E</u> , Arbitration Agreement	(see 216)
<u>Exhibit F</u> , <i>CL SNF, LLC v. Fountain</i> , 355 Ga. App 176 (Ga. Ct. App. 2020).....	(see 283)
<u>Exhibit G</u> , <i>Scott v. Heritage Healthcare of Estill, LLC</i> , 2014-UP-317 (S.C. Ct. App., filed Aug 6, 2014).....	(see 291)
<u>Exhibit H</u> , <i>Wilson v. NHC Healthcare/Mauldin Order</i>	(see 293)
<u>Exhibit I</u> , <i>THI of South Carolina at Magnolia Manor – Inman, LLC v. Gilbert</i> , Order and Opinion	(see 299)
The Facility’s Memo in Support of its Motion to Compel Arbitration, filed December 1, 2020 [3708]	324
<u>Exhibit B</u> , Admission Agreement	(see 271)
FAS’s Memo in Support of Motion to Stay, filed December 1, 2020 [3708]	355
FCOS’s Memo in Support of Motion to Stay, filed December 1, 2020 [3708]	360

HVH’s Memo in Support of Motion to Stay, filed December 1, 2020 [3708].....	365
THIB’s Memo in Support of Motion to Stay, filed December 1, 2020 [3708].....	370
THISC’s Memo in Support of Motion to Stay, filed December 1, 2020 [3708].....	375
The Facility’s Memo in Support of its Motion to Compel Arbitration, filed December 1, 2020 [3709].....	380
<u>Exhibit B</u> , Admission Agreement	(see 271)
FAS’s Memo in Support of Motion to Stay, filed December 1, 2020 [3709].....	411
FCOS’s Memo in Support of Motion to Stay, filed December 1, 2020 [3709].....	416
HVH’s Memo in Support of Motion to Stay, filed December 1, 2020 [3709].....	421
THIB’s Memo in Support of Motion to Stay, filed December 1, 2020 [3709].....	426
THISC’s Memo in Support of Motion to Stay, filed December 1, 2020 [3709].....	431
Emails between Law Clerk and Counsel on February 1, 2021	436
CEN and NEF for Plaintiff’s Proposed Order Denying Principal Motions [3708], dated February 16, 2021	438
CEN and NEF for Plaintiff’s Proposed Order Denying Principal Motions [3709], dated February 16, 2021	441
Motion to Alter, Amend, and/or Reconsider Order Denying Defendants’ Respective Motions to Compel Arbitration and to Stay, filed April 19, 2021 [3708].....	444

Motion to Alter, Amend, and/or Reconsider Order Denying Defendants’ Respective Motions to Compel Arbitration and to Stay, filed April 19, 2021 [3709].....	461
Emails between Law Clerk and Counsel on June 6 and 10, 2022	478
CEN and NEF for Plaintiff’s Proposed Order Denying Defendants’ Motion to Reconsider [3708], dated June 17, 2022	480
CEN and NEF for Plaintiff’s Proposed Order Denying Defendants’ Motion to Reconsider [3709], dated June 17, 2022	483
Notice of Appeal with Proof of Service, filed July 26, 2022	485
Amended Notice of Appeal with Proof of Service, filed July 27, 2022	505
Respondent’s Motion to Dismiss the Appeal in case number 2019-CP-42-03708 and 2019-CP-42-03709, Filed August 1, 2022	525
Appellants’ Return to Respondent’s Motion to Dismiss the Appeal, filed August 11, 2022	531
Certificate of Counsel	544

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Kenneth Pace, Individually and as Personal
Representative of the Estate of Earl E. Pace,

Plaintiff,

v.

Lake Emory Post Acute Care; THI of South
Carolina at Camp Care, LLC; THI of South
Carolina, LLC; THI of Baltimore, Inc.;
Fundamental Administrative Services, LLC;
Fundamental Clinical and Operational Services,
LLC; Fundamental Clinical Consulting, LLC;
Fundamental Long Term Care Holdings, LLC,
and Kerry L. Wheeler, DO,

Defendants.

IN THE COURT OF COMMON PLEAS

2019-CP-42-03709

2019-CP-42-03708

**ORDER DENYING
DEFENDANTS' MOTIONS TO
DISMISS, COMPEL
ARBITRATION, AND TO STAY
THE STATE COURT
PROCEEDING**

This matter is before the Court upon motions filed by the Defendants to stay the underlying state court litigation and compel the above-captioned matters to arbitration. The parties submitted written memoranda in support and opposition to the motions and the Court heard oral argument of counsel for both parties on January 20, 2021. For the reasons set forth below, the Defendants' motion are hereby DENIED.

I. FACTUAL & PROCEDURAL HISTORY

This Court finds that on or about July 10, 2014, Mr. Pace was taken into the protective custody of the South Carolina Department of Social Services, (hereafter "DSS"). A Guardian *ad Litem*, (hereafter "GAL"), and an attorney were appointed for Mr. Pace by the family court. Thereafter, Mr. Pace was admitted to Lake Emory Post Acute Care, (hereafter "Lake Emory"), for care and supervision. At the time Mr. Pace was admitted to Lake Emory, he was under the custody of DSS. A DSS employee executed Mr. Pace's

admission paperwork. The paperwork executed by the DSS employee, Calvin Hill, (hereafter “Mr. Hill”), included an admission agreement and a separate arbitration agreement. It is undisputed that Mr. Hill was the only signer of the admission paperwork and the arbitration agreement. DSS subsequently petitioned the court to be relieved of custody and recommended that Lake Emory designate the Plaintiff as Mr. Pace’s representative. DSS, with the consent of the Guardian *ad litem*, the attorney for the Guardian *ad litem*, and the court appointed attorney for Mr. Pace, submitted a consent order seeking to relieve DSS of custody of Mr. Pace, as well as relieving from their appointments the attorneys and Guardian *ad litem*. The Laurens County Family Court entered an Order April 24, 2015 relieving DSS of custody of Mr. Pace and also relieving the court appointed Guardian *ad litem*, the attorney appointed for the Guardian *ad litem*, as well as the attorney appointed for Mr. Pace.

The Plaintiff in this action is Kenneth Pace, the son of the Decedent. Plaintiff filed his Summonses and Complaints alleging a Survival Action and a Wrongful Death Action on or about October 21, 2019. Defendants filed motions to dismiss and compel arbitration on April 13, 2020. Defendants alleged that they were entitled to compel this matter to arbitration pursuant to the aforementioned arbitration agreement and sought a stay of these proceedings. Defendants assert Mr. Hill was acting pursuant to “court ordered powers” and alleges that South Carolina Code Ann. § 43-35-10 provides authority for DSS to execute an arbitration agreement on behalf of an individual in their custody.¹ This Court disagrees and finds the arbitration agreement unenforceable as a matter of law.

¹ Defendants assert that the doctrines of equitable estoppel and third-party beneficiary similarly require this Court to compel arbitration. These arguments are similarly without merit.

II. LAW/ANALYSIS

Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination. *See New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 667 S.E.2d 1 (S.C. Ct. App. 2008). The arbitration agreement presented by the Defendants is not enforceable because the arbitration agreement was executed by someone that did not possess the authority to execute such an agreement on behalf of Mr. Pace.

In order for a court to compel arbitration pursuant to the Federal Arbitration Act, a litigant must demonstrate a valid arbitration agreement that purports to cover the dispute. *See Aiken v. World Finance Corp. of S.C.*, 373 SC 144, 149, 644 SE2d 705, 708 (2007). Where one party denies the existence of a valid arbitration agreement, a court must immediately determine whether the agreement exists in the first place. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 SC 14, 644 SE2d 663, 667 (2007). If no agreement is found to exist, the court must deny the request to arbitrate. *See id.* Whether a valid arbitration agreement exists is a matter for judicial determination. *See York v. Dodgeland of Columbia, Inc.*, 406 SC 67, 749 SE2d 139, 144 (Ct. App. 2013).

Although there is public policy favoring arbitration – it is applied only as an aid in interpreting the scope and enforcement of validly entered arbitration agreements. *See Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020). The FAA does not give the party seeking arbitration a “leg up in the threshold determination of whether a valid arbitration agreement exists.” *Id.*, 431 S.C.at 229, 847

S.E.2d at 271.. The “first principle that underscores all [] arbitration decisions is that [a]rbitration is strictly a matter of consent.” *Id* quoting *Lamps Plus, Inc., v. Varela*, 139 S.Ct. 1407, 1415 (2019).

Because Mr. Pace did not execute the arbitration agreement himself, Mr. Hill must have had the appropriate legal authority to execute the arbitration agreement for it to be enforceable.

Defendants argue that Mr. Hill was granted agency authority to act on Mr. Pace’s behalf. This argument is without merit. This Court finds that Calvin Hill lacked common law agency authority to execute an arbitration agreement for Mr. Pace.² Agency is a fiduciary relationship that results when one person consents to be subject to the control of the other and to act on his behalf. *See R & G Constr., Inc. v. Lowcountry Reg’l Transp. Auth.*, 343 S.C. 424, 540 S.E.2d 113 (S.C. Ct. App. 2000). It is undisputed that Mr. Pace was diagnosed with dementia, was incompetent, and unable to provide consent or acquiesce to Mr. Hill’s actions. Furthermore, the authority conveyed to an agent does not encompass executing an agreement to resolve legal claims through arbitration. *See Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), citing *Dickerson v. Longoria*, 995 A.2d 721, 736-37 (Md. 2010).

Defendants assert that Mr. Hill was acting pursuant to “court ordered powers” and the “actual authority” provided by the Adult Protection Act. These arguments are similarly without merit.

The Adult Protection Statute codified at § 43-35-5 *et seq.* sets forth the authority

² Similarly, the South Carolina Health Care Consent Act, (hereafter “SCHCA”), codified at South Carolina Code Ann. § 44-66-10 *et seq.* does not give authority for DSS to waive the constitutionally protected right to a trial by jury of a vulnerable adult in its custody.

and procedure for the State of South Carolina to take a vulnerable adult into protective custody. The duties and responsibilities to the vulnerable adult under the Adult Protective Services program are set forth in § 43-35-45. The other provisions of the Adult Protective Services Program relate entirely to the duties and responsibilities of the GAL. This Court finds that while the statutes authorizing the Adult Protective Services Program would permit DSS to hire a doctor or medical facility for Mr. Pace, and would authorize DSS to hire an attorney to provide legal services for Mr. Pace, the statutes do not authorize DSS to perform legal services and do not provide any authority for DSS to execute an arbitration agreement that waives Mr. Pace's constitutional right to a jury trial.

Defendants argue that the "definitions" section of the Adult Protective Services statute grants authority in defining protective service. "Protective services" means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services." *See* S.C. Code Ann. § 43-35-10(9). Defendants place particular emphasis on the words "legal services." This Court interprets the statute as permitting DSS to arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed. The statute does not authorize DSS to provide legal services to Mr. Pace or waive his constitutional right to a jury trial. Similarly, the family court order provides no such authority.

Defendants argue that Kenneth Pace should be estopped from denying the arbitration agreement under the doctrine of equitable estoppel. In this case, the

admission agreement and the arbitration agreement were wholly independent and shall not be construed together. *See Hodge v. Unihealth Post-Acute Care of Bamberg, LLC.*, 422 SC 544, 813 S.E.2d 292 (Ct. App. 2018). Because the admission agreement is not merged with the arbitration agreement, this argument is without merit.

Defendants argue that Mr. Pace is a third-party beneficiary to the arbitration agreement. For all the reasons set forth above, this Court has found that the arbitration agreement in this matter is not valid. Without a valid arbitration agreement, there can be no third-party beneficiary. *See Thompson, supra*. This argument is without merit.

Therefore, this Court finds that DSS did not have the authority to execute an arbitration on behalf of Mr. Pace. Because the arbitration agreement was executed by a person without authority, it cannot be enforced.

IT IS HEREBY ORDERED that the Adult Protective Services Statute does not permit DSS to execute an arbitration agreement on behalf of a vulnerable adult. However, this Court does find that the Adult Protective Services Statute does provide for DSS to arrange for legal services to be provided for a vulnerable adult.

IT IS FURTHER ORDERED that the arbitration agreement presented by the Defendants is not enforceable.

IT IS SO ORDERED.

Hon. R. Keith Kelly
Circuit Court Judge

February _____, 2021
Gaffney, South Carolina



Spartanburg Common Pleas

Case Caption: Kenneth Pace VS Lake Emory Post Acute Care , defendant, et al

Case Number: 2019CP4203708

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

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COUNTY OF SPARTANBURG

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2019-CP-42-03709

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Defendants argue that Mr. Pace is a third-party beneficiary to the arbitration agreement. For all the reasons set forth above, this Court has found that the arbitration agreement in this matter is not valid. Without a valid arbitration agreement, there can be no third-party beneficiary. *See Thompson, supra*. This argument is without merit.

Therefore, this Court finds that DSS did not have the authority to execute an arbitration on behalf of Mr. Pace. Because the arbitration agreement was executed by a person without authority, it cannot be enforced.

IT IS HEREBY ORDERED that the Adult Protective Services Statute does not permit DSS to execute an arbitration agreement on behalf of a vulnerable adult. However, this Court does find that the Adult Protective Services Statute does provide for DSS to arrange for legal services to be provided for a vulnerable adult.

IT IS FURTHER ORDERED that the arbitration agreement presented by the Defendants is not enforceable.

IT IS SO ORDERED.

Hon. R. Keith Kelly
Circuit Court Judge

February _____, 2021
Gaffney, South Carolina



Spartanburg Common Pleas

Case Caption: Kenneth Pace VS Lake Emory Post Acute Care , defendant, et al

Case Number: 2019CP4203709

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2021-04-08 14:37:41 page 7 of 7

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Kenneth Pace, Individually and as Personal
Representative of the Estate of Earl E.
Pace,

Plaintiff,

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Lake Emory Post Acute Care; THI of South
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Care Holdings, LLC, and Kerry L. Wheeler,
DO,

Defendants.

IN THE COURT OF COMMON PLEAS

2019-CP-42-03709

2019-CP-42-03708

**ORDER DENYING THE MOTION
TO ALTER, AMEND AND/OR
RECONSIDER BY THE
DEFENDANTS**

This matter is before the Court upon motions filed by the Defendants to stay the underlying state court litigation and compel the above-captioned matters to arbitration. The parties submitted written memoranda in support and opposition to the motions and the Court heard oral argument of counsel for both parties on January 20, 2021. This Court denied the Defendants' motion in an Order filed April 8, 2021. Defendants' subsequently filed a Motion to Alter, Amend or Reconsider. The parties submitted written memoranda in support and opposition to the motion. This Court carefully considered arguments of both parties.

For the reasons set forth below, the Defendants' motions are hereby DENIED.

I. FACTUAL & PROCEDURAL HISTORY

This Court finds that on or about July 10, 2014, Mr. Pace was taken into the protective custody of the South Carolina Department of Social Services, (hereafter “DSS”). A Guardian *ad Litem*, (hereafter “GAL”), and an attorney were appointed for Mr. Pace by the family court. Thereafter, Mr. Pace was admitted to Lake Emory Post Acute Care, (hereafter “Lake Emory”), for care and supervision. At the time Mr. Pace was admitted to Lake Emory, he was under the custody of DSS. A DSS employee executed Mr. Pace’s admission paperwork. The paperwork executed by the DSS employee, Calvin Hill, (hereafter “Mr. Hill”), included an admission agreement and a separate arbitration agreement. It is undisputed that Mr. Hill was the only signer of the admission paperwork and the arbitration agreement. DSS subsequently petitioned the court to be relieved of custody and recommended that Lake Emory designate the Plaintiff as Mr. Pace’s representative. DSS, with the consent of the Guardian *ad litem*, the attorney for the Guardian *ad litem*, and the court appointed attorney for Mr. Pace, submitted a consent order seeking to relieve DSS of custody of Mr. Pace, as well as relieving from their appointments the attorneys and Guardian *ad litem*. The Laurens County Family Court entered an Order April 24, 2015 relieving DSS of custody of Mr. Pace and also relieving the court appointed Guardian *ad litem*, the attorney appointed for the Guardian *ad litem*, as well as the attorney appointed for Mr. Pace.

The Plaintiff in this action is Kenneth Pace, the son of the Decedent. Plaintiff filed his Summonses and Complaints alleging a Survival Action and a Wrongful Death Action on or about October 21, 2019. Defendants filed motions to dismiss and compel arbitration on April 13, 2020. Defendants alleged that they were entitled to compel this matter to

arbitration pursuant to the aforementioned arbitration agreement and sought a stay of these proceedings. Defendants assert Mr. Hill was acting pursuant to “court ordered powers” and alleges that South Carolina Code Ann. § 43-35-10 provides authority for DSS to execute an arbitration agreement on behalf of an individual in their custody. This Court disagrees and finds the arbitration agreement unenforceable as a matter of law.

II. LAW/ANALYSIS

A motion under Rule 59(e) has long been viewed as "motion for reconsideration" despite the absence of those words from the rule. *See Elam v. S.C. DOT*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004). A party is permitted to ask the court to reconsider its decision “even if it means rehashing all or part of an argument previously presented *See id.* This Court finds that the Defendants’ motions are based on the same grounds set forth in Defendants’ original Motions to Dismiss and Compel Arbitration and therefore adopts and incorporates by reference the reasoning set forth in this Court’s April 8, 2021 Order denying the Defendants’ motions.

Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination. *See New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 667 S.E.2d 1 (S.C. Ct. App. 2008). The arbitration agreement presented by the Defendants is not enforceable because the arbitration agreement was executed by someone that did not possess the authority to execute such an agreement on behalf of Mr. Pace.

In order for a court to compel arbitration pursuant to the Federal Arbitration Act, a litigant must demonstrate a valid arbitration agreement that purports to cover the

dispute. *See Aiken v. World Finance Corp. of S.C.*, 373 SC 144, 149, 644 SE2d 705, 708 (2007). Where one party denies the existence of a valid arbitration agreement, a court must immediately determine whether the agreement exists in the first place. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 SC 14, 644 SE2d 663, 667 (2007). If no agreement is found to exist, the court must deny the request to arbitrate. *See id.* Whether a valid arbitration agreement exists is a matter for judicial determination. *See York v. Dodgeland of Columbia, Inc.*, 406 SC 67, 749 SE2d 139, 144 (Ct. App. 2013).

Although there is public policy favoring arbitration – it is applied only as an aid in interpreting the scope and enforcement of validly entered arbitration agreements. *See Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020). The FAA does not give the party seeking arbitration a “leg up in the threshold determination of whether a valid arbitration agreement exists.” *Id.*, 431 S.C.at 229, 847 S.E.2d at 271.. The “first principle that underscores all [] arbitration decisions is that [a]rbitration is strictly a matter of consent.” *Id.* quoting *Lamps Plus, Inc., v. Varela*, 139 S.Ct. 1407, 1415 (2019).

Because it is undisputed that Mr. Pace did not execute the arbitration agreement himself, Mr. Hill must have had the appropriate legal authority to execute the arbitration agreement for it to be enforceable.

Defendants have argued in both their original motion and in the Motion to Reconsider that Mr. Hill was granted agency authority to act on Mr. Pace’s behalf. This Court finds that this argument continues to be without merit.

DSS Representative Calvin Hill lacked common law agency authority to execute an arbitration agreement for Mr. Pace. Agency is a fiduciary relationship that results when

one person consents to be subject to the control of the other and to act on his behalf. *See R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 540 S.E.2d 113 (S.C. Ct. App. 2000). It is undisputed that Mr. Pace was diagnosed with dementia, was incompetent, and unable to provide consent or acquiesce to Mr. Hill's actions. Furthermore, the authority conveyed to an agent does not encompass executing an agreement to resolve legal claims through arbitration. *See Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), citing *Dickerson v. Longoria*, 995 A.2d 721, 736-37 (Md. 2010).

Defendants assert that Mr. Hill was acting pursuant to "court ordered powers" and the "actual authority" provided by the Adult Protection Act. These arguments are similarly without merit.

The Adult Protection Statute codified at § 43-35-5 *et seq.* sets forth the authority and procedure for the State of South Carolina to take a vulnerable adult into protective custody. The duties and responsibilities to the vulnerable adult under the Adult Protective Services program are set forth in § 43-35-45. The other provisions of the Adult Protective Services Program relate entirely to the duties and responsibilities of the GAL. This Court finds that while the statutes authorizing the Adult Protective Services Program would permit DSS to hire a doctor or medical facility for Mr. Pace, and would authorize DSS to hire an attorney to provide legal services for Mr. Pace, the statutes do not authorize DSS to perform legal services and do not provide any authority for DSS to execute an arbitration agreement that waives Mr. Pace's constitutional right to a jury trial.

Defendants argue that the "definitions" section of the Adult Protective Services statute grants authority in defining protective service. "Protective services" means those

services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.” *See* S.C. Code Ann. § 43-35-10(9). Defendants place particular emphasis on the words “legal services.” Defendants argue that this Court has erred in failing to consider the language “include, but are not limited to” in determining that the protective services would give to DSS the authority to execute the arbitration agreement. This argument is without merit.

This Court interprets the statute, and every portion thereof, as permitting DSS to arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed. The statute does not authorize DSS to provide legal services to Mr. Pace or waive his constitutional right to a jury trial. Similarly, the family court order provides no such authority.

Defendants further argue that Kenneth Pace should be estopped from denying the arbitration agreement under the doctrine of equitable estoppel. In order for equitable estoppel to apply to the case at hand, there must have been a merger of the admission agreement and the arbitration agreement.

The Defendants argue that the court erred in failing to accept their argument that the documents were executed at the same time and by the same parties and therefore, constituted one transaction. Defendants argue that the Court has failed to consider the parties’ intentions.

In this case the Court looked carefully at the documents in question to determine

whether the parties *intended* the documents to be construed together. There is no reference whatsoever within the 12 pages of the admission agreement regarding arbitration. The admission agreement refers to a “Grievance Procedure” that is included in the admission handbook and is incorporated by reference. There is no reference to arbitration and the admission agreement does not state anywhere that admission is contingent upon execution of an arbitration agreement.

The admission agreement provides expressly that it will be governed by the laws of the State in which “Facility” is located – South Carolina. Finally, the Admission Agreement provides an “Entire Agreement” or merger clause. The merger clause provides:

I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties...

Id.

Defendants argue that the “entire agreement” clause should be interpreted to include documents that were not, in fact, included in the admission agreement. This argument is simply without merit.

In contrast, the arbitration agreement is governed by federal law and the Federal Arbitration Act.¹ Moreover, the arbitration agreement, on its face, is separate from the admission agreement. Finally, there is no language in the arbitration agreement that

¹ See *Hodge*, *supra* wherein the Court found that the admission agreement and arbitration provisions were not merged, in part because state law governed the admission agreement and federal law the arbitration agreement. The *Hodge* court determined that plaintiff would not be equitably estopped from denying arbitration noting that “...even if the Admission Agreement and Arbitration Agreement [were] merged, because [plaintiffs] are not suing for a breach of the Admission Agreement, they are not attempting to enforce that agreement. See *id.*”

execution of the same was required for admission to Defendants' facility.

The admission agreement and the arbitration agreement were wholly independent and this Court holds that they shall not be construed together. *See Hodge v. Unihealth Post-Acute Care of Bamberg, LLC.*, 422 SC 544, 813 S.E.2d 292 (Ct. App. 2018). Because the admission agreement is not merged with the arbitration agreement, Defendants' equitable estoppel argument is without merit.

Defendants further argue that Mr. Pace is a third-party beneficiary to the arbitration agreement. For all the reasons set forth above, this Court has found that the arbitration agreement in this matter is not valid. Without a valid arbitration agreement, there can be no third-party beneficiary. *See Thompson, supra*. This argument is without merit.

Therefore, this Court finds that DSS did not have the authority to execute an arbitration on behalf of Mr. Pace. Because the arbitration agreement was executed by a person without authority, it cannot be enforced.

IT IS HEREBY ORDERED that the Adult Protective Services Statute does not permit DSS to execute an arbitration agreement on behalf of a vulnerable adult. However, this Court does find that the Adult Protective Services Statute does provide for DSS to arrange for legal services to be provided for a vulnerable adult.

IT IS FURTHER ORDERED that the arbitration agreement presented by the Defendants is not enforceable under theories of equitable estoppel or third party beneficiary.

IT IS FURTHER ORDERED that the Defendants' Motion to Alter, Amend or Reconsider is hereby denied.

IT IS FURTHER ORDERED that the Defendants' Motion to Stay are moot in light of this Court's rulings and are hereby denied.

IT IS SO ORDERED.

Hon. R. Keith Kelly
Circuit Court Judge

June _____, 2022
Gaffney, South Carolina



Spartanburg Common Pleas

Case Caption: Kenneth Pace VS Lake Emory Post Acute Care , defendant, et al

Case Number: 2019CP4203708

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2022-06-23 14:33:23 page 10 of 10

Certificate of Electronic Notification

Recipients

Russell Harter - Notification transmitted on 06-23-2022 04:31:03 PM.

Donald Davis - Notification transmitted on 06-23-2022 04:31:02 PM.

Kate Mettler - Notification transmitted on 06-23-2022 04:31:06 PM.

Anthony Harbin - Notification transmitted on 06-23-2022 04:31:05 PM.

Jennifer Burnett - Notification transmitted on 06-23-2022 04:31:02 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP4203708

Official File Stamp: 06-23-2022 04:30:51 PM

Court: CIRCUIT COURT

Common Pleas

Spartanburg

Case Caption: Kenneth Pace VS Lake Emory Post Acute Care ,
defendant, et al

Document(s) Submitted: Order/Other Order/Other

Filed by or on behalf of: R. Keith Kelly

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Anthony Lee Harbin for Kenneth Pace

Russell W. Harter, Jr. for Kerry L. Wheeler, Do

Kate Mettler for Fundamnetal Long Term Care
Holdings, Llc, Lake Emory Post Acute Care,
Fundamental Clinical And Opertational Services,
Llc, Fundamental Administrative Services, Llc, Thi
Of Baltimore, Inc, Thi Of South Carolina, Llc, Thi
Of South Carolina At Camp Care, Llc

Donald Jay Davis, Jr. for Fundamnetal Long Term
Care Holdings, Llc, Lake Emory Post Acute Care,
Fundamental Clinical And Opertational Services,
Llc, Fundamental Administrative Services, Llc, Thi
Of Baltimore, Inc, Thi Of South Carolina, Llc, Thi
Of South Carolina At Camp Care, Llc

Jennifer Spragins Burnett for Kenneth Pace

The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Kenneth Pace, Individually and as Personal
Representative of the Estate of Earl E.
Pace,

Plaintiff,

v.

Lake Emory Post Acute Care; THI of South
Carolina at Camp Care, LLC; THI of South
Carolina, LLC; THI of Baltimore, Inc.;
Fundamental Administrative Services, LLC;
Fundamental Clinical and Operational
Services, LLC; Fundamental Clinical
Consulting, LLC; Fundamental Long Term
Care Holdings, LLC, and Kerry L. Wheeler,
DO,

Defendants.

IN THE COURT OF COMMON PLEAS

2019-CP-42-03709

2019-CP-42-03708

**ORDER DENYING THE MOTION
TO ALTER, AMEND AND/OR
RECONSIDER BY THE
DEFENDANTS**

This matter is before the Court upon motions filed by the Defendants to stay the underlying state court litigation and compel the above-captioned matters to arbitration. The parties submitted written memoranda in support and opposition to the motions and the Court heard oral argument of counsel for both parties on January 20, 2021. This Court denied the Defendants' motion in an Order filed April 8, 2021. Defendants' subsequently filed a Motion to Alter, Amend or Reconsider. The parties submitted written memoranda in support and opposition to the motion. This Court carefully considered arguments of both parties.

For the reasons set forth below, the Defendants' motions are hereby DENIED.

I. FACTUAL & PROCEDURAL HISTORY

This Court finds that on or about July 10, 2014, Mr. Pace was taken into the protective custody of the South Carolina Department of Social Services, (hereafter “DSS”). A Guardian *ad Litem*, (hereafter “GAL”), and an attorney were appointed for Mr. Pace by the family court. Thereafter, Mr. Pace was admitted to Lake Emory Post Acute Care, (hereafter “Lake Emory”), for care and supervision. At the time Mr. Pace was admitted to Lake Emory, he was under the custody of DSS. A DSS employee executed Mr. Pace’s admission paperwork. The paperwork executed by the DSS employee, Calvin Hill, (hereafter “Mr. Hill”), included an admission agreement and a separate arbitration agreement. It is undisputed that Mr. Hill was the only signer of the admission paperwork and the arbitration agreement. DSS subsequently petitioned the court to be relieved of custody and recommended that Lake Emory designate the Plaintiff as Mr. Pace’s representative. DSS, with the consent of the Guardian *ad litem*, the attorney for the Guardian *ad litem*, and the court appointed attorney for Mr. Pace, submitted a consent order seeking to relieve DSS of custody of Mr. Pace, as well as relieving from their appointments the attorneys and Guardian *ad litem*. The Laurens County Family Court entered an Order April 24, 2015 relieving DSS of custody of Mr. Pace and also relieving the court appointed Guardian *ad litem*, the attorney appointed for the Guardian *ad litem*, as well as the attorney appointed for Mr. Pace.

The Plaintiff in this action is Kenneth Pace, the son of the Decedent. Plaintiff filed his Summonses and Complaints alleging a Survival Action and a Wrongful Death Action on or about October 21, 2019. Defendants filed motions to dismiss and compel arbitration on April 13, 2020. Defendants alleged that they were entitled to compel this matter to

arbitration pursuant to the aforementioned arbitration agreement and sought a stay of these proceedings. Defendants assert Mr. Hill was acting pursuant to “court ordered powers” and alleges that South Carolina Code Ann. § 43-35-10 provides authority for DSS to execute an arbitration agreement on behalf of an individual in their custody. This Court disagrees and finds the arbitration agreement unenforceable as a matter of law.

II. LAW/ANALYSIS

A motion under Rule 59(e) has long been viewed as “motion for reconsideration” despite the absence of those words from the rule. *See Elam v. S.C. DOT*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004). A party is permitted to ask the court to reconsider its decision “even if it means rehashing all or part of an argument previously presented. *See id.* This Court finds that the Defendants’ motions are based on the same grounds set forth in Defendants’ original Motions to Dismiss and Compel Arbitration and therefore adopts and incorporates by reference the reasoning set forth in this Court’s April 8, 2021 Order denying the Defendants’ motions.

Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination. *See New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 667 S.E.2d 1 (S.C. Ct. App. 2008). The arbitration agreement presented by the Defendants is not enforceable because the arbitration agreement was executed by someone that did not possess the authority to execute such an agreement on behalf of Mr. Pace.

In order for a court to compel arbitration pursuant to the Federal Arbitration Act, a litigant must demonstrate a valid arbitration agreement that purports to cover the

dispute. *See Aiken v. World Finance Corp. of S.C.*, 373 SC 144, 149, 644 SE2d 705, 708 (2007). Where one party denies the existence of a valid arbitration agreement, a court must immediately determine whether the agreement exists in the first place. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 SC 14, 644 SE2d 663, 667 (2007). If no agreement is found to exist, the court must deny the request to arbitrate. *See id.* Whether a valid arbitration agreement exists is a matter for judicial determination. *See York v. Dodgeland of Columbia, Inc.*, 406 SC 67, 749 SE2d 139, 144 (Ct. App. 2013).

Although there is public policy favoring arbitration – it is applied only as an aid in interpreting the scope and enforcement of validly entered arbitration agreements. *See Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020). The FAA does not give the party seeking arbitration a “leg up in the threshold determination of whether a valid arbitration agreement exists.” *Id.*, 431 S.C.at 229, 847 S.E.2d at 271.. The “first principle that underscores all [] arbitration decisions is that [a]rbitration is strictly a matter of consent.” *Id* quoting *Lamps Plus, Inc., v. Varela*, 139 S.Ct. 1407, 1415 (2019).

Because it is undisputed that Mr. Pace did not execute the arbitration agreement himself, Mr. Hill must have had the appropriate legal authority to execute the arbitration agreement for it to be enforceable.

Defendants have argued in both their original motion and in the Motion to Reconsider that Mr. Hill was granted agency authority to act on Mr. Pace’s behalf. This Court finds that this argument continues to be without merit.

DSS Representative Calvin Hill lacked common law agency authority to execute an arbitration agreement for Mr. Pace. Agency is a fiduciary relationship that results when

one person consents to be subject to the control of the other and to act on his behalf. *See R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 540 S.E.2d 113 (S.C. Ct. App. 2000). It is undisputed that Mr. Pace was diagnosed with dementia, was incompetent, and unable to provide consent or acquiesce to Mr. Hill's actions. Furthermore, the authority conveyed to an agent does not encompass executing an agreement to resolve legal claims through arbitration. *See Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), citing *Dickerson v. Longoria*, 995 A.2d 721, 736-37 (Md. 2010).

Defendants assert that Mr. Hill was acting pursuant to "court ordered powers" and the "actual authority" provided by the Adult Protection Act. These arguments are similarly without merit.

The Adult Protection Statute codified at § 43-35-5 *et seq.* sets forth the authority and procedure for the State of South Carolina to take a vulnerable adult into protective custody. The duties and responsibilities to the vulnerable adult under the Adult Protective Services program are set forth in § 43-35-45. The other provisions of the Adult Protective Services Program relate entirely to the duties and responsibilities of the GAL. This Court finds that while the statutes authorizing the Adult Protective Services Program would permit DSS to hire a doctor or medical facility for Mr. Pace, and would authorize DSS to hire an attorney to provide legal services for Mr. Pace, the statutes do not authorize DSS to perform legal services and do not provide any authority for DSS to execute an arbitration agreement that waives Mr. Pace's constitutional right to a jury trial.

Defendants argue that the "definitions" section of the Adult Protective Services statute grants authority in defining protective service. "Protective services" means those

services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.” *See* S.C. Code Ann. § 43-35-10(9). Defendants place particular emphasis on the words “legal services.” Defendants argue that this Court has erred in failing to consider the language “include, but are not limited to” in determining that the protective services would give to DSS the authority to execute the arbitration agreement. This argument is without merit.

This Court interprets the statute, and every portion thereof, as permitting DSS to arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed. The statute does not authorize DSS to provide legal services to Mr. Pace or waive his constitutional right to a jury trial. Similarly, the family court order provides no such authority.

Defendants further argue that Kenneth Pace should be estopped from denying the arbitration agreement under the doctrine of equitable estoppel. In order for equitable estoppel to apply to the case at hand, there must have been a merger of the admission agreement and the arbitration agreement.

The Defendants argue that the court erred in failing to accept their argument that the documents were executed at the same time and by the same parties and therefore, constituted one transaction. Defendants argue that the Court has failed to consider the parties’ intentions.

In this case the Court looked carefully at the documents in question to determine

whether the parties *intended* the documents to be construed together. There is no reference whatsoever within the 12 pages of the admission agreement regarding arbitration. The admission agreement refers to a “Grievance Procedure” that is included in the admission handbook and is incorporated by reference. There is no reference to arbitration and the admission agreement does not state anywhere that admission is contingent upon execution of an arbitration agreement.

The admission agreement provides expressly that it will be governed by the laws of the State in which “Facility” is located – South Carolina. Finally, the Admission Agreement provides an “Entire Agreement” or merger clause. The merger clause provides:

I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties...

Id.

Defendants argue that the “entire agreement” clause should be interpreted to include documents that were not, in fact, included in the admission agreement. This argument is simply without merit.

In contrast, the arbitration agreement is governed by federal law and the Federal Arbitration Act.¹ Moreover, the arbitration agreement, on its face, is separate from the admission agreement. Finally, there is no language in the arbitration agreement that

¹ See *Hodge*, *supra* wherein the Court found that the admission agreement and arbitration provisions were not merged, in part because state law governed the admission agreement and federal law the arbitration agreement. The *Hodge* court determined that plaintiff would not be equitably estopped from denying arbitration noting that “...even if the Admission Agreement and Arbitration Agreement [were] merged, because [plaintiffs] are not suing for a breach of the Admission Agreement, they are not attempting to enforce that agreement. See *id.*”

execution of the same was required for admission to Defendants' facility.

The admission agreement and the arbitration agreement were wholly independent and this Court holds that they shall not be construed together. *See Hodge v. Unihealth Post-Acute Care of Bamberg, LLC.*, 422 SC 544, 813 S.E.2d 292 (Ct. App. 2018). Because the admission agreement is not merged with the arbitration agreement, Defendants' equitable estoppel argument is without merit.

Defendants further argue that Mr. Pace is a third-party beneficiary to the arbitration agreement. For all the reasons set forth above, this Court has found that the arbitration agreement in this matter is not valid. Without a valid arbitration agreement, there can be no third-party beneficiary. *See Thompson, supra*. This argument is without merit.

Therefore, this Court finds that DSS did not have the authority to execute an arbitration on behalf of Mr. Pace. Because the arbitration agreement was executed by a person without authority, it cannot be enforced.

IT IS HEREBY ORDERED that the Adult Protective Services Statute does not permit DSS to execute an arbitration agreement on behalf of a vulnerable adult. However, this Court does find that the Adult Protective Services Statute does provide for DSS to arrange for legal services to be provided for a vulnerable adult.

IT IS FURTHER ORDERED that the arbitration agreement presented by the Defendants is not enforceable under theories of equitable estoppel or third party beneficiary.

IT IS FURTHER ORDERED that the Defendants' Motion to Alter, Amend or Reconsider is hereby denied.

IT IS FURTHER ORDERED that the Defendants' Motion to Stay are moot in light of this Court's rulings and are hereby denied.

IT IS SO ORDERED.

Hon. R. Keith Kelly
Circuit Court Judge

June _____, 2022
Gaffney, South Carolina



Spartanburg Common Pleas

Case Caption: Kenneth Pace VS Lake Emory Post Acute Care , defendant, et al

Case Number: 2019CP4203709

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2022-06-27 15:02:06 page 10 of 10

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Kenneth Pace, Individually and as Personal
Representative of the Estate of Earl E. Pace,
Plaintiff,

2019-CP-42-_____

v.

**SUMMONS
(Survival Action)**

Lake Emory Post Acute Care; THI of South Carolina at
Camp Care, LLC; THI of South Carolina, LLC; THI of
Baltimore, Inc.; Fundamental Administrative Services,
LLC; Fundamental Clinical and Operational Services,
LLC; Fundamental Clinical Consulting, LLC;
Fundamental Long Term Care Holdings, LLC, and Kerry
L. Wheeler, DO,
Defendants.

JURY TRIAL DEMANDED

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at this office at Post Office Box 35, Anderson, South Carolina, 29622, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff(s) in this action will apply to the Court for the said relief demanded in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a Guardian ad Litem to represent you in this action within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE/(THEY) RESIDE(S):

You are further summoned and notified to apply for the appointment of a Guardian ad Litem to represent said infant(s) under fourteen years of age (said incompetent or insane person) within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

{signature page follows}

s/ Jennifer Burnett

Jennifer Spragins Burnett, SC Bar #69617

Harbin & Burnett, LLP

2124 Highway 81 North (29621)

P.O. Box 35

Anderson, SC 29622-0035

(864) 622-7801

(864) 964-0930 (Facsimile)

Attorneys for the Plaintiff

Anderson, South Carolina
October 21, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Kenneth Pace, Individually and as Personal
Representative of the Estate of Earl E. Pace,
Plaintiff,

2019-CP-42-_____

v.

**COMPLAINT
(Survival Action)**

Lake Emory Post Acute Care; THI of South Carolina at
Camp Care, LLC; THI of South Carolina, LLC; THI of
Baltimore, Inc.; Fundamental Administrative Services,
LLC; Fundamental Clinical and Operational Services,
LLC; Fundamental Clinical Consulting, LLC;
Fundamental Long Term Care Holdings, LLC, and Kerry
L. Wheeler, DO,
Defendants.

JURY TRIAL DEMANDED

The Plaintiff, complaining of the Defendants herein, would respectfully show unto the Court and allege as follows:

Jurisdictional Allegations

1. The Plaintiff, Kenneth Pace, Individually and as the Personal Representative of the Estate of Earl E. Pace, is the duly appointed, qualified, and acting Personal Representative of the Estate of his father, Earl E. Pace ("Mr. Pace"), as defined by South Carolina Code Ann. § 62-3-203. Kenneth Pace is a citizen and resident of the County of Grundy, State of Tennessee.
2. The Decedent, Mr. Pace, was, at the time of the incident, a resident of the skilled nursing facility doing business as "Lake Emory Post Acute Care" which is located at 59 Blackstock Road in Inman, South Carolina.
3. Kenneth Pace has the authority to pursue this claim on behalf of the Estate of his father pursuant to South Carolina Code Ann. § 62-3-203.
4. Upon information and belief, the Defendant Lake Emory Post Acute Care (hereafter "Lake Emory"), is licensed as a skilled nursing facility and doing business as a healthcare provider.
5. Upon further information and belief, Lake Emory; THI of South Carolina at Camp Care, LLC; THI of South Carolina, LLC; THI of Baltimore, Inc.; Fundamental Administrative Services, LLC; Fundamental Clinical and Operational Services, LLC; Fundamental Clinical Consulting, LLC; Fundamental Long Term Care

Holdings, LLC, (hereafter collectively "THI"), are entities which own, operate, direct, control, provide budgetary control or oversight, provide management or consulting services to, or are the alter-egos of the long term care facility known as Lake Emory.

6. At all times relevant, the Defendants acted by and through their agents, contractors, and employees for the purpose of carrying on their business and therefore, are liable for the negligent acts of their agents, contractors, and employees under the theories of non-delegable duty and *respondeat superior*.
7. Upon information and belief, Lake Emory is organized under one of the States of the United States and doing business in the County of Spartanburg, State of South Carolina as a "nursing home" as defined by South Carolina Code Ann. §40-35-20(7) and/or a "long term care facility" as defined by South Carolina Code Ann. §44-81-30(1).
8. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina, the Omnibus Budget Reconciliation Act of 1987, ("OBRA") and the Regulations of the South Carolina Department of Health and Environmental Control.
9. Jurisdiction and venue are proper in this judicial circuit pursuant to South Carolina Code Ann. § 15-7-30(B).
10. Plaintiff expressly pleads that one or more agents of the Defendants was grossly negligent, willful, wanton, and reckless in their acts and omissions towards Mr. Pace and/or other acts or omissions set forth in South Carolina Code § 15-32-220 and one or more of the Defendants has engaged in fraud or misrepresentation related to the claim. As such, the Plaintiff expressly pleads that the limitation on non-economic damages set forth in South Carolina Code § 15-32-220 does not apply to a verdict in these matters pursuant to § 15-32-220(E).

Facts

11. Mr. Pace was admitted to Lake Emory on or about January 30, 2015 from Spartanburg Regional Medical Center, ("SRMC").
12. Mr. Pace took no medication to manage his blood sugars.
13. Mr. Pace was again admitted to SRMC on or about April 9, 2017 when he experienced some delirium.
14. During that hospitalization, SRMC treated Mr. Pace for a UTI and adjusted his psychiatric medications.
15. Mr. Pace was hospitalized until April 20, 2017 when he was returned to Lake Emory.

16. Upon return to Lake Emory, nursing staff and Dr. Wheeler ordered Levemir 47 units two times a day as well as Tradjenta 5 mg once a day – despite that prior to being sent to the hospital, Mr. Pace was not receiving any medication to control blood sugar.
17. Neither of these medications were given to Mr. Pace during his hospitalization.
18. Defendants Lake Emory and Wheeler caused Mr. Pace to receive medications to control blood sugar that he did not need and ultimately caused him to experience extreme hypoglycemia with a blood sugar of 14, on or about April 27, 2017.
19. Defendants failed to recognize timely signs and symptoms of hypoglycemia and failed to monitor Mr. Pace.
20. Mr. Pace was transferred back to SRMC on April 27, 2017 where he was diagnosed with hypoglycemic encephalopathy.
21. Mr. Pace's prognosis was poor and the recommendation was made to keep him comfortable and to provide hospice services.
22. Mr. Pace was transferred to the Hospice House in Clinton where he passed away.

First Cause of Action

(Negligence as to all Defendants)

23. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
24. During all times relevant, the Defendants' acts and omissions amounted to negligence, recklessness and a willful and wanton disregard for the health and wellbeing of Earl E. Pace.
25. As a direct and proximate result of the willful and wanton and reckless acts, as well as the gross negligence of the Defendants, Earl E. Pace sustained severe injuries and death.
26. Kenneth Pace, as Personal Representative of the Estate of Earl E. Pace, is entitled to recover compensatory damages from the Defendants in an amount to be proven at trial.
27. Kenneth Pace, as Personal Representative of the Estate of Earl E. Pace, is entitled to recover punitive damages from the Defendants in an amount as to be determined by this Court.
28. Following the acceptance of Mr. Pace as a resident, the Defendants were under a continuing duty both under the statutory and common law of South Carolina, as well as by the terms of said admission agreement to exercise reasonable care in their treatment of Mr. Pace in light of his known conditions.

29. The Defendants were negligent, willful, wanton, reckless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Mr. Pace in the following particulars:
- a. Failing to ensure that medications prescribed for patient were accurate and consistent with medical diagnoses;
 - b. Failing to monitor administration of medication prescribed for patient;
 - c. Failure to administer medications in a manner consistent with the standard of care;
 - d. Failure to perform appropriate assessments and monitoring;
 - e. Allowing Mr. Pace to suffer an overdose of medications that his condition did not require;
 - f. Failure to monitor and assess Mr. Pace as required by the standard of care;
 - g. Failure to provide acute care intervention to Mr. Pace when his condition so required;
 - h. Failing to document accurately and completely in the medical record;
 - i. Failing to document truthful information in the medical record;
 - j. Failing to train staff;
 - k. Failing to supervise staff;
 - l. Failing to assess Mr. Pace;
 - m. Failing to ensure preventative measures were in place to keep resident safe;
 - n. Failing to comply with State and Federal Laws and regulations;
 - o. Failing to allocate sufficient resources to the facility and in particular, nursing budgets, to meet the needs of Earl E. Pace;
 - p. Failing to meet professional standards;
 - q. Failing to provide services that were necessary to avoid physical harm and mental anguish, which constitutes neglect;
 - r. Failing to provide Earl E. Pace with services that were necessary to attain or maintain physical, mental, and psychosocial well-being, which constitutes abuse; and,
 - s. Failing to use the degree of care as would have been used by medical care providers of reasonable skill and prudence under the prevailing standards of care; and,
 - t. By other negligent or grossly negligent acts and/or omissions yet to be determined or defined; and,
 - u. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure.

30. As a direct and proximate result of the negligence, recklessness, and gross negligence of the Defendants, as set forth above, Earl E. Pace, suffered emotional and physical pain, mental pain, mental anguish, emotional distress, and death.
31. Kenneth Pace, as Personal Representative of the Estate of Earl E. Pace, is entitled to recover damages, as set forth herein, from the Defendants in an amount as to be determined by this Court.

Second Cause of Action

(Gross Negligence as to all Defendants)

32. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
33. During all times material to the claims herein, the Defendants' acts and omissions amounted to gross negligence, recklessness, and a willful and wanton disregard for the safety and wellbeing of Earl E. Pace. The reckless, willful and wanton acts of the Defendants include, but are not limited to those set forth in the foregoing paragraphs.
34. As a direct and proximate result of the willful and wanton acts, as well as the gross negligence of the Defendants, Earl E. Pace sustained severe injuries, damages, and death.
35. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, Earl E. Pace suffered, and Kenneth Pace, as Personal Representative, suffered damages as more fully set forth in the following.

Third Cause of Action

(Negligence *Per Se*)

36. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
37. In addition to the aforementioned negligent acts, the Defendant violated the O.B.R.A. Regulations, South Carolina Code, and South Carolina Regulations, which establish the minimum standard of care to be followed by nursing homes, such violations being negligent and negligent *per se*.
38. These legislative and administrative regulations are designed to prevent injury to a class of persons to which Earl E. Pace belongs.

39. These violations by Defendants were the proximate cause of Mr. Pace's injuries and damages.

Damages

40. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
41. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, Earl E. Pace suffered numerous painful, severe, and grievous injuries to his body which resulted in his death.
1. In accordance with South Carolina Code Ann. § 15-5-90, and as a direct result of the Defendants' negligence and gross negligence, Kenneth Pace, as Personal Representative of the Estate of his father has incurred the following:
- a. Medical, surgical, and hospital expenses;
 - b. Funeral Expenses;
 - c. Conscious pain, suffering, and mental distress experienced by Earl E. Pace; and
 - d. Punitive damages.
2. Kenneth Pace, as Personal Representative of the Estate of Earl E. Pace, is entitled to recover actual and punitive damages from the Defendants in an amount as to be determined by this Court.

Punitive Damages

3. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
4. The acts and/or omissions of the Defendants, as stated above, were willful, wanton, and/or in reckless disregard for the safety, wellbeing, and life of Earl E. Pace.
5. As a direct and proximate result of the willful, wanton, and/or reckless acts and omissions of the Defendants, Earl E. Pace suffered and died.
6. The conduct of the Defendants as set forth above justifies an award of punitive damages for each and every claim of the Plaintiff as set forth herein.

WHEREFORE, the Plaintiff demands a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure (SCRCP), and prays for judgment against the Defendants, for actual and punitive

damages in an amount to be determined by the jury which Plaintiff alleges to be ***in excess of*** One Hundred Thousand and No/100 (\$100,000.00) Dollars actual damages, such allegation being made solely for the purpose set forth in Rule 30(h) of the SCRCP, for the costs of this action, and for such other and further relief as this court may deem just and proper.

s/ Jennifer Burnett
Jennifer Spragins Burnett, SC Bar #69617
Harbin & Burnett, LLP
2124 Highway 81 North (29621)
P.O. Box 35
Anderson, SC 29622-0035
(864) 622-7801
(864) 964-0930 (Facsimile)
Attorneys for the Plaintiff

Anderson, South Carolina
October 21, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Kenneth Pace, Individually and as Personal
Representative of the Estate of Earl E. Pace,
Plaintiff,

2019-CP-42-_____

v.

**SUMMONS
(Wrongful Death)**

Lake Emory Post Acute Care; THI of South Carolina at
Camp Care, LLC; THI of South Carolina, LLC; THI of
Baltimore, Inc.; Fundamental Administrative Services,
LLC; Fundamental Clinical and Operational Services,
LLC; Fundamental Clinical Consulting, LLC;
Fundamental Long Term Care Holdings, LLC, and Kerry
L. Wheeler, DO,
Defendants.

JURY TRIAL DEMANDED

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at this office at Post Office Box 35, Anderson, South Carolina, 29622, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff(s) in this action will apply to the Court for the said relief demanded in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a Guardian ad Litem to represent you in this action within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE/(THEY) RESIDE(S):

You are further summoned and notified to apply for the appointment of a Guardian ad Litem to represent said infant(s) under fourteen years of age (said incompetent or insane person) within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

{signature page follows}

s/ Jennifer Burnett

Jennifer Spragins Burnett, SC Bar #69617

Harbin & Burnett, LLP

2124 Highway 81 North (29621)

P.O. Box 35

Anderson, SC 29622-0035

(864) 622-7801

(864) 964-0930 (Facsimile)

Attorneys for the Plaintiff

Anderson, South Carolina
October 21, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Kenneth Pace, Individually and as Personal
Representative of the Estate of Earl E. Pace,
Plaintiff,

2019-CP-42-_____

v.

**COMPLAINT
(Wrongful Death)**

Lake Emory Post Acute Care; THI of South Carolina at
Camp Care, LLC; THI of South Carolina, LLC; THI of
Baltimore, Inc.; Fundamental Administrative Services,
LLC; Fundamental Clinical and Operational Services,
LLC; Fundamental Clinical Consulting, LLC;
Fundamental Long Term Care Holdings, LLC, and Kerry
L. Wheeler, DO,
Defendants.

JURY TRIAL DEMANDED

The Plaintiff, complaining of the Defendants herein, would respectfully show unto the Court and allege as follows:

Jurisdictional Allegations

1. The Plaintiff, Kenneth Pace, Individually and as the Personal Representative of the Estate of Earl E. Pace, is the duly appointed, qualified, and acting Personal Representative of the Estate of his father, Earl E. Pace ("Mr. Pace"), as defined by South Carolina Code Ann. § 62-3-203. Kenneth Pace is a citizen and resident of the County of Grundy, State of Tennessee.
2. The Decedent, Mr. Pace, was, at the time of the incident, a resident of the skilled nursing facility doing business as "Lake Emory Post Acute Care" which is located at 59 Blackstock Road in Inman, South Carolina.
3. Kenneth Pace has the authority to pursue this claim on behalf of the wrongful death beneficiaries pursuant to South Carolina Code Ann. § 15-51-20.
4. Upon information and belief, the Defendant Lake Emory Post Acute Care (hereafter "Lake Emory"), is licensed as a skilled nursing facility and doing business as a healthcare provider.
5. Upon further information and belief, Lake Emory; THI of South Carolina at Camp Care, LLC; THI of South Carolina, LLC; THI of Baltimore, Inc.; Fundamental Administrative Services, LLC; Fundamental Clinical and Operational Services, LLC; Fundamental Clinical Consulting, LLC; Fundamental Long Term Care

Holdings, LLC, (hereafter collectively “THI”), are entities which own, operate, direct, control, provide budgetary control or oversight, provide management or consulting services to, or are the alter-egos of the long term care facility known as Lake Emory.

6. At all times relevant, the Defendants acted by and through their agents, contractors, and employees for the purpose of carrying on their business and therefore, are liable for the negligent acts of their agents, contractors, and employees under the theories of non-delegable duty and *respondeat superior*.
7. Upon information and belief, Lake Emory is organized under one of the States of the United States and doing business in the County of Spartanburg, State of South Carolina as a “nursing home” as defined by South Carolina Code Ann. §40-35-20(7) and/or a “long term care facility” as defined by South Carolina Code Ann. §44-81-30(1).
8. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina, the Omnibus Budget Reconciliation Act of 1987, (“OBRA”) and the Regulations of the South Carolina Department of Health and Environmental Control.
9. Jurisdiction and venue are proper in this judicial circuit pursuant to South Carolina Code Ann. § 15-7-30(B).
10. Plaintiff expressly pleads that one or more agents of the Defendants was grossly negligent, willful, wanton, and reckless in their acts and omissions towards Mr. Pace and/or other acts or omissions set forth in South Carolina Code § 15-32-220 and one or more of the Defendants has engaged in fraud or misrepresentation related to the claim. As such, the Plaintiff expressly pleads that the limitation on non-economic damages set forth in South Carolina Code § 15-32-220 does not apply to a verdict in these matters pursuant to § 15-32-220(E).

Facts

11. Mr. Pace was admitted to Lake Emory on or about January 30, 2015 from Spartanburg Regional Medical Center, (“SRMC”).
12. Mr. Pace took no medication to manage his blood sugars.
13. Mr. Pace was again admitted to SRMC on or about April 9, 2017 when he experienced some delirium.
14. During that hospitalization, SRMC treated Mr. Pace for a UTI and adjusted his psychiatric medications.
15. Mr. Pace was hospitalized until April 20, 2017 when he was returned to Lake Emory.

16. Upon return to Lake Emory, nursing staff and Dr. Wheeler ordered Levemir 47 units two times a day as well as Tradjenta 5 mg once a day – despite that prior to being sent to the hospital, Mr. Pace was not receiving any medication to control blood sugar.
17. Neither of these medications were given to Mr. Pace during his hospitalization.
18. Defendants Lake Emory and Wheeler caused Mr. Pace to receive medications to control blood sugar that he did not need and ultimately caused him to experience extreme hypoglycemia with a blood sugar of 14, on or about April 27, 2017.
19. Defendants failed to recognize timely signs and symptoms of hypoglycemia and failed to monitor Mr. Pace.
20. Mr. Pace was transferred back to SRMC on April 27, 2017 where he was diagnosed with hypoglycemic encephalopathy.
21. Mr. Pace's prognosis was poor and the recommendation was made to keep him comfortable and to provide hospice services.
22. Mr. Pace was transferred to the Hospice House in Clinton where he passed away.

First Cause of Action

(Negligence as to all Defendants)

23. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
24. During all times relevant, the Defendants' acts and omissions amounted to negligence, recklessness and a willful and wanton disregard for the health and wellbeing of Earl E. Pace.
25. As a direct and proximate result of the willful and wanton and reckless acts, as well as the gross negligence of the Defendants, Earl E. Pace sustained severe injuries and death.
26. Kenneth Pace, as Personal Representative of the Estate of Earl E. Pace, is entitled to recover compensatory damages from the Defendants in an amount to be proven at trial.
27. Kenneth Pace, as Personal Representative of the Estate of Earl E. Pace, is entitled to recover punitive damages from the Defendants in an amount as to be determined by this Court.
28. Following the acceptance of Mr. Pace as a resident, the Defendants were under a continuing duty both under the statutory and common law of South Carolina, as well as by the terms of said admission agreement to exercise reasonable care in their treatment of Mr. Pace in light of his known conditions.

29. The Defendants were negligent, willful, wanton, reckless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Mr. Pace in the following particulars:
- a. Failing to ensure that medications prescribed for patient were accurate and consistent with medical diagnoses;
 - b. Failing to monitor administration of medication prescribed for patient;
 - c. Failure to administer medications in a manner consistent with the standard of care;
 - d. Failure to perform appropriate assessments and monitoring;
 - e. Allowing Mr. Pace to suffer an overdose of medications that his condition did not require;
 - f. Failure to monitor and assess Mr. Pace as required by the standard of care;
 - g. Failure to provide acute care intervention to Mr. Pace when his condition so required;
 - h. Failing to document accurately and completely in the medical record;
 - i. Failing to document truthful information in the medical record;
 - j. Failing to train staff;
 - k. Failing to supervise staff;
 - l. Failing to assess Mr. Pace;
 - m. Failing to ensure preventative measures were in place to keep resident safe;
 - n. Failing to comply with State and Federal Laws and regulations;
 - o. Failing to allocate sufficient resources to the facility and in particular, nursing budgets, to meet the needs of Earl E. Pace;
 - p. Failing to meet professional standards;
 - q. Failing to provide services that were necessary to avoid physical harm and mental anguish, which constitutes neglect;
 - r. Failing to provide Earl E. Pace with services that were necessary to attain or maintain physical, mental, and psychosocial well-being, which constitutes abuse; and,
 - s. Failing to use the degree of care as would have been used by medical care providers of reasonable skill and prudence under the prevailing standards of care; and,
 - t. By other negligent or grossly negligent acts and/or omissions yet to be determined or defined; and,
 - u. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure.

30. As a direct and proximate result of the negligence, recklessness, and gross negligence of the Defendants, as set forth above, Earl E. Pace, suffered emotional and physical pain, mental pain, mental anguish, emotional distress, and death.
31. Kenneth Pace, as Personal Representative of the Estate of Earl E. Pace, is entitled to recover damages, as set forth herein, from the Defendants in an amount as to be determined by this Court.

Second Cause of Action

(Gross Negligence as to all Defendants)

32. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
33. During all times material to the claims herein, the Defendants' acts and omissions amounted to gross negligence, recklessness, and a willful and wanton disregard for the safety and wellbeing of Earl E. Pace. The reckless, willful and wanton acts of the Defendants include, but are not limited to those set forth in the foregoing paragraphs.
34. As a direct and proximate result of the willful and wanton acts, as well as the gross negligence of the Defendants, Earl E. Pace sustained severe injuries, damages, and death.
35. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, Earl E. Pace suffered, and Kenneth Pace, as Personal Representative, suffered damages as more fully set forth in the following.

Third Cause of Action

(Negligence *Per Se*)

36. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
37. In addition to the aforementioned negligent acts, the Defendant violated the O.B.R.A. Regulations, South Carolina Code, and South Carolina Regulations, which establish the minimum standard of care to be followed by nursing homes, such violations being negligent and negligent *per se*.
38. These legislative and administrative regulations are designed to prevent injury to a class of persons to which Earl E. Pace belongs.

39. These violations by Defendants were the proximate cause of Mr. Pace's injuries and damages.

Damages

40. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
41. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, Earl E. Pace suffered numerous painful, severe, and grievous injuries to his body which resulted in his death.
42. In accordance with South Carolina Code Ann. § 15-5-90, and as a direct result of the Defendants' negligence and gross negligence, Kenneth Pace, as Personal Representative of the Estate of Earl E. Pace, has incurred the following:
- a. Grief and sorrow;
 - b. Loss of companionship;
 - c. Mental shock and suffering;
 - d. Deprivation of the use and comfort of Earl E. Pace's society;
 - e. Loss of Earl E. Pace's experience, knowledge, and judgment in managing his affairs;
 - f. Funeral and burial expenses; and,
 - g. Punitive damages.
43. Kenneth Pace, as Personal Representative of the Estate of Earl E. Pace, is entitled to recover actual and punitive damages from the Defendants in an amount as to be determined by this Court.

Punitive Damages

44. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.
45. The acts and/or omissions of the Defendants, as stated above, were willful, wanton, and/or in reckless disregard for the safety, wellbeing, and life of Earl E. Pace.
46. As a direct and proximate result of the willful, wanton, and/or reckless acts and omissions of the Defendants, Earl E. Pace suffered and died.
47. The conduct of the Defendants as set forth above justifies an award of punitive damages for each and every claim of the Plaintiff as set forth herein.

WHEREFORE, the Plaintiff demands a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure (SCRCP), and prays for judgment against the Defendants, for actual and punitive damages in an amount to be determined by the jury which Plaintiff alleges to be ***in excess of*** One Hundred Thousand and No/100 (\$100,000.00) Dollars actual damages, such allegation being made solely for the purpose set forth in Rule 30(h) of the SCRCP, for the costs of this action, and for such other and further relief as this court may deem just and proper.

s/ Jennifer Burnett
Jennifer Spragins Burnett, SC Bar #69617
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(864) 964-0930 (Facsimile)
Attorneys for the Plaintiff

Anderson, South Carolina
October 21, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	DEFENDANT THI OF SOUTH
CAROLINA, LLC; THI OF	)	CAROLINA AT CAMP CARE, LLC D/B/A
BALTIMORE, INC; FUNDAMENTAL	)	LAKE EMORY POST-ACUTE CARE'S
ADMINISTRATIVE SERVICES, LLC;	)	ANSWER TO PLAINTIFF'S COMPLAINT
FUNDAMENTAL CLINICAL AND	)	(SURVIVAL ACTION)
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, THI of South Carolina at Camp Care, LLC d/b/a Lake Emory Post-Acute Care (misidentified in Plaintiff's Complaint as "Lake Emory Post Acute Care" and "THI of South Carolina at Camp Care, LLC" as separate parties and hereinafter referred to as "this Defendant" or the "Facility"), by and through its undersigned counsel and *subject to and specifically reserving its right to compel this matter to arbitration and without waiving any rights to have any and all claims dismissed*, hereby answers and responds to the allegations set forth in Plaintiff's Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. This Defendant admits the allegations set forth in Paragraph 2 of Plaintiff's Complaint but would further crave reference to Mr. Pace's skilled nursing chart for his date of admission and date of transfers. This Defendant denies any and all allegations inconsistent with said records.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore do not require a response. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are denied as stated. This Defendant would further assert that THI of South Carolina at Camp Care, LLC is the licensee of the skilled nursing facility doing business as "Lake Emory Post-Acute Care."

6. To the extent the allegations set forth in Paragraph 5 are directed at this answering Defendant, this Defendant admits the allegations set forth in Paragraph 5 only insofar as it is alleged that this Defendant, controls, operates, directs, and manages the long term care facility referenced. To the extent the allegations set forth in Paragraph 5 are directed at a Defendant other than answering Defendant, no response is required. Any and all further and remaining allegations are denied and strict proof is demanded thereof.

7. The allegations set forth in Paragraph 6 of Plaintiff's Complaint call for pure legal conclusions and therefore do not require a response. Defendant denies any and all allegations which assert or imply liability as to this Defendant.

8. This Defendant admits that it is a Delaware limited liability company licensed to operate the skilled nursing facility doing business as Lake Emory Post Acute Care in the County of Spartanburg, State of South Carolina. The allegations set forth in Paragraph 7 of Plaintiff's Complaint not admitted are denied.

9. The allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint call for legal conclusions and therefore do not require a response. To the extent a response is required, these allegations are denied and this Defendant would further assert that this action is subject to a valid arbitration agreement.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore do not require a response. To the extent a response is required, these allegations are denied and strict proof thereof is required.

11. This Defendant would crave reference to the skilled nursing and medical records of Mr. Pace in response to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of the Plaintiff's Complaint. Further responding, to the extent any allegations in the above Paragraphs are inconsistent with the skilled nursing and/or medical records or can be interpreted to allege liability against this Defendant, they are denied.

12. This Defendant denies the allegations set forth in Paragraphs 18 and 19 of Plaintiff's Complaint and demands strict proof thereof.

13. This Defendant would crave reference to the skilled nursing and medical records of Mr. Pace in response to the allegations set forth in Paragraphs 20, 21, and 22 of the Plaintiff's

Complaint. Further responding, to the extent any allegations in the above Paragraphs are inconsistent with the skilled nursing and/or medical records or can be interpreted to allege liability against this Defendant, they are denied.

14. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

15. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, and 27 of Plaintiff's Complaint and demands strict proof thereof.

16. This Defendant admits the allegations set forth in Paragraph 28 of Plaintiff's Complaint only insofar as it is alleged that this Defendant has a duty to provide care to its residents in compliance with the governing standard of care. Any allegation inconsistent with this response or any allegation intended to allege liability as to this Defendant is denied. Defendant specifically denies the application of a generic duty of care such as "the statutory and common law of South Carolina." To the extent the allegations in Paragraph 28 of the Plaintiff's Complaint call for legal conclusions they do not warrant a response.

17. This Defendant denies the allegations set forth in Paragraphs 29, 30, and 31 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

18. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

19. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

20. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

21. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof.

22. This Defendant denies the allegations set forth in Paragraph 38 of Plaintiff's Complaint as stated. This Defendant would further assert that the referenced "legislative and administrative regulations" are not all applicable to this matter and furthermore do not establish the applicable standard of care.

23. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

24. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

25. This Defendant denies the allegations set forth in Paragraph 41 of Plaintiff's Complaint and demands strict proof thereof.

26. This Defendant denies the allegations set forth in Paragraphs 1 and 2 of the Damages Section of Plaintiff's Complaint (aggregate paragraphs 42 and 43, respectively), including all subparts, and demands strict proof thereof.

27. In answering the allegations set forth in Paragraph 3 of the Punitive Damages Section of the Plaintiff's Complaint (aggregate paragraph 44), this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

28. This Defendant denies the allegations set forth in Paragraphs 4, 5, and 6 of the Punitive Damages Section of Plaintiff's Complaint (aggregate paragraphs 45, 46, and 47, respectively) and demands strict proof thereof.

29. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. This Court lacks jurisdiction over this matter because Plaintiff's claims as to this Defendant are subject to arbitration pursuant to a valid arbitration agreement entered into between the parties hereto, and therefore this matter should be dismissed and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure or Federal Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 et seq., which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

43. This Defendant would assert they complied with the applicable standard of care at all times during the timeframe alleged in the Complaint.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

44. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

P.O. Box 993, Charleston, SC 29402

(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant THI of South Carolina
at Camp Care, LLC d/b/a Lake Emory Post-Acute
Care

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	DEFENDANT FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC;	)	ADMINISTRATIVE SERVICES, LLC'S
FUNDAMENTAL CLINICAL AND	)	ANSWER TO PLAINTIFF'S COMPLAINT
OPERATIONAL SERVICES, LLC;	)	(SURVIVAL ACTION)
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, Fundamental Administrative Services, LLC (hereinafter referred to as "this Defendant" or the "FAS"), by and through its undersigned counsel, and subject to and specifically reserving its right to stay this matter pending arbitration, hereby answers and responds to the allegations set forth in Plaintiff's Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a

response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator

of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required of these allegations allege liability, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 1 and 2 of the Damages Section of Plaintiff's Complaint (aggregate paragraphs 42 and 43, respectively), including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 3 of the Punitive Damages Section of the Plaintiff's Complaint (aggregate paragraph 44), this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 4, 5, and 6 of the Punitive Damages Section of Plaintiff's Complaint (aggregate paragraphs 45, 46, and 47, respectively) and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any

and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. This Defendant did not owe a duty to Plaintiff.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

[SIGNATURE BLOCK ON NEXT PAGE]

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

P.O. Box 993, Charleston, SC 29402

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jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant Fundamental

Administrative Services, LLC

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT FUNDAMENTAL
CLINICAL AND OPERATIONAL
SERVICES, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT
(SURVIVAL ACTION)**

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, Fundamental Clinical and Operational Services, LLC (hereinafter referred to as "this Defendant" or the "FCOS"), by and through its undersigned counsel, and subject to and specifically reserving its right to stay this matter pending arbitration, hereby answers and responds to the allegations set forth in Plaintiff's Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a

response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator

of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required or these allegations allege liability, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 1 and 2 of the Damages Section of Plaintiff's Complaint (aggregate paragraphs 42 and 43, respectively), including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 3 of the Punitive Damages Section of the Plaintiff's Complaint (aggregate paragraph 44), this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 4, 5, and 6 of the Punitive Damages Section of Plaintiff's Complaint (aggregate paragraphs 45, 46, and 47, respectively) and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any

and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. This Defendant did not owe a duty to Plaintiff.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

P.O. Box 993, Charleston, SC 29402

(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant Fundamental Clinical
and Operational Services, LLC

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT HUNT VALLEY
HOLDINGS, LLC F/K/A FUNDAMENTAL
LONG TERM CARE HOLDINGS, LLC'S
ANSWER TO PLAINTIFF'S COMPLAINT
(SURVIVAL ACTION)**

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, Hunt Valley Holdings, LLC f/k/a Fundamental Long Term Care Holdings, LLC (misidentified in Plaintiff's Complaint as "Fundamental Long Term Care Holdings, LLC" and hereinafter referred to as "this Defendant" or the "HVVH"), by and through its undersigned counsel, *and subject to and without waiving its objections to the jurisdiction of this Court and its rights to stay this matter pending arbitration and subject to and without waiving any rights to have any and all claims dismissed*, hereby answers and responds to the allegations set forth in Plaintiff's Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 1 and 2 of the Damages Section of Plaintiff's Complaint (aggregate paragraphs 42 and 43, respectively), including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 3 of the Punitive Damages Section of the Plaintiff's Complaint (aggregate paragraph 44), this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 4, 5, and 6 of the Punitive Damages Section of Plaintiff's Complaint (aggregate paragraphs 45, 46, and 47, respectively) and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. This Defendant would assert that this matter should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction over this Defendant.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant did not owe a duty to Plaintiff.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

43. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

P.O. Box 993, Charleston, SC 29402

(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant Hunt Valley Holdings,
LLC, f/k/a Fundamental Long Term Care Holdings,
LLC

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	DEFENDANT THI OF BALTIMORE,
CAROLINA, LLC; THI OF	)	INC.'S ANSWER TO PLAINTIFF'S
BALTIMORE, INC; FUNDAMENTAL	)	COMPLAINT
ADMINISTRATIVE SERVICES, LLC;	)	(SURVIVAL ACTION)
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, THI of Baltimore, Inc. (hereinafter referred to as “this Defendant” or the “THIB”), by and through its undersigned counsel, *and subject to and without waiving its objections to the jurisdiction of this Court and its rights to stay this matter pending arbitration and subject to and without waiving any rights to have any and all claims dismissed*, hereby answers and responds to the allegations set forth in Plaintiff’s Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a

response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator

of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required or these allegations allege liability, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 1 and 2 of the Damages Section of Plaintiff's Complaint (aggregate paragraphs 42 and 43, respectively), including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 3 of the Punitive Damages Section of the Plaintiff's Complaint (aggregate paragraph 44), this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 4, 5, and 6 of the Punitive Damages Section of Plaintiff's Complaint (aggregate paragraphs 45, 46, and 47, respectively) and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. This Defendant would assert that this matter should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction over this Defendant.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

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FOR A FURTHER AFFIRMATIVE DEFENSE**

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**FURTHER ANSWERING AND
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**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant did not owe a duty to Plaintiff.

FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE

43. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

P.O. Box 993, Charleston, SC 29402

(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant THI of Baltimore, Inc.

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	DEFENDANT THI OF SOUTH
CAROLINA, LLC; THI OF	)	CAROLINA, LLC'S ANSWER TO
BALTIMORE, INC; FUNDAMENTAL	)	PLAINTIFF'S COMPLAINT
ADMINISTRATIVE SERVICES, LLC;	)	(SURVIVAL ACTION)
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, THI of South Carolina, LLC (hereinafter referred to as "this Defendant" or the "THISC"), by and through its undersigned counsel, *and subject to and without waiving its objections to the jurisdiction of this Court and its rights to stay this matter pending arbitration and subject to and without waiving any rights to have any and all claims dismissed*, hereby answers and responds to the allegations set forth in Plaintiff's Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a

response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator

of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required or these allegations allege liability, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. This Defendant denies the allegations set forth in Paragraph 41 of Plaintiff's Complaint and demands strict proof thereof.

24. This Defendant denies the allegations set forth in Paragraphs 1 and 2 of the Damages Section of Plaintiff's Complaint (aggregate paragraphs 42 and 43, respectively), including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 3 of the Punitive Damages Section of the Plaintiff's Complaint (aggregate paragraph 44), this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 4, 5, and 6 of the Punitive Damages Section of Plaintiff's Complaint (aggregate paragraphs 45, 46, and 47, respectively) and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. This Defendant would assert that this matter should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction over this Defendant.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant did not owe a duty to Plaintiff.

FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE

43. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

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(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant THI of South Carolina,
LLC

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	DEFENDANT THI OF SOUTH
BALTIMORE, INC; FUNDAMENTAL	)	CAROLINA AT CAMP CARE, LLC D/B/A
ADMINISTRATIVE SERVICES, LLC;	)	LAKE EMORY POST-ACUTE CARE'S
FUNDAMENTAL CLINICAL AND	)	ANSWER TO PLAINTIFF'S COMPLAINT
OPERATIONAL SERVICES, LLC;	)	(WRONGFUL DEATH)
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, THI of South Carolina at Camp Care, LLC d/b/a Lake Emory Post-Acute Care (misidentified in Plaintiff's Complaint as "Lake Emory Post Acute Care" and "THI of South Carolina at Camp Care, LLC" as separate parties and hereinafter referred to as "this Defendant" or the "Facility"), by and through its undersigned counsel and *subject to and specifically reserving its right to compel this matter to arbitration and without waiving any rights to have any and all claims dismissed*, hereby answers and responds to the allegations set forth in Plaintiff's Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. This Defendant admits the allegations set forth in Paragraph 2 of Plaintiff's Complaint but would further crave reference to Mr. Pace's skilled nursing chart for his date of admission and date of transfers. This Defendant denies any and all allegations inconsistent with said records.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore do not require a response. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are denied as stated. This Defendant would further assert that THI of South Carolina at Camp Care, LLC is the licensee of the skilled nursing facility doing business as "Lake Emory Post-Acute Care."

6. To the extent the allegations set forth in Paragraph 5 are directed at this answering Defendant, this Defendant admits the allegations set forth in Paragraph 5 only insofar as it is alleged that this Defendant, controls, operates, directs, and manages the long term care facility referenced. To the extent the allegations set forth in Paragraph 5 are directed at a Defendant other than answering Defendant, no response is required. Any and all further and remaining allegations are denied and strict proof is demanded thereof.

7. The allegations set forth in Paragraph 6 of Plaintiff's Complaint call for pure legal conclusions and therefore do not require a response. Defendant denies any and all allegations which assert or imply liability as to this Defendant.

8. This Defendant admits that it is a Delaware limited liability company licensed to operate the skilled nursing facility doing business as Lake Emory Post Acute Care in the County of Spartanburg, State of South Carolina. The allegations set forth in Paragraph 7 of Plaintiff's Complaint not admitted are denied.

9. The allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint call for legal conclusions and therefore do not require a response. To the extent a response is required, these allegations are denied and this Defendant would further assert that this action is subject to a valid arbitration agreement.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore do not require a response. To the extent a response is required, these allegations are denied and strict proof thereof is required.

11. This Defendant would crave reference to the skilled nursing and medical records of Mr. Pace in response to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of the Plaintiff's Complaint. Further responding, to the extent any allegations in the above Paragraphs are inconsistent with the skilled nursing and/or medical records or can be interpreted to allege liability against this Defendant, they are denied.

12. This Defendant denies the allegations set forth in Paragraphs 18 and 19 of Plaintiff's Complaint and demands strict proof thereof.

13. This Defendant would crave reference to the skilled nursing and medical records of Mr. Pace in response to the allegations set forth in Paragraphs 20, 21, and 22 of the Plaintiff's

Complaint. Further responding, to the extent any allegations in the above Paragraphs are inconsistent with the skilled nursing and/or medical records or can be interpreted to allege liability against this Defendant, they are denied.

14. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

15. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, and 27 of Plaintiff's Complaint and demands strict proof thereof.

16. This Defendant admits the allegations set forth in Paragraph 28 of Plaintiff's Complaint only insofar as it is alleged that this Defendant has a duty to provide care to its residents in compliance with the governing standard of care. Any allegation inconsistent with this response or any allegation intended to allege liability as to this Defendant is denied. Defendant specifically denies the application of a generic duty of care such as "the statutory and common law of South Carolina." To the extent the allegations in Paragraph 28 of the Plaintiff's Complaint call for legal conclusions they do not warrant a response.

17. This Defendant denies the allegations set forth in Paragraphs 29, 30, and 31 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

18. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

19. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

20. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

21. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof.

22. This Defendant denies the allegations set forth in Paragraph 38 of Plaintiff's Complaint as stated. This Defendant would further assert that the referenced "legislative and administrative regulations" are not all applicable to this matter and furthermore do not establish the applicable standard of care.

23. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

24. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

25. This Defendant denies the allegations set forth in Paragraphs 41, 42, and 43 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

26. In answering the allegations set forth in Paragraph 44 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

27. This Defendant denies the allegations set forth in Paragraphs 45, 46, and 47 of Plaintiff's Complaint and demands strict proof thereof.

28. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. This Court lacks jurisdiction over this matter because Plaintiff's claims as to this Defendant are subject to arbitration pursuant to a valid arbitration agreement entered into between the parties hereto, and therefore this matter should be dismissed and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure or Federal Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code

§15-32-200 et seq., which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural

disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant would assert they complied with the applicable standard of care at all times during the timeframe alleged in the Complaint.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

43. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

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(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant THI of South Carolina
at Camp Care, LLC d/b/a Lake Emory Post-Acute
Care

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	DEFENDANT FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC;	)	ADMINISTRATIVE SERVICES, LLC'S
FUNDAMENTAL CLINICAL AND	)	ANSWER TO PLAINTIFF'S COMPLAINT
OPERATIONAL SERVICES, LLC;	)	(WRONGFUL DEATH)
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, Fundamental Administrative Services, LLC (hereinafter referred to as “this Defendant” or the “FAS”), by and through its undersigned counsel, and subject to and specifically reserving its right to stay this matter pending arbitration, hereby answers and responds to the allegations set forth in Plaintiff’s Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a

response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator

of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required or these allegations allege liability, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 41, 42, and 43 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 44 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 45, 46, and 47 of Plaintiff's Complaint and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges

and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-

32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. This Defendant did not owe a duty to Plaintiff.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

P.O. Box 993, Charleston, SC 29402

(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant Fundamental

Administrative Services, LLC

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT FUNDAMENTAL
CLINICAL AND OPERATIONAL
SERVICES, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT
(WRONGFUL DEATH)**

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, Fundamental Clinical and Operational Services, LLC (hereinafter referred to as "this Defendant" or the "FCOS"), by and through its undersigned counsel, and subject to and specifically reserving its right to stay this matter pending arbitration, hereby answers and responds to the allegations set forth in Plaintiff's Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a

response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator

of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required or these allegations allege liability, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 41, 42, and 43 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 44 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 45, 46, and 47 of Plaintiff's Complaint and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges

and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-

32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. This Defendant did not owe a duty to Plaintiff.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

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YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

P.O. Box 993, Charleston, SC 29402

(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant Fundamental Clinical
and Operational Services, LLC

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT HUNT VALLEY
HOLDINGS, LLC F/K/A FUNDAMENTAL
LONG TERM CARE HOLDINGS, LLC'S
ANSWER TO PLAINTIFF'S COMPLAINT
(WRONGFUL DEATH)**

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, Hunt Valley Holdings, LLC f/k/a Fundamental Long Term Care Holdings, LLC (misidentified in Plaintiff's Complaint as "Fundamental Long Term Care Holdings, LLC" and hereinafter referred to as "this Defendant" or the "HVVH"), by and through its undersigned counsel, *and subject to and without waiving its objections to the jurisdiction of this Court and its rights to stay this matter pending arbitration and subject to and without waiving any rights to have any and all claims dismissed*, hereby answers and responds to the allegations set forth in Plaintiff's Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 41, 42, and 43 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 44 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 45, 46, and 47 of Plaintiff's Complaint and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges

and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. This Defendant would assert that this matter should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction over this Defendant.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant did not owe a duty to Plaintiff.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

43. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

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Attorneys for the Defendant Hunt Valley Holdings,
LLC, f/k/a Fundamental Long Term Care Holdings,
LLC

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	DEFENDANT THI OF BALTIMORE,
CAROLINA, LLC; THI OF	)	INC.'S ANSWER TO PLAINTIFF'S
BALTIMORE, INC; FUNDAMENTAL	)	COMPLAINT
ADMINISTRATIVE SERVICES, LLC;	)	(WRONGFUL DEATH)
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, THI of Baltimore, Inc. (hereinafter referred to as “this Defendant” or the “THIB”), by and through its undersigned counsel, *and subject to and without waiving its objections to the jurisdiction of this Court and its rights to stay this matter pending arbitration and subject to and without waiving any rights to have any and all claims dismissed*, hereby answers and responds to the allegations set forth in Plaintiff’s Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a

response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator

of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required or these allegations allege liability, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 41, 42, and 43 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 44 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 45, 46, and 47 of Plaintiff's Complaint and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges

and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. This Defendant would assert that this matter should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction over this Defendant.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant did not owe a duty to Plaintiff.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

43. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration,

and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

P.O. Box 993, Charleston, SC 29402

(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com

Attorneys for the Defendant THI of Baltimore, Inc.

Charleston, South Carolina

Dated: November 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT THI OF SOUTH
CAROLINA, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT
(WRONGFUL DEATH)**

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, THI of South Carolina, LLC (hereinafter referred to as “this Defendant” or the “THISC”), by and through its undersigned counsel, *and subject to and without waiving its objections to the jurisdiction of this Court and its rights to stay this matter pending arbitration and subject to and without waiving any rights to have any and all claims dismissed*, hereby answers and responds to the allegations set forth in Plaintiff’s Complaint as follows:

1. All allegations of the Complaint not hereinafter admitted, qualified, or otherwise explained are hereby expressly denied and strict proof is demanded thereof.

2. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

3. In responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant is without sufficient knowledge or information to answer these allegations and therefore denies same and demands strict proof thereof. To the extent these allegations are directed parties other than this Defendant, no response is required.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraph 3 of Plaintiff's Complaint and, therefore, denies these allegations and demands strict proof thereof.

5. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied and strict proof is demanded thereof.

6. This Defendant denies the allegations set forth in Paragraph 5 to the extent such allegations are directed toward this Defendant. As to any allegations which are directed toward parties other than this Defendant, no response is required.

7. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's complaint and demands strict proof thereof. To the extent these allegations call for pure legal conclusions, no response is required.

8. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed toward parties other than this Defendant and therefore no response is required. To the extent a

response is required, these allegations are denied to the extent they assert or imply liability as to this Defendant.

9. This Defendant denies the allegations set forth in Paragraphs 8 and 9 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations in the above Paragraph call for pure legal conclusions, no response is required.

10. The allegations set forth in Paragraph 10 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. Defendant denies any and all allegations which assert or imply liability therein as to this Defendant.

11. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, and 17 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

12. The allegations set forth in Paragraph 18 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent they are directed at this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind.

13. This Defendant denies the allegations set forth in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator

of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

14. This Defendant is without sufficient knowledge and information to respond to the allegations set forth in Paragraphs 20, 21, and 22 of Plaintiff's Complaint and therefore these allegations are denied and strict proof is demanded thereof. To the extent these allegations assert or imply liability as to this Defendant, they are similarly denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

15. In answering the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

16. This Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30, and 31 of Plaintiff's Complaint, including all subparts. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

17. In answering the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

18. This Defendant denies the allegations set forth in Paragraphs 33, 34, and 35 of Plaintiff's Complaint and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 36 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Pace. This Defendant further denies any interaction or relationship with the Plaintiff or his decedent of any kind. To the extent these allegations are directed toward parties other than this Defendant, no response is required.

21. The allegations in Paragraph 38 of Plaintiff's Complaint call for pure legal conclusions and therefore no response is required. To the extent a response is required or these allegations allege liability, they are denied. This Defendant would further assert that the referenced "legislative and administrative regulations" do not apply to this Defendant.

22. This Defendant denies the allegations set forth in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 41, 42, and 43 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 44 of the Plaintiff's Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 45, 46, and 47 of Plaintiff's Complaint and demands strict proof thereof.

27. This Defendant further denies any and all allegations set forth in Plaintiff's prayer for relief including all assertions of liability as to this Defendant set forth therein.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

28. This Court lacks jurisdiction over this matter because Plaintiff's claims are subject to arbitration pursuant to a valid arbitration agreement entered into between the Facility Defendant and Plaintiff, and therefore this matter should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

29. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the Plaintiff's arbitration agreement is determined by the United States District Court where this action is pending. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges

and immunities, due process and equal protection and this Defendant would further assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et. seq.*

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

31. The Complaint fails to state facts sufficient to constitute a cause of action and fails to state a claim upon which relief can be granted against this Defendant and should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

32. This Defendant would assert that this matter should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction over this Defendant.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

33. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005 which is codified at SC Code §15-32-200 *et seq.*, which is pled as a limitation or partial bar to the Plaintiff's claims and alleged damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

34. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

35. This Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Law including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

36. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

37. This Defendant would allege, upon information and belief, that some or all of the injuries or damages sustained by the Plaintiffs, were due to, caused, and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

38. This Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiffs do not create a standard of care applicable to Plaintiff's claims in this matter.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

39. Plaintiff, as personal representative, lacks standing to bring some or all of the claims and allegations asserted against this Defendant pursuant to S.C. Code Ann. § 15-5-90 and/or § 15-51-20 & 40.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

40. This Defendant hereby raises the doctrine of election of remedies as a defense to Plaintiff's claims.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

41. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiffs, this Defendant would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

42. This Defendant did not owe a duty to Plaintiff.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

43. This Defendant would assert that no act, omission, representation or fault, if any, of this Defendant was the cause in fact or legal cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice, order that it be compelled to arbitration,

and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

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Charleston, South Carolina

Dated: November 25, 2019

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Kenneth Pace, Individually)
5 and as Personal Representative)
6 of the Estate of Earl E. Pace,) TRANSCRIPT OF RECORD
7 Plaintiff,) 2019-CP-42-03708
8 vs.)
9 Lake Emory Post Acute Care,)
et al,)
10 Defendants.) January 20, 2021
11 Spartanburg, SC

11 B E F O R E:
12
13 HONORABLE R. KEITH KELLY, JUDGE

14 A P P E A R A N C E S:
15
16 ANTHONY LEE HARBIN, ESQUIRE
Attorney for the Plaintiff
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18 RUSSELL GRAINGER HINES, ESQUIRE
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20 RUSSELL W. HARTER, ESQUIRE
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22 Linda D. Moffitt
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INDEX

Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 (The following is with all counsel and the Court on
2 webex.)

3 THE COURT: The next matter is 2019-CP-42-03708, and
4 that is Kenneth Pace vs. Lake Emory Post Acute Care, et al.

5 MR. HARBIN: That's me, Judge.

6 MR. HINES: Your Honor, that's also me. This is Russ
7 Hines from Clement Rivers in Charleston. I'm covering this
8 motion, Your Honor, for Jay Davis and Kate Mettler, some
9 other lawyers for our firm. And actually a number of
10 motions.

11 THE COURT: Yes, sir. I was looking at that
12 yesterday, as a matter of fact.

13 MR. HARBIN: I'm filling in for my law partner,
14 Jennifer Burnett too, Judge. So both of us are
15 pinch-hitting, I think.

16 MR. HINES: That's right, Your Honor.

17 I guess when I mentioned a number of motions, I think
18 I have a good of bit news. I can simplify that.

19 There are two -- two actions that have been filed, a
20 separate action for survival and another one for wrongful
21 death, so if you see twin motions, as it were, for two
22 different cases, so.

23 And, in fact, there really are two categories of
24 motions that we have that are made and -- well, it escapes
25 me. Let me make sure. I'll say this again for the record.

1 This is Russ Hines, and may it please the Court.

2 Your Honor, the -- the primary motion here is a motion
3 to compel arbitration. There are a number of other
4 motions. I think it's five of them that we've made for a
5 stay that sort of tag along with that motion to compel
6 arbitration.

7 Basically, we have one defendant, and that's Lake
8 Emory Post Acute Care, which is a skilled nursing facility.
9 It's moving for a stay for a -- excuse me -- to compel
10 arbitration.

11 The other defendants are moving -- at least the ones
12 that we represent -- and to make that clear, Your Honor,
13 there's a lot of parties in this caption.

14 We represent everyone in this caption -- the
15 defendants that is -- except for Kerry L. Wheeler, D.O.

16 Also I would note that while named in the caption
17 there's a defendant called Fundamental Clinical Consulting,
18 LLC. That party has been dismissed without prejudice by
19 stipulation.

20 So, but as for the rest of those parties, they're all
21 moving parties today, but the motion that's really the
22 primary motion is the motion by Lake Emory Post Acute Care
23 to compel arbitration.

24 All the other motions that are before Your Honor are
25 motions that say, Your Honor, in light of that motion to

1 compel arbitration we are asking for you to stay this case
2 as to us pending the result of that arbitration.

3 And the basis for that, Your Honor, and we've briefed
4 this, and I trust that Your Honor has the various memos
5 that were filed. But in the number of bases for that stay
6 argument, Your Honor, and I don't mean to put the cart
7 before the horse, but they're stated in that memo and we're
8 happy to rely upon that if that -- if that suits Your
9 Honor.

10 But the first one of them is Section 3 of the Federal
11 Arbitration Act, and we maintain that the plain language of
12 that, of that act, requires a stay in this circumstance if
13 there is -- one of the parties has an arbitration agreement
14 that's enforceable.

15 And I can get into that further, Your Honor, but
16 really the real meat and potatoes here is the motion compel
17 arbitration. And maybe in the interest of time I would
18 just rely on the brief on the -- on those motions for the
19 stays because I think we filed memos in support of -- of
20 all of those defendants moving for a stay. And it's all
21 the same argument.

22 Your Honor, this case -- let me give a little bit of
23 background here. This is a -- I'll treat them as one,
24 although they are separately filed actions for wrongful
25 death and survival.

1 It arises out of the allegation of nursing home
2 negligence.

3 The -- I'll call the facility Lake Emory Post Acute
4 Care, is a skilled nursing facility in Spartanburg County.
5 And I'll just refer to it as the facility. That's the
6 actual facility where -- where this -- the decedent,
7 Mr. Pace -- his name is Earl Pace. And this suit is
8 brought by his personal representative Kenneth Pace.
9 Mr. Pace -- I'll refer to him as the resident.

10 Now, he -- there is -- and this is in our materials,
11 Your Honor. There was an arbitration agreement. Well,
12 there's two -- two documents that are essential to our
13 argument.

14 One is an admission agreement where he was admitted to
15 our facility in January of 2015. The other is an
16 arbitration agreement. It's a separate document that was
17 signed in conjunction with his admission.

18 Your Honor, as I understand it, the real battleground
19 here is -- well, it's twofold, and the first question is
20 was there authorization, was there the proper authority to
21 enter into an arbitration agreement that bound Mr. Pace
22 and, in turn, has now bound his estate in these actions.

23 The -- in this particular case there was -- there were
24 adult protective proceedings that were initiated by the
25 department of social services prior to Mr. Pace's admission

1 to the facility.

2 And as a result of those proceedings a merits order
3 was entered on or about August 28th of 2014, and that order
4 determined that it was appropriate for -- it granted
5 D.S.S.'s petition to provide protective services to
6 Mr. Pace and to take custody of Mr. Pace. Again, that was
7 in August of 2014.

8 Fast forward just a bit to January of 2015. Mr. Pace
9 is admitted to the facility. At that time a D.S.S.
10 representative signs the admission agreement and the
11 arbitration agreement for Mr. Pace.

12 We maintain that that -- the authority vested in
13 the -- in D.S.S. through the adult protective procedure and
14 the merits order that was entered was -- had vested in
15 D.S.S. the authority to enter into the arbitration
16 agreement.

17 The argument that I understand we are met with, the
18 counter argument that is, is that there was not authority
19 to do that.

20 And where we're coming from, Your Honor, on D.S.S.'s
21 authority -- and this has to do with the statutory section
22 43-35-10. In particular, this is from the -- well, the
23 provisions of the code on adult protection.

24 And it defines the term protective services, and if
25 the Court will indulge just a little bit of reading --

1 "Protective Services. It means those services whose
2 objective is to protect a vulnerable adult from harm caused
3 by the vulnerable adult or another. These services
4 include, but are not limited to, evaluating the need for
5 protective services, securing and coordinating existing
6 services, arranging for living quarters, obtaining
7 financial benefits to which a vulnerable adult is entitled,
8 and securing medical services, supplies, and legal
9 services."

10 If I tried to emphasize in reading that this list was
11 not -- it is expressly not exhaustive. It includes, but
12 not limited to -- is not limited to those things, but it
13 specifically includes securing legal services.

14 Your Honor, I know that, for instance, in some of
15 these cases -- and candidly this is the first one that I've
16 ever dealt with where we had a question of D.S.S.'s
17 authority -- in a number of these type cases where the
18 issue is litigated by arbitrability, it's a relative, a
19 spouse, a child, someone who's assisted a relative in being
20 admitted and signed on their behalf.

21 And sometimes we get into arguing over something
22 called the Adult Healthcare Consent Act, and I want to make
23 clear that we are not here arguing that the Adult
24 Healthcare Consent Act is what we're relying on. We're not
25 relying on that. It's immaterial to our claim. It's a

1 particular grant of authority that comes from the statutes
2 about adult protection.

3 And so it is oftentimes argued in addition to, in
4 conjunction with, the argument about the Adult Healthcare
5 Consent Act which, again, Your Honor, we're not arguing
6 here, but I'm using it to illustrate the distinction.

7 I know my argument doesn't need that and also this
8 respectfully is correct in that it will be argued against
9 us that the Adult Healthcare Consent Act only allows for
10 healthcare related decisions; for instance, the admission
11 to the facility, certain decisions about care and
12 treatment; but does not extend so far as to allow a party
13 to bind legal rights.

14 Well, again we're not relying upon that, on the
15 Healthcare Consent Act. We're relying on specific grant of
16 authority under the statutory scheme for adult protection
17 and protective services, specifically including, again, but
18 not limited to, securing legal services.

19 The variability to secure legal services on behalf of
20 a vulnerable adult who's been placed in D.S.S. custody
21 necessarily provides the ability to make decisions relevant
22 to the legal rights of the -- or involving impacting legal
23 rights of the -- of the person who is under D.S.S.
24 protection. And let me try to illustrate this, I think, a
25 little further.

1 The -- the ability to secure legal services when
2 they're needed, which is clearly granted, has to include
3 within it the discretion to determine when legal services
4 are or are not needed.

5 In exercising that discretion, for instance, D.S.S. is
6 entrusted with the ability to determine, well, is there a
7 situation that needs legal -- where legal services are
8 needed.

9 It is clearly placing in D.S.S.'s hands the ability to
10 make decisions that impact these legal rights, and a lot of
11 times it's argued against motions to compel arbitration.
12 They'll say, well, this, the idea of waiving a person's
13 constitutional right to a jury trial and agreeing to
14 arbitration, is beyond what's contemplated here.

15 Your Honor, for that -- for that to be -- I think that
16 argument fails because it only seems to look at waiver of a
17 jury trial through -- in terms of an arbitration.

18 Every case that's settled is, in fact, is a waiver of
19 a jury trial, meaning that the jury trial -- any case that
20 doesn't proceed all the way to a trial by a jury, and in
21 many, many cases obviously, those cases include -- you
22 know, cases do not do that because they're settled. well,
23 that's a waiver of a right to a jury trial and for another
24 way of resolving the case, which is in this case
25 arbitration.

1 So, Your Honor, I suppose maybe the better thing for
2 me to do is -- that is our argument on authorization. It
3 comes from that statutory language. There is no question
4 here about whether or not the protective proceedings were
5 had and this order was entered.

6 I'll be happy to respond to any argument from
7 plaintiff's counsel on that point. The shorter story is
8 the ability to provide or to secure these legal services
9 encompasses and includes the ability to make decisions that
10 impact legal rights.

11 And I would also -- I guess one final thing I would
12 note in this regard is that in the original brief that
13 plaintiffs submitted in opposition they note that there was
14 already at the time of the admission a guardian ad litem
15 appointed for Mr. Pace, and an attorney.

16 Well, that is true, but it is only true because that
17 is what the statutory scheme for these protective
18 proceedings -- and this is coming from 14-35 -- excuse
19 me -- 43-35-45, in particular Subsection (C) which has to
20 do with the procedure when there's a petition by the adult
21 protective services program for -- to provide protective
22 services, about the Court's appointment of a guardian ad
23 litem and an attorney to the person who is against -- well,
24 in whose behalf the proceedings are brought.

25 The point is that those folks really operate up to the

1 point of the merits hearing, which in this case had already
2 been had and the order had already been issued in August of
3 2014. Again, some few months ahead of the admission.

4 But, furthermore, plaintiff agrees in the -- in their
5 brief that the guardian ad litem doesn't have the ability
6 to make decisions concerning the legal rights of the -- of
7 the -- the -- well, the resident in this case, Mr. Pace,
8 and only suggests that maybe it's possible for the
9 attorney, the Court-appointed attorney, to do so.

10 Your Honor, where I'm getting here is through the
11 process of elimination, is to try to show that the
12 practical reality of what the protective services are
13 designed to be able to do if we know that the guardian ad
14 litem couldn't waive legal rights. The plaintiff indicates
15 that maybe the appointed attorney could. I don't think
16 that's correct. This was appointed for a specific purpose.
17 This attorney was appointed in terms of dealing with the
18 proceedings on the petition for adult protective custody,
19 not for -- it wasn't made an attorney.

20 In fact, like under a power of attorney, that's not
21 what we're talking about, and it wasn't just your attorney
22 for any and all purposes.

23 The point I'm getting at here, Your Honor, is to say
24 if you have a vulnerable adult who has been placed into the
25 custody of D.S.S., who needs the protection of D.S.S. to --

1 to protect themselves and you have no person, no entity who
2 can waive or make decisions about those legal rights, then
3 you have a stalemate that the law really does not --
4 doesn't envision.

5 That's why I get back to the idea of these protective
6 services of D.S.S. Once they've been ordered that they
7 should provide them, they have the ability to make these
8 rights, to make these decisions concerning rights, because
9 the G.A.L. couldn't do it. The Court-appointed attorney
10 couldn't do it. And the person who is under protective
11 care and custody couldn't do it because that's the reason
12 they're vulnerable.

13 So you have a situation where not only could they not
14 agree to arbitration. They couldn't settle the case.

15 So that's the whole issue on authority, and I'll put
16 one other argument, Your Honor, if you are not inclined to
17 agree with us on the actual authority here to enter into
18 the arbitration agreement.

19 The other argument -- and I'll try to work through
20 this as quick as possible, Your Honor, but it's an argument
21 that's based on the doctrine of merger and also the
22 doctrine of equitable estoppel.

23 And as condensed as I can make it, Your Honor, in
24 relying on our briefing, otherwise that -- the idea is that
25 when you have two instruments -- and in this case the

1 instruments I'm referring to are the admission agreement
2 and the arbitration agreement. They were executed at the
3 same time by the same parties for the same purpose and
4 during the course of the same transaction. Our law
5 presumes that those instruments were and are to be
6 considered merged and act as one.

7 And this proposition, Your Honor, is -- I don't think
8 there's any disagreement from the plaintiff on -- on the
9 proposition itself. I can cite to you the cases. Coleman
10 vs. Mariner Healthcare makes this clear that -- that
11 legal -- actually presumes a merger has happened in a case
12 where you have that again -- same parties, same time, same
13 purpose, same transaction.

14 Coleman also indicates -- as Coleman was another case
15 that dealt with a question about arbitration agreements and
16 admission agreements to nursing facilities.

17 Admittedly, the Coleman court came down and against
18 arbitration in that case, but I submit to Your Honor that
19 is a factual distinction.

20 The point I'm trying to make here is for the legal
21 premise from which my argument springs, is that if Coleman
22 did indicate, number one, its presumption of merger is the
23 correct law of South Carolina and that when you have an
24 admission agreement and an arbitration agreement signed,
25 separate instruments like this, they -- in conjunction with

1 the admission to a facility like this, they are indeed for
2 the same purpose and part of the same transaction by the
3 same parties at the same time.

4 And so what Coleman said is that when you have that
5 presumption that that presumption will prevail unless there
6 is an indication that the parties did not intend for the
7 instruments to merge and intended them to remain separate.

8 Your Honor, briefly, there is no such intention here,
9 and it couldn't be the intention of separateness as well as
10 separation or separateness is what Coleman called it.

11 These documents -- the arbitration agreement doesn't
12 make any sense standing by itself. The only reason why it
13 exists is to go hand in glove, I would say, with the
14 admission agreement.

15 The admission agreement provides for the admission and
16 for the services that are going to be received and the
17 arbitration agreement provides for the resolution of any
18 disputes arising out of the admission. The arbitration
19 agreement doesn't make any sense standing alone.

20 Some of the arguments that have been made against it
21 have to do with things like, well, the arbitration
22 agreement, it's only one page, agreement, admission
23 agreement, is numbered pages 1 of 12 through 12 of 12. It
24 has an entire agreement provision in it.

25 well, Your Honor, a couple of things on that. The

1 fact that documents or two instruments or even more than
2 two instruments along, again, the same time, same parties,
3 transaction and purpose, have -- are separately paginated
4 or have separate titles, that's all specious and provides
5 no evidence whatsoever of intent to have the documents
6 being separate, because really all that's saying is that
7 there are two instruments. So the doctrine of merger is
8 never going to apply at all unless you're dealing with more
9 than one instrument.

10 The question, Your Honor -- this is what I'm saying --
11 respectfully arguing that -- Your Honor, and I look at the
12 page numbering or the separate titling, of course you -- we
13 won't be talking about merger unless we're talking about
14 multiple. And the idea that this admission agreement here
15 has an entire agreement clause, that's true, but it also
16 specifically references other admissions, materials, that
17 would be included in it, which would include any materials
18 executed in conjunction with the admission which is,
19 obviously, our position is the arbitration agreement.

20 So, Your Honor, the reason I go through all of that
21 long rigmarole was to say that once you conclude that we
22 argued, is correct, these two instruments are merged into
23 one, then you have the estoppel component, which is that
24 you can't accept direct benefits from an agreement on a
25 contract and then turn around and say, well, I'm going to

1 deny the validity of that contract and it was in another
2 respect.

3 And so our point is, Your Honor, that you cannot --
4 there were, obviously, a number of direct benefits that
5 were provided under the admission agreement to Mr. Pace
6 including room and board and care and treatment.

7 The only thing I would note, Your Honor, is the claim
8 here really arises out of allegations of improper
9 medication being prescribed over the course of about a week
10 in 2017. Mr. -- the claim does not include, as I
11 understand it, allegations of any kind of negligence from
12 January 30th of 2015 until April of 2017.

13 But, in any event, Mr. -- Mr. Pace did receive care
14 and treatment, room, board, meals included in room and
15 board, all of those things. So having received that, he
16 can't -- he cannot deny the enforceability of the admission
17 or arbitration agreement which is merged with the admission
18 agreement.

19 And, Your Honor, one last point is that I think the
20 plaintiff has argued that even if we are right the
21 admission agreement should apply to the survival claim and
22 cannot apply to the wrongful death claim because the
23 wrongful death claim belongs to the wrongful death
24 beneficiaries and they've not signed an arbitration
25 agreement, Your Honor, respectfully that is incorrect

1 because the wrongful death claim is a derivative claim,
2 meaning the claim has to be a claim that would have existed
3 in favor of the decedent had the decedent lived.

4 well, any defense that would have been good or any
5 avoidance or other contractual obligation that would have
6 been enforceable against the decedent had the decedent
7 lived would be enforceable against the -- the -- the
8 wrongful death beneficiaries.

9 In this case if indeed the arbitration agreement is
10 enforceable as we argue it is, either that it is
11 enforceable by virtue of the authority under D.S.S.'s
12 statutes or that plaintiff is estopped to argue that it's
13 not enforceable, either way, then that all would be just as
14 binding in terms of the wrongful death claim as it is under
15 the survival claim.

16 And with that, Your Honor, I would just thank you very
17 much for your indulgence. I know it's a lot that I've
18 gotten out there, and you've been quite -- well, patient to
19 let me do it. So I thank you for that, and we reserve just
20 a moment to respond to plaintiff's counsel if I may once
21 he's done.

22 THE COURT: Sure. Certainly.

23 Yes, sir.

24 MR. HARBIN: Your Honor, may it please the Court.

25 My name is Tony Harbin. I'm here on behalf of my law

1 partner, Jennifer Burnett.

2 And Ms. Burnett filed a brief in opposition to these
3 motions, and I'm going to rely -- she did 31 pages
4 examining the defendant's arguments and case law that
5 contradicts their position. And I'm going to rely on that
6 brief, but I do briefly want to touch on a few things.

7 What's undisputed about this case is that Mr. Pace
8 didn't sign the arbitration agreement.

9 Mr. Pace at the time of his admission had dementia.
10 He was incapable of having the capacity. He didn't have
11 the capacity to sign; he didn't have the capacity to
12 understand; he didn't have the capacity to grant either
13 apparent or direct or implied authority to waive his
14 constitutional rights.

15 Also, at the time of this admission Mr. Pace did, in
16 fact, have a guardian ad litem and an attorney in fact that
17 was appointed by the Court.

18 And the defendant takes the position, well, they're
19 just appointed because of the statute, but they hadn't been
20 relieved once D.S.S. took custody of him. They were still
21 his guardian ad litem; they were still his attorney in
22 fact.

23 And the defendant says, well, Your Honor, this random
24 D.S.S. employee, Calvin Hill, who signed this arbitration
25 agreement -- and, by the way, I may be wrong. I haven't

1 seen an affidavit from Mr. Hill from D.S.S. saying that he
2 felt like he had the authority or he -- for any reason why
3 he signed this arbitration agreement.

4 But the fact that the defendant relies on a random
5 D.S.S. employee to waive a constitutional right to a jury
6 trial is just misplaced. If D.S.S. had that authority,
7 then you'd never need to appoint a guardian ad litem or an
8 attorney in fact for any vulnerable adult.

9 You'd simply just say, well, D.S.S. once they're
10 appointed, they can -- they can handle his affairs, they
11 can do whatever they want to do. And that's just simply
12 not the law in this state.

13 If Mr. Hill had gone to Mr. Pace's bank and tried to
14 withdraw money or tried to sell property that would of
15 course have been denied.

16 And the defendant uses this brief definition to
17 arrange for legal services to say, well, that means they
18 can settle cases, they can handle his affairs, they can
19 waive his constitutional right to a jury trial. And, Your
20 Honor, that is just a huge stretch to reach that conclusion
21 that a random D.S.S. employee who knows nothing about
22 Mr. Pace, who knows nothing about his legal affairs or his
23 financial ability or anything like that can walk into a
24 facility and enter into an arbitration agreement that
25 waives his constitutional rights. And so I strongly

1 disagree that this arbitration agreement signed by Mr. Hill
2 is valid at all.

3 But really there's no reason for this arbitration
4 agreement. It's a standalone arbitration agreement. It is
5 not incorporated in the admission documents. It is a
6 separate document.

7 And the defendant argued, well, there's merger,
8 there's merger, because the arbitration -- the admission
9 agreement says -- it mentions other documents. It does.

10 It says -- it refers you to the facility handbook on
11 resolution of disputes. It doesn't refer you to the
12 arbitration -- arbitration agreement under the Federal
13 Arbitration Act. It doesn't mention the arbitration
14 agreement.

15 In fact, that admission agreement is 12 pages long,
16 and in that 12 pages it has a merger clause that says this
17 is all the documents but for the facility handbook, this is
18 everything in our contract that Mr. Hill signed.

19 And, now, I consent, I agree, that Mr. Hill had the
20 authority to admit it to the nursing home, because that's
21 arranging for services for the vulnerable adult. But he
22 did not have the authority to sign this separate
23 arbitration agreement that was not -- nowhere in that
24 document, either document, says it's required for admission
25 or it's required for services.

1 So the arbitration agreement doesn't -- has no issue.
2 There's no reason for this arbitration agreement.

3 And, you know, it's been 33 or 34 years since I took
4 contracts, and this is not in my lawyer partner's brief,
5 but I don't even see any consideration for the arbitration
6 agreement. I don't see how it's a valid contract.

7 There -- it -- there's no consideration; there's no
8 meeting of the minds; there's no acceptance. It's just an
9 arbi -- a standalone arbitration agreement that sets there.
10 And our court has ruled that arbitration agreements are
11 contracts and they must comply with contract law.

12 Like I say, it's been a long time since Professor
13 Lacey taught me contracts in the 80s, but I don't -- and my
14 law partner didn't put it in the brief, but I was looking
15 at it last night. I don't see it's a valid contract.

16 It's a completely standalone document that the
17 facility, the defendants, own admission agreement excludes
18 it by the merger clause that they put in the 12-page
19 admission agreement. It don't reference the arbitration
20 agreement in the -- in the admission agreement.

21 So I believe it fails on contract purposes. I believe
22 it fails because Calvin Hill -- we don't even know anything
23 about Mr. Hill -- a random D.S.S. employee who checked this
24 adult into this facility signed this without any authority
25 whatsoever to do it.

1 Let me think what else I want to tell you, Judge.

2 Nothing in 43 -- they cite 43-35-55 saying, well, it
3 says there's -- I believe my law partner put the whole
4 statute in her brief, but there's nothing in there that
5 says you can waive a constitutional right. And it's a
6 stretch. They reached and said, well, it says legal
7 services. I believe that means you can get a lawyer or you
8 can go to the guardian and let the guardian or the lawyer
9 take care of the legal issues.

10 The cite as I noted before -- D.S.S. is not in the
11 business of representing people legally. All they are is
12 protecting the vulnerable adult. And so to say that this
13 guy can come in there and waive a constitutional right, it
14 is a stretch.

15 I would turn into the estoppel issue. I've already
16 addressed this primarily, but there is no merger between
17 the two documents.

18 In fact, the admission document by its terms says this
19 is all of the -- this is all of the agreement between the
20 parties, this and the admission handbook which talks about
21 the dispute resolution. Nothing about this federal
22 arbitration agreement document. So we would argue that the
23 estoppel does not apply because there is no merger and
24 there can't be estoppel.

25 And that Coleman case is pretty well on point, and I

1 believe they found in Coleman -- I may be wrong and I may
2 have misunderstood what the defendant said -- that there
3 was no merger between the arbitration agreement and the
4 admission agreement. And they also declined to apply the
5 arbitration agreement in Coleman, and I believe that's the
6 case here.

7 And I can talk about equitable estoppel. I think it
8 fails on the merger. But even if it -- even if there was
9 merger, I don't believe that under Coleman and Thompson
10 that equitable estoppel would apply.

11 In the Thompson case that's in the brief they set
12 forth a number of factors, allegation of false
13 representation, expectance of reliance on a false
14 representation, detrimental reliance, equitable estoppel.
15 None of that -- there's nothing here.

16 And, again, they could have went to Mr. Hill, Calvin
17 Hill, from D.S.S. and got an affidavit and filed it with
18 this. And if they did, I'm wrong. I haven't seen anything
19 else. And said the reason for the arbitration agreement
20 that was explained to him, that he had to have it to be
21 admitted, I don't see that.

22 And as I say, Judge, you know, this -- this -- to me
23 this is cut and dried. They get the -- D.S.S. comes to
24 admit him to the facility who is a vulnerable adult. The
25 man signs the arbitration -- the admission document which

1 admits him into the facility. That's the end of it.
2 He's -- that's it. That's what D.S.S. -- has accomplished
3 their purpose.

4 Then they hand him this arbitration agreement that
5 waives his constitutional right to a trial by a jury. He's
6 already in the facility under the terms of the admission
7 document. And he signs it, and he -- it's on there, D.S.S.
8 representative. He doesn't put my legal authority to do
9 that.

10 And, you know, under the law of South Carolina that
11 arbitration agreement fails. It just cannot -- and you can
12 see in their -- in their brief and in their argument there
13 is no -- there is no case law that says D.S.S. has the
14 authority to waive a constitutional right.

15 That's why they reach into that statute definition and
16 say legal services, this is a legal service. That's such a
17 reach, Judge. And, again, it's not in the brief, but I
18 do -- I may be wrong about this because it's been a long
19 time, but I don't see the arbitration agreement is a valid
20 contract. And that's -- that's our argument, Judge, in
21 addition to the brief and the law set forth in the brief.
22 Thank you.

23 MR. HARTER: Your Honor, may -- excuse me, Your Honor.
24 Forgive me. I'm sorry.

25 THE COURT: Mr. Harter, you're muted.

1 MR. HARTER: I do that. How about now? Am I okay?

2 All right. Great. You'll probably be glad to hear,
3 Judge, I don't have a lot to say about this. I do -- I
4 represent Dr. Kerry Wheeler who is a medical director over
5 there at the facility.

6 And I really don't have, you know, a position on this.
7 It is a -- it is a case involving an alleged medication
8 error, as I think Russ has alluded to.

9 The only thing I would add, Judge, and I think kind of
10 de facto we've dealt with this.

11 I know one of the motions was to stay discovery until
12 this arbitration matter got resolved, I think wisely,
13 because the lawyers appreciated. We didn't want to have to
14 do double discovery. Jennifer and Tony and Jay and I --
15 nobody has really pushed on any discovery at this point
16 until we got that out of the way.

17 So, you know, but I really don't have a position on
18 this. And that's all I've got to say.

19 THE COURT: All right. Thank you, sir. If you don't
20 mind, if you'll mute yourself again -- the muting keeps the
21 background noise out. Thank you.

22 Mr. Hines, go ahead sir.

23 MR. HINES: Thank you, Your Honor.

24 Just a few things in response to Mr. Harbin.

25 He, I think, referred to the lawyer who had been

1 appointed through the D.S.S. protective proceedings
2 procedure as an attorney in fact.

3 I do need to verify. That's -- that's not accurate.
4 And I'm not trying to be -- well, I'm not trying to be
5 overly technical about it, but I think in this particular
6 case it's a point that needs to be made because an attorney
7 in fact would be like someone with power of attorney. And
8 that's -- this language in the statute -- this person is an
9 attorney for the -- the vulnerable -- vulnerable adult in
10 respect of those, the D.S.S. proceedings.

11 And so, you know, the idea that an attorney had been
12 appointed to handle any and all of -- I mean, I think it's
13 an overstatement to say that an attorney had been appointed
14 to handle any and all of Mr. Pace's legal affairs even as
15 an attorney at law. But it's inaccurate to say that the
16 attorney had been vested with authority to make decisions
17 as an attorney in fact on behalf of Mr. Pace. That's just
18 not -- that's not the case.

19 And when I -- and I point that out and follow up on --
20 on this practical point, I suppose, in the -- in the brief,
21 the original brief, I think plaintiff did supplement with a
22 more recent one. But this is page five of the original
23 brief in opposition filed November 30th of last year where
24 they write that plaintiff can find no authority in South
25 Carolina for the proposition that G.A.L. has authority to

1 bind (webex dropped) concedes that the attorney would
2 arguably have the requisite legal authority to do so.

3 I'm not able to see where that argument would -- would
4 succeed and -- and really the point I'm getting to there,
5 Your Honor, is that they acknowledge that the guardian
6 couldn't make that decision.

7 The most they can say about what the attorney --
8 again, not attorney in fact but attorney at law appointed
9 to the D.S.S. procedure -- what that attorney could do, the
10 best they can say, is arguable.

11 I suggest Your Honor that that does portray some doubt
12 on that proposition. And I would add further to that
13 doubt. But if we'll assume for the sake of this argument
14 that neither the G.A.L. nor that appointed attorney could
15 make the decision, you know, then you would have -- as Mr.
16 Harbin explained, Mr. Pace was not in a position to make
17 the decision for himself. That's -- he was a vulnerable
18 adult in fact.

19 So, you know, Mr. Pace's argument -- excuse me -- Mr.
20 Harbin's argument -- I mean, one of the things that I think
21 needs to be brought to the floor of it is some undercurrent
22 there about this random D.S.S. employee, someone who didn't
23 apparently know anything about anything, and is out there.
24 I mean, that's -- I think that is -- well, Your Honor, I
25 think that's undue -- you know, this is -- D.S.S. is like

1 any entity. It's going to act through personnel, you know,
2 people. That's so.

3 And I think this idea -- I'm not aware of any
4 requirement that there needs to be some sort of affidavit.
5 I'm not aware of any requirement that any suggestion for
6 this very moment that -- that even, you know, is something
7 that would be a reason to think about.

8 I mean, this -- you know, it's on its face. It's been
9 signed by someone who is a D.S.S. representative, and
10 that's D.S.S. was vested with the authority to act and to
11 provide these protective services through the order that
12 I've mentioned.

13 The -- you know, we have a situation which is,
14 obviously, unfortunate. I think that Mr. -- Mr. Pace was
15 approximately 87 years old when he was admitted.

16 He apparently was dealing with a -- with a host of
17 issues with his health and through the appropriate process
18 was adjudicated to be in need of these protective services.

19 The idea that this is a -- some great reach where
20 D.S.S. would be able to make these decisions, there needs
21 to be someone to make decisions for us, is one of the
22 things I'm saying. And the reason that needs to be is
23 because he needs that protection. D.S.S. is the entity
24 that's attempting to provide that protection for him.

25 And, you know, and -- and the idea that it's a stretch

1 for us to say that we cite the word, you know, legal
2 services, I mean, that clearly indicates that there is
3 going to be D.S.S. involvement in determining legal
4 matters.

5 And I would argue that that is all -- that expressed
6 language is enhanced by the fact that's all leading to
7 that, is the including but not limited to.

8 I mean, if there's any interpretation of that
9 language, it should be interpreted broadly.

10 The -- you know, a couple of last points about no --
11 no consideration in the contract.

12 Your Honor, as Mr. Harbin mentioned, I mean, I dealt
13 with that argument before, but I don't think it has been
14 raised in this one. So I don't have a case in front me. I
15 feel it's the case called O'Neil, and there's another case.
16 But the consideration is the mutual and binding, you know,
17 promises to arbitrate both ways. And that's -- that's
18 sufficient consideration. That's -- our courts recognize
19 that promises, mutual and concurrent, you know promises,
20 to -- to arbitrate constitutes sufficient consideration.

21 Furthermore, because this is an arbitration agreement
22 that's governed by the F.A.A., the Federal Arbitration Act,
23 it could not be. The Federal Arbitration Act, you know,
24 requires that arbitration agreements be placed on equal
25 footing with any other contract under state law.

1 So you couldn't have a higher standard of
2 consideration needed for an arbitration agreement than you
3 have for another contract. And so, you know, the contract
4 law of South Carolina is that mutual promises are
5 sufficient consideration.

6 As far as meeting of the minds, I think that was
7 mentioned. Meetings of the minds, as I understand it,
8 usually goes to the idea of is there some lack of terms or
9 some ambiguity of the terms.

10 That's not really been argued, but, you know, all of
11 the -- all of the terms that would be material to the
12 binding arbitration agreement are in the arbitration
13 agreement.

14 It also makes reference to and adopts the South
15 Carolina Arbitration Rules. We also have the terms
16 supplied by the F.A.A.

17 If there was an serious argument about that I couldn't
18 -- I could get into it, but I just -- I just wanted to
19 touch on -- on that briefly because, I mean, it was
20 addressed briefly.

21 As far as -- I hope I made this -- made this clear.
22 The Coleman court absolutely came down against arbitration
23 in that case, but I wasn't suggesting otherwise. But the
24 fact of my legal argument is supported through Coleman.

25 And, Your Honor, there was -- oh, the entire

1 agreement. It does reference the handbook. This is the
2 entire agreement on a merger from the admission agreement,
3 but it doesn't just reference the handbook.

4 It -- the Court will indulge me very briefly. "The
5 undersigned further acknowledges that he/she has received
6 and read the admission handbook and other admissions
7 materials and understood these documents are made part of
8 this agreement."

9 The other admissions materials are -- is what I'm
10 referring to, Your Honor. These are all things that
11 were -- these admission agreement and the arbitration
12 agreement were executed in conjunction with the admission.

13 And there would be absolutely no reason whatsoever for
14 there to be an arbitration agreement had it not been for
15 the admission. That's why it was -- was suggested. In
16 fact, it's a standalone. As I said, it's a separate
17 instrument. It does stand alone. In my merger argument
18 I've explained that.

19 But really what that underscores is that it's a
20 voluntary document that's not required for admission. But
21 once it is signed in conjunction with admission, it is
22 admissions paperwork.

23 So, Your Honor, thank you very much again for your
24 indulgence. That's -- I think that's all I have.

25 THE COURT: I've got one question.

1 I did a fair amount of family law when I was
2 practicing law for 25 years, and there was a case in the
3 family court arena -- I will have to find it, or my law
4 clerk will -- that our court held -- if I'm not mistaken,
5 our court held that a divorce was so personal in nature
6 that the adult son could not go -- could not proceed with a
7 divorce against -- his stepmother of course on behalf of
8 his father because there are some rights that are so
9 personal in nature that they -- that they can only be
10 waived by that individual. Kind of following that, would
11 there be anybody who could waive this gentleman's right
12 with jury trials?

13 MR. HINES: Your Honor, if that -- Tony, go right
14 ahead. Sounding like you had something. I didn't mean to
15 cut you off.

16 MR. HARBIN: Judge, I think if the -- if the -- Mr.
17 Pace had entered into a durable power of attorney that
18 specifically granted the person with the power of attorney
19 the right to enter into contracts on his behalf, then maybe
20 if -- and I still disagree that there's consideration, and
21 there's some language from our Supreme Court about this --
22 this argument, that -- well, it's a mutual promise to
23 forego the jury trial.

24 Really the only duty owed here was by the nursing
25 facility to -- to Mr. Pace. He had a duty to pay -- to pay

1 rent, but it was under the admission agreement, not the
2 arbitration agreement.

3 So I think there's some language. I don't have it,
4 but there's some language as I recall about a mutuality of
5 promise, and I think the argument -- well, they just both
6 agreed to give up their jury trial. That fails, and I can
7 find that if the Court wants it.

8 But I do think that there are certain contracts that
9 could be entered into if Mr. Pace had the capacity and had
10 granted that right to a power of attorney or to a family
11 member through a power of attorney. But I think that's the
12 only way that that would be.

13 And then the contract itself would have to be valid
14 for that to apply. So, but I don't think even -- I don't
15 think even a power of attorney that you could be able to
16 get a divorce or things of that nature.

17 I think you're right on that, but I do think that
18 there are certain contracts such as buy and sell land, open
19 and close bank accounts and maybe enter into arbitration
20 agreements that they're valid, that a durable power of
21 attorney.

22 But we don't have that here. We don't have anything
23 here except an action saying take care of a vulnerable
24 adult. And once he signed that admission agreement, it was
25 done. The arbitration agreement's separate. He didn't --

1 there was no reason for D.S.S. to sign that arbitration
2 agreement. There was no -- it gave no benefit to the
3 vulnerable adult. He was already in the facility, so.

4 MR. HINES: Your Honor, if I may very briefly.

5 The way Mr. Harbin presents that, I think maybe
6 looking at it from the other direction to me would seem
7 might help illustrate and maybe make this point.

8 To say that D.S.S.'s job was done upon admission, if
9 that were true, Your Honor, and I think protective services
10 would need to be -- the definition of it would need to be
11 drafted far more narrowly than it is currently, because
12 essentially the idea that D.S.S. is done upon admission
13 would be D.S.S.'s only concern, is with healthcare related
14 decision. Clearly, that's not what protective services
15 indicates.

16 And I read that language, Your Honor. I don't intend
17 to read it all again, but it includes specifically legal
18 services, financial services. And it says including, but
19 not limited to.

20 Your Honor's pointed out that case about the such a
21 personal situation. I'm going to have to look for that
22 just on my own because that sounds interesting, regardless,
23 but I would say this is a point I started to make and maybe
24 made it earlier, but I don't know if it was clear. This
25 gives me a good opportunity to do it.

1 when this -- when this -- the right to a jury trial
2 obviously is -- is an important and constitutionally
3 protected right. And you hear that language a lot in
4 response to these arbitration agreements.

5 But it's -- to forego the right to a jury trial is not
6 only done through means of arbitration agreements.

7 If we are to say this language and this statute does
8 not provide this person with the ability to -- with any
9 ability -- D.S.S. rather any ability to waive the right to
10 a jury trial, that means there can be no settlement because
11 you can file -- you know, that means you -- in fact, it can
12 be the case where -- let's imagine here, by the way, that
13 this doesn't have to be a situation where you have a --
14 someone who is deceased and is now being -- suit is being
15 brought for the wrongful death and survival.

16 You can have a person who, let's say, he's injured in
17 a facility like this and he -- and he has claims for that
18 and he's continued to live and he's got -- you know, he
19 had -- the claim needs to be brought.

20 well, there can be a situation where that claim is
21 brought on his behalf and there's a favorable settlement.
22 without question the settlement is one that is in his best
23 interest to take in terms of D.S.S., its conclusion on
24 that, but it cannot be -- the idea would be that that --
25 his best interest in taking that settlement could not be

1 accomplished because no one could do that, and he himself
2 wouldn't be able to do it because of his incapacity.

3 Your Honor, I think -- the issue here, I think, and
4 I'm not familiar with the D.S.S. case, the family court
5 case you mentioned. It really does sound interesting. But
6 what I might suspect is that it's particularly related to
7 marital relations and in that particular relationship of
8 such -- you know, because it -- you know, the nature of
9 that relationship. My suspicion is that that's very
10 narrowly focused and wouldn't encompass the situation we're
11 talking about now.

12 I think what I was just trying to make is that if that
13 point did expand to -- to this situation, I think it would
14 be unduly limiting on the ability of D.S.S. to try and
15 carry out the -- the protective purpose of the statute as
16 to carry out.

17 Again, thank you, Your Honor. That's all I have.

18 THE COURT: Okay. Thank you. Anyone else want to be
19 heard?

20 Okay. Certainly it's under advisement.

21 And I have glanced at everything, but I will admit I
22 have not read in depth the briefs and motions in the file.

23 Anything else from anyone?

24 MR. HARBIN: Nothing from the plaintiff, Your Honor.

25 MR. HINES: No, sir.

1 THE COURT: If not, okay. Thank you. Thank you,
2 gentlemen, very much. Good to see all of you.

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 20th day of January 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 20, 2022

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	THI OF SOUTH CAROLINA AT CAMP
THI OF SOUTH CAROLINA AT CAMP	)	CARE, LLC D/B/A LAKE EMORY POST-
CARE, LLC; THI OF SOUTH	)	ACUTE CARE'S MOTION TO DISMISS
CAROLINA, LLC; THI OF	)	PLAINTIFF'S COMPLAINT, COMPEL
BALTIMORE, INC; FUNDAMENTAL	)	ARBITRATION AND STAY STATE
ADMINISTRATIVE SERVICES, LLC;	)	COURT PROCEEDINGS
FUNDAMENTAL CLINICAL AND	)	(SURVIVAL ACTION)
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant THI of South Carolina at Camp Care, LLC d/b/a Lake Emory Post-Acute Care (misidentified in Plaintiff's Complaint as "Lake Emory Post Acute Care" and "THI of South Carolina at Camp Care, LLC" as separate parties and hereinafter referred to as "this Defendant" or the "Facility"), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order dismissing this action pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelling this matter to arbitration,

or, alternatively, staying the action pending arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq.

Plaintiff has brought a Survival Action against this Defendant pursuant to his father’s residency at the Facility. However, prior to being admitted to the Facility, Plaintiff’s father, Earl Pace, entered into an Arbitration Agreement with the Facility. (See Arbitration Agreement attached as **Exhibit A**). The Arbitration Agreement was signed on behalf of Earl Pace by Calvin Hill, a representative of South Carolina’s Department of Social Services. See Ex. A. Calvin Hill identified himself as Earl Pace’s “Durable Power of Attorney for Health Care/Legal Guardian/Responsible Party” in the Arbitration Agreement, as Earl Pace was under the custody of DSS at the time of his admission to the Facility. Id.

The parties to the Arbitration Agreement agreed that the South Carolina Uniform Arbitration Act would not apply; rather, arbitration would be governed by the Federal Arbitration Act (“FAA”), because the services and reimbursement thereof to be provided to the Plaintiff upon his admission to the facility involved interstate commerce. In accordance with the terms of this agreement, the Defendant respectfully requests that this matter be compelled to arbitration. Alternatively, this Defendant requests that these proceedings be stayed pending the outcome of arbitration pursuant to Section 3 of the FAA.

Defendant respectfully requests that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any other motions or discovery filed or served by Plaintiff while the current motion is pending.

This Motion and Petition are supported by the attached Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent

memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

T. Ashton Phillips, III

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Attorneys for the Defendant THI of South Carolina
at Camp Care, LLC d/b/a Lake Emory Post-Acute
Care

Charleston, South Carolina

Dated: April 13, 2020

PLEASE READ CAREFULLY

FACILITY - RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

This Agreement is made between Lake Emily Post Acute ("Facility"), its agents, employees and servants, and East Place ("Resident") or Calvin Hill ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative"). It is the intention of the parties to this Agreement to bind not only themselves, but also their successors; assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of Resident.

It is understood by Resident/Representative that he/she is not required to use the aforesaid Facility for Resident's healthcare needs and that there are numerous other health care providers in the State where Facility is located that are qualified to provide such care to Resident.

It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively "Disputes"), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.

The parties shall select an arbitrator from a panel having experience and knowledge of the health care industry. If the parties cannot reach a mutual decision on the selection of an arbitrator, the parties agree that an arbitrator shall be selected by the Court. The arbitrator shall hear and decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction.

The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law.

I understand and agree that I am giving up and waiving my right to a jury trial.

This Agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement or the Admission Agreement. By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative.

Calvin Hill DSS Representative
Resident/Representative Signature

Date

1-29-15 Calvin Hill
Printed Name of Resident/Representative

Kimberly Martin
Authorized Agent of Facility

Date

1-29-15 Kimberly Martin AD
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	DEFENDANT FUNDAMENTAL
BALTIMORE, INC; FUNDAMENTAL	)	ADMINISTRATIVE SERVICES, LLC'S
ADMINISTRATIVE SERVICES, LLC;	)	MOTION TO STAY
FUNDAMENTAL CLINICAL AND	)	(SURVIVAL ACTION)
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant Fundamental Administrative Services, LLC, hereinafter referred to as "this Defendant," by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Camp Care, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

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aphillips@ycrlaw.com

Attorneys for the Defendant Fundamental
Administrative Services, LLC

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	DEFENDANT FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC;	)	CLINICAL AND OPERATIONAL
FUNDAMENTAL CLINICAL AND	)	SERVICES, LLC'S MOTION TO STAY
OPERATIONAL SERVICES, LLC;	)	(SURVIVAL ACTION)
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant Fundamental Clinical and Operational Services, LLC, hereinafter referred to as "this Defendant," by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Camp Care, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Kate C. Mettler

T. Ashton Phillips, III

P.O. Box 993, Charleston, SC 29402

(843) 720-5406

jdavis@ycrlaw.com; kmettler@ycrlaw.com;

aphillips@ycrlaw.com

Attorneys for the Defendant Fundamental Clinical
and Operational Services, LLC

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT HUNT VALLEY
HOLDINGS, LLC F/K/A FUNDAMENTAL
LONG TERM CARE HOLDINGS, LLC'S
MOTION TO STAY
(SURVIVAL ACTION)**

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant Hunt Valley Holdings, LLC f/k/a Fundamental Long Term Care Holdings, LLC (misidentified in Plaintiff's Complaint as "Fundamental Long Term Care Holdings, LLC" and hereinafter referred to as "this Defendant"), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Camp Care, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

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Attorneys for the Defendant Hunt Valley Holdings,
LLC f/k/a Fundamental Long Term Care Holdings,
LLC

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	DEFENDANT THI OF BALTIMORE,
BALTIMORE, INC; FUNDAMENTAL	)	LLC'S MOTION TO STAY
ADMINISTRATIVE SERVICES, LLC;	)	(SURVIVAL ACTION)
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant THI of Baltimore, LLC, hereinafter referred to as "this Defendant," by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Camp Care, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

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aphillips@ycrlaw.com

Attorneys for the Defendant THI of Baltimore, LLC

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03708
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT THI OF SOUTH
CAROLINA, LLC'S MOTION TO STAY
(SURVIVAL ACTION)**

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant THI of South Carolina, LLC, hereinafter referred to as "this Defendant," by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Camp Care, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

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D. Jay Davis, Jr.

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P.O. Box 993, Charleston, SC 29402

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jdavis@ycrlaw.com; kmettler@ycrlaw.com;

aphillips@ycrlaw.com

Attorneys for the Defendant THI of South Carolina,
LLC

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	THI OF SOUTH CAROLINA AT CAMP
THI OF SOUTH CAROLINA AT CAMP	)	CARE, LLC D/B/A LAKE EMORY POST-
CARE, LLC; THI OF SOUTH	)	ACUTE CARE'S MOTION TO DISMISS
CAROLINA, LLC; THI OF	)	PLAINTIFF'S COMPLAINT, COMPEL
BALTIMORE, INC; FUNDAMENTAL	)	ARBITRATION AND STAY STATE
ADMINISTRATIVE SERVICES, LLC;	)	COURT PROCEEDINGS
FUNDAMENTAL CLINICAL AND	)	(WRONGFUL DEATH)
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO ,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant THI of South Carolina at Camp Care, LLC d/b/a Lake Emory Post-Acute Care (misidentified in Plaintiff's Complaint as "Lake Emory Post Acute Care" and "THI of South Carolina at Camp Care, LLC" as separate parties and hereinafter referred to as "this Defendant" or the "Facility"), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order dismissing this action pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelling this matter to arbitration,

or, alternatively, staying the action pending arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq.

Plaintiff has sued this Defendant for Wrongful Death pursuant to his father’s residency at the Facility. However, prior to being admitted to the Facility, Plaintiff’s father, Earl Pace, entered into an Arbitration Agreement with the Facility. (See Arbitration Agreement attached as **Exhibit A**). The Arbitration Agreement was signed on behalf of Earl Pace by Calvin Hill, a representative of South Carolina’s Department of Social Services. See Ex. A. Calvin Hill identified himself as Earl Pace’s “Durable Power of Attorney for Health Care/Legal Guardian/Responsible Party” in the Arbitration Agreement, as Earl Pace was under the custody of DSS at the time of his admission to the Facility. Id.

The parties to the Arbitration Agreement agreed that the South Carolina Uniform Arbitration Act would not apply; rather, arbitration would be governed by the Federal Arbitration Act (“FAA”), because the services and reimbursement thereof to be provided to the Plaintiff upon his admission to the facility involved interstate commerce. In accordance with the terms of this agreement, the Defendant respectfully requests that this matter be compelled to arbitration. Alternatively, this Defendant requests that these proceedings be stayed pending the outcome of arbitration pursuant to Section 3 of the FAA.

Defendant respectfully requests that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any other motions or discovery filed or served by Plaintiff while the current motion is pending.

This Motion and Petition are supported by the attached Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent

memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

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Attorneys for the Defendant THI of South Carolina
at Camp Care, LLC d/b/a Lake Emory Post-Acute
Care

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	DEFENDANT FUNDAMENTAL
BALTIMORE, INC; FUNDAMENTAL	)	ADMINISTRATIVE SERVICES, LLC'S
ADMINISTRATIVE SERVICES, LLC;	)	MOTION TO STAY
FUNDAMENTAL CLINICAL AND	)	(WRONGFUL DEATH)
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant Fundamental Administrative Services, LLC, hereinafter referred to as "this Defendant," by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Camp Care, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

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aphillips@ycrlaw.com

Attorneys for the Defendant Fundamental
Administrative Services, LLC

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	DEFENDANT FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC;	)	CLINICAL AND OPERATIONAL
FUNDAMENTAL CLINICAL AND	)	SERVICES, LLC'S MOTION TO STAY
OPERATIONAL SERVICES, LLC;	)	(WRONGFUL DEATH)
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant Fundamental Clinical and Operational Services, LLC, hereinafter referred to as "this Defendant," by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Camp Care, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

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Attorneys for the Defendant Fundamental Clinical
and Operational Services, LLC

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT HUNT VALLEY
HOLDINGS, LLC F/K/A FUNDAMENTAL
LONG TERM CARE HOLDINGS, LLC'S
MOTION TO STAY
(WRONGFUL DEATH)**

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant Hunt Valley Holdings, LLC f/k/a Fundamental Long Term Care Holdings, LLC (misidentified in Plaintiff's Complaint as "Fundamental Long Term Care Holdings, LLC" and hereinafter referred to as "this Defendant"), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Camp Care, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

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aphillips@ycrlaw.com

Attorneys for the Defendant Hunt Valley Holdings,
LLC f/k/a Fundamental Long Term Care Holdings,
LLC

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	DEFENDANT THI OF BALTIMORE,
BALTIMORE, INC; FUNDAMENTAL	)	LLC'S MOTION TO STAY
ADMINISTRATIVE SERVICES, LLC;	)	(WRONGFUL DEATH)
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant THI of Baltimore, LLC, hereinafter referred to as "this Defendant," by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

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aphillips@ycrlaw.com

Attorneys for the Defendant THI of Baltimore, LLC

Charleston, South Carolina

Dated: April 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
KENNETH PACE, INDIVIDUALLY	)	CASE NO. 2019-CP-42-03709
AND AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF EARL E. PACE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
LAKE EMORY POST ACUTE CARE;	)	
THI OF SOUTH CAROLINA AT CAMP	)	
CARE, LLC; THI OF SOUTH	)	
CAROLINA, LLC; THI OF	)	
BALTIMORE, INC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, LLC	)	
AND KERRY L. WHEELER, DO,	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT THI OF SOUTH
CAROLINA, LLC'S MOTION TO STAY
(WRONGFUL DEATH)**

TO: JENNIFER SPRAGINS BURNETT, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant THI of South Carolina, LLC, hereinafter referred to as "this Defendant," by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Camp Care, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.
D. Jay Davis, Jr.
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